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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Counseling, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC115-70-10 et seq.
<b>Regulation title(s)</b>	Regulations Governing the Registration of Peer Recovery Specialists
<b>Action title</b>	New chapter
<b>Date this document prepared</b>	August 21, 2017

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Regulations for registration of peer recovery specialists are being promulgated pursuant to a mandate of Chapters 418 and 426 of the 2017 Acts of the Assembly. Regulations establish the fees required for registration and renewal of registration and specify the qualification for registration, which is evidence of meeting the requirements set out in regulations of the Department of Behavioral Health and Developmental Services. In order to maintain registration, there is a requirement of eight hours of continuing education with a minimum of one hour in

ethics. Standards of practice for registered peer recovery specialists include practicing within one’s competency area, practicing in a manner that does not endanger public health and safety, maintaining confidentiality, and avoiding dual relationships that would impair objectivity and increase risk of client exploitation. A violation of standards of practice or of applicable law or regulation provides grounds for disciplinary action by the Board.

**Acronyms and Definitions**

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

DBHDS =Virginia Department of Behavioral Health and Developmental Services  
 DMAS = Department of Medical Assistance Services  
 VDH = Virginia Department of Health

**Emergency Authority**

*The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.*

Chapters 418 and 426 of the 2017 Acts of the Assembly included a second enactment providing “that the Board of Behavioral Health and Developmental Services and the Board of Counseling shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.” Therefore, the Board is authorized to adopt emergency regulations pursuant to § 2.2-4011 of the Code of Virginia.

**Legal basis**

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.*

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system:

***§ 54.1-2400 -General powers and duties of health regulatory boards***  
*The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.
- ...
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

The definition of a peer recovery specialist is found in:

§ [54.1-3500](#). Definitions.

As used in this chapter, unless the context requires a different meaning:...

*"Registered peer recovery specialist" means a person who by education and experience is professionally qualified and registered by the Board to provide collaborative services to assist individuals in achieving sustained recovery from the effects of addiction or mental illness, or both. A registered peer recovery specialist shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services, a provider licensed by the Department of Behavioral Health and Developmental Services, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.*

In addition, the Board has specific statutory authority to promulgate regulations for registration of peer recovery specialists in:

§ [54.1-3505](#). Specific powers and duties of the Board.

*In addition to the powers granted in § [54.1-2400](#), the Board shall have the following specific powers and duties:...*

- 10. To promulgate regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the Board of Behavioral Health and Developmental Services pursuant to § [37.2-203](#).

**Purpose**

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The intent of the emergency regulation is to establish a registry of peer recovery specialists, so there is some accountability for their practice and a listing of qualified persons for the purpose of reimbursement by DMAS. It has been shown that the availability of a peer recovery specialist can drastically increase the willingness of people struggling with addiction to seek treatment.

DBHDS has recently begun utilization of "certified peer recovery specialists" for work with individuals who are in recovery from mental health and substance use disorders. This regulation will ensure that there is a health regulatory board (Counseling) responsible for registration of peer recovery specialists and for taking disciplinary action if necessary. Peer recovery specialists who are not registered would still be able to provide peer services, but would not be able to be reimbursed by DMAS.

**Need**

*Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

Peer recovery specialists use their life experiences, including their own recovery, to provide effective support for others struggling with mental health or substance use disorders. The legislation and subsequent regulations are intended to address concerns jointly expressed by the Department of Health Professions (DHP), the Department of Behavioral Health and Developmental Services (DBHDS), and the Department of Medical Assistance Services (DMAS) about the lack of oversight and accountability for individuals who are providing mental health or substance abuse services, but who are not responsible to a health regulatory board with authority to take disciplinary action.

By requiring a person who works as a registered peer recovery specialist in a program approved by DBHDS, or under a licensee of VDH or DHP, to be registered by the Board of Counseling, individuals can be disciplined and removed from the registry and no longer be employed in that capacity. This will result in greater protection for the public and a reduction in the possibility of abuse and fraud in Medicaid-funded programs.

**Substance**

*Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.*

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Establishes definitions for words and terms used in the Chapter, including mental health professional,	§§ 54.1-2400 & 54.1-3500	Words and terms are defined in

	peer recovery specialist, and registered peer recovery specialist	12VAC35-250	conformity to definitions found in the Code
20	Establishes fees to be charged to applicants and registrants, including a registration or renewal fee of \$30	§§ 54.1-2400 and 54.1-113	Fees are consistent with other registered professions and are minimally intended to offset costs associated with registration
30	Sets a requirement for a registrant to maintain a current name and address	§ 54.1-2400	All current information required for notifications to registrants must be maintained with the Board.
40	Sets forth the requirements for registration, including submission of an application and fee and evidence of meeting requirements established in regulations of DBHDS.	§§ 54.1-2400 & 54.1-3505 12VAC35-250	The qualifications for registration are determined by DBHDS in its regulations.
50	States that renewal of registration is annual on or before June 30 of each year.	§§ 54.1-2400	The renewal cycle is consistent with all certified and licensed professions under the Board.
60	Sets forth the continued education requirements for renewal to include eight contact hours with a minimum of one hour in ethics Subsection A lists the content areas for continuing competency activities. Subsection B lists the organization, associations, or institutions that are approved to provide continuing education. Subsection C exempts newly registered peers from CE for the first renewal. Subsection D allows the Board to grant an extension for up to one year for good cause shown. Subsection E allows the Board to grant an exemption for circumstances beyond the control of the peer. Subsection F requires maintenance of documentation for three years. Subsection G authorizes an audit of registrants and specifies the documentation required. Subsection H specifies that CE hours required by a disciplinary order may not be counted towards the annual requirement.	§§ 54.1-2400 & 54.1-103 12VAC35-250	Continuing education is a requirement specified in regulations of DBHDS; subject matter content is also consistent with the areas required in 12VAC35-250-50. Allowances for the first renewal, extensions or exemptions are consistent with those of other professions.
70	Sets out the standards of practice for a registered peer recovery specialist practicing within one's competency area, practicing in a manner that does not endanger public health and safety, maintaining confidentiality, and avoiding dual relationships that	§§ 54.1-2400 & 54.1-3505 12VAC35-250	The standards of conduct are the same set for other mental health professions and

	would impair objectivity and increase risk of client exploitation.		emphasize the need for professionalism, confidentiality, and safety in practice.
80	Establishes grounds for disciplinary action or denial of registration including conviction of a felony, violation of law or regulation, fraud or misrepresentation, practicing in a manner to be a danger to the health and welfare of a client, and functioning outside one’s competency or scope of practice	§§ 54.1-2400 & 54.1-111	Likewise, the grounds for disciplinary action or denial of registration are the same as those for other professions under the Board.
90	Establishes the requirements for reinstatement after a disciplinary action.	§§ 54.1-2400	Requirements for reinstatement are necessary to ensure that the registrant is qualified and competent to return to practice.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

Legislation establishing a definition of a registered peer recovery specialist and authorizing the registration of this new profession mandates the Board of Counseling: *To promulgate regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the Board of Behavioral Health and Developmental Services pursuant to § 37.2-203.* Therefore, there are no alternatives that can be considered to achieve the essential purpose of the action. Emergency regulation of DBHDS in 12VAC35-250-10 et seq. became effective on May 12, 2017. Regulations promulgated by the Board of Counseling are consistent with the requirements of DBHDS for peer recovery specialists with the exception that there are fewer continuing education hours required under this proposed chapter.

Fees established in this chapter are minimal for a registered profession and are consistent with fees charged to applicants and registrants by other health regulatory boards at DHP. It is unknown whether the fees will generate sufficient revenue to offset the expenses of registration, renewal, and potential investigations and disciplinary proceedings for this profession.

In the development of regulations, the Department of Health Professions worked collaboratively for several months with staff from the Secretary’s office, DMAS, and DBHDS. Then on June 26, 2017, the Board of Counseling convened a Regulatory Advisory Panel (RAP) with 18 members representing the three health regulatory boards at DHP, staff from the other agencies,

community services boards, private providers of mental health services, and professional associations. Regulations were recommended by the RAP to the Regulatory Committee, which met on July 21, 2017. Public comment has been received at each of these meetings.

### Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or by mail to Elaine Yeatts, 9960 Mayland Drive, Suite 300, Henrico, VA 23233; by email to [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov); by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

To the extent a registered peer recovery specialist is available and effective for persons seeking recovery from addictions, these regulations could have a positive impact on the institution and stability of the family.