



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 115-20 Regulations Governing the Practice of Professional Counseling
18 VAC 115-30 Regulations Governing the Certification of Substance Abuse Counselors
18 VAC 115-50 Regulations Governing the Practice of Marriage and Family Therapy
18 VAC 115-60 Regulations Governing the Licensure of Substance Abuse Professionals
Virginia Department of Health Professions
Town Hall Action/Stage: 5225/8743
November 20, 2019

Summary of the Proposed Amendments to Regulation

The Board of Counseling (Board) proposes to amend 18 VAC 115-20 *Regulations Governing the Practice of Professional Counseling*, 18 VAC 115-30 *Regulations Governing the Certification of Substance Abuse Counselors*, 18 VAC 115-50 *Regulations Governing the Practice of Marriage and Family Therapy*, and 18 VAC 115-60 *Regulations Governing the Licensure of Substance Abuse Professionals* (regulations) in order to add a definition of “conversion therapy” and a stipulation that licensees shall not engage in conversion therapy with individuals under 18 years of age.

Background

During the 2018 General Assembly Session, Delegates Patrick A. Hope and Betsy B. Carr introduced a bill (HB 363) that provided a definition of “sexual orientation change efforts” (SOCE) and would “prohibit any health care provider or person who performs counseling as part of his training for any profession licensed by a regulatory board of the Department of Health Professions (DHP) from engaging in sexual orientation change efforts with a person under 18 years of age.”¹ The bill was referred to the Committee on Health, Welfare and Institutions and assigned to a subcommittee where, in the course of their deliberations, the question was raised as

¹ See <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=hb363>

to why the issue had not already been addressed by licensing boards. The bill was passed by indefinitely and left in subcommittee.

Subsequently, the President of the Board of Psychology recommended that the Director of DHP convene a workgroup to discuss the issue. The workgroup met on October 5, 2018 and included representatives from the Boards of Counseling, Medicine, Psychology and Social Work. After substantial debate, most members concurred that there was a need for more protection of children. It was agreed that each board would have to make the decision whether to promulgate regulation.

The proposed amendments mirror the language of HB 363, and define conversion therapy in some detail:

"Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include:

- 1. Counseling that provides assistance to a person undergoing gender transition; or*
- 2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction.*

This definition appears to be consistent with those adopted by the American Psychological Association, the American Psychiatric Association, and other professional associations.²

In general, DHP reports that licensed providers are not taught conversion therapy as part of their professional training, and that the agency has not received any complaints or reports of licensees practicing conversion therapy. However, the counseling, social work, and medical professional communities have adopted resolutions and position statements based on research conducted over the past two decades regarding the effects of conversion therapy, particularly on

² See https://williamsinstitute.law.ucla.edu/wp-content/uploads/Conversion-Therapy-LGBT-Youth-Jan-2018.pdf?response_type=embed and citations therein.

minors.^{3,4,5} The Virginia Counselors Association specifically posted a comment at the NOIRA stage saying, “it is our position that it is unprofessional and dangerous conduct for a counselor to engage in sexual orientation change efforts, known as “conversion therapy,” especially in persons under age 18.”⁶ Hence, the Board is proposing these amendments based on its authority to impose regulations for the protection of the health, safety, and welfare of the public. The Boards of Social Work, Psychology, Medicine, and Nursing have also initiated regulatory actions with nearly identical proposed changes.⁷

In contrast, some religious organizations continue to offer conversion therapy. The organizations, including programs aimed at teenagers and young adults, may use different terminologies such as ‘ex-gay ministry’, ‘reparative therapy’, or ‘promoting healthy sexuality’ but the programs seek to change the individual’s sexual orientation or gender identity, thus appearing to meet the Board’s definition of conversion therapy. However, religious counselors (rabbis, priests, ministers, or clergymen) are exempt from the requirement for licensure.⁸ As a result, the content of this regulation would not apply to them. Accordingly, the Board has no

³ See <https://www.apa.org/about/policy/sexual-orientation> For instance, the American Psychological Association convened a task force whose 2009 report *Appropriate Therapeutic Responses to Sexual Orientation* states “... Thus, the results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through SOCE. We found that there was some evidence to indicate that individuals experienced harm from SOCE.” See <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf> (Executive Summary)

⁴ See <https://www.psychiatry.org/newsroom/news-releases/apa-reiterates-strong-opposition-to-conversion-therapy>. In a 2013 Position Statement, the American Psychiatric Association stated that it “does not believe that same-sex orientation should or needs to be changed, and efforts to do so represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change. No credible evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation need to be changed.” Downloaded from <https://www.psychiatry.org/home/policy-finder>

⁵ See <https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-during-first-day-voting-interim-meeting>

⁶ See <https://townhall.virginia.gov/L/viewcomments.cfm?commentid=75098>.

⁷ See Board of Social Work Action 5241 (<https://townhall.virginia.gov/L/ViewAction.cfm?actionid=5241>), Board of Psychology Action 5218 (<https://townhall.virginia.gov/L/ViewAction.cfm?actionid=5218>) and Board of Medicine Action 5412 (<https://townhall.virginia.gov/L/viewaction.cfm?actionid=5412>) and Board of Nursing Action 5430 (<https://townhall.virginia.gov/L/ViewAction.cfm?actionid=5430>).

⁸ As per COV § 54.1-3501 *Exemption from requirements of licensure*: The activities, including marriage and family therapy, counseling, or substance abuse treatment, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

authority to take disciplinary action against religious organizations and affiliated counselors who continue to provide conversion therapy, unless they are also licensed by the Board.

Estimated Benefits and Costs

For the reasons described above, it is unlikely that counselors licensed by the Board presently provide conversion therapy. Moreover, programs that are conducted in a religious setting by rabbis, priests, ministers or clergymen are exempt from licensure. Hence, although the proposed regulation has received 692 public comments and appears to have been controversial, it is unlikely to have substantive economic impact.

To the extent that the Board's licensees are currently engaging in conversion therapy with individuals under 18 years of age, they may now have to change their practice, lose clients, or face disciplinary action if they fail to comply with the regulation. However, as mentioned previously, conversion therapy is not an evidence-based practice and is hence not included in the curriculum at accredited counseling programs and not practiced by the vast majority of licensed professionals. Any current license-holders choosing to forfeit their licensure in favor of continuing to practice conversion therapy may continue to do so if employed as a rabbi, priest, minister or clergyman, as long as they belong to "an established and legally cognizable church, denomination or sect" and remain "accountable to its established authority."⁹

Clients under age 18, who seek to receive, or continue receiving, conversion therapy from licensed providers, and their parents, may now face certain indirect costs if they choose to find other providers. The amount of the cost would depend upon the availability of providers, including religious counselors. Conversely, children and their parents may be benefited to the degree the board's action limits the availability of conversion therapy. The degree of this benefit would depend upon the extent to which the harms cited by the professional organizations noted above would have occurred but for this regulatory action.

Businesses and Other Entities Affected

As mentioned above, some licensed practitioners who may also have been working in a religious setting may have to alter their practice or face disciplinary action, but DHP estimates

⁹ Ibid.

that these are most likely a very small fraction of the overall number of license-holders.¹⁰

Although DHP does not have an estimate of the number of affected providers, the agency reports that the vast majority of current license-holders likely do not engage in conversion therapy at all (in either religious or secular settings) since it is not taught by any accredited program and has been considered contrary to the “professional code of ethics” in an informal capacity for more than a decade.

Small Businesses¹¹ Affected

Although many licensed practitioners may be employed in a small business setting, DHP estimates that only a very small fraction of the overall number of license-holders would be affected by the regulation at all, and there is no reason to suggest that those affected are more likely to be working in a small business. Even so, the cost of complying with the regulation is unlikely to be significant, and there are no alternatives to the regulation that would provide greater flexibility while also meeting its policy objectives.

Localities¹² Affected¹³

The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment

The proposed amendments are unlikely to affect the overall number of employed Licensed Professional Counselors, Licensed Marriage and Family Therapists, Licensed Substance Abuse Treatment Providers, and Certified Substance Abuse Counselors.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

¹⁰ According to the ABD, the overall numbers of licensees are as follows: 5,784 Licensed Professional Counselors, 840 Marriage and Family Therapists, 260 Licensed Substance Abuse Treatment Providers, and 1,876 Certified Substance Abuse Counselors.

¹¹ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

¹² “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.