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Final Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC115-40
VAC Chapter title(s)	Regulations Governing the Certification of Rehabilitation Providers
Action title	Periodic review
Date this document prepared	2/5/21

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The intent of the amendments resulting from the periodic review is to update regulations, clarify language, and achieve some consistency among standards of practice and renewal requirements for certified and registered professions.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On February 5, 2021, the Board of Counseling adopted final amendments to 18VAC115-40-10 et seq., Regulations Governing the Certification of Rehabilitation Providers.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The impetus for the regulatory change is the periodic review that was filed on July 5, 2018 with a comment period from August 6, 2018 to September 5, 2018. There are no changes to the original impetus.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

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. ...

Specific authority for regulation of the profession of counseling is found in Chapter 35 of Title 54.1:

§ 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: ...

4. To administer the certification of rehabilitation providers pursuant to Article 2 (§ 54.1-3510 et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal....

Article 2. Rehabilitation Providers.

§ 54.1-3510. Definitions.

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

"Certified rehabilitation provider" means a person who is certified by the Board as possessing the training, the skills and the experience as a rehabilitation provider to form an opinion by discerning and evaluating, thereby allowing for a sound and reasonable determination or recommendation as to the appropriate employment for a rehabilitation client and who may provide vocational rehabilitation services under subdivision A 3 of § [65.2-603](#) that involve the exercise of professional judgment.

"Professional judgment" includes consideration of the client's level of disability, functional limitations and capabilities; consideration of client aptitudes, career and technical skills and abilities; education and pre-injury employment; and identification of return-to-work options and service needs which culminate in the determination or recommendation of appropriate employment for the rehabilitation client.

§ 54.1-3513. Restriction of practice; use of titles.

A. No person, other than a person licensed by the Boards of Counseling; Medicine; Nursing; Optometry; Psychology; or Social Work, shall hold himself out as a provider of rehabilitation services or use the title "rehabilitation provider" or a similar title or any abbreviation thereof unless he holds a valid certificate under this article.

B. Subsection A shall not apply to employees or independent contractors of the Commonwealth's agencies and sheltered workshops providing vocational rehabilitation services, under the following circumstances: (i) such employees or independent contractors are not providing vocational rehabilitation services under § [65.2-603](#) or (ii) such employees are providing vocational rehabilitation services under § [65.2-603](#) as well as other programs and are certified by the Commission on Rehabilitation Counselor Certification (CRCC) as certified rehabilitation counselors (CRC) or by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES) as Certified Vocational Evaluation Specialists (CVE).

§ 54.1-3514. Certification of existing providers.

The Board of Counseling upon receipt of a completed application and payment of the prescribed fee on or before June 30, 1995, shall issue a certificate to any person who was actively engaged in providing rehabilitation services on January 1, 1994.

§ 54.1-3515. Certification renewal of individuals who became certified under the provisions of § 54.1-3514.

After July 1, 2001, the Board of Counseling shall not renew a certificate to any person who became certified under the provisions of § [54.1-3514](#) without documentation that such person meets the current requirements for certification established by the Board, unless such person provided rehabilitation services for at least two years immediately preceding July 1, 1997, and has done so continuously since that date without interruption and received a passing score on a Board approved examination. The Board of Counseling, pursuant to its authority in this section and in § [54.1-3505](#), shall adopt regulations to implement the 1997 revisions of the law relating to certified rehabilitation providers in 280 days or less of the date of the enactment of such revisions.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Additional standards of conduct and causes for disciplinary action will provide further guidance to licensees on the expectations for ethical practice and give the Board more explicit grounds on which to discipline practitioners for the purpose of protecting the health, safety and welfare of the public they serve.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

In addition to edits for clarity and updating of terminology, the following changes were adopted:

In section 22, clarify that unresolved disciplinary action in another jurisdiction may be grounds to deny certification, but the board will consider each on a case-by-case basis.

In section 25, require "verification" of any other mental health or health license in another jurisdiction. Documentation is not necessary, provided the verification comes from the other jurisdiction; the only "licenses" the board is concerned about are mental health or health licenses.

In section 26, replace the words "members" with the word "persons" who are in group supervision.

In section 30, change the renewal date from January 31st to June 30th for consistency with renewal for other professions.

In subsection B of section 35, provide examples of “evidence” of continuing ability to perform the functions of a rehabilitation provider that may be required for reinstatement, such as continuing education and/or practice in another state.

In section 38, add the requirement for notification of a name change and change the requirement from 30 to 60 days for submission of information on changes.

In section 50, add the following grounds for disciplinary action that exist in other regulations for the Board of Counseling:

- Conducting one’s practice in such a manner so as to make it a danger to the health and welfare of one’s clients or to the public;
- Performance of functions outside the board-certified area of competency;
- Intentional or negligent conduct that causes or is likely to cause injury to a client or clients;
- Performance of an act likely to deceive, defraud, or harm the public;
- Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;
- Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia, or elder abuse or neglect as required in § 63.2-1606 in the Code of Virginia;
- Knowingly allowing persons under supervision to jeopardize client safety or provide care to clients outside of such person’s scope of practice or area of responsibility; and
- Violating any provisions of this chapter, including practice standards set forth in 18VAC115-40-40.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1) The primary advantage to the public is greater accountability by the addition of grounds for disciplinary action if any issues with the practice of rehabilitation providers arise; there are no disadvantages to the public.

2) There are no advantages and disadvantages to the agency or the Commonwealth.

3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 “To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system...” The proposed amendments are a foreseeable result of the statute requiring the Board to protect the safety and health of the citizens of the Commonwealth.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the previously reported information.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the previously reported information.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

There was a comment period from 9/14/20 to 11/13/20; no comment was received on Townhall or at a public hearing conducted on 10/23/20. However, Lori Cowan stated at the public comment period during the Board meeting on 11/6/20 that the International Association of Rehabilitation Professionals, Virginia Chapter, is in support of the proposed changes to regulations.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

There are no changes since the previous stage.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
20	Sets the fees for applicants and certified rehabilitation providers	A new fee of \$25 is added for verification of certification. <i>This fee is identical to the fee charged to all other regulants under the Board of Counseling. Since verification of certification is available online, an entity or another jurisdiction has the capability to verify without the rehabilitation provider incurring a fee. On occasion, a paper verification is required so a fee for completing that request is necessary.</i>
22	Sets the criteria for eligibility for certification	Subsection D is added to clarify that the Board has authority to deny certification to an applicant who has unresolved disciplinary action. There is no barrier to certification, but disciplinary actions are reviewed on a case-by-case basis to determine whether they provide grounds for denial.
25	Sets out the application process for certification	Passage of an examination is required by section 28, so the additional requirement for documentation is clarification for the applicant to have all required elements of the application in one section. Currently, the regulation requires submission of documentation of a license or certification in another jurisdiction. The proposed regulation changes “documentation” to “verification” so an applicant does not have to submit paper documentation.
26	Sets out the requirements for supervised experience	The word “members” is changed to “persons” as a correction to the section on group instruction.
30	Sets the requirements for annual renewal of certification	The renewal date is changed from January 31 to June 30 for consistency with all other professions related by the Board. <i>All certificate holders will be given at least 12 months of renewed certification after the effective date of the regulation. For example, if the final regulation becomes effective</i>

		<i>January 1 of 2021, rehab providers would not renew again until June 30 of 2022.</i>
35	Sets the requirements for reinstatement of certification	Currently, regulations provide that a person applying for reinstatement must submit “evidence regarding the continued ability to perform the functions within the scope of practice of certification.” The proposed regulation will offer examples of the evidence that may be provided – continuing education, practice in another jurisdiction or maintenance of national certification.
38	Provides a requirement to notify the Board of a change of address or a name change	The requirement to submit a change of address is amended from 30 to 60 days for consistency with other professions regulated by the Board. The proposed regulation also adds a requirement to notify the Board of a name change so records can be maintained accurately for renewal notification, newsletters, etc.
50	Sets out grounds for disciplinary action or for denial of certification	The grounds for action have not been recently updated. In proposed regulations, they have been made consistent with other professions to include: <ul style="list-style-type: none"> • Attempting to procure or maintain certification by fraud or misrepresentation; • Conducting one’s practice in a manner to be a danger to the health and welfare of clients or the public; • Performance of functions outside the board-certified area of competency; • Intentional or negligent conduct that causes or is likely to cause injury to a client; • Performance of an act likely to deceive, defraud, or harm the public; • Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; • Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia, or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia; • Knowingly allowing a person under supervision to jeopardize client safety; or • Violating any provisions of this chapter, including practice standards.