



Proposed Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 125-20
Regulation title	Regulations Governing the Practice of Psychology
Action title	Changes in continuing education requirements
Document preparation date	11/21/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Board's action is in response to a petition for rulemaking to reduce the number of continuing education hours that must be gained face-to-face, include real-time interactive hours as face-to-face, recognize the educational value in preparation for presentations or publication, expand the listing of approved providers, and eliminate the process and fee for board approval of individual courses and providers.

Legal basis

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) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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 Psychology 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:

...

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 specific statutory mandate for continuing education requirements is found in § 54.1-3606.1:

§ 54.1-3606.1. Continuing education.

A. The Board shall promulgate regulations governing continuing education requirements for psychologists licensed by the Board. Such regulations shall require the completion of the equivalent of fourteen hours annually in Board-approved continuing education courses for any license renewal or reinstatement after the effective date.

B. The Board shall approve criteria for continuing education courses that are directly related to the respective license and scope of practice of school psychology, applied psychology and clinical psychology. Approved continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders. Any licensed hospital, accredited institution of higher education, or national, state or local health, medical, psychological or mental health association or organization may submit applications to the Board for approval as a provider of continuing education courses satisfying the requirements of the Board's regulations. Approved course providers may be required to register continuing education courses with the Board pursuant to Board regulations. Only courses meeting criteria approved by the Board and offered by a Board-approved provider of continuing education courses may be designated by the Board as qualifying for continuing education course credit.

C. All course providers shall furnish written certification to licensed psychologists attending and completing respective courses, indicating the satisfactory completion of an approved continuing education course. Each course provider shall retain records of all persons attending and those persons satisfactorily completing such continuing education courses for a period of four years following each course. Applicants for renewal or reinstatement of licenses issued pursuant to this article shall retain for a period of four years the written certification issued by any course provider. The Board may require course providers or licensees to submit copies of such records or certification, as it deems necessary to ensure compliance with continuing education requirements.

D. The Board shall have the authority to grant exemptions or waivers or to reduce the number of continuing education hours required in cases of certified illness or undue hardship.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

Continuing education hours have been required for renewal of licensure since 2004, so the Board has now encountered several issues relating to its requirements that it intends to address in the promulgation of amendments that will clarify the regulations and make them less burdensome for licensee compliance. The Code of Virginia requires ***“criteria for continuing education courses that are directly related to the respective license and scope of practice of school psychology, applied psychology and clinical psychology. Approved continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders.”*** Therefore, any modification of the continuing education requirements must protect the health and safety of the public by conforming to the Code in relating to the practice of the psychologist in his care and treatment of clients or patients.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

Included in its amendments adopted as proposed are:

- 1) A reduction in the number of hours that must be obtained in face-to-face courses, which is currently set at half of the 14 required hours. The Board reduced the number to 6 of the 14 hours but also included real-time interactive hours as face-to-face;
- 2) Specification of the term “educational experiences” to include learning activities such as research and publication;
- 3) Acceptance of courses approved by other state boards of psychology to facilitate renewal for psychologists who are licensed in one than one jurisdiction;
- 4) Clarifications of associations, organizations and institutions that are approved providers; and
- 5) Elimination of board-approval of individual providers in regulation.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) There are no advantages or disadvantages to the public. The changes will not significantly affect the quality or amount of continuing education received by psychologists and therefore should have no affect on their competency to practice.
- 2) There are no disadvantages to the agency or the Commonwealth. There would be an advantage to the Board and its staff to eliminate the application process for individuals who want themselves or their businesses approved as CE providers. Deletion of the CE approval process would eliminate an expensive and time-consuming activity that does not provide significant benefit to licensees or the consumers/patients they serve.
- 3) There is no other pertinent matter of interest related to this action.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. B) There may be some on-going cost-savings resulting from the elimination of a board approval process for continuing education providers. While there has been a fee of \$200 per application for such approval, the review of documentation to assure compliance with law and regulation has been contracted out. After payment of a contractor and accounting for the amount of staff time consumed in handling such a process, it is likely that the Board does not cover its costs.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the</p>	<p>The individuals likely to be affected by the regulation are those persons licensed by the Board</p>

<p>regulation</p>	<p>of Psychology and those individuals who have been approved as CE providers.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.</p>	<p>The licensees affected by the regulatory action are those who hold an active license and are subject to CE requirements for renewal of that license: Applied psychologists – 45 Clinical psychologists – 1912 School psychologists – 104 Continuing education providers - 8</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There is no projected cost for licensees for compliance with amended regulations. There will be more opportunities for CE courses through the changes. The CE providers that have been approved to offer courses will continue to be able to do so through the two-year approval period. Thereafter, they will have to offer their programs through a psychological or mental health association or be approved by a board in another state (2 of the 8 are out-of-state providers and may already be approved in their states)</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

In considering its response to a petition for rulemaking to eliminate the face-to-face requirement in continuing education, the Board held discussion about the subject of the petition and other suggested changes to regulations for continuing education. To avoid piecemeal revision of CE requirements, the Board voted to refer the issue to the Regulatory Review Committee for further consideration. After a thorough review and discussion of the Psychology regulations and law on continuing education, the Committee recommended that the Board consider certain changes that would expand the offerings for approved CE, reduce the hours of face-to-face CE, and clarify the list of approved providers. In its development of proposed regulations, the Board has considered requirements of the other behavioral science professions and other health professions within the Department.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published on June 11, 2007 with comment received until July 11, 2007. During that period, the following comment was received:

The Virginia Academy of Clinical Psychologists (Jennifer Morgan, Regulatory Affairs Chair)

- With the availability of face-to-face CE hours offered by organizations, academies, hospitals, colleges and universities, there is no substantial hardship or inconvenience to a licensee required to take 7 hours per year. Face-to-face CE allows for interaction between presenter and the audience, making that type of CE a valuable educational and learning experience. VACP does not support reducing the 7-hour requirement.

Board response: The Board concurred with the comment about availability and the value of interactive course, so it did amend the requirement to allow real-time interactive to count as face-to-face. The Board also reduced the hourly requirement from 7 to 6 because that is the number of hours that is often available in a one-day course.

- VACP supports allowing up to four hours per year for educational experiences in preparing for and presenting a continuing education program and for preparation and research for publication.

Board response: The Board concurred with the comment and amended section 121 accordingly.

- VACP supports recognition of other courses approved by other state boards provided they meet the requirements for content.

Board response: The Board concurred with the comment and amended section 122 accordingly.

- VACP supports maintaining a list of general categories of associations, organizations and institutions approved as CE providers.

Board response: The Board concurred with the comment and clarified section 122 accordingly.

- VACP supports the continuation of Board approval of individual and business providers.

Board response: The Board does not have specific statutory authority to approve individuals and businesses as approved CE providers. Those entities may offer continuing education through entities that are approved as listed in subsection A of section 122.

Dr. Roger Bartman, Clinical Psychologist wrote to support complete elimination of the face-to-face requirement; some of the non face-to-face courses have been more valuable.

Board response: The Board appreciates the perspective of its licensee but concluded that 6 of the 14 hours in face-to-face courses was not burdensome. That would leave the majority of the hours at the discretion of the licensee to choose the type of delivery method he or she found most educational.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
121	n/a	Sets out the continuing education requirements for renewal of a license	<p>In subsection A, the beginning date of January 1, 2004 is deleted as unnecessary.</p> <p>The requirement for a minimum of 1.5 hours in courses that emphasize the ethics, standards of practice or laws governing the profession of psychology is amended to eliminate the requirement that the standards or laws must be those in Virginia. <i>Some Virginia licensees practice in other states, and the standards of practice or laws governing the profession are not substantially different from state to state.</i></p> <p>Subsection B is amended to reduce from 7 to 6 of the required hours to be earned face-to-face. In addition, a licensee would be allowed to obtain those hours in real-time interactive educational experiences. The regulation defines real-time interactive as a course in which the learner has the opportunity to interact with the presenter and participants during the time of the presentation.</p> <p><i>While the petition for rulemaking had requests elimination of face-to-face hours, the Board saw merit in retaining some hours that would be acquired in an interactive setting with peers in the profession. The inclusion of real-time interactive hours will expand the availability of such hours to persons and places where face-to-face courses are not as convenient or are not readily available.</i></p> <p>The Board also amended subsection to be able to approve up to four hours per renewal cycle for specific educational experiences to include:</p> <p>a. Presentation of a continuing education program, seminar, workshop or course offered by an approved provider and directly related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the presentation is given, and may not be credited toward the face-to-face requirement.</p>

			<p>b. Publication of an article or book in a recognized publication directly related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the writing is published, and may not be credited toward the face-to-face requirement.</p> <p><i>The additional opportunity to earn continuing education hours for preparation of a continuing education program or for a publication in the practice of psychology will be helpful for a few licensees whose scholarly expertise is sought. In both course preparation and publication of an article or a book, there is substantial learning that must occur on behalf of the author or presenter, so the Board wanted to recognize that educational effort.</i></p>
122	n/a	Sets out the organizations or entities that may be approved to provide continuing education	<p>In subsection A, the current regulation uses the term “board-approved” but the Board has never “approved” psychological or mental health associations to provide continuing education. Any that are recognized by the profession have been acceptable to the Board as “approved” continuing education providers. Therefore, the regulation is amended to clarify what types of entities are approved to provide CE.</p> <p>Any regionally accredited institution of higher learning is approved to provide CE, but there was no equivalency for the course in terms of CE credit. An amendment will specify that a maximum of 14 hours will be accepted for each academic course directly related to the practice of psychology. <i>Fourteen hours of CE is required for each renewal, so if a licensee took one academic course, there CE requirement would be fulfilled for that renewal year.</i></p> <p>The Board has also included in the listing of approved providers any association or organization that has been approved as a continuing competency provider by a psychology board in another state or jurisdiction.</p> <p>Subsection B, which sets out a process for board approval of course providers not listed in subsection A has been eliminated.</p> <p><i>The law provides that: Any licensed hospital, accredited institution of higher education, or national, state or local health, medical, psychological or mental health association or organization may submit applications to the Board for approval as a provider of</i></p>

			<p><i>continuing education courses satisfying the requirements of the Board's regulations. The Board has chosen to generally recognize all such providers by regulation in order to eliminate a very burdensome approval process for the institutions, association or organizations and for the Board. Currently, the Board has approved several individuals as providers of continuing education – although there is no specific statutory authority for such approval. Therefore, the proposed regulations would eliminate the process for board approval of individual providers and rely on a very broad listing of providers as set out in regulation. Any individual who has board approval for a course may continue to offer the course that is approved until approval expires two years from issuance. Thereafter, such an individual would need to offer the course through an entity, institution or organization approved in subsection A.</i></p> <p><i>Approval of continuing education providers has been somewhat problematic for the Board. It is often very time-consuming to obtain all necessary documentation about a course offering and presenter. If the offering is from someone out-of-state or someone unknown to board members, there is little or no knowledge about the quality of the course and no opportunity for follow-up to ensure it was presented as described. The Board would prefer to rely on the professional associations, hospitals, and educational institutions to determine approval of continuing education.</i></p>
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