



[townhall.virginia.gov](http://townhall.virginia.gov)

## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Psychology
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC 125-20
<b>VAC Chapter title(s)</b>	Regulations Governing the Practice of Psychology
<b>Action title</b>	Implementation of PsyPact
<b>Date this document prepared</b>	4/16/2021

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.*

Chapter 1162 of the 2020 Acts of the Assembly mandated membership of the Commonwealth of Virginia in the Psychology Interjurisdictional Compact and required the Board to promulgate regulations to implement the provisions of the act to be effective within 280 days of enactment. Amendments add definitions consistent with the Compact and revise the standards of practice and the grounds for disciplinary action to ensure that they cover persons practicing with an E.Passport or temporary authorization to practice in Virginia through the Compact.

### 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

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

Chapter 1162 of the 2020 Acts of the Assembly mandated membership of the Commonwealth of Virginia in the Psychology Interjurisdictional Compact and required the Board to promulgate regulations to implement the provisions of the act to be effective within 280 days of enactment.

The proposed regulations are identical to and will replace emergency regulations currently in effect.

### 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 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 Psychological Interjurisdictional Compact is created by § 54.1-3606.2 in the Code of Virginia.: <https://law.lis.virginia.gov/vacode/title54.1/chapter36/section54.1-3606.2/>

### 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.*

The amendments to sections 150 and 160 are essential to ensure that psychologists who are clinically practicing on patients/clients in Virginia are accountable for the same standards of care as psychologists who hold a Virginia license. Otherwise, psychological services for Virginia citizens by persons practicing through the Compact would potentially be harmful to their health, safety, or welfare.

## 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.*

Amendments add definitions consistent with the Compact and revise the standards of practice and the grounds for disciplinary action to ensure that they cover persons practicing with an E.Passport or temporary authorization to practice in Virginia through the Compact.

## 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 advantage to the public is assurance that psychologists practicing in Virginia through the Compact will be held to the same standards of conduct as Virginia licensees; there are no disadvantages to the public.
- 2) There are no specific advantages or disadvantages to the agency.
- 3) There are no other pertinent matters of interest.

The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The proposed regulation promulgated by the Board does not represent any restraint on that competition. Regulations to implement PsyPact are a foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth. The Board is authorized under § 54.1-2400 to "*promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system*" and has acted in accordance with a statutory mandate in § 54.1-3606.2.

## Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale*

for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected – None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

**Economic Impact**

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>There are no costs resulting from this regulation. Membership in the Compact is not optional for the Board of Psychology, as it is set out in the Code of Virginia.</p> <p>Compact member states will be charged an annual assessment of \$10 per Authorization Holder licensed in their Home State per fiscal year to be no greater than \$6,000 annually. The Compact will be sending out invoices in January 2022 based on 2021 home state declarations.</p> <p>There are currently 15 states that are members of the Compact, and Kentucky and Alabama have enacted legislation for participation.</p> <p>There are no other projected costs, savings, fees or revenues resulting from the regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the</p>	<p>There are no projected costs, savings, fees or revenues for other state agencies resulting from the regulatory change.</p>

regulatory change, including a delineation of one-time versus on-going expenditures.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There are no expected benefits to agencies.

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no projected costs, savings, fees or revenues resulting from the regulatory change.
Benefits the regulatory change is designed to produce.	The regulatory change is designed to assure that psychologists practicing in Virginia through the Compact will be held to the same standards of conduct as Virginia licensees with the purpose of ensuring the same protection of the health, safety, and welfare of the public.

**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Individuals likely to be affected include psychologists who are not already licensed with the Board, who are licensed in other states and who want to conduct a telepsychology practice or a temporary practice in Virginia through the Compact.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The Board has no estimate of the number who will obtain an E-passport or a Temporary Authorization to Practice through the Compact.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs resulting from these regulations; no fees are paid to the Virginia Board for Compact authorization.  To obtain an E-passport to practice telepsychology, there is a \$40 fee paid to the Compact and a \$400 fee paid to the Association of State and Provincial Psychology Boards (ASPPB). By comparison, the application fee for a Virginia license (which allows full practice) is \$200.
Benefits the regulatory change is designed to produce.	This regulatory change will allow Virginia-licensed psychologists to practice in other member states for a fee while ensuring all psychologists practicing in Virginia (whether through Board licensure or Compact agreement) are subject to the same standards of practice and disciplinary procedures. The primary objective of the regulatory change is to ensure the continued health, safety, and welfare of citizens of Virginia.

### **Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

---

There are no alternatives as the promulgation of regulations is a mandate of the legislation.

### **Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

---

There is no alternative to regulation. Chapter 1162 of the 2020 Acts of the Assembly mandated membership of the Commonwealth of Virginia in the Psychology Interjurisdictional Compact and required the Board of Psychology to promulgate regulations to implement the provisions of the act.

### **Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

---

The regulatory change is not a result of a periodic review/small business impact review.

**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 were no public comments. The public comment period ended on March 3, 2021.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

The Board of Psychology is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Elaine Yeatts, Senior Policy Analyst, 9960 Mayland Drive, Suite 300, Henrico, VA 23233; email: [Elaine.yeatts@dhp.virginia.gov](mailto:Elaine.yeatts@dhp.virginia.gov); FAX- 804-527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

**Detail of Changes**

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are*

*being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
20-10	N/A	Sets out definitions for words and terms used in the chapter	Words and terms used in § 54.1-3606.2, which is the Compact language are included with definitions.
20-150	N/A	Sets out the standards of practice for the profession of psychology	Subsection B is amended to clearly state that persons who are practicing in Virginia with an E.Passport (telepractice) or an IPC (temporary authorization for in-person practice) are held to the same standards as those with a Virginia license.
20-160	N/A	Sets out the grounds for disciplinary action or denial of licensure	As with section 150, the amendment will clearly state the Board's authority to take disciplinary action against an E.Passport or IPC for any of the stated causes.

There are no changes to the Emergency regulations.