



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Psychology, Department of Health Professions
VAC Chapter Number:	18 VAC 125-30-10 et seq.
Regulation Title:	Regulations Governing the Certification of Sex Offender Treatment Providers.
Action Title:	Periodic Review
Date:	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

Regulations of the Board of Psychology set forth the education and experience requirements for certification of individuals who provide treatment services to sexual offenders, establish fees to cover the administrative costs of the certification and disciplinary activities, and set forth standards of conduct which provide the basis for disciplinary action in the event of practitioner misconduct.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The Board has the general authority under §54.1-2400 to establish qualifications for certification, collect fees to administer the certification program, and take disciplinary action in response to violations of law or regulations.

§ 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.

4. To establish schedules for renewals of registration, certification and licensure.

5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.

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.

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.

8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.

9. To take appropriate disciplinary action for violations of applicable law and regulations.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference

committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

§ 54.1-3605 mandates that the Board promulgate regulations for the voluntary certification of individuals who are exempt from certification under §54.1-3610 and for the mandatory certification of individuals who are not otherwise licensed.

§ 54.1-3605. Specific powers and duties of the Board.--*In addition to the powers granted in other provisions of this title, the Board shall have the following specific powers and duties:*

- 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
- 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
- 3. To designate specialties within the profession.*
- 4. To issue a temporary license for such periods as the Board may prescribe to practice psychology to persons who are engaged in a residency or pursuant to subdivision 7 of § 54.1-3601.*
- 5. To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers. In promulgating such regulations, the Board shall consider the standards recommended by the Advisory Committee on Certified Practices pursuant to 54.1-3610.***
- 6. To administer the mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 and to promulgate regulations governing such mandatory***

certification. The regulations shall include provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

An announcement of the Board's intent to review all chapters of its regulations governing licensing and certification was posted on the Virginia Regulatory Town Hall, published in the Registrar of Regulations, and mailed to individuals who requested listing on the public participation mailing list.

Two comments were received during the 30-day comment period ending July 1, 2000. One individual requested that the title of the certification be changed to "Certified Sex Offender Clinical Specialist," which would be more appropriate for individuals who evaluate sexual offenders and consult with the courts and correctional institutions, but do not provide treatment. The Board does not have the authority to change the title of the certification, which is established in law. In addition, the practice definition of "certified sex offender treatment provider" in § 54.1-3600 includes only treatment as an activity, and not evaluation or consultation.

The other comment requested that the Board ensure that the treatment providers are appropriately trained and certified, but did not offer specific suggestions.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goals for the Boards regulations are as follows:

- 1) To establish adequate education, experience and examination requirements to ensure competency of practitioners and protect the public.
- 2) To establish consistent and effective standards of ethics to provide a basis for disciplinary action of unscrupulous practitioners.
- 3) To establish fees sufficient to cover the expenses of operating the licensing and disciplinary programs.

This profession has been established in law (Chapter 36 of Title 54.1) on the basis of that specialized skills and training are needed to provide treatment services to this specific

population of offenders, and on the premise that there is a potential for harm to the public if each of individuals providing these services are not regulated (§ 54.1-100).

The Board of Psychology is charged with issuing certificates and regulating the practice of sex offender treatment providers. As the regulating agency, the Board has the duty under § 54.1-2400 to protect the public by establishing qualifications and requirements for certification which are necessary to ensure the competence and integrity of certificate holders and by taking disciplinary action for violations to applicable law and regulations. Regulations are the mechanism by which the Board sets forth qualifications and requirements for certification, and standards of professional conduct which provide the basis for disciplinary action. The Board considers the problems the regulations are intended to address, and utilizes professional expertise, review of requirements of other states and national associations, historical information and public comment to determine what these requirements and standards should be. Through periodic review of the regulations in compliance with Executive Orders and the Administrative Process Act, the Board amends its regulations as needed to ensure that they are relevant documents outlining the minimal requirements that will ensure competency of its licensees and protect the public health, safety and welfare.

Although the Board has determined that the regulations are generally clear and easily understandable, it has identified several areas where unnecessary or outdated language needs to be rescinded, and several areas where new language is needed for clarification or improved consistency with its other regulations.

In April, 2000 the Board amended its fees for psychologist licensure in compliance with a mandate to correct a budget deficit. The Board based these fee changes on *Principles for Fee Development* developed by the Department of Health Professions to base fees more closely on the actual cost of the items or services provided. At that time, the Board did not amend its fees for sex offender treatment provider certification, because the small numbers of certified sex offender treatment providers do not impact the budget of the Board significantly. During this review, the Board would like to take the opportunity to bring the fees for certification in compliance with the *Principles for Fee Development*.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The primary issues the Board addressed during its review involved the education and experience requirements. The Board had concerns that the ten clock hour requirement in each of the five areas of specialized training set forth under 18 VAC 125-30-40 might not

be a sufficient number of hours in the more critical areas of sex offender assessment and sex offender treatment interventions. The Board considered increasing the number of required hours, particularly in these areas, which would increase the total clock hours of training beyond the 50 hours in the current regulations. This alternative was rejected in favor of changing the hours in each area to place greater emphasis on the more critical subject areas, and less on the other areas, which will not increase the total hours required.

The Board also considered whether the regulations should specify that the 50 clock hours of training must be completed prior to beginning the supervised experience. The Board members acknowledged that exposure to a training area in practice under supervision might help a trainee process the didactic training better through recognition of the subject. The Board opted to leave this matter to the discretion of the licensed supervisor, who is best able to assess the abilities of the individual trainee.

The Board addressed the registration of supervision requirement which has been an area of confusion for many applicants. The current regulations, which are the initial regulations establishing the certification, have a one-year waiver of the supervision requirement which ended August 6, 1998. The Board will recommend removing all references to this waiver, which is no longer in effect. The Board considered including language to specify that no supervision will be accepted without prior registration of the supervision contract. As alternatives, the Board would like to propose waiving the registration requirement for individuals who completed their experience prior to August 6, 1998, and for individuals who are combining their training with another residency for a mental health license which has been registered with the appropriate Board, provided the other requirements have been met.

The Board considered removing the reference letter requirement, since the letters always reflect positively on the applicants and have little bearing on the acceptance of the application. The Board decided to retain the requirement, which provides additional verification of competency for individuals who are working with a dangerous population of offenders, and who may testify in court regarding the potential for recidivism. The Board also discussed whether reference letters should be accepted from the supervisor, which may be seen as a duplication of the evaluation submitted at the completion of the supervised experience. The Board opted to continue to accept reference letters from supervisors, but require that all three letters come from licensed health professionals.

The Board also considered whether continuing education should be recommended for this certification, as is being developed for its psychology licensees. The Board rejected this alternative at this time with the expectation that the structured settings which employ certified sex offender treatment providers provide continuing education and training for their staff.

Two alternative fee structures were considered by the Board during its 1999 review of fees for psychologist licensure. The structure that was adopted did not change fees for application processing, registration of residency or renewal of certification, but did change other fees to bring the fees into compliance with the *Principles for Fee Development*.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Board is recommending amendments to its regulations for the certification of sex offender treatment providers in order to update and clarify the regulations. The requirement of 50 clock hours of training would be redistributed among the five subject areas in recognition of the fact that some subjects are more essential and courses more available than others. Amendments to fees are recommended for consistency with the Department's *Principles for Fee Development*, which have already been applied and are in effect for other professions regulated under the Board.

The Board will recommend removing all references to the outdated waiver of the supervision requirement and including language to specify that no supervision will be accepted without prior registration of the supervision contract. However, the Board will propose accepting verification of experience completed during the effective period of prior regulations, provided it met those regulations. The Board will also propose waiving the registration requirement for individuals who are combining their training with another residency for a mental health license which has been registered with the appropriate Board, provided the other requirements have been met.

To proceed with its recommendations, the Board requests publication of a Notice of Intended Regulatory Action.

Substance

Please detail any changes that would be implemented.

18 VAC 125-30-10. Definitions.

An amendment to the definition of "supervisor" is recommended to change the name of the Board of Counseling as it is now in statute. References to that board in other sections of the regulations will also be amended.

18 VAC 125-30-20. Fees.

Amendments are proposed to provide fees that are consistent with the "Principles for Fee Development" approved for all regulations within the Department. Fees for adding or changing registration of a supervisor, for late renewal, for a duplicate certificate, for verifying a certificate to another jurisdiction and for reinstatement following revocation or suspension will be added for consistency with other professions regulated under the Board.

The Board would like to propose that fees which are generic to all professions such as a duplicate certificate, verifying a certificate to another jurisdiction and for returned checks be changed to conform with the fees of other boards. This will lower the duplicate certificate fee from \$10 to \$5, increase the returned check fee from \$15 to \$25 and establish a verification fee of \$25. The Board would also like to establish a new fee of \$500 for reinstatement of a certificate that has been revoked or suspended following disciplinary action. This is the same fee established for licensed psychologists and for all categories of regulants under the Board of Counseling. It is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.

No change is proposed for the renewal fee, application fee, or registration of supervision fee, which are currently in line with the agency's *Principles* to establish this fee based the administrative cost of reviewing the application. For clarification, the Board will propose changing the name of the application fee to "Application Processing and Initial Certification."

The Board would like to establish a reduced fee for registrations of additional supervisors, as it has done in its other regulations. Since the education component would already have been reviewed for the first registration, this fee would be half of the initial \$50 registration fee.

One of the goals of the agency's *Principles for Fee Development* was to provide a basis for standardizing the late renewal and reinstatement processes for all categories of licensure and certification, which vary widely among boards. In April 2000, the Board amended its processes for psychologist late renewal to provide for a penalty fee within one renewal period and a reinstatement process for licenses which have lapsed more than one renewal period. Currently, sex offender treatment providers must pay cumulative renewal and reinstatement fees for each year the certificate has lapsed. The Board would like to amend this process to make it conform with the process established for psychologists in accordance with the *Principles for Fee Development*. This would establish a late penalty of 35% of the renewal fee (\$25) for licenses lapsed less than one year, and a reinstatement fee of \$110 (\$50 review of reinstatement application plus ½ of the annual renewal fee plus the \$25 penalty for late renewal).

18 VAC 125-30-30. Prerequisites to certification.

Amendments recommended include: a) deletion of subsection A, as unnecessary language; and b) addition of the word "licensed" in subsection B3 c, to require "reference letters from three licensed health care professionals."

18 VAC 125-30-40. Educational requirements.

Amendments are recommended to redistribute the 50 clock hours of training acceptable to the Board from 10 hours in each area to a variable number, depending on the essential nature of the subject and the availability of the courses. Training in sex offender assessment and sex offender treatment interventions would require 15 hours in each area; in etiology/developmental issues of sex offense behavior, 10 hours would be required; and in criminal justice and legal issues and program evaluation, treatment efficacy and issues related to recidivism, 5 hours in each area would be required. The total of 50 hours would not be changed. Also, the Board recommends clarification that recidivism refers to sex offenders.

18 VAC 125-30-60. Supervision requirement.

The recommendation is to combine this section with section 50, which states the experience requirements, including supervision. The current regulation applies to anyone getting their supervised experience after August 6, 1998, so that phrase may be eliminated. In subsection C, an amendment is suggested to clarify that supervised experience obtained in Virginia without prior written board approval will not be accepted for certification. (A similar requirement already exists for other persons licensed by the Board.)

18 VAC 124-30-80. Annual renewal of certificate.

A requirement should be added for consistency with other regulated professionals requiring them to notify the board within 60 days of a change of address. In addition, the requirements for reinstatement of a lapsed license need to be amended to require reinstatement after a certificate has been lapsed for one year and to add a requirement for verification of licensure or certification in any other jurisdiction subsequent to initial certification by the Board. The changes are recommended for consistency with the Principles for Fee Development and with other regulations under this board.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to

which 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.

The proposed amendments will have no impact on 1) the authority and rights of parents in the education, nurturing or supervision of their children; 2) the self-pride or self-sufficiency of any individual; 3) the marital commitment; or 4) family income.