



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

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### **18 VAC 115-80 Regulations Governing the Registration of Qualified Mental Health Professionals**

**Department of Health Professions**

**Town Hall Action/Stage: 5444/8843**

April 10, 2020

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### **Summary of the Proposed Amendments to Regulation**

The Board of Counseling (Board) proposes to amend 18 VAC 115-80 *Regulations Governing the Registration of Qualified Mental Health Professionals* in order to formalize the registration requirements for trainees receiving supervised work experience. Although the Board previously required trainees to be registered, the requirements for registration were not explicitly listed in the regulation. The Board also seeks to amend the definitions of the relevant professional categories and add language addressing unresolved disciplinary actions.

### **Background**

Chapters 101 and 217 of the 2019 Acts of Assembly added a definition for “Qualified mental health professional-trainee” and directed the Board to promulgate regulations for the registration of trainees undertaking supervised work experience.<sup>1</sup> The regulation currently does not contain a definition or requirements for the registration of trainees. However, both sections 18 VAC 115-80-40 *Requirements for registration as a qualified mental health professional-adult* and 18 VAC 115-80-50 *Requirements for registration as a qualified mental health professional-child* state that individuals receiving supervised training in order to qualify for professional registration may register with the Board. The Board proposes to add the definition of trainee as adopted by the 2019 Acts of Assembly and replace the current language that offers registration as an option with language that requires registration.

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<sup>1</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0101>

The Board states that trainees who applied for registration have been required to meet all the requirements for professional registration listed under either category – adult or child –except for the work experience portion. Thus, the proposed amendments include the creation of a new section 18 VAC 115-80-35 *Requirements for registration as a qualified mental health professional-trainee*, which includes all the educational requirements listed in sections 18 VAC 115-80-40 and -50, but leaves out all mention of hours of experience.

In practice, qualified mental health professionals, including trainees, primarily work with populations served by the Department of Behavioral Health and Developmental Services or the Department of Corrections. As such, these populations are covered by Medicaid and the services provided to them are reimbursed by the Department of Medical Administrative Services (DMAS). The registration requirement for trainees is intended to increase oversight of trainees and accountability for their services, decrease incidents of abuse and fraud in Medicaid-funded programs, and provide a listing of qualified persons for the purpose of reimbursement by DMAS.

In addition to these amendments, the Board also proposes two changes to the requirements for professional registration under the ‘adult’ and ‘child’ categories. First, the Board seeks to specify that applicants shall have no unresolved disciplinary action and that the Board will consider a history of disciplinary action on a case-by-case basis. Second, the Board seeks to clarify that supervised experience obtained prior to meeting the educational requirements shall not be accepted.

### **Estimated Benefits and Costs**

Since the proposed amendments do not increase the educational or other requirements already in place for trainees who apply for registration, the Board states that the proposed changes do not differ from current practice, and would not affect the 2,193 trainees currently registered. Any un-registered trainees who have been working under supervision would now have to pay the \$25 registration fee and demonstrate that they meet the educational requirements; these costs are unlikely to be substantive in nature. Further, the Board reported that all qualified mental health professionals (including trainees) working with Medicaid patients would have been required to register in order to receive reimbursement from DMAS. To the extent that the registration requirement increases oversight and accountability for trainees and reduces instances of abuse and fraud in the Medicaid program, the proposed amendments would benefit qualified

mental health professionals as well as the populations they serve. Amendments relating to unresolved disciplinary actions are unlikely to have any significant impact.

### **Businesses and Other Entities Affected**

The proposed amendments pertain to applicants for professional registration qualified mental health professional-adult, qualified mental health professional-child, and qualified mental health professional-trainee. These individuals primarily work with populations served by the Department of Behavioral Health and Developmental Services or the Department of Corrections.

### **Small Businesses<sup>2</sup> Affected**

The proposed amendments do not directly affect any small businesses, nor would they face any new costs as a result of the proposed amendments.

### **Localities<sup>3</sup> Affected<sup>4</sup>**

The proposed amendments are not expected to disproportionately affect particular localities or introduce new costs for local governments.

### **Projected Impact on Employment**

The proposed amendments are unlikely to affect total employment in the industry.

### **Effects on the Use and Value of Private Property**

The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

### **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.

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<sup>2</sup> 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.”

<sup>3</sup> “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.

<sup>4</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

**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.