



townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC85-150
Regulation title(s)	Regulations Governing the Practice of Behavior Analysis
Action title	Increase in continuing education hours
Date this document prepared	2/26/16

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Advisory Board on Behavior Analysis recommended that the Board of Medicine amend renewal requirements to match the continuing education required by the Behavior Analysis Certification Board. The amendments would change continuing education requirements from 24 hours for the biennial renewal to 32 hours for behavior analysts and from 16 to 20 hours for assistant behavior analysts. Four of those hours must be in ethics relating to professional practice.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

BACB = Behavior Analysis Certification Board

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 Medicine 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. ...*

In § 54.1-2957.16, the Board of Medicine is mandated to promulgate regulations for the licensure of behavior analysts and assistant behavior analysts:

§ 54.1-2957.16. Licensure of behavior analysts and assistant behavior analysts; requirements; powers of the Board.

A. It shall be unlawful for any person to practice or to hold himself out as practicing as a behavior analyst or to use the title "Licensed Behavior Analyst" unless he holds a license as a behavior analyst issued by the Board. It shall be unlawful for any person to practice or to hold himself out as practicing as an assistant behavior analyst or to use the title "Licensed Assistant Behavior Analyst" unless he holds a license as an assistant behavior analyst issued by the Board. The Board shall issue licenses to practice as a behavior analyst or an assistant behavior analyst to applicants for licensure who meet the requirements of this chapter and the Board's regulations.

B. The Board shall establish criteria for licensure as a behavior analyst, which shall include, but not be limited to, the following:

1. Documentation that the applicant is currently certified as a Board Certified Behavior Analyst by the Behavior Analyst Certification Board or any other entity that is nationally accredited to certify practitioners of behavior analysis;

2. Documentation that the applicant conducts his professional practice in accordance with the Behavior Analyst Certification Board Guidelines for Responsible Conduct and Professional

Ethical and Disciplinary Standards and any other accepted professional and ethical standards the Board deems necessary; and

3. Documentation that the applicant for licensure has not had his license or certification as a behavior analyst or as an assistant behavior analyst suspended or revoked and is not the subject of any disciplinary proceedings by the certifying board or in another jurisdiction.

C. The Board shall establish criteria for licensure as an assistant behavior analyst, which shall include, but not be limited to, the following:

1. Documentation that the applicant is currently certified as a Board Certified Assistant Behavior Analyst by the Behavior Analyst Certification Board or any other entity that is nationally accredited to certify practitioners of behavior analysis;

2. Documentation that the applicant conducts his professional practice in accordance with the Behavior Analyst Certification Board Guidelines for Responsible Conduct and Professional Ethical and Disciplinary Standards and any other accepted professional and ethical standards the Board deems necessary;

3. Documentation that the applicant for licensure has not had his license or certification as an assistant behavior analyst suspended or revoked and is not the subject of any disciplinary proceedings by the certifying board or in another jurisdiction; and

4. Documentation that the applicant's work is supervised by a licensed behavior analyst in accordance with the supervision requirements and procedures established by the Board.

D. The Board shall promulgate such regulations as may be necessary to implement the provisions of this chapter related to (i) application for and issuance of licenses to behavior analysts or assistant behavior analysts, (ii) requirements for licensure as a behavior analyst or an assistant behavior analyst, (iii) standards of practice for licensed behavior analysts or licensed assistant behavior analysts, (iv) requirements and procedures for the supervision of a licensed assistant behavior analyst by a licensed behavior analyst, and (v) requirements and procedures for supervision by licensed behavior analysts and licensed assistant behavior analysts of unlicensed individuals who assist in the provision of applied behavior analysis services.

E. The Board shall establish a fee, determined in accordance with methods used to establish fees for other health professionals licensed by the Board of Medicine, to be paid by all applicants for licensure as a behavior analyst or assistant behavior analyst.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Chapter 3 (House Bill 1106) of the 2012 Acts of the Assembly mandated that the Board of Medicine promulgate regulations to implement the provisions of the act within 280 days of its enactment. Emergency regulations were developed and then replaced with permanent regulations. At that time, the continuing competency requirements for renewal of license were set to mirror the requirements for maintenance of certification with the Behavior Analyst Certification Board (BACB). Certification by the BACB is required for initial licensure, and

although licensees are not required to maintain current certification to renew a license, they are encouraged to do so.

In 2013, the BACB announced that, beginning in December of 2014, the requirements for maintenance of certification would be changed from a three-year cycle to a two-year cycle and the hourly requirement would be increased. The proposed regulations for behavior analysts and assistant behavior analysts are consistent with the continuing competency requirements of the certification board, to include four hours each biennium in ethics relating to professional practice. The BACB offers several types of continuing education that are acceptable for certification and for renewal of licensure. With the additional hours, notably the hours of ethics, licensees may be better prepared to handle situations that they encounter in their practice and more knowledgeable about modalities and treatments that will improve outcomes and protect the health and safety of their clients.

Substance

Please 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.

The amendments would change continuing education requirements from 24 hours for the biennial renewal to 32 hours for behavior analysts and from 16 to 20 hours for assistant behavior analysts. Four of those hours must be in ethics relating to professional practice.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage to the public would be more knowledgeable behavior analysts and assistant behavior analysts who would have more hours of continuing education to keep them informed about new modalities and theories of behavior analysis and specific hours relating to professional ethics. There are no disadvantages to the public.
- 2) There are no advantages or disadvantages to the Commonwealth or the agency.
- 3) There are no other pertinent matters.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board of Medicine is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including:	There will be no costs to implement and enforce the proposed regulation.
---	--

<p>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Licensed Behavior Analysts and Assistant Behavior Analysts will be affected.</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: 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.</p>	<p>Licensed Behavior Analysts - 648 Assistant Behavior Analysts – 119</p> <p>There is no information on the number of small businesses; some BA's work as independent practitioners and others work for entities or schools that serve autistic children.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>The costs may vary depending on whether the licensee chooses to attend a live seminar or an on-line course available from a provider approved by the BACB. For example, a two-hour ethics course offered on-line is listed as costing \$39. An 8-hour on-line course in supervisor training is listed as \$130. There is a very wide range of on-line courses available through the BACB website.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The beneficial impact would be better educated and informed behavior analysis, which continues to be an emerging field in the treatment of autism.</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. 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 regulation.

The only alternative to this action would be adoption of a requirement for maintenance of BACB certification as the requirement for renewal of licensure. By doing so, the Board would not have to establish continuing education hours in regulation; those hours would automatically increase with a decision by the BACB to do so. However, maintenance of certification requires payment of a recertification fee to the BACB so it would not be a less costly alternative.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no alternative regulatory methods; continuing education hours must be specified in regulation in order to be an enforceable standard for renewal of licensure.

Public comment

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

Commenter	Comment	Agency response
14 persons commented on Townhall; all identified themselves as licensed behavior analysts	Strongly supported increase in hours for consistency with professional certification requirements. CE requirement for renewal of licensure should not be less than the BACB certification standards.	The Board concurred with the comments.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.

Autism has a distinct impact on the family, so to the extent treatment can be improved with new information and modalities, the family is positively affected by the proposed regulation.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
90	Sets the requirements for reactivation or reinstatement of licensure as 12 hours of CE for each year of inactive or lapsed licensure.	<p>Increases the number of hours to 16 per year for a behavior analyst and 10 hours for an assistant behavior analyst.</p> <p><i>The change is for consistency with the proposed requirement for CE hours for biennial renewal. Additionally, there are a lesser number of hours required for the assistant in the proposed regulation, so the amendment actually represents a reduction in the regulatory burden for that group of licensees.</i></p>
100	Sets the continuing education requirements for biennial renewal as 24 hours of continuing education for a licensed behavior analyst and 16 hours for a licensed behavior analyst assistant.	<p>The amendment would increase the hours from 24 to 32 for the behavior analyst and from 16 to 20 for the assistant. Additionally, four of the required hours must be related to ethics in the practice of the profession.</p> <p><i>The change is made to keep behavior analyst regulations consistent with the requirements for maintenance of BACB certification. When new regulations were adopted for licensure of these professions, there was strong support for requiring maintenance of BACB certification for renewal of licensure. BACB certification is required for initial licensure, but maintenance of certification requires an additional fee to the BACB. The Board chose to mirror the continuing education requirements to encourage but not require maintenance of professional certification. With the BACB change in CE requirements beginning December of 2014, that consistency no longer exists. The behavior analysis community strongly supports the consistent requirements between the BACB and the Board.</i></p>