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SENATE BILL NO. 403

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health and Human Services
on February 27, 2024)

(Patron Prior to Substitute—Senator Durant)

A BILL to amend and reenact §§ 54.1-3500 and 54.1-3505 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 35 of Title 54.1 an article numbered 4, consisting of sections numbered 54.1-3518 through 54.1-3521, relating to behavioral health technicians; behavioral health technician assistants; qualified mental health professionals; qualified mental health professional-trainees; scope of practice, supervision, and qualifications.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-3500 and 54.1-3505 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 35 of Title 54.1 an article numbered 4, consisting of sections numbered 54.1-3518 through 54.1-3521, as follows:

§ 54.1-3500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Appraisal activities" means the exercise of professional judgment based on observations and objective assessments of a client's behavior to evaluate current functioning, diagnose, and select appropriate treatment required to remediate identified problems or to make appropriate referrals.

"Art therapist" means a person who has (i) completed a master's or doctoral degree program in art therapy, or an equivalent course of study, from an accredited educational institution; (ii) satisfied the requirements for licensure set forth in regulations adopted by the Board; and (iii) been issued a license for the independent practice of art therapy by the Board.

"Art therapy" means the integrated use of psychotherapeutic principles, visual art media, and the creative process in the assessment, treatment, and remediation of psychosocial, emotional, cognitive, physical, and developmental disorders in children, adolescents, adults, families, or groups.

"Art therapy associate" means a person who has (i) completed a master's or doctoral degree program in art therapy, or an equivalent course of study from an accredited educational institution; (ii) satisfied the requirements for licensure set forth in regulations adopted by the Board; and (iii) been issued a license to practice art therapy under an approved clinical supervisor in accordance with regulations of the Board.

"Behavioral health technician" means a person who has completed, at a minimum, an associate degree and registered with the Board to practice in accordance with the provisions of § 54.1-3518 and regulations of the Board and provides collaborative behavioral health services. A "behavioral health technician" shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services, the Department of Corrections, or the Department of Education or a provider licensed by the Department of Behavioral Health and Developmental Services.

"Behavioral health technician assistant" means a person who has completed a high school diploma or equivalent, at a minimum, and registered with the Board to practice in accordance with the regulations of the Board and the provisions of § 54.1-3519 to provide collaborative behavioral health services. A "behavioral health technician assistant" shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services, the Department of Corrections, or the Department of Education or a provider licensed by the Department of Behavioral Health and Developmental Services.

"Board" means the Board of Counseling.

"Certified substance abuse counseling assistant" means a person certified by the Board to practice in accordance with the provisions of § 54.1-3507.2.

"Certified substance abuse counselor" means a person certified by the Board to practice in accordance with the provisions of § 54.1-3507.1.

"Collaborative behavioral health services" means those supportive services that are provided by a registered behavioral health technician, registered behavioral health technician assistant, registered qualified mental health professional, or registered qualified mental health professional-trainee under the direction of and in collaboration with either a mental health professional licensed in the Commonwealth or a person under supervision as a prerequisite for licensure who has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work.

"Counseling" means the application of principles, standards, and methods of the counseling profession in (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating treatment plans using treatment interventions to facilitate human development and to identify and remediate mental, emotional, or

60 behavioral disorders and associated distresses that interfere with mental health.

61 "Licensed substance abuse treatment practitioner" means a person who: (i) is trained in and engages
62 in the practice of substance abuse treatment with individuals or groups of individuals suffering from the
63 effects of substance abuse or dependence, and in the prevention of substance abuse or dependence; and
64 (ii) is licensed to provide advanced substance abuse treatment and independent, direct, and unsupervised
65 treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct
66 substance abuse treatment provided by others.

67 "Marriage and family therapist" means a person trained in the appraisal and treatment of cognitive,
68 affective, or behavioral mental and emotional disorders within the context of marriage and family
69 systems through the application of therapeutic and family systems theories and techniques.

70 "Marriage and family therapy" means the appraisal and treatment of cognitive, affective, or
71 behavioral mental and emotional disorders within the context of marriage and family systems through
72 the application of therapeutic and family systems theories and techniques and delivery of services to
73 individuals, couples, and families, singularly or in groups, for the purpose of treating such disorders.

74 "Practice of counseling" means rendering or offering to render to individuals, groups, organizations,
75 or the general public any service involving the application of principles, standards, and methods of the
76 counseling profession, which shall include appraisal, counseling, and referral activities.

77 "Practice of marriage and family therapy" means the appraisal and treatment of cognitive, affective,
78 or behavioral mental and emotional disorders within the context of marriage and family systems through
79 the application of therapeutic and family systems theories and techniques, which shall include
80 assessment, treatment, and referral activities.

81 "Practice of substance abuse treatment" means rendering or offering to render substance abuse
82 treatment to individuals, groups, organizations, or the general public.

83 "Professional counselor" means a person trained in the application of principles, standards, and
84 methods of the counseling profession, including counseling interventions designed to facilitate an
85 individual's achievement of human development goals and remediating mental, emotional, or behavioral
86 disorders and associated distresses that interfere with mental health and development.

87 "Qualified mental health professional" ~~includes qualified mental health professionals-adult and~~
88 ~~qualified mental health professionals-child~~ means a person who has (i) completed, at a minimum, a
89 bachelor's degree; (ii) registered with the Board to practice in accordance with the provisions of
90 § 54.1-3520 and the regulations of the Board; and (iii) a combination of work, training, or experience
91 in providing collaborative behavioral health services for youth or adults. A "qualified mental health
92 professional" includes a qualified mental health professional-adult and qualified mental health
93 professional-child. A "qualified mental health professional" shall provide such services as an employee
94 or independent contractor of the Department of Behavioral Health and Developmental Services, the
95 Department of Corrections, or the Department of Education or a provider licensed by the Department of
96 Behavioral Health and Developmental Services.

97 "Qualified mental health professional-adult" means a qualified mental health professional who
98 provides collaborative mental health services for adults. A qualified mental health professional-adult
99 shall provide such services as an employee or independent contractor of the Department of Behavioral
100 Health and Developmental Services or the Department of Corrections, or as a provider licensed by the
101 Department of Behavioral Health and Developmental Services.

102 "Qualified mental health professional-child" means a person who by education and experience is
103 professionally qualified and registered by the Board to provide collaborative mental health services for
104 children and adolescents up to 22 years of age. A qualified mental health professional-child shall
105 provide such services as an employee or independent contractor of the Department of Behavioral Health
106 and Developmental Services or the Department of Corrections, or as a provider licensed by the
107 Department of Behavioral Health and Developmental Services.

108 "Qualified mental health professional-trainee" means a person who is receiving supervised training to
109 qualify as a qualified mental health professional in accordance with the provisions of § 54.1-3521 and is
110 registered with the Board. A "qualified mental health professional-trainee" shall provide such services as
111 an employee or independent contractor of the Department of Behavioral Health and Developmental
112 Services, the Department of Corrections, or the Department of Education or a provider licensed by the
113 Department of Behavioral Health and Developmental Services.

114 "Referral activities" means the evaluation of data to identify problems and to determine advisability
115 of referral to other specialists.

116 "Registered peer recovery specialist" means a person who by education and experience is
117 professionally qualified and registered by the Board to provide collaborative services to assist individuals
118 in achieving sustained recovery from the effects of addiction or mental illness, or both. A registered peer
119 recovery specialist shall provide such services as an employee or independent contractor of the
120 Department of Behavioral Health and Developmental Services, a provider licensed by the Department of
121 Behavioral Health and Developmental Services, a practitioner licensed by or holding a permit issued

from the Department of Health Professions, or a facility licensed by the Department of Health.

"Residency" means a post-internship supervised clinical experience registered with the Board.

"Resident" means an individual who has submitted a supervisory contract to the Board and has received Board approval to provide clinical services in professional counseling under supervision.

"Substance abuse" and "substance dependence" mean a maladaptive pattern of substance use leading to clinically significant impairment or distress.

"Substance abuse treatment" means (i) the application of specific knowledge, skills, substance abuse treatment theory, and substance abuse treatment techniques to define goals and develop a treatment plan of action regarding substance abuse or dependence prevention, education, or treatment in the substance abuse or dependence recovery process and (ii) referrals to medical, social services, psychological, psychiatric, or legal resources when such referrals are indicated.

"Supervision" means the ongoing process, performed by a supervisor, of monitoring the performance of the person supervised and providing regular, documented individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person supervised. *Supervisors may only supervise activities within their scope and area of Board-defined competency. Supervision provided by nonlicensed supervisors shall not be a replacement for the direction of services and collaboration with the licensed mental health professional or licensed eligible mental health professional required to perform collaborative behavioral health services.*

§ 54.1-3505. Specific powers and duties of the Board.

In addition to the powers granted in § 54.1-2400, 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 administer the certification of rehabilitation providers pursuant to Article 2 (§ 54.1-3510 et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.

5. [Expired.]

6. To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.

7. To promulgate, subject to the requirements of Article 1.1 (§ 54.1-3507 et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners and certification of certified substance abuse counselors and certified substance abuse counseling assistants. The requirements for membership in NAADAC: the Association for Addiction Professionals and its national examination may be considered by the Board in the promulgation of these regulations. The Board also may provide for the consideration and use of the accreditation and examination services offered by the Substance Abuse Certification Alliance of Virginia. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors. Such regulations also shall establish standards and protocols for the clinical supervision of certified substance abuse counselors and the supervision or direction of certified substance abuse counseling assistants, and reasonable access to the persons providing that supervision or direction in settings other than a licensed facility.

8. To maintain a registry of persons who meet the requirements for supervision of residents. The Board shall make the registry of approved supervisors available to persons seeking residence status.

9. To promulgate, *subject to the requirements of Article 4 (§ 54.1-3518 et seq.),* regulations for the ~~registration of qualified mental health professionals, including qualifications, education, and experience necessary for such registration, and for the registration of persons receiving supervised training in order to qualify as a qualified mental health professional~~ *qualifications, training, supervision, and experience for the registration of behavioral health technicians, behavioral health technician assistants, qualified mental health professionals, and qualified mental health professional-trainees.*

10. To promulgate regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the Board of

183 Behavioral Health and Developmental Services pursuant to § 37.2-203.

184 11. To promulgate regulations for the issuance of temporary licenses to individuals engaged in a
185 counseling residency so that they may acquire the supervised, postgraduate experience required for
186 licensure.

187 *Article 4.*

188 *Behavioral Health Technicians and Qualified Mental Health Professionals.*

189 **§ 54.1-3518. Scope of practice, supervision, and qualifications of registered behavioral health**
190 **technicians.**

191 A. A registered behavioral health technician shall be (i) qualified to perform, under Board-approved
192 supervision, collaborative behavioral health services, training on prevention of mental health and
193 substance use disorders, and mental health literacy and the supportive functions of screening, intake,
194 orientation, care coordination, client education, and recordkeeping and (ii) after three years of
195 practicing as a behavioral health technician in good standing and completion of the required behavioral
196 health technician supervisor training set forth by the Board, qualified to supervise, as part of a
197 collaborative team, behavioral health technicians and behavioral health technician assistants. A
198 registered behavioral health technician shall not engage in independent or autonomous practice and
199 shall only perform collaborative behavioral health services.

200 B. Such registered behavioral health technician shall be supervised by a mental health professional
201 licensed by the Department of Health Professions, a person under supervision that has been approved
202 by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for
203 licensure who has completed the required supervisor training, or a registered qualified mental health
204 professional who has practiced for three years and completed the required supervisor training.

205 C. Pursuant to regulations adopted by the Board, an applicant for registration as a behavioral
206 health technician shall submit evidence satisfactory to the Board that the applicant has (i) completed a
207 specified number of hours of didactic education in a program or programs recognized or approved by
208 the Board and (ii) received, at a minimum, an associate degree from an institution of higher education
209 accredited by an accrediting agency recognized by the Board. A bachelor's degree shall not be a
210 requirement for registration as a behavioral health technician.

211 **§ 54.1-3519. Scope of practice, supervision, and qualifications of registered behavioral health**
212 **technician assistants.**

213 A. A registered behavioral health technician assistant shall be qualified to perform, under
214 Board-approved supervision, collaborative behavioral health services, training on prevention of mental
215 health and substance use disorders, and mental health literacy and the supportive functions of screening,
216 intake, orientation, care coordination, client education, and recordkeeping. A registered behavioral
217 health technician assistant shall not engage in independent or autonomous practice and shall only
218 provide collaborative behavioral health services.

219 B. Such registered behavioral health technician assistants shall be supervised by either a mental
220 health professional licensed by the Department of Health Professions who has completed the required
221 supervisor training, a person under supervision that has been approved by the Board of Counseling,
222 Board of Psychology, or Board of Social Work as a prerequisite for licensure who has completed the
223 required supervisor training, a registered qualified mental health professional who has practiced for
224 three years and completed the required supervisor training, or a registered behavioral health technician
225 who has practiced for three years and completed the required supervisor training.

226 C. Pursuant to regulations adopted by the Board, an applicant for registration as a behavioral
227 health technician assistant shall submit evidence satisfactory to the Board that the applicant has (i)
228 received, at a minimum, a high school diploma or its equivalent and (ii) completed a specified number
229 of hours of didactic education in a program recognized or approved by the Board.

230 **§ 54.1-3520. Scope of practice, supervision, and qualifications of qualified mental health**
231 **professionals.**

232 A. A qualified mental health professional shall be qualified to perform, under Board-approved
233 supervision, collaborative behavioral health services, including the supportive functions of (i) screening;
234 (ii) intake; (iii) orientation; (iv) care coordination; (v) client education; (vi) referral activities; (vii)
235 initiating crisis de-escalation; (viii) gathering histories of mental and physical health conditions, alcohol
236 and drug use, past mental health treatment, and interactions with the criminal justice system; (ix)
237 providing psychosocial skills development; (x) implementing interventions as assigned on individual
238 plans of care and documenting the interventions for the purposes of recordkeeping; and (xi) prevention
239 of mental health and substance use disorders. A registered qualified mental health professional shall not
240 engage in independent or autonomous practice and shall only perform collaborative behavioral health
241 services.

242 B. Such registered qualified mental health professionals shall be supervised by either a mental health
243 professional licensed by the Department of Health Professions who has completed the required
244 supervisor training, a person under supervision that has been approved by the Board of Counseling,

Board of Psychology, or Board of Social Work as a prerequisite for licensure who has completed the required supervisor training, or a registered qualified mental health professional who has practiced for three years and completed the required supervisor training. Registered qualified mental health professionals who have met the supervisor requirements may supervise activities within their scope. This supervision must occur under the broader required direction of and in collaboration with the licensed or licensed eligible mental health professional.

C. Pursuant to regulations adopted by the Board, an applicant for registration as a qualified mental health professional shall submit evidence satisfactory to the Board that the applicant has (i) completed a specified number of hours of didactic education in a program or programs recognized or approved by the Board; (ii) received, at a minimum, a bachelor's degree from an institution of higher education accredited by an accrediting agency recognized by the Board; and (iii) accumulated a specified number of hours of Board-approved supervised experience.

§ 54.1-3521. Scope of practice, supervision, and qualifications of qualified mental health professional-trainees.

A. A qualified mental health professional-trainee shall be qualified to perform, under Board-approved supervision, collaborative behavioral health services, including the supportive functions of (i) screening; (ii) intake; (iii) orientation; (iv) care coordination; (v) client education; (vi) referral activities; (vii) initiating crisis de-escalation; (viii) gathering histories of mental and physical health conditions, alcohol and drug use, past mental health treatment, and interactions with the criminal justice system; (ix) providing psychosocial skills development; (x) implementing interventions as assigned on individual plans of care and documenting the interventions for the purposes of recordkeeping; and (xi) prevention of mental health and substance use disorders. A registered qualified mental health professional-trainee shall not engage in independent or autonomous practice and shall only perform collaborative behavioral health services.

B. Such registered qualified mental health professional-trainees shall be supervised by a mental health professional licensed by the Department of Health Professions who has completed the required supervisor training, a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure and who has completed the required supervisor training, or a registered qualified mental health professional who has practiced for three years and completed the required supervisor training.

C. Pursuant to regulations adopted by the Board, an applicant for registration as a qualified mental health professional-trainee shall submit evidence satisfactory to the Board that the applicant has (i) completed a specified number of hours of didactic education in a program or programs recognized or approved by the Board and (ii) received, at a minimum, a bachelor's degree from an institution of higher education accredited by an accrediting agency recognized by the Board or is actively enrolled and in good standing in a bachelor's degree program from an institution of higher education accredited by an accrediting agency recognized by the Board.

2. That the Board of Counseling's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board of Counseling shall provide an opportunity for public comment on the regulations prior to adoption of such regulations.

3. That the Department of Behavioral Health and Developmental Services shall promulgate regulations that align with the regulations adopted by the Board of Counseling in accordance with this act. The Department of Medical Assistance Services shall promulgate any necessary regulations and submit any necessary State Plan amendments that align with changes made by the Department of Behavioral Health and Developmental Services and the Board of Counseling. The initial adoption of these regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Department of Behavioral Health and Developmental Services and the Department of Medical Assistance Services shall provide an opportunity for public comment on the regulations prior to adoption of such regulations.

4. That the Board of Counseling shall promulgate regulations in accordance with this act by November 1, 2024.