



## **Notice of Request for Information on the Department of Veterans Affairs Rehabilitation Counselor Standard of Practice**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Request for Information.

**SUMMARY:** The Department of Veterans Affairs is requesting information to assist in developing a national standard of practice for VA Rehabilitation Counselors. VA seeks comments on various topics to help inform VA's development of this national standard of practice.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments must be submitted through <https://www.regulations.gov/>. Except as provided below, comments received before the close of the comment period will be available at <https://www.regulations.gov/> for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov/>. VA will not post on <https://www.regulations.gov/> public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, 202-461-0500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

*Authority*

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any state license, registration, certification, or other requirements that unduly interfere with their practice. 38 CFR 17.419; 85 FR 71838. Specifically, this rulemaking confirmed VA's current practice of permitting VA health care professionals to deliver health care services in a state other than the health care professional's state of licensure, registration, certification, or other requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals, which would standardize a health care professional's practice in all VA medical facilities, regardless of conflicting state laws, rules, regulations, or other requirements.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may perform the same type of tasks and duties regardless of the state where they are located or the state license, registration, certification, or other requirement they hold. We emphasized in the rulemaking and reiterate here that VA will determine, on an individual basis, that a health care professional has the proper education, training, and skills to perform the tasks and duties detailed in the national standard of practice, and that they will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice, or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

#### *Preemption of State Requirements*

The national standard of practice will preempt any state laws, rules, regulations, or other requirements that both are and are not listed in the national standard as conflicting, but that do conflict with the tasks and duties as authorized in VA's national standard of practice. The term state as applied here means each of the several states, territories, possessions of the United States, and the district of Columbia, and the Commonwealth of Puerto Rico and is consistent with the definition in 38 U.S.C. 101(20). In the event that a state changes their requirements and places new limitations on the tasks and duties it permits in a manner that would be inconsistent with what is authorized under the national standard of practice, the national standard of practice will preempt such limitations and authorize the VA health care professional to continue to practice consistent with the tasks and duties outlined in the national standard of practice.

In cases where a VA health care professional's license, registration, certification, or other requirement permits a practice that is not included in a national standard of practice, the individual may continue that practice so long as it is permissible under Federal law and VA policy, is not explicitly restricted by the national standard of practice, and is approved by the VA medical facility.

### *Need for National Standards of Practice*

It is critical that VA, the Nation's largest integrated health care system, develops national standards of practice to ensure, first, that beneficiaries receive the same high-quality care regardless of where they enter the system and, second, that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the coronavirus disease 2019 (COVID-19) pandemic. The increased need for mobility in VA's workforce, including through VA's Disaster Emergency Medical Personnel System, highlighted the importance of creating uniform national standards of practice to better support VA health care professionals who practice across state lines. Creating national standards of practice also promotes interoperability of medical data between VA and the Department of Defense (DoD), providing a complete picture of a Veteran's health information and improving VA's delivery of health care to the Nation's Veterans. DoD has historically standardized practice for certain health care professionals, and VA has closely partnered with DoD to learn from their experience.

### *Process to Develop National Standards of Practice*

As authorized by 38 CFR 17.419, VA is developing national standards of practice via policy. There is one overarching directive to describe Veterans Health Administration

(VHA) policy on national standards of practice, VHA Directive 1900(5), VA National Standards of Practice, August 30, 2023. The directive is accessible on VHA's publications website at <https://www.va.gov/vhapublications/>. As each individual national standard of practice is finalized, it is published as an appendix to the directive and accessible at the same website.

To develop these national standards, VA is using a robust, interactive process that adheres to the requirements of Executive Order (EO) 13132 to preempt conflicting state laws, rules, regulations, or other requirements. For each health care occupation, a workgroup comprised of VA health care professionals in the identified occupation conducts research to identify internal best practices that may not be authorized under every state license, certification, or registration, but would enhance the practice and efficiency of the profession throughout VA. If a best practice is identified that is not currently authorized by every state, the workgroup determines what education, training, and skills are required to perform such tasks and duties. The workgroup then drafts a proposed VA national standard of practice using the data gathered and any internal stakeholder feedback received. The workgroup may consult with internal or external stakeholders at any point throughout the process.

The process to develop VA national standards of practice includes listening sessions for members of the public, professional associations, and VA employees to provide comments on the variance between state practice acts for specific occupations and what should be included in the national standard of practice for that occupation. The listening session for Rehabilitation Counselors was held on September 21, 2023. No one provided comments on Rehabilitation Counselors standard of practice.

After the proposed standard is developed, it is first internally reviewed. This includes a review from an interdisciplinary VA workgroup consisting of representatives

from Quality Management, VA medical facility Chief of Staff, Academic Affiliates, Veterans Integrated Services Network (VISN) Chief Nursing Officer, Ethics, Workforce Management and Consulting, Surgery, Credentialing and Privileging, VISN Chief Medical Officer, and Electronic Health Record Modernization.

After the internal review, VA provides the proposed national standard of practice to our DoD partners as an opportunity to flag inconsistencies with DoD standards. VA also engages with labor partners informally as part of a pre-decisional collaboration. Consistent with EO 13132, VA sends a letter to each state board and certifying organization or registration organization, as appropriate, which includes the proposed national standard and offers the recipient an opportunity to discuss the national standard with VA. After the state boards, certifying organizations, or registration organizations have received notification, the proposed national standard of practice is posted in the Federal Register for 60 days to obtain feedback from the public, professional associations, and any other interested parties. At the same time, the proposed national standard is posted to an internal VA site to obtain feedback from VA employees. Responses received through all vehicles—from state boards, professional associations, unions, VA employees, and any other individual or organization who provides comments via the Federal Register—will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals. VA will publish a collective response to all comments at <https://www.va.gov/standardspractice/>.

The national standard of practice is then finalized, approved, and published in VHA policy. Any tasks or duties included in the national standard will be properly incorporated into individual VA health care professionals' privileges, scope of practice, or functional statement once it has been determined by their VA medical facility that the

individual has the proper education, training, and skills to perform the task or duty. Implementation of the national standard of practice may be phased in across all VA medical facilities, with limited exemptions for health care professionals as needed.

### *Format for the Proposed National Standard for Rehabilitation Counselors*

The format for the proposed national standards of practice when there is a national certification body is as follows. The first paragraph provides general information about the profession and what the health care professionals can do. For this national standard, Rehabilitation Counselors help patients with disabilities to achieve their personal career, independent living, social, and psychological goals. We reiterate that the proposed standard of practice does not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight generally what tasks and duties the health care professionals perform and how they will be able to practice within VA.

The second paragraph references the education and certification needed to practice this profession at VA. Qualification standards for employment of health care professionals by VA are available at: <https://www.va.gov/OHRM/QualificationStandards/>. VA follows the requirements outlined in the VA qualification standards even if the requirements conflict with or differ from a state requirement. National standards of practice do not affect those requirements. For Rehabilitation Counselors, VA qualification standards require an active, current, full, and unrestricted certification from the Commission on Rehabilitation Counselor Certification (CRCC). For Rehabilitation Counselors, VA qualification standards require an active, current, full, and unrestricted certification from the certification body: complete qualifications standards details for Rehabilitation

Counselors are found: <https://www.va.gov/OHRM/QualificationStandards/HT38/0101-RehabilitationCounselor.pdf>.

The second paragraph also notes whether the national standard of practice explicitly excludes individuals who practice under “grandfathering” provisions. Qualification standards may include provisions to permit employees who met all requirements prior to revisions to the qualification standards to maintain employment at VA even if they no longer meet the new qualification standards. This practice is referred to as grandfathering. VA Rehabilitation Counselors have grandfathering provisions included within their qualification standards, and VA proposes to have those individuals not be authorized to follow the Rehabilitation Counselor national standard of practice. Instead, VA proposes its medical facilities will determine the tasks and duties for Rehabilitation Counselors who are grandfathered under the qualification standards. Such determinations are determined at the VA medical facility based on the Rehabilitation Counselor’s education, training, and credentialing.

The third paragraph establishes what the national standard of practice will be for the occupation in VA. For this national standard, VA Rehabilitation Counselors follow the standard set by the CRCC, found at: <https://crccertification.com>, with the exception of, the listed task or duty VA proposes to restrict even though the certification otherwise permits the profession to perform those tasks or duties.

The final paragraph provides justification for VA’s proposal to restrict the specified tasks and duties. It explains why VA is restricting those tasks or duties and the clinical basis for this proposed decision.

This national standard of practice does not address training because it will not authorize VA Rehabilitation Counselors to perform any tasks and duties not already authorized under their national certification.

Following public and VA employee comments and revisions, each national standard of practice that is published in policy will also include the date for recertification of the standard of practice and a point of contact for questions or concerns.

*Proposed National Standard of Practice for Rehabilitation Counselors*

**NOTE:** *All references herein to VA and VHA documents incorporate by reference subsequent VA and VHA documents on the same or similar subject matter.*

1. Rehabilitation Counselors are professional counselors educated and trained at the graduate level who possess the specialized knowledge, skills, and attitudes to work collaboratively with patients with disabilities. Through a professional counseling process, Rehabilitation Counselors help patients with disabilities to achieve their personal career, independent living, social, and psychological goals.

2. Rehabilitation Counselors in the Department of Veterans Affairs (VA) possess the education and certification required by VA qualification standards, available at:

<https://www.va.gov/OHRM/QualificationStandards/HT38/0101-RehabilitationCounselor.pdf>.

**NOTE:** *This national standard of practice does not apply to Rehabilitation Counselors who were grandfathered into the position on July 21, 2020, the effective date for the VA qualification standards for Rehabilitation Counselors. Tasks and responsibilities for Rehabilitation Counselors who are grandfathered under the qualification standards are determined at the VA medical facility based on their education, training, and credentialing.*

3. VA Rehabilitation Counselors practice in accordance with the Certified Rehabilitation Counselor scope of practice from the Commission on Rehabilitation Counselor Certification (CRCC), available at: <https://crccertification.com/>, except as noted in

paragraph 3.a. VA reviewed certification requirements for this occupation in October 2024 and confirmed that all Rehabilitation Counselors in VA followed this national certification.

a. VA Rehabilitation Counselors, practicing within scope of their VA employment and consistent with this standard, cannot diagnose mental health disorders (F Codes in the International Classification of Diseases 11th Revision) unless they have a license in a mental health discipline, in addition to their CRCC certification and qualify as licensed providers through the Medical Staff Bylaws of their VA medical facility.

***NOTE: VA Rehabilitation Counselors meet CRCC certification eligibility criteria of a master's degree in rehabilitation counseling or a qualifying related mental health field with additional graduate-level core rehabilitation coursework and supervised experience. All Rehabilitation Counselors with CRCC certification can diagnose "Other Conditions That May Be a Focus of Clinical Attention" as outlined in the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (Z codes in the International Classification of Diseases 11th Revision).***

#### **4. JUSTIFICATION**

a. VA Rehabilitation Counselors who only maintain a CRCC certification are restricted from diagnosing mental health disorders because VA has licensed mental health personnel with the specific education, training, and expertise that VA would rely on to diagnose. VA Rehabilitation Counselors who possess a CRCC certification, hold a state license in a mental health field (e.g. Licensed Professional Counselor, Licensed Clinical Professional Counselor, Licensed Clinical Social Worker, Licensed Independent Social Worker, Licensed Psychologist), and qualify as a licensed provider based on the medical facility bylaws will be permitted to diagnose mental health disorders because their education, training, and expertise provides the necessary competency to diagnose.

*Request for Information:*

1. Is VA's assessment of what the state and CRCC certification permits, and prohibits, accurately represented?
2. Are there any other areas of variance of any state license, certification, registration or other requirement that VA should preempt that are not listed?
3. Is there anything else you would like to share with us about this VA national standard of practice?

*Signing Authority:*

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on December 6, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Luvenia Potts,**

*Regulation Development Coordinator,*

*Office of Regulation Policy & Management,*

*Office of General Counsel,*

*Department of Veterans Affairs.*