



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

**18 VAC 85-160 Regulations Governing the Licensure of Surgical Assistants and
Registration of Surgical Technologists**
Department of Health Professions
Town Hall Action/Stage: 5969 / 9649
August 30, 2022

The Department of Planning and Budget (DPB) 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). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Board of Medicine (Board) proposes to add new text pertaining to surgical technologists (STs) regarding: 1) issuance of an inactive certificate, 2) reactivation of a certificate, 3) reinstatement of a certificate that has lapsed for two years or more, and 4) reinstatement of a certificate that has been revoked.

Background

The current regulation does not include text on inactive certification, reactivating an inactive certificate, or reinstating lapsed or revoked certificates. The Board proposes to add new text regarding these topics, as follows.

Inactive Certificates

An active, unrestricted certificate holder may be issued an inactive certificate upon submission of the following:

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

1. A renewal application; and
2. The required fee.

The proposed regulation would also note that the “holder of an inactive certificate shall not be entitled to perform any act requiring a certification to practice surgical technology in Virginia.”

Reactivating a Certificate

An inactive certificate holder may reactivate his certificate upon submission of the following:

1. An application as required by the board;
2. A payment of the difference between the current renewal fee for inactive certification and the renewal fee for active certification; and
3. Documentation of completed continued competency hours as required by 18VAC85-160-65.

Lapsed Certificates

The holder of a certificate that has lapsed for two years or more can reinstate their certificate upon submission of the following:

1. A reinstatement application;
2. Information on any practice and licensure or certification in other jurisdictions during the period in which the certificate was lapsed; and
3. The required fee.²

Revoked Certificates

For reinstating a certificate that has been revoked by the Board, the proposal is that the ST shall:

1. Make a new application to the Board; and
2. Pay the fee for reinstatement of his certificate as prescribed in 18VAC85-160-40³ pursuant to § 54.1-2408.2 of the Code of Virginia.⁴

² The fee (that is proposed in [Action 5639](#) to be) prescribed in 18VAC85-160-40 is \$90.

³ The fee (that is proposed in [Action 5639](#) to be) prescribed in 18VAC85-160-40 is \$2,000.

⁴ Code § 54.1-2408.2 states that in part that “the board may, after three years and upon the payment of a fee prescribed by the board, consider an application for reinstatement of a certificate, registration, permit, or license in the same manner as the original certificates, registrations, permits, or licenses are granted; however, if a license has been revoked pursuant to subdivision A 19 of § [54.1-2915](#), the board shall not consider an application for reinstatement until five years have passed since revocation. A board shall conduct an investigation and review an application for reinstatement after revocation to determine whether there are causes for denial of the application. The burden of proof shall be on the applicant to show by clear and convincing evidence that he is safe and competent to practice. § [54.1-2915](#) states in part that the Board may “impose a monetary penalty or terms as it may designate ...”

The proposal also includes a statement that:

The board reserves the right to deny a request for reactivation or reinstatement to any certificate holder who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia⁵ or any provisions of this chapter.

Estimated Benefits and Costs

Lapsed Certificates

According to the Department of Health Professions (DHP), because the current regulation does not address lapsed certificates, STs whose certificate has lapsed for two years or more and who wish to resume practice must use the same process as an initial applicant. The application fee for initial certification is \$75.

Through a separate regulatory action, the Board proposes to add a \$90 reinstatement fee for a certificate that has lapsed for two years or more.⁶ In conjunction with this action, the result is that the fee to be paid would be \$15 more than under the regulation currently in effect. On the other hand, according to DHP the time to process a reinstatement of a lapsed certificate would be significantly faster than processing a new application. If this time savings would allow, as seems likely, an ST to return to practice sooner, that would very likely be worth more than \$15 to the applicant. According to the U.S. Bureau of Labor Statistics, the median hourly wage for STs in the Commonwealth is \$23.15.

Revoked Certificates

As mentioned above, the current regulation does not address reinstating revoked certificates. Code § 54.1-2408.2 states in part that the Board may consider an application for reinstatement upon the payment of a fee prescribed by the Board.⁷ Further, that statute provides that the Board

shall conduct an investigation and review an application for reinstatement after revocation to determine whether there are causes for denial of the application. The burden of proof shall be on the applicant to show by clear and convincing evidence that he is safe and competent to practice.

⁵ See <https://law.lis.virginia.gov/vacode/54.1-2915/>

⁶ This proposed fee is in [Action 5639](#), which at the date of this report was at the final stage being reviewed by the Secretary of Health and Human Resources.

⁷ See <https://law.lis.virginia.gov/vacode/title54.1/chapter24/section54.1-2408.2/>

Given the statutory directive to conduct an investigation, the cost for the Board and DHP to address an application to reinstate a revoked certificate would likely be considerably more than the cost to reinstate a lapsed certificate. The current regulation does not state what fee the Board would charge, but the separate regulatory action noted above would establish that fee as \$2,000.⁸ The proposal to state the process for reinstating a revoked certificate in the regulation does not appear to change current practice, and thus the added clarity would be beneficial for readers of the regulation.

Inactive Certificates

In both the current and proposed regulation, there is a late fee of \$25 for paying for certification renewal as long as the fee is paid less than two years after it is due. For STs who plan to take a break from active practice for a period of two years to less than four years, the proposed inactive status may be beneficial because the total amount of fees paid would be less. The table below shows the total fees that would be paid for an ST who went into inactive status and applied for reactivation at different points in time, versus an ST who let their certificate lapse and applied for reinstatement at the same times.

	2 Years	2.5 Years	3 Years	3.5 Years	4 Years
Reactivate	\$70	\$70	\$70	\$70	\$105
Reinstate	\$90	\$90	\$90	\$90	\$90

The ST who goes into inactive status pays \$35 at the beginning, and the remainder when he applies for reactivation. The ST who lets their certificate lapse pays nothing initially, and \$90 when he applies for reactivation. For those that discount future spending, it may be preferable to let the certificate lapse and pay nothing initially and then pay \$90 in three years (for example), versus paying \$35 initially and another \$35 three years later.

Businesses and Other Entities Affected

The proposed amendments affect surgical technologists. According to DHP, surgical technologists typically practice in large hospital systems. As of June 1, 2022, there were 1,186 surgical technologists registered with the Commonwealth.

⁸ This proposed fee is in [Action 5639](#), which at the date of this report was at the final stage being reviewed by the Secretary of Health and Human Resources.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁹ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As discussed above, the proposal does not appear to increase net cost or reduce net revenue. Thus, an adverse impact is not indicated.

Small Businesses¹⁰ Affected:¹¹

The proposed amendments do not appear to adversely affect small businesses.

Localities¹² Affected¹³

The proposed amendments neither disproportionately affect any particular locality nor introduce costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to substantively affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not appear substantively affect the use and value of private property. The proposal does not affect real estate development costs.

⁹ 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. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

¹⁰ 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.”

¹¹ 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.

¹² “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.

¹³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.