



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: 5639 / 9324
September 13, 2021

Summary of the Proposed Amendments to Regulation

In response to recent legislation, this action changes the means by which surgical assistants and surgical technologists are regulated. This action expands upon changes already made by the Board of Medicine (Board) in two exempt actions that are already in effect.

Chapter 1222 of the 2020 Acts of Assembly¹ changed the regulation of surgical assistants² from registration to licensure. In an exempt action,³ the Board amended the *Regulations Governing the Licensure of Surgical Assistants and Registration of Surgical Technologists* (regulation) to conform to the 2020 legislation. In the current action, the Board proposes to: 1) raise the initial, renewal, and late renewal licensure fees for surgical assistants, 2) establish an inactive license with an accompanying fee and rules on reactivation, 3) establish reinstatement with an accompanying fee for when the license has been lapsed for two years or more, 4) establish reinstatement with an accompanying fee for when the license was revoked, 5) establish a fee for a letter of good standing or verification to another jurisdiction, and 6) require all licensees complete 38 hours of continuing education (CE) for license renewal.

¹ See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1222>

² [Code of Virginia § 54.1-2900](#) defines “surgical assistant” as “an individual who has met the requirements of the Board for licensure as a surgical assistant and who works under the direct supervision of a licensed doctor of medicine, osteopathy, or podiatry.” That section also defines the “practice of surgical assisting” as “the performance of significant surgical tasks, including manipulation of organs, suturing of tissue, placement of hemostatic agents, injection of local anesthetic, harvesting of veins, implementation of devices, and other duties as directed by a licensed doctor of medicine, osteopathy, or podiatry under the direct supervision of a licensed doctor of medicine, osteopathy, or podiatry.”

³ See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=9039>

Chapter 230 of the 2021 Special Session 1 Acts of Assembly⁴ changed the regulation of surgical technologists⁵ from registration to certification. In another exempt action,⁶ the Board amended the regulation to conform to the 2021 legislation. In the current action, the Board proposes to require all certificate holders to complete 30 hours of CE every two years for certification renewal. The proposed 18 VAC 85-160-40 *Fees* section includes fees for inactive certification and also for reinstatement of certification that has been lapsed for two years or more. However, unlike the changes proposed for surgical assistant licensure, the proposed regulation does not include text on the process for obtaining inactive certification and any associated rules, how to reactivate certification, or how to reinstate certification.

Additionally, pertaining to both surgical assistants and surgical technologists, the Board proposes to add six new sections to the regulation, all of which contain text that is essentially identical to text in the Board's other regulations for other health care professionals. The proposed six new sections are: 18 VAC 85-160-80 *Confidentiality*, 18 VAC 85-160-90 *Patient records*, 18 VAC 85-160-100 *Communication with patients; termination of relationship*, 18 VAC 85-160-110 *Practitioner responsibility*, 18 VAC 85-160-120 *Sexual contact*, and 18 VAC 85-160-130 *Refusal to provide information*.

Background

Fees

The table below compares current surgical assistant licensure fees with the proposed fees:

	Current	Proposed
Initial licensure	\$75	\$130
Renewal	\$70	\$135
Additional fee to process a late renewal application within one renewal cycle	\$25	\$50

The Board does not propose to change the initial certification, certification renewal, and the late renewal application within one renewal cycle fees for surgical technologists.

⁴ See <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0230>

⁵ According to the Department of Health Professions, a surgical technologist is usually responsible for ensuring the sterility of the room, the equipment, the surgical instruments, the surgical towels, etc. and making sure everything needed is present and arranged for maximum efficiency prior to the procedure.

⁶ See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=9312>

The table below displays the proposed new fees for surgical assistants and surgical technologists:

	Surgical Assistants	Surgical Technologists
Renewal of inactive license or inactive certification	\$70	\$35
Reinstatement of license or certification that has been lapsed for two years or more	\$180	\$90
Fee for when the license was revoked	\$2,000	Not applicable
Fee for a letter of good standing or verification to another jurisdiction for a license	\$10	Not applicable

Continuing Education for Surgical Assistants

In order to qualify for initial licensure as a surgical assistant, the candidate must provide evidence of:

1. A current credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting or the National Commission for Certification of Surgical Assistants or their successors;
2. Successful completion of a surgical assistant training program during the applicant's service as a member of any branch of the armed forces of the United States; or
3. Practice as a surgical assistant in the Commonwealth at any time in the six months immediately prior to July 1, 2020.

Under the current regulation, in order for a surgical assistant who was initially licensed based on a credential (described in number one above) to renew his license, he must attest that the credential is current at the time of renewal (the renewal fee must also be paid). Both the National Board of Surgical Technology and Surgical Assisting, and the National Commission for Certification of Surgical Assistants, require 38 hours of CE every two years for the credential to remain current.

In contrast, besides paying the renewal fee, the current regulation does not specify any requirements for licensure renewal for surgical assistants who were initially licensed based on the second or third category above. The Board now proposes to add the following:

A surgical assistant who was licensed based on successful completion of a surgical assistant training program during the person's service as a member of any branch of the armed forces of the United States or based on practice as a surgical assistant in the Commonwealth at any time in the six months immediately prior to July 1, 2020 shall attest to completion of 38 hours of continuing education

recognized by the National Surgical Assistant Association at the time of biennial renewal.

Continuing Education for Surgical Technologists

In order to qualify for initial certification as a surgical technologist, the candidate must provide evidence of:

1. Successful completion of an accredited surgical technologist training program and a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor; or
2. Successful completion of a training program for surgical technology during the applicant's service as a member of any branch of the armed forces of the United States.

The current regulation lists a biennial fee for surgical technologist certification renewal, but does not state any other certification renewal requirements. The Board proposes to add the following:

A. A surgical technologist who was certified based on certification as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor shall attest that the credential is current at the time of renewal.

B. A surgical technologist who was certified based on successful completion of a training program for surgical technology during the person's service as a member of any branch of the armed forces of the United States, or based on practice as a surgical technologist at any time in the six months prior to July 1, 2021 shall attest to completion of 30 hours of continuing education recognized by the Association of Surgical Technologists at the time of biennial renewal.

The National Board of Surgical Technology and Surgical Assisting certification renewal requires 30 hours of CE recognized by the Association of Surgical Technologists (AST) every two years. Thus, the proposed requirements equate to all surgical technologists needing 30 hours of CE for Virginia certification renewal.

Standard New Sections

The proposed 18 VAC 85-160-80 *Confidentiality* in its entirety states that “A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.”

The proposed 18 VAC 85-160-90 *Patient records*: 1) provides reminders to comply with a specified section of the Code of Virginia § 32.1-127.1:03, 2) states that “Practitioners who are

employed by a health care institution or other entity in which the individual practitioner does not own or maintain his own records shall maintain patient records in accordance with the policies and procedures of the employing entity,” and 3) states that “Practitioners who are self-employed or employed by an entity in which the individual practitioner does own and is responsible for patient records shall ... Maintain a patient record for a minimum of six years following the last patient encounter ...” with some exceptions specified.

The proposed 18 VAC 85-160-100 *Communication with patients; termination of relationship*, states that the practitioner: shall not deliberately make false or misleading statements, should follow specified sections of the Code of Virginia, and shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

The proposed 18 VAC 85-160-110 *Practitioner responsibility* states that the practitioner shall not: perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent, knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice, engage in an egregious pattern of disruptive behavior or interaction in a health care setting, or exploit the practitioner/patient relationship for personal gain.

Code of Virginia § 54.1-2915. *Unprofessional conduct; grounds for refusal or disciplinary action*⁷ lists grounds for disciplinary action for which the Board may act, including sexual contact with a patient. The proposed 18 VAC 85-160-120 *Sexual contact* provides greater detail on what constitutes unprofessional conduct and grounds for discipline through sexual contact.

The proposed 18 VAC 85-160-130 *Refusal to provide information* in its entirety states that “A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.”

⁷ See <https://law.lis.virginia.gov/vacode/54.1-2915/>

Estimated Benefits and Costs

Fee Increases

The fees in the current regulation for initial licensure, license renewal, and processing a late renewal application within one renewal cycle are all the same as they were when surgical assistants were registered rather than licensed prior to 2020. As a registered profession, surgical assistants were not subject to disciplinary action under § 54.1-2915. The existing regulation also does not specify disciplinary action. According to the Department of Health Professions (DHP), a large percentage of the revenue collected by the agency is used to cover the costs of investigations and disciplinary proceedings. Thus, as a licensed profession which is subject to disciplinary action under § 54.1-2915, the cost of regulating surgical assistants has become substantially higher.

Prior to Chapter 1222 of the 2020 Acts of Assembly, § 54.1-2956.13.A stated that “No person shall use or assume the title ‘registered surgical assistant’ unless such person is registered with the Board.” In other words, people who were not registered with the Board could do the work of surgical assistants; they just could not use the title “registered surgical assistant.” Chapter 1222 amended § 54.1-2956.13.A to “No person shall engage in the practice of surgical assisting or use or assume the title ‘surgical assistant’ unless such person holds a license as a surgical assistant issued by the Board.” As a result, it is now against the law to do the work of surgical assistants in the Commonwealth without being licensed by the Board. To the extent that no longer allowing individuals who have not met all of the requirements necessary to earn surgical assistant licensure to practice surgical assisting may reduce the likelihood of adverse surgical outcomes, switching from registration to licensure for surgical assistants may be beneficial. Additionally, it is potentially beneficial for those individuals who do meet the licensure requirements in that there is likely reduced competition for jobs. Thus, for at least some if not most licensed surgical assistants, if the higher fees are necessary for licensure rather than registration, then the benefits of licensure outweigh the additional cost.

Continuing Education

Under both the current and proposed regulations, surgical assistants who were initially licensed based on a current credential as either a surgical assistant or surgical first assistant (issued by the National Board of Surgical Technology and Surgical Assisting, or the National

Commission for Certification of Surgical Assistants or their successors) may renew their license by paying the renewal fee and attesting that the credential is current at the time of renewal. In order to keep the credential current, 38 hours of CE have to be completed biennially. Thus, other than paying a higher renewal fee, there is no change for license renewal for these surgical assistants.

For surgical assistants who were initially licensed based on a different method, the proposed regulation introduces a new requirement of 38 CE hours every two years. The National Surgical Assistant Association lists the following as methods to earn CE credits:⁸

- Health care facility mandatory education
- Health care facility sponsored in-services
- Attending professional physician organization programs
- Writing for health-related publications
- Instruction of health professionals
- College credit
- Lecture
- Clinical demonstration
- Completion of enduring material activities.⁹

One CE credit equals 50 - 60 minutes of activity when attending a program or viewing a recorded CE lectures and completing the post-lecture CE exam. All CE activities must be relevant to the practice of surgical assisting to qualify for CE credit. Since most surgical assistants work for hospital systems, some of the required CE hours would likely be covered by health care facility mandatory education and/or health care facility sponsored in-services for at least some surgical assistants.

For those surgical assistants who have not been participating in activities that would qualify for 38 CE hours every two years, the proposed requirement may make it more likely that they remain up-to-date in advances and current skills in their profession, which could have a

⁸ See <http://www.nsa.net/wp-content/uploads/2019/12/Continuing-Education-Policy-Rev.-2019.pdf>

⁹ Enduring material is defined as a non-live offering, including but not limited to, CE articles delivered hard-copy or electronically that have a post-article CE exam; health care facility mandatory education tests online; viewing a recorded CE lecture on-line, CD, or other electronic means that has a post-article CE exam.

positive impact on public health. On the other hand, there may be individuals who remain up-to-date in their skills without participating in activities that meet the 38-hour requirement. These individuals would be required to spend time and potentially dollars differently than they otherwise would have chosen.

The current regulation lists a biennial fee for surgical technologist certification renewal, but does not state any other certification renewal requirements. The proposed regulation effectively newly requires 30 hours of CE every two years for Virginia surgical technologist certification renewal. Surgical technologists who have chosen to keep current National Board of Surgical Technology and Surgical Assisting certification would not be practically affected, since such certification also requires 30 hours of CE every two years.

According to AST, the vast majority of all surgical technologist CE credits are earned through one or more of the ways listed below:¹⁰

- AST distance CE (journal tests or CE packages);
- Hospital internal training;
- Live lectures at AST state assemblies, national conference and others, such as ACS Congress;
- College courses; and
- Healthcare manufacturers' live events. In order for the CE credits to be accepted by AST, the live program must be approved by AST and the program must be relevant to the practice of surgical technology or surgical first assisting. Live events are stand-alone events, such as forums or hands-on workshops.

The AST website lists CE packages for members.¹¹ Annual membership is \$80 and 30 hours of CE credits through CE packages costs about \$50, in addition to the time it takes to complete. Since most surgical technologists work for hospital systems,¹² some of the required CE hours may be covered by hospital internal training for at least some surgical technologists.

Similar to surgical assistants, for those surgical technologists who have not been participating in activities that would qualify for 30 CE hours every two years, the proposed

¹⁰ See https://www.ast.org/Members/Submit_Credits/

¹¹ See https://www.ast.org/Members/CE_Credit_Packages/

¹² Source: Department of Health Professions

requirement may make it more likely that they remain up-to-date in advances and current skills in their profession, which could have a positive impact on public health. On the other hand, there may be individuals who remain up-to-date in their skills without participating in activities that meet the 30-hour requirement. These individuals would be required to spend time and potentially dollars differently than they otherwise would have chosen.

Inactive Licensure, Reactivation, and Reinstatement

The current regulation does not address reinstatement of lapsed or revoked licenses or certification or inactive licenses or certification. The proposed regulation includes text on obtaining inactive certification and associated rules, how to reactivate certification, and how to reinstate certification. Having this information spelled out in the regulation is beneficial for the public and regulated entities.

Standard New Sections

The proposed new *Confidentiality* section does not appear to add requirements beyond what already exists in the Code of Virginia.¹³ Thus adding it would not likely have impact beyond improving clarity for someone who reads the regulation, but not the relevant part of the Code of Virginia.

The reminders in the proposed *Patient records* section to comply with Code of Virginia requirements on confidentiality and patient records do not produce any new requirements, but may be beneficial for readers of the regulation who are unfamiliar with these Code requirements. The proposed statement that “Practitioners who are employed by a health care institution or other entity in which the individual practitioner does not own or maintain his own records shall maintain patient records in accordance with the policies and procedures of the employing entity” would not likely have a substantive impact since the employers would presumably already require this. There are not likely many, if any, surgical assistants and surgical technologists who are self-employed or own patient records. If there are any, and they do not currently keep records for a minimum of six years following the last patient encounter, the proposed statement that “Practitioners who are self-employed or employed by an entity in which the individual

¹³ See <https://law.lis.virginia.gov/vacode/32.1-127.1:03/>

practitioner does own and is responsible for patient records shall ... Maintain a patient record for a minimum of six years following the last patient encounter ...” may have some impact.

The language in the proposed *Communication with patients; termination of relationship* section indicating that the practitioner shall not deliberately make false or misleading statements and should follow specified sections of the Code of Virginia does not produce any new requirements, but may be beneficial for readers of the regulation who are unfamiliar with these Code requirements. Stating that the practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner would probably not have a substantial impact since surgical assistants and surgical technologists work under the supervision of a licensed doctor of medicine, osteopathy, or podiatry and not typically directly with patients.

The statement in the proposed *Practitioner responsibility* section that the practitioner shall not perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent does not produce any new requirements, but may be beneficial for readers of the regulation who are unfamiliar with these Code requirements. The proposed language on the practitioner not knowingly allowing subordinates to jeopardize patient safety or providing patient care outside of the subordinate's scope of practice, engaging in an egregious pattern of disruptive behavior or interaction in a health care setting, or exploiting the practitioner/patient relationship for personal gain might help reduce the likelihood of these activities from occurring.

The proposed *Sexual contact* section may be beneficial in that by providing greater detail on what constitutes unprofessional conduct and grounds for discipline through sexual contact, there may be greater clarity on what behavior is grounds for Board disciplinary action.

The proposed *Refusal to provide information* section may help encourage practitioners to cooperate with the Board.

Businesses and Other Entities Affected

The proposed amendments affect surgical assistants, surgical technologists, and providers of continuing education. According to DHP, surgical assistants and surgical technologists typically practice in large hospital systems. As of June 30, 2021, there were 368 surgical

assistants licensed and 242 surgical technologists registered with the Commonwealth.¹⁴ The switch from registration to certification for surgical technologists took place on July 1, 2021.

The proposed fee increases for the initial, renewal, and late renewal of surgical assistant licenses would increase costs for all surgical assistants. The proposed minimum of 38 hours of CE for surgical assistant license renewal and 30 hours of CE for surgical technologist certification renewal every two years increases costs (whether in time or dollars) for those practitioners that would not have otherwise participated in activities that would meet those number of CE hours. 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. Thus, an adverse impact is indicated.

Small Businesses¹⁵ Affected:

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

Localities¹⁶ Affected¹⁷

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

Projected Impact on Employment

There may be a small increase in employment at providers of CE. Given the nature of the activities that qualify for CE, any such increase would likely be modest.

Effects on the Use and Value of Private Property

The proposed CE requirements would likely prompt an increase in demand for CE activities. Given the nature of the activities that qualify for CE, any increase in demand for private outside provision of CE and an associated increase in business value would likely be modest. The proposed amendments do not affect real estate development costs.

¹⁴ Source: Department of Health Professions.

¹⁵ 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.”

¹⁶ “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.

¹⁷ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

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.

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.