



# Virginia Department of Planning and Budget Economic Impact Analysis

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**18 VAC 85-140 Regulations Governing the Practice of Polysomnographic Technologists**  
**Department of Health Professions**  
**Town Hall Action/Stage: 6116 / 9835**  
May 31, 2023

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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 19. The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

As a result of a 2022 periodic review<sup>2</sup> and in response to Executive Order 19 (2022)<sup>3</sup> (EO 19), the Board of Medicine (Board) is proposing editorial updates to this regulation governing polysomnographic technologists.<sup>4</sup>

## **Background**

As a result of a 2022 periodic review and in order to reduce regulatory requirements as directed by EO 19, the Board proposes to revise or delete language that duplicates statutory requirements, is not related to the practice of polysomnographic technology, is outdated, or is otherwise ineffectual. The affected regulatory language pertains to a reference to a public participation regulation; restatements of statutory scope of practice; provisions related to

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<sup>1</sup> 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.

<sup>2</sup> <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2155>

<sup>3</sup> <https://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>

<sup>4</sup> Polysomnographic technology means the process of analyzing, scoring, attended monitoring, and recording of physiologic data during sleep and wakefulness to assist in the clinical assessment and diagnosis of sleep/wake disorders and other disorders, syndromes, and dysfunctions that either are sleep related, manifest during sleep, or disrupt normal sleep/wake cycles and activities.

handling of patient records that were intended to cover physicians; provisions related to the sale, closure, or transfer of a practice that are redundant of statutory provisions; provisions related to communications to patients; and language regarding solicitation or remuneration in exchange for referral.

### **Estimated Benefits and Costs**

The Department of Health Professions states, and it so appears, that the proposed changes to this regulation are editorial in nature and would not affect the practice of polysomnographic technology. For example, removing duplicative or redundant references, such as to the public participation regulation or provisions in the Code of Virginia that deal with the sale, closure, or transfer of a practice, would not make that regulation or the Code of Virginia any less enforceable or applicable. However, to the extent that polysomnographic technologists and other members of the public relied upon these regulatory provisions to better understand the requirements that pertain to this profession, some lack of clarity may result. Otherwise, no significant economic impact is expected to result from the proposed changes.

### **Businesses and Other Entities Affected**

As of March 2023, there were 497 individuals licensed as polysomnographic technologists. None of the licensed professionals would be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> 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 noted above, the proposed changes are editorial in nature and do not alter rights or obligations of polysomnographic technologists. Thus, no adverse impact is indicated.

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<sup>5</sup> 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.

**Small Businesses<sup>6</sup> Affected:<sup>7</sup>**

The proposed amendments do not adversely affect small businesses.

**Localities<sup>8</sup> Affected<sup>9</sup>**

The proposed amendments apply throughout the Commonwealth and do not introduce costs for local governments.

**Projected Impact on Employment**

The proposed amendments do not affect total employment.

**Effects on the Use and Value of Private Property**

No effect on the use and value of private property or the real estate development costs is expected.

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<sup>6</sup> 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.”

<sup>7</sup> 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.

<sup>8</sup> “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.

<sup>9</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.