



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

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**18 VAC 85-40 Regulations Governing the Practice of Respiratory Therapists**  
**Department of Health Professions**  
**Town Hall Action/Stage: 6123 / 9842**  
July 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 the potential economic impacts as of the date of this analysis.<sup>1</sup>

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

As the result of a periodic review,<sup>2</sup> the Board of Medicine (Board) proposes to remove text from various portions of 18 VAC 85-40 *Regulations Governing the Practice of Respiratory Therapists*.

### **Background**

The Board relates that each portion of text proposed for removal qualifies as one of the following: 1) definition not used in the regulation, 2) refers to another regulation that is not used in this regulation, 3) redundant, 4) imposes a \$10 fee for an individual licensed out-of-state to register for voluntary practice in the Commonwealth, 5) requires the Board to periodically conduct a random audit of its active licensees to determine compliance, 6) limits licensees from performing actions that the Board believes should be within their scope of practice, 7)

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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> See <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2148>.

duplicative of Health Insurance Portability and Accountability Act (HIPAA) provisions, or 8) duplicative of statute.

### **Estimated Benefits and Costs**

According to DHP, the \$10 fee for an individual licensed out-of-state to register for voluntary practice itself costs more administratively to collect than \$10. Thus, eliminating the fee would be beneficial in that it would both reduce cost for respiratory therapists licensed out-of-state seeking to volunteer in Virginia and net costs for the Board.

In 18 VAC 85-40-66 (D), the current regulation states that “The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.” According to DHP, the Board has only performed one or two of these audits in the last two decades, and only on two sets of its 18 types of licensees. DHP adds that the Board does not have staff or the ability to conduct such audits and has not for years. Thus, the proposed repeal of the quoted sentence at the beginning of this paragraph would conform the regulation to practice.

In setting forth the scope of practice for respiratory therapists, the current text 18 VAC 85-40-70 states that<sup>3</sup>

This practice shall include, but not be limited to, ventilatory assistance and support; the insertion of artificial airways **without cutting tissue** and the maintenance of such airways; the administration of medical gases **exclusive of general anesthesia**; topical administration of pharmacological agents to the respiratory tract; humidification; and administration of aerosols.

According to DHP, the Board proposes to delete “without cutting tissue” and “exclusive of general anesthesia” to conform to current standard of care. The Board notes that the amendments are needed because the regulation as currently written limits the scope of practice by not allowing respiratory therapists to perform, for example, emergency tracheotomies, which they are required to do at times.

DHP believes that the limitation on the scope of practice caused by the current inclusion of “without cutting tissue” and “exclusive of general anesthesia” may have caused issues

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<sup>3</sup> Bold added for emphasis.

providing care. However, the agency has no direct information that this limitation occurred in actuality, but advisory board members had this concern. Thus, the proposed removal of these terms may be beneficial by increasing the scope of practice available to respiratory therapists.

Removing the other instances noted above – definitions that are not used in the regulation, text that refers to another regulation or that is redundant or duplicative of HIPAA provisions or statute – would have no impact on requirements for regulated entities or the public.

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

The proposed amendments affect the 4,724 respiratory therapists licensed in the Commonwealth,<sup>4</sup> as well as their patients and employers. According to survey data from the most recently published Virginia Healthcare Workforce Data Center report on respiratory therapists,<sup>5</sup> the primary type of employers of respiratory therapists in the Commonwealth are distributed as follows:

<u>Establishment Type</u>	<u>Percentage</u>
General Hospital, Inpatient Department	60%
Academic Institution	8%
General Hospital, Outpatient Department	6%
Home Health Care	5%
Children's Hospital	5%
Rehabilitation Facility, Residential/Inpatient	2%
Health Equipment Rental Company	2%
Physician Office	2%
Skilled Nursing Facility	2%
Sleep Center, Hospital Based	1%
Other	7%

<sup>4</sup> Source: <https://www.dhp.virginia.gov/about/stats/2023Q3/04CurrentLicenseCountQ3FY2023.pdf>

<sup>5</sup> See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/medicine/0117RT2021.pdf>

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</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 no proposed amendment increases costs or reduces net revenue for any entity, no adverse impact is indicated.

### **Small Businesses<sup>7</sup> Affected:<sup>8</sup>**

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

### **Localities<sup>9</sup> Affected<sup>10</sup>**

The proposed amendments do not disproportionately affect any particular localities, nor introduce costs for local governments.

### **Projected Impact on Employment**

The proposed amendments do not appear to affect total employment.

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

To the extent that respiratory therapists who work for private entities may have refrained from performing emergency tracheotomies and other procedures due to the current text on the scope of practice in 18 VAC 85-40-70, the proposed amendments to this section as described above may lead to such respiratory therapists newly performing emergency tracheotomies and other procedures once the changes are in effect. This change could increase the value of those

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<sup>6</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.

<sup>7</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>8</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>9</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>10</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

private entities; however, any such increase is expected to be minimal. The proposed amendments do not affect real estate development costs.