



# Virginia Department of Planning and Budget Economic Impact Analysis

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**18 VAC 90-30 Regulations Governing the Licensure of Nurse Practitioners**  
**Department of Health Professions**  
**Town Hall Action/Stage: 6084 / 9796**  
December 16, 2022

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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**

Pursuant to Chapter 197 of the 2022 *Acts of Assembly*,<sup>2</sup> the Boards of Nursing and Medicine (Boards) propose to indicate that clinical nurse specialists (CNSs) who do not prescribe controlled substances or devices do not need to practice pursuant to a practice agreement.

## **Background**

Prior to July 1, 2021, CNSs were registered with the Board of Nursing. They worked without supervision as advanced practice registered nurses according to their scope of practice.

In order to allow CNSs to apply for prescriptive authority, Chapter 157 of the 2021 *Special Session I Acts of Assembly*<sup>3</sup> required all CNSs to be jointly licensed by the Boards of Nursing and Medicine as nurse practitioners. According to the Department of Health Professions (DHP), this created an unintended consequence because the change also meant that all CNSs

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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://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0197>

<sup>3</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0157>

would be required to have a practice agreement with a licensed physician. A practice agreement was required even if a CNS did not want to practice with prescriptive authority, and DHP indicates that not all CNS licensees were seeking prescriptive authority. Rather, many CNSs focus on psychological-mental health where they do not prescribe, and the profession has the statutory authority<sup>4</sup> to bill the Department of Medical Assistance Services as independent providers.

Chapter 197 of the 2022 *Acts of Assembly* eliminated the unintended consequence by stipulating that a CNS who does not prescribe controlled substances or devices may practice without a practice agreement. Between the effective date of the 2021 legislation (July 1, 2021) and the effective date of the 2022 legislation (July 1, 2022), the unintended consequence was temporarily resolved by adding language to the 2021 *Special Session II Appropriation Act* that allowed CNS to practice without a practice agreement if they practiced without prescriptive authority.<sup>5</sup> The budget language, which expired June 30, 2022, was added at the request of DHP after hearing concerns from the CNS community and representatives from the Virginia Association of Clinical Nurse Specialists who were concerned about the new requirement for all CNS to practice under a practice agreement.

### **Estimated Benefits and Costs**

The proposed additional text for the regulation is identical to the text in the 2022 legislation. Thus, the only impact in practice is to better inform readers of the regulation as toward the actual requirements for CNS practice.

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

Hospitals or other healthcare entities that employ nurse practitioners licensed in the category of clinical nurse specialists who do not prescribe controlled substances are affected by the legislation in that it allows these practitioners to work without practice agreements. The Virginia Department of Health licenses 105 inpatient hospitals and 70 outpatient surgical hospitals.<sup>6</sup> There are 399 licensed nurse practitioners in the category of clinical nurse specialists

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<sup>4</sup> See § 32.1-325 F: <https://law.lis.virginia.gov/vacode/title32.1/chapter10/section32.1-325/#v2/>

<sup>5</sup> See I.1 and I.2 at <https://lis.virginia.gov/cgi-bin/legp604.exe?213+ful+HB7001>

<sup>6</sup> Data source: Virginia Department of Health

in Virginia.<sup>7</sup> The Board does not have data on the number of whom do not prescribe controlled substances or devices.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>8</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. The proposed amendments match statutory text; consequently they neither increase net cost nor reduce net revenue. Thus, no adverse impact is indicated.

### **Small Businesses<sup>9</sup> Affected:<sup>10</sup>**

The proposed amendments do not adversely affect small businesses.

### **Localities<sup>11</sup> Affected<sup>12</sup>**

The proposed amendments neither 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**

As the proposed amendments match statute, the use and value of private property is not affected. Additionally, the proposed amendments do not affect real estate development costs.

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<sup>7</sup> Data source: Department of Health Professions

<sup>8</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>9</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>10</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>11</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>12</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.