



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

18 VAC 95-15 Regulations Governing Delegation to an Agency Subordinate
Department of Health Professions
Town Hall Action/Stage: 5465 / 8873
March 25, 2020

Summary of the Proposed Amendments to Regulation

The Board of Long-Term Care Administrators (Board) proposes to promulgate a new regulation, 18 VAC 95-15 *Regulations Governing Delegation to an Agency Subordinate*, to set out the rules for delegation of informal fact-finding to an agency subordinate.

Background

Code of Virginia § 54.1-2400(10) states that the Board may delegate to an appropriately qualified agency subordinate¹ the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to a disciplinary action. Further, the Code section specifies that, “Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.”

Specifics of Proposed Regulation

The proposed new regulation has three sections: 18 VAC 95-15-10 Decision to delegate, 18 VAC 95-15-20 Criteria for delegation, and 18 VAC 95-15-30 Criteria for an agency subordinate. Section 10 merely states that “In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.” This essentially does not provide criteria beyond that which is already in the Code.

¹ "Subordinate" is defined as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf."

Section 20 in full states that “Cases that may not be delegated to an agency subordinate include violations of standards of practice, except as may otherwise be determined by the executive director in consultation with the board chair.” This provides guidance beyond the Code as to which cases may by default be delegated, but does not conclusively limit any cases from being delegated.

Section 30.A states that “An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.” This is consistent with the Code and is slightly more specific, in that the Code definition of subordinate includes “any other person or persons designated by the agency to act in its behalf,” versus “other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals” in the proposed regulation.

Section 30.B specifies that “The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.” This is not in the Code.

Section 30.C specifies that “The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.” This is also only in the proposed regulation.

Estimated Benefits and Costs

According to the Department of Health Professions (DHP), the Board is not currently delegating any cases to an agency subordinate, but will likely start using agency subordinates once the regulation becomes effective. It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., a quorum of the board. Thus, to the extent that the adoption of the proposed regulation makes it more likely that the board delegates to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in

a timelier manner. Since the Board must still ratify recommendations of the subordinate, the subject of the potential disciplinary action would still be under the judgment of the Board.

Businesses and Other Entities Affected

The proposed regulation affects members of the Board and other individuals who may be chosen as agency subordinates, such as past members of the Board, staff of DHP, and other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals. The proposed regulation may also affect the 936 nursing home administrators and 656 assisted living administrators regulated by the Board. The proposal does not produce cost.

Small Businesses² Affected:

Types and Estimated Number of Small Businesses Affected

The Board only regulates individual practitioners; thus, data on number of small businesses is not available.

Costs and Other Effects

Delegating to an agency subordinate may reduce the time it takes to resolve cases before the Board. This may moderately reduce time costs for small businesses that employ nursing home administrators or assisted living administrators who go before the Board.

Alternative Method that Minimizes Adverse Impact

The proposed regulation does not produce adverse impact.

Localities³ Affected⁴

The proposed regulation does not disproportionately affect any particularly locality nor appear to introduce additional costs for local governments.

² 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.”

³ “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.

⁴ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Projected Impact on Employment

The proposed regulation does not appear to substantively affect total employment.

Effects on the Use and Value of Private Property

The proposed regulation appears to neither substantively affect the use and value of private property, nor affect real estate development costs.

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.