



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

18 VAC 115-90 Regulations Governing the Practice of Art Therapy
Department of Health Professions
Town Hall Action/Stage: 5656 / 9495
March 21, 2022

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 14 (as amended, July 16, 2018). The analysis presented below represents DPB’s best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

As required by Chapter 301 of the 2020 *Acts of Assembly*,² the Board of Counseling (Board) proposes to promulgate a new regulation governing the practice of art therapy.

Background

In 2018, the Board of Health Professions assembled a regulatory research committee that conducted a study titled “Study into the Need to Regulate Art Therapists in the Commonwealth of Virginia” on behalf of the Virginia Art Therapy Association.³ The major findings of the study are:

- 1. Art therapy is an integrative mental health and human services profession. Art therapists are educated in psychotherapeutic principles as specifically trained in the use of art media to provide counseling to individuals, families and groups.*
- 2. Art therapy is categorically different than “art in therapy.” Art in therapy is a therapeutic modality leveraging the creative process as a growth-producing experience.*

¹ 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.

² <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0301&201+ful+CHAP0301>

³ https://www.dhp.virginia.gov/media/dhpweb/docs/studies/ArtTherapist_2018.pdf

3. Art therapy practices pose an inherent risk of harm to the patient. Individuals practicing art therapy without the proper skills, level education, supervision and ethical standards pose a risk, especially to vulnerable patients who may have difficulty with verbal communication.

4. Art therapists practice autonomously as well as under supervision.

5. Art therapists are educated at the master's degree level and must sit for a national board certification exam to obtain the Registered Art Therapist (ATR) credential.

6. Seven (7) states license art therapists as a distinct profession; five (5) states provide for licensure of art therapists under a related profession's license; and four (4) state recognize art therapists to enable state hiring and/or to provide title protection.

7. The number of art therapists in Virginia is undetermined at this time.

8. There is a need for art therapists in Virginia.

Subsequently, Chapter 301 of the 2020 *Acts of Assembly* was enacted and became the legislative mandate for this action. The Board now proposes to establish the requirements for licensure as an art therapist and art therapist associate, continuing education requirements, standards of practice, disciplinary actions for violations of the standards of practice, and a fee structure to cover the program's operating expenses at the Department of Health Professions (DHP).

Estimated Benefits and Costs

Art therapy was practiced in Virginia before the legislative mandate became effective. However, the legislation created title protection for "art therapists" and "art therapy associates" and prohibited the practice of "art therapy" "unless he is licensed by the Board." The legislation and the regulation would affect individuals who previously practiced art therapy differently depending on the credentials and related licenses they may possess.

Specific job positions for art therapy generally have not existed in Virginia because they did not require a license, because reimbursement for art therapists was not available from health insurance companies, or both. Instead, individuals have practiced art therapy as part of another job for which they qualified based on other skills. For example, the report noted that a teacher used art therapy with her students, a licensed professional counselor used art therapy with her patients, and another individual used art therapy when working with the elderly and persons with dementia (a job she held based on other credentials).

A driving force behind the study appears to be similarly-placed individuals, who have a certification, education, or a license from another jurisdiction in art therapy. The study and the testimony to the research committee highlight the difficulty such individuals have experienced finding employment in Virginia. These individuals, who would meet the proposed standards because they already possess a certification, education, or a license from another jurisdiction, are the ones that stand to gain the most from the proposed regulation as they would likely have an easier time finding jobs in Virginia; they may also be able to complement their compensation due to the new license.

A second group that would appear to benefit consists of those who were already practicing art therapy and would be able to continue practicing based on a related license that had art therapy within its scope of practice. These individuals, who lacked a specific license for art therapy, include some licensed professional counselors and licensed marriage and family therapists. The legislation and the regulation would allow them to continue practicing art therapy under the umbrella of their existing licenses. However, they would be prohibited from calling themselves “art therapists” unless they also obtain the separate art therapist license.⁴ The impact on such individuals appears to be limited to the impact of not being able to use the title of “art therapist.” If they wish to use the title of “art therapist,” they would have to obtain the new license.

The last group consists of those individuals who lack the credentials for a Virginia art therapy license or a qualifying art therapy license from another jurisdiction. These individuals would have to not only cease any practice of art therapy, but also cease using the titles “art therapist” and “art therapy associate.” If they wish, they can obtain an art therapy or art therapy associate license by fulfilling the proposed credentials. The cost of meeting the proposed standards for these individuals would likely be proportional to how much more education and experience they need to qualify for a Virginia license.

The proposed regulation allows licensure as an art therapist by endorsement as well as licensure by examination. The endorsement route requires “a current, unrestricted art therapy license issued from another United States jurisdiction,” “[a]n attestation of having read and

⁴ Legislation specifically states “Nothing in this chapter shall prohibit a person licensed, certified, or registered by a health regulatory board from using the modalities of art media if such modalities are within his scope of practice.”

understood the regulations and laws governing the practice of art therapy in Virginia,” and either (a) “Current ATR-BC [Board Certified Registered Art Therapist] certification from the ATCB [Art Therapy Credentials Board, Inc.]”, or (b) “documentation of passage of the examination of the ATCB and evidence of autonomous, clinical practice in art therapy” “for 24 of the last 60 months immediately preceding his licensure application in Virginia.”

In the licensure by examination route, the proposed regulation requires credentialing from ATCB as an ATR-BC for the art therapist license and Registered Art Therapist (ATR) or a Provisional Registered Art Therapist (ATR-P) for the art therapy associate license.

The proposal heavily relies on various credentials (i.e. ATR-BC, ATR, and ATR-P) all from ATCB. ATCB is an independent company and as such is free to establish or modify from time to time its own standards for its own credentials and its fees for exams, periodic renewals, or registration. This would produce some risk for the Commonwealth as decisions made by this independent company would effectively become Virginia administrative law without any oversight or approval from the Commonwealth. ATCB’s education, experience, and supervision standards are complex.⁵ At a high level, they appear to require at least master’s level of degree or higher in art therapy with certain accreditation or master’s degree or higher with concentration in certain areas, a minimum of 1,000 hours of post-education or more of direct client contact using art therapy, and a minimum of 100 hours or more of supervised practicum. From an ordinal perspective, it appears those who have a master’s degree in art therapy would likely meet ATCB criteria most readily, followed by those who have a psychology related license that includes art therapy within its scope of practice, and then those that have a psychology-related license but where art therapy does not fall within their scope of practice.

The proposed regulation also requires a minimum of 20 hours of continuing education for each annual licensure renewal. Similarly, maintaining the ATCB credentials also requires 100 hours of continuing education over its five-year renewal cycle independently from this regulation.⁶ The regulation recognizes continuing education credits earned for maintaining

⁵ https://www.atcb.org/wp-content/uploads/2022/03/ATR_ApplicationHandbook-2021-FINAL-1-2.pdf
https://www.atcb.org/wp-content/uploads/2022/03/ATRProvisional_ApplicationHandbook-2021-FINAL-1-1.pdf
<https://www.atcb.org/board-certified-registered-art-therapist-atr-bc/>

⁶ <https://www.atcb.org/wp-content/uploads/2021/07/Recertification-Standards-final-2021-1.pdf>

ATCB credentials. Thus, continuing education required by this regulation and ATCB are allowed to overlap.

In addition to costs associated with education, experience, supervision, and continuing competency, the license applicants would be required to pay fees to DHP. These fees would be used to pay administrative costs associated with the proposed program. The administrative costs would include but not be limited to staff time for application processing, issuance of licenses, disciplinary hearings and actions, postal costs, office supplies, etc.

The proposed fee structure is as follows: initial application processing and licensure as an art therapist (\$175); initial application processing and licensure as an art therapy associate (\$65); active annual license renewal as an art therapist (\$130); inactive annual license renewal as an art therapist (\$65); late renewal (\$45); duplicate license (\$10); verification of licensure to another jurisdiction (\$30); reinstatement of a lapsed license (\$200); replacement of or additional wall certificate (\$25); returned check or dishonored credit card or debit card (\$50); reinstatement following revocation or suspension (\$600). DHP estimates that the number of persons seeking licensure in this program will initially be fewer than 200 which would translate to less than \$6,000 in total collected from annual renewal fees.

This regulation is also expected to encourage educational institutions to start new degree programs or increase the number of courses offered specific to art therapy. The study notes that there are two master's degree programs in Virginia: 1) George Washington University's Columbian College of Arts and Sciences' Art Therapy Master's Degree Program in Alexandria offering three options (a Master's in Art Therapy, with a thesis option; a Master's in Art Therapy Practice; and a combined Bachelor of Arts/Masters of Arts in Art Therapy) enrolling approximately 20 students per year; and 2) Eastern Virginia Medical Schools Art Therapy & Counseling Program in Norfolk offering a Post Master's program with enrollment of 34 students in the 2016-2017 school year.

At the one end of the spectrum, for someone who is just starting and who has no background in psychology, the proposed education and experience requirements for a license in art therapy would undoubtedly impose significant compliance costs. At the other end of the spectrum, there appears to be individuals who meet all the proposed requirements and who only need to apply and pay the associated fees. Regardless of the magnitude of compliance costs, the

individual choosing to obtain a license in art therapy thereby indicates that the expected benefits to him/her exceed the expected costs.

In addition, the legislation (and thus the regulation) impose a ban on practice of art therapy by individuals who are not licensed. As a consequence, individuals who have an education and background in art therapy but not a license to practice it (such as a teacher or a nursing home employee), would no longer be allowed to practice art therapy at all. The rationale for such a ban in the legislation is unclear, but the “Study into the Need to Regulate Art Therapists in the Commonwealth of Virginia” (noted earlier) includes the statement that “Art therapy practices pose an inherent risk of harm to the patient. Individuals practicing art therapy without the proper skills, level education, supervision and ethical standards pose a risk, especially to vulnerable patients who may have difficulty with verbal communication.” The study’s discussion of harm states that “Untrained providers of art therapy can cause potential harm to their clients’ emotional wellbeing,” but the study does not provide any additional information on how these harms may occur. The study also notes potential physical risks to the subject, observing that while art therapists overall do not use dangerous equipment, there are “basic art tools, such as paint and glue, which contain toxic chemicals that could cause harm should they be inhaled or ingested, scissors which have sharp edges capable of causing cuts or punctures, and objects such as clay, if thrown, could be considered potentially dangers [*sic.*]” These risks, however, would seem to apply to any setting in which art supplies are available. Moreover, the study does not provide any evidence that harms actually occur, noting that “Information regarding disciplinary action against art therapists was not readily accessible.” The lack of evidence of harm to patients in this case is unusual compared to most other regulations from health boards, but as noted above this ban results from the legislative mandate.

As discussed above, the main driving force for licensure of art therapy is employment considerations for those who have a license from another jurisdiction, or who have completed a degree program but are experiencing difficulty finding a job. The tradeoff is between expanding employment opportunities for those who meet the proposed credentials and reducing the beneficial practice of art therapy by those who are able to provide these services but who are not licensed. Perhaps this unintended tradeoff may be mitigated by allowing uncompensated practice of art therapy by individuals whose scope of education and experience include art therapy. There does not seem to be much of a health and safety risk for allowing a school teacher or a nursing

home employee with some education and experience in art therapy to utilize it, given the lack of documented evidence of harm. However, such a flexibility would require legislative action given the language of the current statute.

Businesses and Other Entities Affected

The legislation and this regulation affect individuals who would be practicing art therapy in the future and those who were practicing art therapy prior to 2020. According to DHP, when the Board of Health Professions conducted its study of the need for licensure of art therapists, the American Association of Art Therapists reported 131 professional members and 37 student members located in Virginia. DHP estimates that the number of persons seeking licensure will initially be fewer than 200. The number of those who were practicing art therapy prior to 2020 and who would not seek licensure is unknown.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁷ 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 discussed above, individuals who were practicing art therapy prior to 2020 would have to cease their practice unless they obtain a license. For some individuals, particularly for those who have relatively lower costs in obtaining licensure, the costs may be outweighed by the increased possibility that their services would be reimbursed by health insurance. For others, particularly those who have relatively higher costs in obtaining licensure, the costs would likely outweigh the benefits. Because there is the potential for an increase in net cost or reduction in net revenue for any entity, an adverse impact is indicated.

⁷ 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 Businesses⁸ Affected:⁹

No data are available to determine if any of the individuals who were practicing art therapy prior to 2020 were associated with a small business.

Localities¹⁰ Affected¹¹

The proposed regulation neither disproportionately affects particular localities, nor introduces costs for local governments.

Projected Impact on Employment

The proposed licensure of art therapists may encourage individuals licensed in other jurisdictions to take jobs in Virginia and may cause those who meet the criteria to be licensed to secure better jobs. However, some individuals who had been practicing art therapy without a license may not be able to maintain their employment in that capacity. Thus, the net impact on total employment and on underemployment is uncertain.

Effects on the Use and Value of Private Property

The proposed regulation does not appear to directly affect the use and value of private property or real estate development costs.

⁸ 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.”

⁹ 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.

¹⁰ “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.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.