



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 85-40 –Regulations Governing the Practice of Respiratory Care Board of Medicine, Department of Health Professions August 23, 2004

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The proposed regulations will establish professional ethical standards for patient records, confidentiality, communication with patients and termination of practitioner/patient relationship, practitioner responsibility, referral ethics, sexual contact, and providing information to the Board of Medicine upon request.

Estimated Economic Impact

These regulations contain professional ethical standards for practice of respiratory care. Recently, a disciplinary sanction imposed by the Board of Medicine (the board) on one of its regulants was overturned by the court of appeals based in part because the board did not have regulations addressing the standards of conduct related to the dispute.¹ Prior to this lawsuit, the board has been using the code of ethics of the American Medical Association and of the other related professional organizations as guidance, but its regulations did not contain many of these

¹ Court of Appeals of Virginia, Record No. 0016-02-2.

ethical standards. As a result of this court case, the board conducted an extensive review of professional ethics used by the American Medical Association and other related professional associations, reviewed the list of 42 grounds for disciplinary action recommended by the Federation of State Medical Boards, combed through the standards already addressed in the Code of Virginia or the regulations, and is proposing to establish ethical standards to cover seven areas.

In general, the proposed regulations will require; that practitioners maintain, manage, and destroy patient records according to the specific criteria to ensure patient confidentiality; that practitioners do not breach the practitioner/patient confidentiality; that practitioners do not mislead or make deliberate false statements regarding the medications, treatment, diagnosis, and prognosis; that practitioners inform patients of the risks, benefits, and alternatives before an invasive procedure; that the practitioners present medical information in understandable language to patients; that practitioners do not terminate their relationship with a patient without a notice allowing reasonable time for the patient; that practitioners do not delegate tasks outside the scope of a subordinate's area; that practitioners do not exploit the practitioner/patient relationship for personal gain; that practitioners do not seek remuneration in exchange for referral; that practitioners do not have sexual contact with patients or with supervisees, if that relationship would have an adverse affect on patient care; and that practitioners provide information to the Board of Medicine if requested.

The proposed changes will establish explicit standards the board is currently using as guidance. Because this regulation will establish more clearly the scope of ethical standards, it will probably be more informative regarding what constitutes a breach of ethical standards and consequently what may be subject to a disciplinary action. Most practitioners are probably already in compliance with most of the proposed standards and are not expected to be affected significantly by the proposed changes on average. Even though there may be a small number of regulants who may have to change their practices to comply with the proposed rules, the significance and the types of potential economic effects are likely to be case specific. Thus, the compliance costs may increase for some regulants by an unknown amount. Also, the proposed changes may cause an increase in the number of complaints and fact-finding investigations. As a

rough estimate, the Department of Health expects approximately 0.7 additional informal hearings costing about \$2,030 per year.²

The proposed regulation requires that practitioners inform or notify patients of the records retention schedule, so patients will be aware of when their records may be no longer available. Given that a practitioner may have accumulated thousands of inactive patients over the years, this requirement seems to have the potential to create significant compliance costs for some of the practitioners. Also, practitioners may not have the accurate address information for most inactive patients. Perhaps, the potential mailing costs of notifications may be significantly reduced if the scope of this requirement is limited to only active or recently active patients.

Some benefits may come from more clearly delineated and stated ethical standards. More informative standards could improve compliance and may provide a higher protection against ethical misconduct for consumers, practitioners, subordinates, and public in general. Also, having ethics standards in regulations could serve as an insurance against similar potential lawsuits that occurred in the past and could improve the enforceability of disciplinary actions.

Businesses and Entities Affected

The proposed regulations apply to approximately 3,104 respiratory care practitioners.

Localities Particularly Affected

The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment

The impact of proposed regulations on employment depends on how significantly the current practitioners will have to change their business practices to comply with the proposed ethics standards. Provided that most practitioners are already conducting their businesses in compliance with the proposed regulations, no significance effect on employment is expected.

Effects on the Use and Value of Private Property

The proposed ethics standards should not have any significant effect on the value of physical real property. Also, unless the proposed regulations introduce significant compliance

² The number of cases and the costs are estimated based on the percentage of regulants affected by these regulations compared to the total number of regulants for which similar ethical standards are proposed, 10 additional cases expected for all professions, and expected cost of \$3,000 per case.

costs on practitioners, no significant effect on the use and value of practitioner businesses is expected.