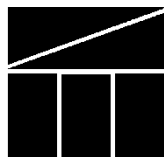


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

18 VAC 90-19 Regulations Governing the Practice of Nursing
18 VAC 90□25 Regulations Governing Certified Nurse Aides
18 VAC 90□27 Regulations Governing Nursing Education Programs
18 VAC 90□50 Regulations Governing the Licensure of Massage Therapists
18 VAC 90□60 Regulations Governing the Registration of Medication Aides
Department of Health Professions
Town Hall Action/Stage: 5385 / 8760
November 4, 2019

Summary of the Proposed Amendments to Regulation

The Board of Nursing (Board) proposes to amend five of its regulations to state that the handling fee for a returned check or dishonored credit card or debit card is \$50.

Background

Code of Virginia § 2.2-614.1 specifies that:

If any check or other means of payment tendered to a public body in the course of its duties is not paid by the financial institution on which it is drawn, because of insufficient funds in the account of the drawer, no account is in the name of the drawer, or the account of the drawer is closed, and the check or other means of payment is returned to the public body unpaid, the amount thereof shall be charged to the person on whose account it was received, and his liability and that of his sureties, shall be as if he had never offered any such payment. A penalty of \$35 or the amount of any costs, whichever is greater, shall be added to such amount.

¹ 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.

With the exception of 18 VAC 90-27 *Regulations for Nursing Education Programs*, the Board's current regulations that include fees include a \$35 returned check charge.

On the other hand, Code of Virginia § 2.2-4805 specifies that "Returned checks or dishonored credit card or debit card payments shall incur a handling fee of \$50 unless a higher amount is authorized by statute to be added to the principal account balance." According to the Department of Health Professions (DHP), the Office of the Attorney General has advised that the handling fee of \$50 in Virginia Code 2.2-4805 governs.

Estimated Benefits and Costs

Based on the view of the Office of the Attorney General that Virginia Code 2.2-4805 prevails, the fee by law for a returned check or dishonored credit card or debit card is \$50. The Board's proposal therefore conforms the regulations to current law. DHP has indicated that in practice they will not raise the fee to \$50 until this proposed regulatory action becomes effective.² The services provided by DHP are funded by the fees paid by the regulated individuals and entities. To the extent that the \$50 fee more accurately represents the cost incurred by DHP, the proposed change may be beneficial in that the cost would need not be subsidized by other regulants who did not cause the cost to be incurred.

Businesses and Other Entities Affected

The proposal pertains to fee-paying individuals and entities regulated by the Board. As of June 30, 2019, there were 45 advanced certified nurse aides, 53,519 nurse aides, 418 clinical nurse specialists, 8,654 licensed massage therapists, 28,547 licensed practical nurses, 6,614 medication aides, 307 medication aide training programs, 109,998 registered nurses, 58 practical schools of nursing, and 76 professional schools of nursing in the Commonwealth and regulated by the Board.^{3, 4} If any of these individuals or entities (other than the nurse education programs) have a check returned or a credit card or debit card dishonored, the proposal would increase their cost by \$15. It is not known whether nursing education programs would be charged a \$35

² Concerning whether nursing education programs would be charged \$35 for a returned check prior to the proposed regulatory action becoming effective, DHP stated that "There haven't been any returned checks for nursing education programs; the new fee is added for consistency but likely will not be needed."

³ Source: DHP

⁴ The Board also regulates 11,569 licensed nurse practitioners. For licensed nurse practitioners, the proposal to state that the handling fee for a returned check or dishonored credit card or debit card is \$50 is in Action 5414. See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=5414>

returned check fee if they had a check returned prior to the proposed regulatory action becoming effective. If they would not receive the charge, the proposal would increase their costs by \$50 in the event that they have a check returned or a credit card or debit card dishonored.

Localities⁵ Affected⁶

The proposal does not disproportionately affect any particular localities or introduce costs for local governments.

Projected Impact on Employment

The proposal does not affect employment.

Effects on the Use and Value of Private Property

The proposal does not substantially affect the use and value of private property or real estate development costs.

Adverse Effect on Small Businesses⁷:

Types and Estimated Number of Small Businesses Affected

The proposal would potentially affect the 307 medication aide training programs, 58 practical schools of nursing, and 76 professional schools of nursing if they were to have a check returned or a credit card or debit card dishonored. It is not known how many of these entities would qualify as a small business.

Costs and Other Effects

If a small medication aide training program has a check returned or a credit card or debit card dishonored, the proposal would increase their cost by \$15. The current *Regulations for Nursing Education Programs* does not include a \$35 returned check charge. It is not clear whether small practical schools of nursing and small professional schools of nursing would be charged a \$35 returned check fee if they had a check returned prior to the proposed regulatory action becoming effective. If they would not receive the charge, the proposal would increase their costs by \$50 in the event that they have a check returned or a credit card or debit card dishonored.

⁵ “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.

⁶ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

⁷ 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.”

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

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.