

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): Yes 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 105 -20 Regulations of the Virginia Board of Optometry
Department of Health Professions
Town Hall Action/Stage: 4780 / 8042
October 28, 2017

Summary of the Proposed Amendments to Regulation

As the result of a periodic review,¹ the Board of Optometry (Board) proposes amendments concerning: 1) definitions, 2) requirements for licensure, 3) continuing education (CE), 4) alignment of regulatory text with the Code of Virginia, and 5) clarification.

Result of Analysis

The benefits likely exceed the costs for all proposed changes or are neutral in effect.

Estimated Economic Impact

Definitions

The Board proposes to define “active clinical practice” as an average of 20 hours per week or 640 hours per year of providing patient care. The term is used in licensing and reinstatement requirements and is currently open to wide interpretation. According to the Department of Health Professions (DHP), the Board’s intent is to allow practice hours less than full-time but in a quantity sufficient to demonstrate continuing competency to practice. Having a specified definition would be beneficial and reduce the likelihood of confusion or dispute.

¹ See <http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1516>

Requirements for Licensure

The current regulation requires that applicants for licensure to practice optometry “Be a graduate of a school of optometry accredited by the Accreditation Council on Optometric Education.” The Board proposes to add “or other accrediting body deemed by the board to be substantially equivalent” to allow potential recognition of another educational accrediting body if there is one in the future. This may be beneficial if such a situation arises.

The Board proposes to add a provision that would allow it to waive the requirement of graduation from an accredited school of optometry for an applicant who holds a current, unrestricted license in another U. S. jurisdiction and has been engaged in active clinical practice for at least 36 out of the 60 months immediately preceding application for licensure in Virginia. According to DHP, the intent of this amendment is to allow a pathway to licensure for foreign-trained optometrists who have been engaged in active practice in another state. Currently, the regulation requires graduation from an accredited program. The Board believes the requirement of passage of the national examination and active practice for at least 36 months is sufficient evidence of qualification to practice.

The Board proposes to eliminate the requirement that an applicant must complete 32 hours of CE if he has not passed all parts of the examination within the five years prior to application, and specify that an applicant who has been licensed in another state and has not been engaged in active practice within the 12 months immediately preceding application complete 20 hours (equivalent of one year) of CE. According to DHP, the Board is trying to make it less onerous for an applicant who is currently licensed and practicing in another state and wants to become licensed in Virginia. If he has been actively practicing and has a current license, the applicant would not be required to do additional CE. If not actively practicing, the Board believes some CE is necessary to ensure minimal competency for providing patient care.

Continuing Education

Other DHP boards have regulations that provide that the board may grant an exemption from all or part of the CE requirement for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters; the Board of Optometry proposes to add this provision for optometrists. To the extent that this proposed

provision is applied wisely, it would be beneficial in that it would allow competent optometrists to continue to practice without interruption.

The current regulation states that “A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.” According to DHP, audits are not conducted within 14 days of the renewal date; so the current requirement is not practical. The Board proposes to amend the requirement to the licensee providing evidence substantiating participation in required continuing education courses within 30 days of the audit notification. The proposed requirement is beneficial in that it is much more feasible.

Under the current regulation CE course providers are directed to submit certificates of course completion and to ensure that all required information is included. The Board proposes to amend the regulatory text to place the burden on the licensee to ensure that the certificate of completion he receives from the CE provider includes the information necessary to receive credit from the Board for meeting regulatory requirements.

Chapter 89 of the 2016 Acts of Assembly amended Code of Virginia § 54.1-3219 to specify that at least 10 hours (of CE) be obtained through real-time, interactive activities, including in-person or electronic presentations. In order to practically meet this statutory requirement, the Board proposes to require that CE certificates include whether the course was in real-time and interactive activities, including in-person or electronic presentations.

Businesses and Entities Affected

The proposed amendments affect the 1,755 licensed optometrists² and the 486 offices of optometrists³ in the Commonwealth. All 486 offices qualify as small businesses.⁴

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

² Data source: Department of Health Professions

³ Data source: Virginia Employment Commission

⁴ Data source: Ibid

Projected Impact on Employment

The proposals to make it less onerous for optometrists to become licensed or maintain licensure in the Commonwealth may moderately increase the number of employed optometrists.

Effects on the Use and Value of Private Property

The proposed amendment do not significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

Small Businesses:**Definition**

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.”

Costs and Other Effects

The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:**Businesses:**

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

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 Number 17 (2014). 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(C): 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.