



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

18 VAC 112-20 Regulations Governing the Practice of Physical Therapy
Department of Health Professions
Town Hall Action/Stage: 6420 / 10265
April 16, 2024

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 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The current *Regulations Governing the Practice of Physical Therapy* (regulation) allows the Board of Physical Therapy (Board) to delegate an informal fact-finding proceeding to an agency subordinate² only upon a determination that probable cause exists that a practitioner may be subject to a disciplinary action. Following a recent statutory change governing these proceedings, the Board proposes to remove this restriction from the regulation.

Background

Code § 54.1-2400(10) authorizes the Board to appoint a special conference committee to ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings. The statute provides that this may occur “upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to

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 The current and proposed regulations state 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.

consider an application for a license.” Prior to legislation this year, the same Code subdivision indicated that the Board may delegate to an appropriately qualified agency subordinate the authority to conduct informal fact-finding proceedings, but only “upon receipt of information that a practitioner may be subject to a disciplinary action.” This effectively prevented delegation from occurring to “consider an application for a license.” Chapter 191 of the *2023 Acts of Assembly*³ (legislation) removed the requirement that a practitioner must be subject to a disciplinary action in order for the Board to make such delegation. Accordingly, the Board is now proposing to remove that same restriction from the regulation as it is no longer mandated by Code.

Estimated Benefits and Costs

The legislation newly permitted the delegation of an informal fact-finding proceeding to occur for nonroutine⁴ applications for licensure. Currently, the regulation only allows such delegation to occur when there is information that a practitioner may be subject to a disciplinary action. When statute and regulation conflict, the statute prevails. Thus, amending the regulation to reflect the legislation would not affect what is permitted, but would be beneficial in accurately informing readers of the regulation concerning what is permitted.

Businesses and Other Entities Affected

According to the Department of Health Professions (DHP), there were no nonroutine applications for Board licensure⁵ that required evidentiary hearings in 2023. Credentials cases in general for this board are rare overall.⁶ The provision for the agency subordinate would likely only be used in situations where applicants were trained in another country or through a non-accredited educational program and the applicants challenge the Board’s use of a third-party credentials reviewer to assist in determination of whether licensure requirements are met.⁷

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁸ An adverse impact is indicated if there is any increase in net cost or

³ See <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0191+hil>

⁴ Nonroutine applications may require evidentiary hearings. In contrast, routine applications for licensure do not require such proceedings.

⁵ The two Board licenses are for physical therapists and physical therapist assistants.

⁶ Source DHP

⁷ Ibid

⁸ 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

reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁹ As there is no increase in net cost nor reduction in net benefit, an adverse impact is not indicated.

Small Businesses¹⁰ Affected:¹¹

The proposed amendment does not adversely affect small businesses.

Localities¹² Affected¹³

The proposed amendment neither disproportionately affects any particular locality, nor introduces costs for local governments.

Projected Impact on Employment

The proposed amendment does not appear to affect total employment.

Effects on the Use and Value of Private Property

The legislation may quicken the licensing of physical therapists and physical therapist assistants with nonroutine applications for licensure. As noted above, nonroutine applications for licensure are rare for the Board. In such rare situations, the licensees may start practicing in Virginia sooner. The proposed amendment does not affect the use and value of private property or real estate development costs.

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.

⁹ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

¹⁰ 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.”

¹¹ 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.

¹² “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.

¹³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.