



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

18 VAC 115-20 Regulations Governing the Practice of Professional Counseling
18 VAC 115-30 Regulations Governing the Certification of Substance Abuse Counselors
18 VAC 115-40 Regulations Governing the Certification of Rehabilitation Providers
18 VAC 115-50 Regulations Governing the Practice of Marriage and Family Therapy
18 VAC 115-60 Regulations Governing the Licensure of Substance Abuse Practitioners
18 VAC 115-70 Regulations Governing the Registration of Peer Recovery Specialists
18 VAC 115-80 Regulations Governing the Registration of Qualified Mental Health

Professionals

Department of Health Professions

Town Hall Action/Stage: 5436 / 8832

January 13, 2020

Summary of the Proposed Amendments to Regulation

The Board of Counseling (Board) proposes to amend 18 VAC 115-20 *Regulations Governing the Practice of Professional Counseling*, 18 VAC 115-30 *Regulations Governing the Certification of Substance Abuse Counselors*, 18 VAC 115-40 *Regulations Governing the Certification of Rehabilitation Providers*, 18 VAC 115-50 *Regulations Governing the Practice of Marriage and Family Therapy*, 18 VAC 115-60 *Regulations Governing the Licensure of Substance Abuse Practitioners*, 18 VAC 115-70 *Regulations Governing the Registration of Peer Recovery Specialists*, and 18 VAC 115-80 *Regulations Governing the Registration of Qualified Mental Health Professionals* to state that the handling fee for a returned check or dishonored credit card or debit card is \$50, replacing a current \$35 charge.

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.

Based on this Code provision, the current regulations 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 continue to charge the \$35 fee until this proposed regulatory action becomes effective. 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 regulated by the Board. As of September 30, 2019, there were 1,899 certified substance abuse counselors, 894 licensed marriage and family therapists, 6004 licensed professional counselors, 344 marriage and family therapist residents, 9,030 post graduate trainees, 7,316 qualified mental health professionals-adult, 6,501 qualified mental health professionals-child, 253 registered peer recovery specialists, 228 rehabilitation providers, 241 substance abuse counseling assistants, 1,892 substance abuse trainees, 265 substance abuse treatment practitioners, 6 substance abuse treatment residents, and 2,715 qualified mental health professional trainees. The Board does not directly regulate businesses. If any of these individuals have a check returned or a credit card or debit card dishonored, the proposal would increase their cost by \$15. Since adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits of the proposal exceed the costs for all entities combined, adverse impact is indicated for this action.

Small Businesses¹ Affected:

No small businesses are directly affected by the proposal.

Localities² Affected³

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.

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.

¹ 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.”

² “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.

³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.