



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

18 VAC 85-20 Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic
Virginia Department of Health Professions
Town Hall Action/Stage: 5412/9121
December 10, 2020

Summary of the Proposed Amendments to Regulation

The Board of Medicine (Board) proposes to amend 18 VAC 85-20 *Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic* (regulation) in order to add a definition of “conversion therapy” and a stipulation that licensees shall not engage in conversion therapy with individuals under 18 years of age.

Background

Chapter 41 of the 2020 *Acts of Assembly* bans the use of conversion therapy on minors by any provider licensed by a health regulatory board with the Department of Health Professions (DHP).¹ Specifically, the Act creates § 54.1-2409.5 of the Code of Virginia, which defines conversion therapy as follows:

“Conversion therapy” means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. “Conversion therapy” does not include counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?201+ful+CHAP0041>.

DHP reports that providers are more likely to be familiar with the regulations put forth by their licensing board than statutes. Thus, the Board seeks to amend the regulation to (i) define conversion therapy by referring the reader to § 54.1-2409.5, and (ii) explicitly state that practitioners shall not engage in conversion therapy with a person under 18 years of age.

Estimated Benefits and Costs

DHP estimates that few, if any, providers would be affected because conversion therapy has been considered harmful² to minors and contrary to the profession's code of ethics.³ To the extent that the Board's licensees are currently engaging in conversion therapy with individuals under 18 years of age, they would be in violation of state law. Any current license-holders choosing to forfeit their licensure in favor of continuing to practice conversion therapy may only continue to do so if employed as a rabbi, priest, minister or clergyman, as long as they belong to "an established and legally cognizable church, denomination or sect" and remain "accountable to its established authority."⁴

Clients under age 18, who seek to receive, or continue receiving, conversion therapy would need to find providers who are not licensed by any board within DHP, which may result in some costs for the client depending on the availability of such providers. Conversely, the proposed amendments would benefit children and their parents to the extent that it prevents the use of a practice that has been found to be harmful to children and has been banned for such use under state law.

² In a 2013 Position Statement, the American Psychiatric Association stated that it "does not believe that same-sex orientation should or needs to be changed, and efforts to do so represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change. No credible evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation need to be changed." Downloaded from <https://www.psychiatry.org/home/policy-finder>

³ In 2019, the Board also adopted a guidance document addressing conversion therapy: <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6791>

⁴ As per COV § 54.1-3501 *Exemption from requirements of licensure*: The activities, including marriage and family therapy, counseling, or substance abuse treatment, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

Businesses and Other Entities Affected

As mentioned above, some licensed practitioners who may also have been working in a religious setting may have to alter their practice or else face disciplinary action, but DHP estimates that these are most likely a very small fraction of the overall number of license-holders.⁵ Although DHP does not have an estimate of the number of affected providers, the agency reports that the vast majority of current license-holders likely do not engage in conversion therapy at all (in either religious or secular settings) since it is not taught by any accredited program and has been considered contrary to the “professional code of ethics” in an informal capacity for more than a decade.

Small Businesses⁶ Affected

Although some licensed providers may be employed in a small business setting, DHP estimates that only a very small fraction of the overall number of license-holders would be affected by the regulation at all, and there is no reason to suggest that those affected are more likely to be working in a small business. Even so, the cost to providers of complying with the regulation is unlikely to be significant, and there are no alternatives to the regulation that would provide greater flexibility while also conforming to the Code of Virginia.

Localities⁷ Affected⁸

The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment

The proposed amendments are unlikely to affect the overall number of employed Doctors of Medicine or Doctors of Osteopathic Medicine.

⁵ According to the ABD, the overall numbers of licensees are as follows: 39,645 doctors of medicine and 4001 doctors of osteopathic medicine. DHP states that conversion therapy falls outside the scope of practice for podiatrists and chiropractors.

⁶ 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.”

⁷ “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.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

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.