



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

---

**18 VAC 85-40 Regulations Governing the Practice of Respiratory Therapists**  
**Department of Health Professions**  
**Town Hall Action/Stage: 5486 / 8902**  
April 6, 2020

---

### **Summary of the Proposed Amendments to Regulation**

The Board of Medicine (Board) proposes to allow a respiratory therapist who passes a specialty examination of the National Board of Respiratory Care to earn 20 hours of continuing education credit for the biennium in which the practitioner passed the exam.

### **Background**

Currently, in order to renew an active license as a respiratory therapist, a licensee must have 20 hours of continuing education within the biennial license renewal cycle. For the continuing education credits, the Board currently recognizes: 1) courses approved and documented by a sponsor recognized by the American Association for Respiratory Care, 2) courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 Continuing Medical Education credit, 3) a credit course of post-licensure academic education relevant to respiratory care offered by a college or university accredited by an agency recognized by the United States Department of Education. In addition, up to two continuing education hours may be satisfied through delivery of respiratory therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic.

In addition to the enumerated ways of obtaining the required 20 hours of continuing education, the proposed amendment would allow respiratory therapists to meet that requirement for the biennium if they pass a specialty exam of the National Board of Respiratory Care. The specialty areas include adult critical care, neonatal/pediatric respiratory care, pulmonary function

technology, and sleep disorders testing and therapeutic intervention. The impetus for the proposed change was a recommendation of the Advisory Board on Respiratory Care.

### **Estimated Benefits and Costs**

The proposed change represents an additional option to meet the required 20 hours of continuing education for biennial renewal of the respiratory therapy license. According to the Department of Health Professions (DHP), even though the Board does not offer specialty licenses some respiratory therapists already take the specialty exam, perhaps to signal to potential employers that their skills are advanced and current in certain areas. The purpose of the regulatory change is to recognize the extensive preparation and effort required to pass a specialty exam by allowing those who pass the exam to meet the continuing education requirement.

In addition to the individuals who would have taken a specialty exam without this change, the proposed amendment may encourage more respiratory therapists to take a specialty exam. Since the proposed change is optional, it can be inferred that the benefits to those who choose to take the exam would exceed the costs to them. Also, to the extent that the specialty exam improves the quality of respiratory care in the Commonwealth, both employers and patients would benefit.

However, the proposed regulation may also lead to a decrease in demand for continuing education services offered by the current continuing education providers. With this change, a respiratory therapist who passes the specialty exam would not have to take 20 hours of continuing education from existing providers.

### **Businesses and Other Entities Affected**

According to DHP, there are currently 3,743 persons licensed as respiratory therapists in Virginia. However, the Board does not license by specialty and as such there is no information on the number of therapists who pass a specialty exam during a certain period of time, nor is there an estimate of the number of therapists who may be interested in taking the specialty exam as a result of the proposed change.

While the benefits of the proposal may exceed costs overall, there would likely be a reduction in net revenue for existing providers of continuing education. An adverse economic

impact<sup>1</sup> on existing providers of continuing education is indicated because there do not appear to be any offsetting direct benefits to these businesses.

### **Small Businesses<sup>2</sup> Affected:**

Substitution of the specialty exam for the alternate courses may negatively affect the small businesses that currently offer the courses that would count toward the 20 required hours.

#### Types and Estimated Number of Small Businesses Affected

The board does not license continuing education providers for respiratory therapy. Accordingly, there is no estimate available on the number of small businesses that currently offer continuing education services to respiratory therapists.

#### Costs and Other Effects

The proposed amendment makes it more attractive to earn continuing education credits through a specialty exam which may reduce the demand for continuing education services from current providers.

#### Alternative Method that Minimizes Adverse Impact

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

### **Localities<sup>3</sup> Affected<sup>4</sup>**

The proposed amendment potentially affects respiratory therapists and continuing education providers in all 132 localities. The proposed amendment does not introduce costs for local governments. Accordingly, no additional funds would be required.

### **Projected Impact on Employment**

There is not enough information to assess whether the likely reduction in demand for continuing education services offered by the current providers has the potential to affect total employment.

---

<sup>1</sup> 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.

<sup>2</sup> 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.”

<sup>3</sup> “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.

<sup>4</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

## Effects on the Use and Value of Private Property

The proposed amendment may negatively affect the asset value of current continuing education providers by potentially reducing the demand for their services. The proposed amendment does not appear to affect 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.