



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

18 VAC 85-20 Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic
Department of Health Professions
Town Hall Action/Stage: 6124 / 9843
August 30, 2023

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

As a result of a 2022 periodic review² and in response to Executive Order 19 (2022)³ (EO 19), the Board of Medicine (Board) is proposing to 1) eliminate a \$10 registration fee for out-of-state volunteers; 2) reduce the reporting time frame for a chronological record of all professional activities and eliminate the requirements to give location, dates, and types of services performed on such records for licensure by endorsement applications; 3) eliminate the currently required thirty hours of Type 2 continuing education per biennium; 4) repeal the requirement that the Board conduct random periodic audits of continuing education; 5) allow residents who have obtained specialized residency to obtain licensure by endorsement; 6) revise the duration of active practice required for licensure by endorsement applicants from “five years” to “two out of the last five years”; and 7) make numerous editorial changes.

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 <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2147>

³ <https://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>

Background

As a result of the 2022 periodic review and in order to reduce regulatory requirements as directed by EO 19, the Board proposes several amendments to generally reduce compliance costs by eliminating fees, reducing reporting requirements, reducing continuing education requirements, and allowing certain individuals to obtain licensure by endorsement.

Further, other changes delete provisions that duplicate statutory requirements or that the Board has determined are not useful, including provisions related to: conversion therapy; public participation regulations; the closing or selling of a practice; repeated information concerning communication with patients; advertising restrictions; recommendations for the use of vitamins, minerals, and supplements; prescriptions of anabolic steroids; provisions related to solicitation or remuneration in exchange for referrals; the use of pharmacotherapy for weight loss; regulatory language regarding what a practitioner may voluntarily provide on the practitioner profile site; consolidation of information related to informed consent for office-based procedures and subsequently elimination of redundant or extraneous language; and elimination of requirements for mixing, diluting, or reconstituting of drugs for administration.

Estimated Benefits and Costs

One of the proposed changes would eliminate the \$10 registration fee collected from out-of-state practitioners volunteering in Virginia. The Board states that the fee is so minimal and used so infrequently that its elimination will have virtually no effect on Board funds. In recent history spanning over several years, this fee was collected no more than three times. Therefore, the elimination of this fee is not expected to have a significant impact on the Board. Moreover, the elimination of this fee may encourage volunteering activities by out-of-state practitioners in Virginia should the need arise.

Another change would reduce the reporting requirements for licensure by endorsement applications. The Board proposes to set the time frame to the previous ten years and to eliminate such required details as location, dates, and types of services performed. Currently, the regulation requires a complete chronological record without referencing any time frame and requires details such as location, dates, and types of services performed on such records. According to the Board, the existing requirements are extraordinarily burdensome for any individual who has practiced for more than ten years. An experienced physician who, for

example, has been in practice for thirty years in many states could face an almost insurmountable task. The Board feels that limiting this requirement to no more than ten years prior to the application and the elimination of some of the specific reporting requirements would reduce this burden. As a result, an unknown number of future licensure by endorsement applicants would be provided some relief in administrative costs in terms of completing the application faster and easier than otherwise would be possible.

This action also includes a proposal to eliminate the currently required thirty hours of Type 2 continuing education per biennium (i.e., fifteen hours per year). Type 2 continuing education hours are earned from sources other than the formal continuing education providers, such as reading journals or talking to other practitioners. The Board states that the requirement for Type 2 hours is unnecessary because most practitioners would complete the activities that are included as Type 2 regardless of the requirement and most practitioners obtain far more than thirty hours of Type 2 continuing education per renewal cycle. Thus, the Board believes that the Type 2 continuing education requirement is an unnecessary and often impossible to verify requirement. Given that most practitioners already participate in activities that can be counted as Type 2 continuing education, and potentially more than the required amount, they would likely to continue to do so without being required. Thus, this change is not expected to create a significant economic impact.

The Board also proposes to repeal the requirement that the Board conduct random periodic audits of continuing education. The Board reports that it has only performed one or two of these audits in the last two decades, and only on two sets of its 21 types of licensees. The Board states that it does not have staff or the ability to conduct such audits and has not for years. Since the audits have not been performed in the past, this change is also unlikely to create any significant economic impact.

The Board also proposes to allow residents who have obtained specialized residency, such as in pediatric cardiology, to obtain licensure by endorsement. Currently, the regulation requires an applicant for licensure by endorsement to have held an “unrestricted” license in another jurisdiction for five years preceding application. The Board proposes to replace the word “unrestricted” with “active.” The intent of this change is to allow some residents who have obtained specialized residency, such as in pediatric cardiology, to obtain licensure by

endorsement. The current language would exclude such residents because their residency license is “restricted” to practice at a particular facility. This change would benefit an unknown number of future applicants by allowing them to obtain licensure by endorsement.

Another proposed change would revise the duration of active practice required for licensure by endorsement applicants from “five years” after postgraduate training and immediately preceding application to “two out of the last five years.” According to the Board, this change is intended to account for individuals who may not have consecutive practice in the five years preceding the application. This would include military spouses and individuals who may have taken a year or more away from practice to care for family. The Board states that this change is consistent with language in regulation of other boards and is intended to reduce the burden on endorsement applicants. Similarly, this change would benefit an unknown number of future applicants who have more than two years of active practice in the last five years by allowing them to obtain licensure by endorsement.

Finally, the Board states that all of the remaining proposed changes to this regulation are editorial in nature and would not affect the practice of medicine, osteopathic medicine, podiatry, and chiropractic. For example, elimination of language regarding conversion therapy, public participation regulations, the closing or selling of a practice, repeated information concerning communication with patients, advertising restrictions, recommendations for the use of vitamins, minerals, and supplements; prescriptions of anabolic steroids would not make this regulation any less enforceable or applicable because these requirements are still enforceable under more general regulatory provisions or under statute. However, to the extent that practitioners and other members of the public relied upon these regulatory provisions to better understand the requirements, some lack of clarity about these requirements may result.

Businesses and Other Entities Affected

The proposed changes apply to current licensees, potential applicants by endorsement, and potential registrants for voluntary out of state licenses. The Board has no data regarding any potential applicants by endorsement or potential registrants for voluntary out of state licenses. However, as of June 30, 2022, there were 41,926 individuals licensed as medical doctor and 4,733 licensed as doctor of osteopathy. There were 1,775 individuals licensed as chiropractors and 560 licensed as podiatrists. None of the regulants appear to be disproportionately affected.

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An 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. As noted above, this action would in general provide some savings in compliance costs and allow certain individuals to apply for licensure by endorsement but is not anticipated to increase costs or reduce revenues for any entity. Thus, no adverse impact is indicated.

Small Businesses⁵ Affected:⁶

The proposed amendments do not appear to adversely affect any entity including small businesses.

Localities⁷ Affected⁸

The proposed amendments neither introduce costs for localities nor disproportionately affect any locality.

Projected Impact on Employment

The proposal to allow certain individuals (i.e., applicants with specialized residency and applicants in active status with less than five consecutive year but more than two year out of the last five years) to apply for licensure by endorsement would likely have a positive impact on employment, but whether such impact would be significant is not known as there is no estimate on how many individuals may make use of this change.

⁴ 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. 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.

⁵ 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.”

⁶ 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.

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 changes are expected to provide some savings in compliance costs in terms of reduced reporting, fees, or other costs, but the magnitude of any such savings and consequently on the asset value of affected businesses is not known. No impact on the use of private property or real estate development costs is expected.