



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

18 VAC 95-20 Regulations Governing the Practice of Nursing Home Administrators 18 VAC 95-30 Regulations Governing the Practice of Assisted Living Facility

Administrators

Department of Health Professions

Town Hall Action/Stage: 6189/10113

June 13, 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

In response to Executive Order 19 (2022) and Executive Directive 1 (2022), the Board for Long-Term Care Administrators (Board) proposes to remove some discretionary requirements and add an option for licensees to maintain an inactive license in the regulations governing nursing home and assisted living facility (ALF) administrators.

Background

Executive Directive Number One (2022) directs Executive Branch entities under the authority of the Governor “...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth.”²

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://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>

Accordingly, the Board seeks to make a number of amendments that would increase flexibility and reduce burdens for the regulated community. Most of the proposed changes are identical in the two chapters, *Regulations Governing the Practice of Nursing Home Administrators* (18 VAC 95-20) and *Regulations Governing the Practice of Assisted Living Facility Administrators* (18 VAC 95-30.) The most significant changes are summarized below.

Adding inactive licensure status

Both chapters currently require licensees to renew their license or preceptor registration by March 31 of each year. New sections 18 VAC 95-20-201 and 18 VAC 95-30-91 would be added in each chapter, respectively, to allow current licensees to convert their license to inactive status when renewing the license. Both proposed sections contain identical stipulations that would (i) prohibit inactive licensees from performing any act requiring a license or registering to serve as a preceptor, and (ii) exempt inactive licensees from meeting continuing education requirements, unless they choose to reactivate their license.

Both proposed sections would allow inactive licensees to reactivate their license by (i) paying the difference between the inactive license fee and the active license fee for the year that the license is being reactivated, and (ii) completing the continuing competency hours required for the period in which the license has been inactive, not to exceed three years.³ The proposed continuing competency requirement for reactivating the license is identical to the current requirement for license reinstatement. However, the Board reports that other requirements for license reinstatement, such as an investigation by the Enforcement division, would not apply for license reactivation. Thus, the option to hold an inactive license for any period of time would provide greater flexibility to licensees who may want to temporarily step away from active professional practice or who are employed in roles that do not require an active license.

The sections on required fees in both chapters (sections 18 VAC 95-20-80 and 18 VAC 95-30-40, respectively) would also be identically amended to add a \$150 fee for inactive license renewal and a \$35 fee for inactive license late renewal. For comparison, the current license renewal fee is \$315 and the late renewal fee is \$110. The Board reports that these fees were set

³ The current continuing education requirement is 20 hours per year, so inactive licensees seeking to re-activate would have to complete a maximum of 60 hours of continuing education.

by comparing inactive license renewal fees among other Boards and determining a comparable amount.⁴

Removing discretionary requirements

The Board proposes to make the following changes to reduce the regulatory burden on licensees:

- Remove a requirement that licensees provide the “signature of an authorized representative of the approved sponsor” for evidence of attendance for continuing education. The Board reports that virtual continuing education offerings have made this requirement outdated and onerous.⁵ (Sections 20-175 and 30-70.)
- Add “as documented in the NAB [National Association of Long Term Care Administrator Boards] continuing education registry” as an option for licensees to demonstrate completion of continuing education requirements if they are contacted for an audit. The Board notes that this information can be easily verified in the online registry, which removes the burden of providing this documentation from licensees.⁶ (Sections 20-175 and 30-70.)
- Remove a requirement that applicants for licensure as nursing home administrators who have completed an “Administrator-in-training” program complete the Board’s Domains of Practice form. This requirement is duplicative as the applicants for complete the form during their training.⁷ (Section 20-220 only; this requirement is duplicative of section 20-300.)
- Remove a requirement for, “an attestation that he has read and understands and will remain current with the applicable Virginia laws and regulations” for each profession in each chapter, respectively. The Board reports that this attestation is now a standard part of the application form.⁸ (Sections 20-230 and 30-130)
- Remove a requirement that all parts of the application package be submitted at the same time. Board staff cannot act on a license until all parts of the package are

⁴ See Agency Background Document (ABD), pages 8 and 10:

https://townhall.virginia.gov/l/GetFile.cfm?File=28\6189\10113\AgencyStatement_DHP_10113_v1.pdf

⁵ See ABD, pages 9 and 11.

⁶ See ABD, pages 9 and 11.

⁷ See ABD, page 10.

⁸ See ABD, pages 10 and 12.

received, so the timing of each component does not matter.⁹ (Sections 20-230, 20-300, 30-130, and 30-140)

- Remove a requirement that an Administrator-in-training whose program is interrupted because the registered preceptor is unable to serve must obtain a new registered preceptor within 60 days. The Board deems this timeline to be arbitrary and unnecessarily burdensome.¹⁰ (Sections 20-440 and 30-200.)

Estimated Benefits and Costs

The proposed amendments would benefit currently licensed nursing home administrators and ALF administrators, as well as those seeking to pursue licensure in those professions, by allowing for inactive licensure, thereby increasing flexibility, and by removing a number of requirements, mainly relating to the application process and the continuing education requirements. As mentioned previously, the process to reactivate an inactive license would be less rigorous than the process to reinstate a license that had expired, which could include an investigation by the Enforcement division. Although new fees would be added for renewing a license under inactive status, those fees would only apply if licensees chose to renew their license under that status and would be lower than the normal license renewal fee.

Businesses and Other Entities Affected

The Department of Health Professions reports that as of December 2023, the Board had 2,159 licensees. As mentioned previously, currently licensed professionals as well as those seeking licensure in the future, would benefit from the increased flexibility and reduced requirements.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹¹ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities

⁹ See ABD, pages 10 and 12.

¹⁰ See ABD, pages 10 and 12.

¹¹ 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.

combined.¹² As noted above, the proposal serves to reduce the regulatory burden on licensees. Thus, no adverse impact is indicated.

Small Businesses¹³ Affected:¹⁴

The proposed amendments would not adversely affect small businesses.

Localities¹⁵ Affected¹⁶

The proposed amendments would neither affect any locality in particular nor create new costs for any local governments.

Projected Impact on Employment

The proposed amendments would not affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments would not affect the value of private property. Real estate development costs would not be affected.

¹² 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.

¹³ 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.”

¹⁴ 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.

¹⁵ “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.

¹⁶ Virginia Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.