



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

18 VAC 105-20 Regulations of the Virginia Board of Optometry
Department of Health Professions
Town Hall Action/Stage: 5426/8819
December 20, 2019

Summary of the Proposed Amendments to Regulation

The Board of Optometry (Board) proposes to amend 18 VAC 105-20 *Regulations of the Virginia Board of Optometry* in order to repeal the requirement to register a professional designation and remove the associated registration fees and penalties for failing to meet that requirement.

Background

Under the Board's current regulation, all licensed optometrists who practice at an office under a professional designation, as opposed to practicing under the legal name of the optometrist, are required to register the professional designation with the Board and pay fees to maintain the registration. For example, if an optometrist named John Smith practiced under the professional designation of "Eye Care Optometry," as opposed to practicing as "John Smith, Doctor of Optometry," then he would have to register "Eye Care Optometry" with the Board as a professional designation and renew the registration every year.¹ The proposed amendment would remove all of the Board's requirements associated with professional designation.

The professional designation requirements currently in place were promulgated as a precaution against false advertising. Section 54.1-3204 of the Code of Virginia deems it illegal for anyone to "publish or cause to be published in any manner an advertisement that is false, deceptive or misleading, contains a claim of professional superiority or violates regulations of

¹ The regulation also requires that the names of all optometrists providing practicing at that location be displayed.

the Board governing advertising by optometrists.”² Section 54.1-3215 of the Code authorizes the Board to revoke or suspend a license or reprimand the licensee for “advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority, or offers free optometrical services or examinations.”³ However, the Code does not define or make any mention of professional designations.

The Department of Health Professions (DHP) reported that these requirements were adopted so that licensees would not operate under a name that could be construed by the public as belonging to a medical facility. Based on a review of the Code and other regulations conducted by a committee appointed by the Board, they now seek to repeal this requirement. Specifically, the committee found that the regulations were unnecessary and that similar Boards, such as Dentistry, did not require the same of their licensees.⁴

Estimated Benefits and Costs

The proposed amendments would eliminate the professional amendment application fee, which is currently \$100. The annual professional designation renewal fee (\$50) and the corresponding late renewal fee (\$20) would also be eliminated. Further the Board proposes to remove “practicing with an expired or unregistered professional designation” from the list of violations for which license-holders could be penalized. Thus, the proposed amendments would benefit optometrists operating under a professional designation. Removal of these requirements does not appear to introduce risk to the public or other costs. Optometrists could still use a professional designation, but such use would now be optional and no registration or fees would be required. Although the Board would lose about \$14,050 in annual revenue, the Board is projected to conclude this biennium with a surplus of \$269,361 and reports it is thus able to absorb this loss.

Businesses and Other Entities Affected

The Board directly regulates optometrists, but not the businesses or other entities where they work. The proposed amendments affect at least the 263 optometrists with professional designations currently registered with the Board. No costs are introduced.

² <https://law.lis.virginia.gov/vacode/title54.1/chapter32/section54.1-3204/>; see point 6.

³ <https://law.lis.virginia.gov/vacode/title54.1/chapter32/section54.1-3215/>; see point 9.

⁴ Explanation provided by DHP; see also

https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\29\29698\Minutes_DHP_29698_v2.pdf

Small Businesses⁵ Affected

As stated above, the Board directly regulates optometrists, but not the businesses or other entities where they work. Virginia Employment Commission data indicates that all 490 offices of optometrists in the Commonwealth qualify as small businesses. Hence, most or all of the affected 263 optometrists with professional designations likely work at small businesses. DHP does not have any information indicating which optometrists work at a small business.

Localities⁶ Affected⁷

The proposed amendments do not introduce new costs for local governments.

Projected Impact on Employment

The proposed amendments are unlikely to affect total employment in the industry.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be 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

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 “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.

⁷ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

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.