



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

18 VAC 105-20 Regulations Governing the Practice of Optometry
Department of Health Professions
Town Hall Action/Stage: 5862/9454
January 7, 2022

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 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Board of Optometry (Board) proposes to update the regulation to reflect changes made in 2020 to the Federal Trade Commission's (FTC) Contact Lens Rule. Optometrists prescribing contact lenses would be required to obtain a confirmation that patients received their prescription.

Background

The 2003 Fairness to Contact Lens Consumers Act established consumers' rights to shop around when buying contact lenses and prescribers' and sellers' duties to prevent anticompetitive behavior.² In 2004, the FTC issued the Contact Lens Rule to implement requirements for prescribers and sellers, specifically with regards to providing prescriptions to consumers and verifying prescriptions in a timely manner.³ In 2020, the FTC amended the Contact Lens Rule to add a requirement that prescribers obtain a confirmation from patients that the patient has

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 See <http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter102&edition=prelim>.

³ See <https://www.ftc.gov/tips-advice/business-center/guidance/contact-lens-rule-guide-prescribers-sellers>.

received a copy of their prescription and retain the confirmation for three years.⁴ Accordingly, the Board proposes to add a sentence to 18 VAC 105-20-45 *Standards of Practice* (section C.2.) to state that “Patient confirmation of receipt of the prescription at the end of the contact lens fitting shall be maintained in the patient record.” The regulation currently requires that all patient records be maintained for a period of six years; thus, the patient confirmation would also be retained for six years.

The FTC Rule provides greater detail as to how prescribers can obtain confirmation, either on paper or electronically. Specifically, prescribing providers may add language to an existing receipt for a contact lens fitting or to the prescription itself saying, “My eye care professional provided me with a copy of my contact lens prescription at the completion of my contact lens fitting.” Patients may then sign under that text on the receipt or prescription, which would not require additional paperwork. If a digital copy of the prescription is provided to the patient, providers could retain evidence that the prescription was sent, received, or made accessible through an online patient portal. Rather than incorporating these details in the text of the regulation, the Board has indicated that they will issue guidance for optometrists that would contain this information.

Estimated Benefits and Costs

The proposed change is intended to enhance consumers’ freedom of choice among contact lens sellers. Although contact lens prescribers were already required to provide patients with a copy of their prescription, the additional requirement that prescribers obtain a confirmation would encourage compliance by prescribers and make it easier to verify compliance if the Board receives a complaint. The recordkeeping costs associated with this change are unlikely to be significant since the confirmation can be easily added to existing paperwork, such as the receipt for the contact lens fitting or to the prescription itself. Optometrists that currently provide digital copies of prescriptions through an online patient portal or encrypted e-mail would likely be in compliance with the new requirement without having to make additional changes.

⁴ See section 315.3 (c) in <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-315>.

Businesses and Other Entities Affected

The proposed amendments affect the 1,680 optometrists in the Commonwealth.⁵ No optometrists appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ 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, the proposed change would increase recordkeeping requirements but are unlikely to require additional paperwork or staff time. Thus, an adverse impact is not indicated.

Small Businesses⁷ Affected:⁸

The Department of Health Professions does not collect information regarding whether license holders run or are employed by a small business. However, the agency reports that the majority of licensed optometrists are likely to run small businesses. However, the proposed change would not create new costs for optometrists. Thus, an adverse economic impact⁹ is not indicated for small businesses.

⁵ Agency Background Document, page 5:

https://townhall.virginia.gov/L/GetFile.cfm?File=29\5862\9454\AgencyStatement_DHP_9454_v1.pdf

⁶ 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.

⁷ 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.”

⁸ 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.

⁹ 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.

Localities¹⁰ Affected¹¹

The proposed amendment would not impact any local government or disproportionately affect the practice of optometry in any particular locality. Consequently, an adverse economic impact¹² is not indicated for localities.

Projected Impact on Employment

The proposed amendments would not affect employment by optometrist practices.

Effects on the Use and Value of Private Property

The proposed change would not create substantive new or ongoing costs. Consequently, the value of optometrist businesses would not be affected. The proposed amendments do not affect real estate development costs.

¹⁰ “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.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

¹² 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.