



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: 6071 / 10029
February 20, 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

Pursuant to the third enactment clause of Chapters 16 and 17 (identical bills) of the 2022 *Acts of Assembly*,² the Board of Optometry (Board) proposes to require optometrists to annually report certain information.

Background

The above-mentioned enactment clause states the following:

That the Board of Optometry (the Board) shall promulgate regulations requiring optometrists to annually register with the Board and to report certain information as deemed appropriate by the Board. The regulations shall include required reporting for: (i) any disciplinary action taken against a person licensed by the Board in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation; (ii) any malpractice judgment against a person licensed by the Board; (iii) any settlement of a malpractice claim against a person licensed by the Board; and (iv) any evidence that indicates a

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 <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0016>

reasonable belief that a person licensed by the Board is or may be professionally incompetent, has or may have engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, has or may have engaged in unprofessional conduct, or may be mentally or physically unable to engage safely in the practice of his profession.

The proposed text includes all of the specified requirements in the enactment clause, and also specifies that:

Failure to provide [the above-specified] information ... annually may constitute a violation of provisions of law relating to the practice of optometry and may subject the licensee to disciplinary action by the board.

Intentionally providing false information to the board through the reporting system shall constitute a violation of provisions of law relating to the practice of optometry and shall subject the licensee to disciplinary action by the board.

According to the Department of Health Professions (DHP), the items in (i), (ii), and (iii) in the enactment clause are interpreted to apply only to the licensee, while (iv) is interpreted to be for both self-reporting and reporting by the licensee about other optometrists. The items that only apply to the licensee would be made public through optometrist's profiles on the DHP website.³ The information in (iv) would be kept confidential.⁴

Estimated Benefits and Costs

The legislatively mandated reporting requirements can be beneficial in that the information could be used by the Board to be better aware of practitioners who may be a risk to Virginia patients. The additional Board-proposed text helps ensure that the information is accurately reported. Also, prospective patients may find the public information to be useful in choosing an optometrist.

Optometrists are already required to annually complete a licensure renewal form and pay the prescribed annual licensure fee. The proposed required information reporting would occur along with the annual renewal. Practitioners would likely have the information readily available for the items that only apply to the licensee. Thus, it would only require a small amount of additional time for the practitioners to report information pertaining to themselves. It may take more time to gather information and to compose descriptions for reporting on other practitioners,

³ Source: DHP

⁴ Ibid

including information regarding incompetency, intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, unprofessional conduct, and mental or physical inability to engage safely in the practice of optometry.

Practitioners who have had disciplinary actions or malpractice judgments against them, or other optometrists who submit such information about a colleague, may not have chosen to report this information in the absence of the legislative mandate. The result of reporting the information may be somewhat costly for optometrists with such negative history to the degree that they lose some business as a result. On the other hand, optometrists without these experiences could benefit by an approximately equal increase in business. Prospective patients would benefit by being able to make better-informed choices in optometrists.

Businesses and Other Entities Affected

The proposed amendments affect the 1,873 optometrists licensed in the Commonwealth.⁵ Because the Department of Health Professions licenses individuals, but not firms, the number of businesses affected is not available.

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 benefit for any entity, even if the benefits exceed the costs for all entities combined.⁷ The proposed required annual reporting of information would entail additional time expended for optometrists. Since this is due to the legislation, and not directly from the proposed regulation, no adverse impact from the regulation is indicated.

⁵ Data source: DHP

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.

⁷ 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.

Small Businesses⁸ Affected:⁹

Since the required additional time results from the legislation, the proposed regulatory amendments do not directly adversely affect small businesses.

Localities¹⁰ Affected¹¹

The proposed amendments neither disproportionately affect any particular localities, nor affect costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

⁸ 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.”

⁹ 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.

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.