



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

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**18 VAC 105-20 Regulations of the Virginia Board of Optometry**  
**Department of Health Professions**  
**Town Hall Action/Stage: 6262 / 10031**  
November 27, 2023

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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.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

The current *Regulations of the Virginia Board of Optometry* (regulation) allows the Board of Optometry (Board) to delegate an informal fact-finding proceeding to an agency subordinate<sup>2</sup> only upon a determination that probable cause exists that a practitioner may be subject to a disciplinary action. Following recent statutory changes governing these proceedings, the Board proposes to remove this restriction.

## **Background**

Code § 54.1-2400(10) authorizes the Board to appoint a special conference committee to ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings. The statute provides that this may occur “upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to

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<sup>1</sup> 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.

<sup>2</sup> The current and proposed regulations state that “An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

consider an application for a license.” Prior to legislation this year, the same Code subdivision indicated that the Board may delegate to an appropriately qualified agency subordinate the authority to conduct informal fact-finding proceedings, but only “upon receipt of information that a practitioner may be subject to a disciplinary action.” This effectively prevented delegation from occurring to “consider an application for a license.” Chapter 191 of the *2023 Acts of Assembly*<sup>3</sup> removed the requirement that a practitioner must be subject to a disciplinary action in order for the Board to make such delegation. Accordingly, the Board is now proposing to remove that same restriction from the regulation as it is no longer mandated by Code.

### **Estimated Benefits and Costs**

The proposed amendment would effectively newly permit the delegation of an informal fact-finding proceeding to occur for nonroutine<sup>4</sup> applications for licensure. Currently, the regulation only allows such delegation to occur when there is information that a practitioner may be subject to a disciplinary action. This proposal could be beneficial in that it may speed the licensing of optometrists with nonroutine applications for licensure. Since this is optional, there do not appear to be any introduced costs.

### **Businesses and Other Entities Affected**

According to the Department of Health Professions, there are typically fewer than three nonroutine applications for optometry licensure that require evidentiary hearings each year. Such applicants, as well as potential delegated agency subordinates, would be particularly affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> 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 there is no increase in net cost nor reduction in net revenue, an adverse impact is not indicated.

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<sup>3</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0191+hil>

<sup>4</sup> Nonroutine applications may require evidentiary hearings. In contrast, routine applications for licensure do not require such proceedings.

<sup>5</sup> 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.

**Small Businesses<sup>6</sup> Affected:<sup>7</sup>**

The proposed amendment does not adversely affect small businesses.

**Localities<sup>8</sup> Affected<sup>9</sup>**

The proposed amendment neither disproportionately affects any particular locality, nor introduces costs for local governments.

**Projected Impact on Employment**

The proposed amendment does not appear to affect total employment.

**Effects on the Use and Value of Private Property**

Since the proposed amendment may quicken the licensing of optometrists with nonroutine applications for licensure, such optometrists may start practicing in Virginia sooner. The proposed amendment does not affect real estate development costs.

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<sup>6</sup> 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.”

<sup>7</sup> 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.

<sup>8</sup> “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.

<sup>9</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.