



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

18 VAC 110-20 Regulations Governing the Practice of Pharmacy

18 VAC 110-21 Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians

18 VAC 110-30 Regulations for Practitioners of the Healing Arts to Sell Controlled Substances

18 VAC 110-50 Regulations Governing Wholesale Distributors, Manufacturers, Third-Party Logistics Providers, and Warehouseurs

18 VAC 110-60 Regulations Governing Pharmaceutical Processors

Town Hall Action/Stage: 5519 / 8953

June 26, 2020

Summary of the Proposed Amendments to Regulation

The Board of Pharmacy (Board) proposes to amend five of its regulations to state that the handling fee for a returned check or dishonored credit card or debit card is \$50.

Background

Code of Virginia § 2.2-614.1 specifies that:

If any check or other means of payment tendered to a public body in the course of its duties is not paid by the financial institution on which it is drawn, because of insufficient funds in the account of the drawer, no account is in the name of the drawer, or the account of the drawer is closed, and the check or other means of payment is returned to the public body unpaid, the amount thereof shall be charged to the person on whose account it was received, and his liability and that of his sureties, shall be as if he had never offered any such payment. A penalty of \$35 or the amount of any costs, whichever is greater, shall be added to such amount.

With the exception of 18 VAC 110-60 *Regulations Governing Pharmaceutical Processors*, the Board's current regulations that include fees include a \$35 returned check charge.

On the other hand, Code of Virginia § 2.2-4805 specifies that "Returned checks or dishonored credit card or debit card payments shall incur a handling fee of \$50 unless a higher amount is authorized by statute to be added to the principal account balance." According to the

Department of Health Professions (DHP), the Office of the Attorney General has advised that the handling fee of \$50 in Virginia Code 2.2-4805 governs.

Estimated Benefits and Costs

Based on the view of the Office of the Attorney General that Virginia Code 2.2-4805 prevails, the fee by law for a returned check or dishonored credit card or debit card is \$50. The Board's proposal therefore conforms the regulations to current law. DHP has indicated that in practice they will not raise the fee to \$50 until this proposed regulatory action becomes effective. The services provided by DHP are funded by the fees paid by the regulated individuals and entities. To the extent that the \$50 fee more accurately represents the cost incurred by DHP, the proposed change may be beneficial in that the cost would need not be subsidized by other regulants who did not cause the cost to be incurred.

Businesses and Other Entities Affected

The proposal pertains to fee-paying individuals and entities regulated by the Board. As of March 31, 2020, there were 1,373 businesses with controlled substance registrations,¹ 9 continuing education programs, 220 medical equipment suppliers, 186 non-resident manufacturers, 325 non-resident medical equipment suppliers, 28 non-resident outsourcing facilities, 796 non-resident pharmacies, 611 non-resident wholesale distributors, 31 non-resident manufacturers, 129 non-resident third-party logistics providers, 33 non-resident warehouse, 15,360 pharmacists, 1 pharmaceutical processor, 1,787 pharmacies, 1,577 pharmacy interns, 12,819 pharmacy technicians, 135 pharmacy technician training programs, 607 physicians licensed to dispense drugs to their own patients, 166 facilities where physicians are licensed to dispense drugs to their own patients, 22 pilot/innovative programs,² 340 registered physicians for

¹ 18 VAC 110-20-690: "Persons or entities that may be [controlled substance] registered by the board shall include hospitals without in-house pharmacies, nursing homes without in-house pharmacies that use automated drug dispensing systems, ambulatory surgery centers, outpatient clinics, alternate delivery sites, crisis stabilization units, persons authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal, and emergency medical services agencies provided such persons or entities are otherwise authorized by law and hold required licenses or appropriate credentials to administer the drugs for which the registration is being sought."

² Code of Virginia § 54.1-3307.2: "Any person who proposes to use a process or procedure related to the dispensing of drugs or devices or to the practice of pharmacy not specifically authorized by Chapter 33 (§ 54.1-3300 et seq.) of this title or by a regulation of the Board of Pharmacy may apply to the Board for approval to use such process or procedure. The application under this section may only include new processes or procedures, within the current scope of the practice of pharmacy, that relate to the form or format of prescriptions, the manner of transmitting prescriptions or prescription information, the manner of required recordkeeping, the use of unlicensed ancillary personnel in the dispensing process, and the use of new technologies in the dispensing process."

CBD/THC-A oil, 2 repackaging training programs, 44 restricted manufacturers, 6 third-party logistic providers, 109 warehouse, and 64 wholesale distributors regulated by and required to pay fees to the Board.³ If any of these individuals or entities (other than pharmaceutical processors and registered physicians for CBD/THC-A oil) have a check returned or a credit card or debit card dishonored, the proposal would increase their cost by \$15. It is not known whether pharmaceutical processors and registered physicians for CBD/THC-A oil would be charged a \$35 returned check fee if they had a check returned prior to the proposed regulatory action becoming effective.⁴ If they would not receive the charge, the proposal would increase their costs by \$50 in the event that they have a check returned or a credit card or debit card dishonored. Since adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits of the proposal exceed the costs for all entities combined, adverse impact is indicated for this action.

Small Businesses Affected:

Types and Estimated Number of Small Businesses Affected

The proposal would potentially affect the 1,373 businesses with controlled substance registrations, 9 continuing education programs, 220 medical equipment suppliers, 186 non-resident manufacturers, 325 non-resident medical equipment suppliers, 28 non-resident outsourcing facilities, 796 non-resident pharmacies, 611 non-resident wholesale distributors, 31 non-resident manufacturers, 129 non-resident third-party logistics providers, 33 non-resident warehouse, 1 pharmaceutical processor, 1,787 pharmacies, 135 pharmacy technician training programs, 166 facilities where physicians are licensed to dispense drugs to their own patients, 22 pilot/innovative programs, 2 repackaging training programs, 44 restricted manufacturers, 6 third-party logistic providers, 109 warehouse, and 64 wholesale distributors. Data is not available to determine how many of these entities would qualify as a small business, though many likely would.⁵

³ Sources: <https://www.dhp.virginia.gov/about/stats/2020Q3/04CurrentLicenseCountQ3FY2020.pdf>, the current Board regulations, and DHP

⁴ The fees for pharmaceutical processors and registered physicians for CBD/THC-A oil are in 18 VAC 110-60 *Regulations Governing Pharmaceutical Processors*, which currently does not specify a returned check charge.

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.”

Costs and Other Effects

If any of the small entities, other than a small pharmaceutical processor, has a check returned or a credit card or debit card dishonored, the proposal would increase their cost by \$15. Since the current *Regulations Governing Pharmaceutical Processors* does not include a \$35 returned check charge, it is not clear whether a small pharmaceutical processor would be charged a \$35 returned check fee if they had a check returned prior to the proposed regulatory action becoming effective. If they would not receive the charge, the proposal would increase their costs by \$50 in the event that they have a check returned or a credit card or debit card dishonored.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁶ Affected⁷

The proposal does not disproportionately affect any particular localities or introduce costs for local governments.

Projected Impact on Employment

The proposal does not affect employment.

Effects on the Use and Value of Private Property

The proposal does not substantially affect the use and value of private property or real estate development costs.

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

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.

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 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.