



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

18 VAC 85-150 Regulations Governing the Practice of Behavior Analysis
Department of Health Professions
Town Hall Action/Stage: 6115/9834
June 5, 2023

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 these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Board of Medicine (Board) proposes to delete unnecessary and duplicative references, to both another regulation and to statute.

Background

As a result of a 2022 periodic review, the Board seeks to amend the regulation to remove a reference to one of the Board's other regulations as well as references to the Code of Virginia. The Board has determined that these references are unnecessary because they are redundant, in part because the statutory references merely repeat language already found in the Code of Virginia.² The most substantive changes are summarized as follows:

- Section 20 would be deleted as being unnecessary because it directs readers to 18 VAC 85-11 for information regarding the involvement of the public in the development of all of the Board's regulations.

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://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2156>.

- Section 110, which summarizes the scope of practice of behavior analysts, would be deleted in part because the scope of practice is already delineated in the Code of Virginia (Code) Section 54.1-2900.³ In addition, Section 110 also refers to behavior analysts' supervisory responsibilities, which is covered in sections 120 and 130 of the same regulation.⁴
- The remaining changes would also delete language that is duplicates statute and thus is redundant.⁵

Estimated Benefits and Costs

Since the proposed changes would not change the practice of behavior analysis as it is currently practiced, it is unlikely that behavior analysts, their employers, or clients would incur any benefits or costs other than those benefits that may result simply from streamlining the regulatory text. However, to the extent that behavior analysts or the public rely upon the regulation for references to the Code, the proposed changes may decrease clarity regarding the requirements applicable to this profession. No information exists with which to determine the extent to which this reliance occurs.

Businesses and Other Entities Affected

DHP reports that there are 2,523 licensed behavior analysts and 259 licensed assistant behavior analysts as of March 31, 2023. 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

³ See <https://law.lis.virginia.gov/vacode/title54.1/chapter29/section54.1-2900/>. Specifically, "Practice of behavior analysis" is defined to mean "the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior."

⁴ Sections 120 and 130 would not be amended. See <https://law.lis.virginia.gov/admincode/title18/agency85/chapter150/section120/> and <https://law.lis.virginia.gov/admincode/title18/agency85/chapter150/section130/>.

⁵ See the Agency Background Document, p. 7 for the specific references that would be removed: https://townhall.virginia.gov/L/GetFile.cfm?File=26\6115\9834\AgencyStatement_DHP_9834_v2.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.

the costs for all entities combined. Since the proposed amendments would not result in an increase in net costs for any entity, an adverse impact is not indicated.

Small Businesses⁷ Affected:⁸

The proposed amendments would not impact small businesses.

Localities⁹ Affected¹⁰

The proposed amendments do not disproportionately affect any particular localities or create costs for local governments.

Projected Impact on Employment

The proposed amendments would not affect the employment of behavior analysts, or have any impact on employment in general.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to affect the value of private property. Real estate development costs would not be affected.

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 “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.

¹⁰ Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.