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## Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                    | Board of Optometry, Department of Health Professions |
| <b>Virginia Administrative Code (VAC) citation(s)</b> | 18VAC105-20-10 et seq.                               |
| <b>Regulation title(s)</b>                            | Regulations Governing the Practice of Optometry      |
| <b>Action title</b>                                   | Inactive license                                     |
| <b>Date this document prepared</b>                    | 11/6/18  |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

In response to a petition for rulemaking, the Board has decided to promulgate regulations to issue inactive licenses. The intent is to allow licensees who are no longer practicing, either because they have located to another state or have retired, to place their Virginia licenses in an inactive status, which will allow them to reactivate should they decide to resume practice.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

N/A

## Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

This regulatory action was initiated from a petition for rulemaking. It is consistent with Governor Northam’s Executive Order 14 (2018), which states that: “All regulatory activity should be undertaken with the least possible intrusion into the lives of the citizens of the Commonwealth and be necessary to protect the public health, safety, and welfare.”

## Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.*

Regulations of the Board of Optometry are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to issue inactive licenses.

**§ 54.1-2400. General powers and duties of health regulatory boards.**--*The general powers and duties of health regulatory boards shall be:*

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*6. To promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*

*12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.*

## Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.*

The purpose is to promulgate regulations for the issuance of inactive licenses for optometrists. Such regulations will include a provision that an inactive license does not authorize an optometrist to practice in Virginia and provisions for evidence of continued competency in order to reactivate an inactive license. All provisions are necessary to protect patients receiving optometric services from being seen by doctors who have not maintained continuing education and competency.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

The Board intends to amend the following sections relating to inactive licenses:  
 Section 20 – Fees set in accordance with Fee Principles for all boards (Guidance document: 76-90.05)

- A fee for an inactive license (set at ½ the cost of an active license)
- A fee for late renewal of an inactive license (set at approximately 1/3 the cost of the renewal)
- A fee for reactivation to active status (set at the difference between the renewal fee for an active license and the fee for an inactive license)

Section 60 – Renewal of licensure; reinstatement; renewal fees

Section 60 is amended to include provisions for requesting an inactive license and for reactivation of a license. Reactivation will require evidence of continuing education for the time of inactivity with a maximum of 40 hours or the equivalent of two years of continuing education. There is also a provision stating that an inactive license does not authorize the practice of optometry in Virginia.

## Issues

*Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

- 1) There are no advantages or disadvantages to the public; the amendments will benefit optometrists who are not actively practicing by allowing them to keep their optometry license at half the cost of an active license.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth. The loss of revenue can be absorbed in the budget of the Board of Optometry without necessitating any increase in fees.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “*To promulgate*

*regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.” There is no restraint on competition as a result of promulgating this regulation, which is less costly and less restrictive for licensees.*

**Requirements More Restrictive than Federal**

*Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There is no applicable federal requirement.

**Agencies, Localities, and Other Entities Particularly Affected**

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

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| <p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul> | <p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically.</p> |
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|   | The proposed change may result in a very modest reduction from less renewal revenue (inactive license ½ the cost of an active license). On the other hand, a licensee who has retired, is taking a family leave of absence, or has moved out of state may decide to obtain an inactive license (no CE required) rather than allowing his active license to lapse. Thus, he would be paying ½ the renewal fee rather than no fee. |
| <i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures. | None   |
| <i>For all agencies:</i> Benefits the regulatory change is designed to produce.   | None   |

**Impact on Localities**

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | None |
| Benefits the regulatory change is designed to produce.                           | None |

**Impact on Other Entities**

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| Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.  | Optometrists   |
| Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:<br>a) is independently owned and operated and;<br>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.  | There are 1,656 persons who hold an optometrist license. There is no estimate of how many might decide to request an inactive license, but the number is likely a small fraction of the total. The vast majority of optometrists likely operate or work in small businesses. |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:<br>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;<br>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;<br>c) fees;<br>d) purchases of equipment or services; and<br>e) time required to comply with the requirements. | The cost of renewing a license will be reduced by one half. If an optometrist with an inactive license decides to reactivate, he or she will have to obtain continuing education as evidence of competency to return to practice.  |
| Benefits the regulatory change is designed to produce.   | Less cost associated with maintaining a license if an optometrist is not practicing.   |

## Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

In order to implement an inactive license, there is no alternative other than revision of regulations; it is the least burdensome alternative.

## Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

There is no alternative to adoption of a less stringent and less burdensome requirement other than the promulgation of amended regulations.

## Public Comment

*Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

The Notice of Intended Regulatory Action was published on August 6, 2018 with a 30-day comment period until September 5, 2018. There were no comments.

## Public Participation

*Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.*

In addition to any other comments, the Board of Optometry is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of

the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### Detail of Changes

| Current section number | Current requirement                                     | Change, intent, rationale, and likely impact of new requirements   |
|------------------------|---|--|
| 20                     | Sets out the fees for application and renewal           | <p>Subsection A is amended to specify an annual renewal fee of \$100, which is half the fee for an active license.</p> <p>The fee for late renewal is approximately 1/3 of the fee for licensure renewal.</p> <p><i>The proportionality of these fees is consistent with all other health regulatory boards that have inactive licensure.</i></p>  |
|                        | 61 - NEW SECTION<br>On inactive licensure; reactivation | <p>Subsection A specifies that an optometrist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license.</p> <p>The regulation also specifies that the holder of an inactive license is not be required to maintain continuing education requirements but is not entitled to perform any act requiring a license to practice optometry in Virginia.</p> <p><i>The intent of an inactive license is to allow a person who does not intend to practice to keep his/her professional license without incurring the cost of a full renewal and of continuing education.</i></p> <p>Subsection B specifies that a licensee whose license has been inactive and who requests reactivation of an active license shall:</p> <ol style="list-style-type: none"> <li>1) file an application,</li> <li>2) pay the difference between the inactive and active renewal fees for the current year, and</li> </ol> |

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|    |  | <p>3) provide documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed 40 contact hours.</p> <p><i>If a licensee intends to be inactive for a short period of time and then return to full licensure and practice, he or she should maintain continuing education so he or she can qualify for reactivation. The licensee would still benefit by a reduced fee during the period of inactivity and would only pay the difference when reactivating. If a licensee retires or moves away and has no intention of returning to active practice in Virginia, he would not need to maintain CE. However, if circumstances change and he does want to resume practice, he would need to demonstrate current competency by completing the hours of CE he would have been required to have – for a maximum of 40 hours or the equivalent of two years of CE.</i></p> |
| 70 | Sets out the requirements for continuing education | Subsection A is amended to clarify that the CE requirement apply to renewal of an active license.  |