



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 85-20 – Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic
Department of Health Professions
February 24, 2005

Summary of the Proposed Regulation

The Board of Medicine (board) proposes to amend Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic to clarify the meaning of “malpractice paid claim” and to specify the period of time in which affected entities must report malpractice paid claims to the board.

Result of Analysis

The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact

Current regulation requires that doctors of medicine, osteopathic medicine and podiatry report “all malpractice paid claims in the most recent 10-year period”. To make this regulation better reflect both the letter and spirit of statutory mandates in §54.1-2909 as amended by Chapter 762, 2003 Acts of Assembly, the board proposes to add language that specifically requires malpractice paid claims be reported within 30 days of initial payment. Although the board already requires regulated entities to report malpractice paid claims within 30 days, this requirement has not been written into the regulation. In addition to clarifying that regulants have 30 days to report malpractice claims, the board proposes to set the initial payment for any malpractice claim as the event that will start the clock on the 30 day reporting time limit. This change should eliminate any confusion that may currently exist as to when settlements that involve payments over multiple years must be reported.

Since this regulatory change addresses only the timing and not the substance of malpractice claim reporting, and that timing has already been required by statute since 2003,

regulants are unlikely to incur any additional compliance costs due to the promulgation of this portion of the proposed regulation. Both regulants and the general public, however, will benefit from this rule change. Regulants will be less likely to run afoul of the law if the rules they are expected to follow are more explicitly defined. The general public will also certainly benefit from having a more complete database of malpractice paid claims information which can help them make informed health care decisions.

The board also proposes to explicitly list the situations which would qualify as a malpractice paid claim. Specifically, the proposed regulation requires reporting of any “payment for the benefit of a doctor of medicine, osteopathic medicine, or podiatry in satisfaction in whole or in part of a settlement or a judgment in response to a written demand for monetary payments for damages based on the provision of health care or professional services rendered”; payments will have to be reported whether they are paid out from a doctor’s personal funds, by an insurance company or from corporate funds. Malpractice paid claims will also have to be reported for entities that are named parties in a malpractice suit who are dismissed from that suit as a condition of its settlement. This regulatory change is consistent with Code of Virginia requirements and will eliminate any confusion about what constitutes a malpractice paid claim so that there is consistent reporting from all regulants.

Again, this clarification will benefit the public, who will be able to access more complete information to help them make healthcare decisions, and regulants, who will now know exactly what rules they are expected to follow. Regulants who, intentionally or inadvertently, have not been reporting malpractice claims that are paid out of personal funds, or that are paid on the condition that a regulant is dropped as a named party in the claim suit, will certainly suffer a loss of reputation under this clarification of rules. To the extent that malpractice paid claims can serve as a proxy for poor medical practice on the part of regulants, however, that loss of reputation is neither undeserved nor unfair. In any case, the benefits of this proposed regulatory change for both regulants and the general public very likely outweigh the costs.

Businesses and Entities Affected

There are 26,982 active doctors of medicine, 816 active doctors of osteopathic medicine and 414 active doctors of podiatric medicine licensed by the Commonwealth. All of these

individuals are subject to malpractice payment reporting requirements. And will, therefore, be affected by the proposed regulation.

Localities Particularly Affected

The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment

To the extent that the proposed regulation causes malpractice paid claims to now be reported where they have not been in the past, involved regulants may individually lose their employment. General employment in these regulated fields, however, will very likely not be affected.

Effects on the Use and Value of Private Property

To the extent that the proposed regulation causes malpractice paid claims to now be reported where they have not been in the past, involved regulants will likely suffer a loss of reputation that could decrease the number of patients who are willing to contract their services. This will decrease the value of any medical practice owned by these regulants and will decrease the value of the medical schooling they have received in the past.

Small Businesses: Costs and Other Effects

The board does not know how many active doctors own or are employed by small businesses. According to the Virginia Employment Commission (VEC), there are 1,191 medical enterprises that have open unemployment insurance accounts and also fall under the Code of Virginia definition of small business. This number is likely a subset of the total number of small businesses that will be affected by the proposed regulation since VEC numbers would not include doctors who are self-employed and, so, would not have to carry unemployment insurance. No new bookkeeping costs should be accrued because of the proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed regulation effectively minimizes the adverse impact on the regulated community given the constraints mandated by the Legislature.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.