



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

18 VAC 85-120 Regulations Governing the Licensure of Athletic Trainers
Department of Health Professions
Town Hall Action/Stage: 6118/9837
August 14, 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 the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The Board of Medicine (Board) proposes to delete outdated or redundant provisions and clarify some provisions to be consistent with current practice.

Background

As a result of a 2022 periodic review, the Board seeks to amend the regulation to remove outdated language and references to the Code of Virginia that are redundant, and to update certain provisions so that they accurately reflect current practice.² The most substantive changes are summarized as follows:

- Section 75 contains application requirements for a temporary authorization to practice for 45 days pending submission of all other required documentation and issuance of a license. These include a requirement that individuals licensed or certified by another jurisdiction in the United States provide documentation that the license or certificate is

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=2153>.

current and unrestricted. Applicants from other jurisdictions already have to provide this documentation to obtain the license; thus, requiring it for the temporary authorization as well is duplicative and would be removed.

- Section 85 contains the registration requirements for voluntary practice by out-of-state trainers, including a \$10 fee. The Board proposes to remove this fee.
- Section 156 contains requirements pertaining to patient records. The current text includes a number of specific requirements for practitioners who are “self-employed or employed by an entity in which the individual practitioner does own and is responsible for patient records.” These requirements include maintaining records for six years following the last patient encounter, except in specific cases; informing patients of the time frame for record retention and destruction; and only destroying records in a manner that protects patient confidentiality. These requirements would be removed and replaced with a more general requirement that such practitioners “develop policies regarding retention of records and adhere to those policies.”
- The remaining changes would be to remove references to other chapters of the Virginia Administrative Code or to remove language that is redundant of statute.³

Estimated Benefits and Costs

According to the Department of Health Professions (DHP), the \$10 fee for an individual licensed out-of-state to register for voluntary practice itself costs more administratively to collect than \$10. Thus, eliminating the fee would be beneficial in that it would both reduce the cost for out-of-state athletic trainers volunteering in Virginia and net costs for the Board.

The proposed changes pertaining to the retention of patient records in section 156 are intended to reduce the burden on practitioners who are “self-employed or employed by an entity in which the individual practitioner does own and is responsible for patient records.”⁴ DHP reports that the current requirements were developed by the Board in the early 2000s specifically for physicians (MDs and DOs) but were also applied to other professions, including athletic

³ See the Agency Background Document (ABD), pp. 7-8 for the specific references that would be removed: https://townhall.virginia.gov/l/GetFile.cfm?File=26\6118\9837\AgencyStatement_DHP_9837_v5.pdf.

⁴ DHP explained that athletic trainers working as independent contractors would instead be expected to follow the recordkeeping policy of the entity that contracted them.

training and acupuncture.⁵ The Board now finds these requirements to be too burdensome for athletic trainers, because they “do not handle the same type of records that are maintained by physicians.”⁶ However, DHP states that athletic trainers would still be bound by the privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA), which sets a floor on the recordkeeping requirements for self-employed athletic trainers and ensures that removing the more restrictive requirements in the regulation would not compromise patient privacy. Accordingly, self-employed athletic trainers may face a one-time cost in developing their own HIPAA-compliant recordkeeping policy, but would also benefit to the extent that the proposed changes reduce their ongoing costs of record retention; thus, their net costs are not expected to increase. DHP does not track the number of licensed athletic trainers who are self-employed or currently subject to the more restrictive requirements; thus, it is unclear how many athletic trainers would be affected.

Removing the other instances noted above – definitions that are not used in the regulation, and text that either refers to another regulation, or is obsolete (no longer applicable), or is repetitive of other regulatory text, or is duplicative of statute – would have no impact on requirements for athletic trainers or the public.

Businesses and Other Entities Affected

The proposed amendments affect the 1,843 athletic trainers licensed in the Commonwealth,⁷ as well as their patients and employers. DHP reports that athletic trainers are primarily employed by hospitals, long-term care facilities, rehabilitation facilities, independent physician offices (such as orthopedic practices), and professional sports teams or facilities.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁸ 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

⁵ The Board proposes to similarly repeal these requirements for acupuncturists as well. See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9838>.

⁶ ABD, p. 8.

⁷ Source: <https://www.dhp.virginia.gov/about/stats/2023Q3/04CurrentLicenseCountQ3FY2023.pdf>

⁸ 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.

combined. As described above, the proposed changes are not anticipated to create any net new costs. Thus, an adverse impact is not indicated.

Small Businesses⁹ Affected:¹⁰

As noted above, DHP does not track the number of licensed athletic trainers who are self-employed. Therefore, based upon the available data it is not clear if the proposed amendments adversely affect small businesses.

Localities¹¹ Affected¹²

The proposed amendments do not appear to disproportionately affect any particular localities, nor introduce costs for local governments.

Projected Impact on Employment

The proposed amendments are not likely to have a substantive impact on total employment.

Effects on the Use and Value of Private Property

The proposed amendments are not expected to affect the value of private property. The proposed amendments do not affect real estate development costs.

⁹ 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.”

¹⁰ 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.

¹¹ “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.

¹² § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.