



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

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**18 VAC 85-110 Regulations Governing the Practice of Licensed Acupuncturists**  
**Department of Health Professions**  
**Town Hall Action/Stage: 6119/9838**  
August 18, 2023

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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.<sup>1</sup>

### **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The Board of Medicine (Board) proposes to delete outdated or redundant provisions and clarify some provisions to be consistent with current practice.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As a result of a 2022 periodic review, the Board seeks to amend the regulation to remove outdated language and references to the Code of Virginia that are redundant, and to update certain provisions so that they accurately reflect current practice.<sup>2</sup> The most substantive changes are summarized as follows:

- Section 80 contains examination requirements for licensure. The Point Location Examination would be removed from this section since this examination is no longer given.

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<sup>1</sup> 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.

<sup>2</sup> See <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2152>.

- Section 145 contains the registration requirements for voluntary practice by out-of-state trainers, including a \$10 fee. The Board proposes to remove this fee.
- Section 176 contains requirements pertaining to 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 practitioners maintain a patient record “in accordance with policies and procedures of the employing entity.” For practitioners who are sole proprietors, the proposed text would require them to, “develop policies for the maintenance of patient records and adhere to these policies.”
- Sections 179 (Advertising ethics) and 181 (Solicitation or remuneration in exchange for referral) would be repealed in their entirety. Virginia Code § 54.1- 2915(A)(1) makes fraud or deceit in the practice of any branch of the healing arts unprofessional conduct and as such, subject to disciplinary action by the Board. The language in section 181 repeats language already contained in Virginia Code § 54.1-2962.1.
- The remaining changes would be to remove references to other chapters of the Virginia Administrative Code or references to statute.<sup>3</sup>

### **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 licensed acupuncturists volunteering in Virginia and net costs for the Board.

The proposed changes pertaining to the retention of patient records in section 176 are intended to reduce the burden on practitioners. 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 training and acupuncture.<sup>4</sup> The Board now

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<sup>3</sup> See the Agency Background Document (ABD), pp. 7-9 for the specific references that would be removed: [https://townhall.virginia.gov/l/GetFile.cfm?File=26\6119\9838\AgencyStatement\\_DHP\\_9838\\_v2.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=26\6119\9838\AgencyStatement_DHP_9838_v2.pdf).

<sup>4</sup> The Board proposes to similarly repeal these requirements for athletic trainers as well. See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9837>.

finds these requirements to be too burdensome for licensed acupuncturists, because they “do not handle the same type of records that are maintained by physicians.”<sup>5</sup> However, DHP states that licensed acupuncturists 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 entities that employ licensed acupuncturists or for licensed acupuncturists who are sole proprietors. Thus, removing the more restrictive requirements in the regulation would not compromise patient privacy. Accordingly, licensed acupuncturists who are sole proprietors 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 acupuncturists who are self-employed or currently subject to the more restrictive requirements; thus, it is unclear how many practitioners would be affected.

Removing the other instances noted above – 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 licensed acupuncturists or the public.

### **Businesses and Other Entities Affected**

The proposed amendments affect the 599 acupuncturists licensed in the Commonwealth,<sup>6</sup> as well as their patients and employers. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>7</sup> 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 combined. As described above, the proposed changes are not anticipated to create any net new costs. Thus, an adverse impact is not indicated.

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<sup>5</sup> ABD, p. 7.

<sup>6</sup> Source: <https://www.dhp.virginia.gov/about/stats/2023Q4/04CurrentLicenseCountQ4FY2023.pdf>.

<sup>7</sup> 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.

**Small Businesses<sup>8</sup> Affected:<sup>9</sup>**

As noted above, DHP does not track the number of licensed acupuncturists who are sole proprietors. Therefore, based upon the available data it is not clear if the proposed amendments adversely affect small businesses.

**Localities<sup>10</sup> Affected<sup>11</sup>**

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.

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<sup>8</sup> 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.”

<sup>9</sup> 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.

<sup>10</sup> “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.

<sup>11</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.