



Virginia Department of Planning and Budget Economic Impact Analysis

18 VAC 105-20 Regulations Governing the Practice of Optometry
Department of Health Professions
Town Hall Action/Stage: 6072/10028
April 26, 2024

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

As a result of a 2022 legislative mandate,² the Board of Optometry (Board) seeks to establish a certification for optometrists to perform certain laser surgery procedures. The Board also proposes to standardize late renewal fees and remove outdated language.

Background

Chapter 16 of the 2022 *Acts of Assembly* directed the Board to promulgate regulations establishing criteria for certification of an optometrist to perform three laser surgery procedures: peripheral iridotomy, selective laser trabeculoplasty, and YAG capsulotomy.³ In doing so, the Board reports that the legislation expanded the scope of practice of optometry in the

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://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0016>.

³ “Peripheral iridotomy” is used to treat or prevent glaucoma or high eye pressure by creating a hole in the iris to free trapped fluid. See <https://glaucoma.org/treatment/laser/lpi>. SLT is used to treat glaucoma by applying laser energy to the drainage tissue in the eye to lower eye pressure. See <https://glaucoma.org/articles/selective-laser-trabeculoplasty-10-commonly-asked-questions>. “YAG capsulotomy” is used to remove scar tissue after lens replacement. See <https://www.webmd.com/eye-health/cataracts/what-to-know-about-posterior-capsulotomy-yag-laser>. “YAG” derives from the name of the laser, “Neodymium:yttrium-aluminum-garnet (Nd:YAG),” which contains the acronym, “YAG.”

Commonwealth. The legislation also specified that the regulation must (i) establish the minimum education, training, and experience requirements for certification, (ii) develop protocols for proctoring and criteria for requiring such proctoring, and (iii) implement a quality assurance review process for such procedures performed by certificate holders.⁴ Accordingly, the Board seeks to make the following amendments to the regulation:

- Section 5 (Definitions) would be amended to add definitions for “laser surgery certification,” “LSPE,” “Proctored session,” and “Proctoring.”
- Section 10 (Requirements for Licensure) would be amended so that from January 1, 2033 onwards, all applicants for a license to practice optometry in the Commonwealth shall meet the requirements for laser surgery in section 80, which would be newly created by this action. Although the date was chosen at the Board’s discretion, the Department of Health Professions (DHP) reports that professional licenses are intended to cover the scope of practice of the profession. Thus, even though the certification may be used initially to indicate which licensees are qualified to perform the surgery, the delayed date was selected so that all applicants would have sufficient notice that they would eventually need to be qualified to practice laser surgery as part of the expanded scope of the profession.
- Section 20 (Fees) would be amended to add a \$200 fee for applications for laser surgery certification, a \$350 fee for initial applications for licensure with TPA certification and laser surgery certification, and a \$250 fee for annual licensure renewal with TPA certification and laser surgery certification.
- Section 80 (Requirements for laser surgery certification) would be newly added. This section would require applicants to submit the application form, the prescribed fee, an educational attestation form covering specific subjects, and evidence of either passing the laser section of the LSPE [Laser and Surgical Procedures Examination] or proctored sessions as required by the newly created section 90.
- Section 90 (Requirements for proctoring) would specify that applicants who have not provided the Board with a passing score on the LSPE must submit a form providing evidence of at least two proctored sessions for each of the three procedures: peripheral iridotomy,

⁴ In addition, the legislation also required the Board to promulgate regulations requiring all optometrists to register annually with the Board and to report certain information as deemed appropriate by the Board, including certain mandatory reporting elements. The annual registration and reporting requirements are being implemented through a separate regulatory action. See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=10029>.

selective laser trabeculoplasty, and YAG capsulotomy. This section would also specify who could proctor these sessions and what information must be provided on the form.

- Section 100 (Reporting requirements) would be newly added to require optometrists certified to perform laser surgery to provide quarterly reports to the Board containing the number and type of laser surgeries performed, the conditions treated for each surgery, and any adverse treatment outcomes that required referral to an ophthalmologist for treatment. This requirement is identical to the fourth enacting clause of Chapter 16 and expires on July 1, 2025.
- Section 110 (Quality assurance review process) would also be newly added and would require optometrists certified to perform laser surgery to maintain documentation for at least three years of the number and type of laser surgeries performed and any adverse treatment outcomes that required referral to an ophthalmologist for treatment. This requirement would become effective on July 1, 2025, effectively replacing the reporting requirements in section 100. This section would also specify that the Board may conduct a random audit of licensees, which would require the licensee to provide this documentation within 30 days of notification of the audit.

In addition, the Board plans to change the late renewal fees to \$50 regardless of license type. Currently, the late renewal fees are \$50 for a license without TPA certification, \$65 for late renewal with TPA certification, and \$35 for an inactive license.

Estimated Benefits and Costs

Currently, the proposed amendments would primarily benefit optometrists who have already received the training to perform these laser eye surgeries, and licensed optometrists who want to obtain such training, by creating a pathway for them to become certified to perform these procedures. As of December 31, 2023, there were 1,852 TPA-certified optometrists in the Commonwealth who would be able to seek certification to perform laser surgery.⁵

The Board reports that optometry students who graduated since roughly 2015 have already received the education required in these amendments as part of the standard instruction at

⁵ See <https://www.dhp.virginia.gov/about/stats/2024Q2/04CurrentLicenseCountQ2FY2024.pdf>. Code of Virginia section 54.1-3225 specifies that only TPA-certified optometrists are eligible for laser surgery certification.

schools of optometry.⁶ Licensed optometrists who graduated prior to 2015 may need to obtain appropriate training and proctored testing to pursue certification. The Board reports that these programs run regularly and cost approximately \$1,200 (according to the Oklahoma College of Optometry continuing education course offering).⁷

Representatives for the Virginia Optometric Association indicate that there are roughly 200 optometrists in Virginia who already meet the criteria for certification, and that the total number of providers of these laser procedures is likely to increase by up to 50 percent once this regulation becomes effective.⁸ These 200 candidates would be able to apply for certification as soon as it is available, either because they have received the required instruction as part of the standard curriculum or because they have completed separate training in other states that would meet the requirements in the proposed text. Representatives for the Association also noted that equivalent certifications are not available in North Carolina, Maryland, West Virginia, or Washington, DC, which could lead some optometrists in those places to either relocate or obtain a Virginia license and practice in multiple jurisdictions depending on their location and proximity.

An increase in the supply of providers of these three laser surgery procedures would benefit patients who need any of these procedures by increasing the availability of appointments and lowering wait times. Patients may also face lower out-of-pocket costs to obtain treatment depending on their insurance coverage.

Lastly, suppliers of the laser equipment required to perform these procedures would benefit since optometrists who obtain the certification in Virginia would have to purchase this equipment. Optometrists who seek to provide these surgeries would have to incur costs to invest in such equipment. However, this investment is not expected to be so high that solo or group private practices would find it cost-prohibitive.

As mentioned previously, initial applicants for licensure with TPA certification and laser surgery certification would have to pay a \$350 application fee, which is \$100 greater than the initial application fee with TPA certification alone. The standalone laser surgery certification would require payment of a \$200 fee. The annual license renewal fee with TPA and laser surgery

⁶ See Agency Background Document (ABD), page 5:
https://townhall.virginia.gov/l/GetFile.cfm?File=29\6072\10028\AgencyStatement_DHP_10028_v3.pdf

⁷ ABD, page 5.

⁸ This assumes that there are currently roughly 400 ophthalmologists who perform these surgeries.

certification would be \$250, which is \$50 greater than the annual license renewal fee with TPA certification. These fees are likely very small relative to the fixed cost of investing in the equipment and the expected revenue from payments for laser surgeries.

Businesses and Other Entities Affected

As described above, the proposed changes would benefit the TPA-certified optometrists who also become certified to provide these three laser eye surgery procedures as well individuals who need these treatments. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁹ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.¹⁰

Applicants for the optometry license after January 1, 2033 would be required to pay an additional \$100 for the license fee for the laser surgery certification, since they would no longer have the option of applying for an initial license with just the TPA certification. They may also incur additional indirect costs through higher tuition for optometry programs with instruction in subjects that would be required for the laser surgery certification; however, to the extent that these subjects are already part of the standard optometry curriculum, any associated costs may already be incurred by optometry students. Similarly, the broader scope of practice may lead to higher costs for liability insurance coverage.

The Board reports that the 2022 legislation expands the scope of practice of the profession to include these three laser eye surgeries. However, the legislation does not appear to directly stipulate that the Board require all applicants for the optometry license be certified to perform laser eye surgeries, or to set a date for such a requirement to go into effect. Since these requirements are at least partly discretionary, an adverse impact is indicated for optometry license applicants on or after January 1, 2033.

⁹ 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.

¹⁰ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

Small Businesses¹¹ Affected:¹²

The proposed amendments would not directly affect small businesses. However, roughly 60 percent of optometrists in Virginia work in a group or solo private practice; these would meet the definition of small businesses.¹³ These private practices would benefit to the extent that those practitioners seek to obtain laser certification and offer laser eye surgeries. The requirement that from 2033 onwards, all applicants for licensure in optometry must meet the criteria for laser surgery certification, and the resulting increase in the cost of obtaining licensure, could impact the creation of new private practices. However, since these arise from individuals' ability to practice in the Commonwealth, they are discussed under the Projected Impact on Employment below.

Localities¹⁴ Affected¹⁵

The proposed amendments neither disproportionately affect any particular localities, nor affect costs for local governments.

Projected Impact on Employment

The proposed regulation does not appear to directly affect total employment. However, there may be a nominal increase in the employment of optometry support staff if, for example, some optometrists moved to Virginia from neighboring states or opened practices to provide laser eye surgeries once the certification becomes effective. The requirement that from 2033 onwards, all applicants for licensure in optometry must meet the criteria for laser surgery certification, and the resulting increase in the cost of obtaining licensure, could discourage some individuals who would otherwise have studied to enter the optometry profession from doing so.

¹¹ 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.”

¹² 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.

¹³ See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/opt/0618Optometrists2023.pdf>, page 14.

¹⁴ “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.

¹⁵ Virginia Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Further, individuals with out-of-state licenses are currently required to obtain a Virginia license to practice in the Commonwealth. Since many other states do not include any laser eye surgeries in the scope of practice for optometry in their state, starting in 2033, such applicants may need to pay for additional education and/or additional testing or proctoring to meet the requirements in the proposed section 80. The extent to which such costs are incurred would depend on the number of out-of-state licensees seeking to work or establish a private practice in Virginia in/after 2033, when they received their optometry education, and whether the subject areas required by section 80 were covered by their programs.

Effects on the Use and Value of Private Property

The value of some private optometry practices that invest in laser technology and certification and provide laser eye surgery could increase since it may increase their operating profits. The proposed amendments do not affect real estate development costs.