



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

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### **18 VAC 95-30 Regulations Governing the Practice of Assisted Living Facility Administrators**

**Department of Health Professions**

**Town Hall Action/Stage: 5471 / 9481**

December 21, 2021

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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 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

The Board of Long-Term Care Administrators (Board) proposes to: 1) establish an additional pathway for individuals to qualify for Administrator-in-Training (AIT) program in the Assisted-Living Facility (ALF) setting and strengthen the current requirement for college or university coursework to include coursework in business and/or human services, 2) enhance training and supervision requirements for prospective nursing home and ALF administrators receiving pre-licensure training in an AIT program, 3) offer continuing education credit for preceptors<sup>2</sup> who supervise AITs, 4) enhance the training and continuing education received by both AITs and administrators related to mental impairments, and 5) specify limitations on the assisted living facilities that qualify for an AIT program.

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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> A preceptor is an experienced practitioner who provides supervision during clinical practice.

## Background

The Board issues licenses to nursing facility administrators as well as ALF administrators. Both administrator types have an AIT program. This regulatory action stems from a set of recommendations from a regulatory advisory panel on both types of AITs which was convened by the Board.

## Estimated Benefits and Costs

One of the pathways to become an ALF administrator is through the completion of an AIT program. Requirements for entry into the AIT program vary. One of the proposed changes would allow individuals who lack the currently required 30 hours of postsecondary education or a degree as a nurse, but who have at least three years of health care experience, to include at least one consecutive year in a managerial or supervisory role in a health care setting within the five years prior to application to join an AIT program. In essence, this amendment would allow a person who has been performed certain roles in a health care setting, such as the food services manager, activities director, or human resources manager, to qualify for entry into an ALF AIT program to become an ALF administrator.

According to the Department of Health Professions (DHP), with an increasingly aging population, there is an ongoing need for more administrators in the field. Also, workforce surveys conducted in 2021 show that the median age for nursing home and ALF administrators is 50 and 52, respectively.<sup>3</sup> Thirty-eight percent of nursing home administrators are 55 years or older, while 43 percent of ALF administrators are 55 years or older.<sup>4</sup> DHP believes these facilities will face a wave of retirements of administrators in the next few years and the ALF community believes this change is urgently needed to fill currently open positions and those that would be needed to meet future needs in long term care.

The proposed additional pathway would open up opportunity for some individuals to climb the career ladder into the administrator role. This change would likely expand the pool of potential administrators and benefit those who currently lack 30 hours of postsecondary education or a degree as a nurse to get into an ALF AIT program. The impact on residents would

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<sup>3</sup> <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/lrc/1706ALFA2021.pdf> and <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/lrc/1701NHA2021.pdf>

<sup>4</sup> <https://statchatva.org/2017/07/05/1-in-5-virginians-will-be-over-65-years-by-2030/>

depend on whether basic, managerial, or supervisory experience in health care setting is a good substitute for postsecondary education or a degree as a nurse.

At the same time, the Board proposes to strengthen AIT program educational requirements by targeting coursework subject matter areas that are more relevant to an ALF administrator. According to DHP, “Thirty hours at a community college without some specified coursework (plus the existing requirement of 640 hours in an AIT program) may not prepare an individual to handle the complexity of managing the health care needs, the financial and regulatory responsibilities, and the human resource issues of a facility.” While the total number of hours (30 semester hours) would not change, the Board proposes to require at least 15 of the 30 hours in business or human services or a combination thereof. Those who are at the beginning of their coursework may meet this requirement by carefully choosing their coursework. However, this change may disqualify those who completed 30 hours of coursework but currently lack at least 15 of the 30 hours in business or human services or a combination and may shrink the pool of potential administrators or force them to take more courses. The impact on residents would depend on whether targeted coursework would help improve their care.

The Board also proposes to incentivize becoming a preceptor for AIT programs through continuing education requirements. Serving as a preceptor is a time-consuming responsibility and a learning experience for the preceptor as well as the trainee. Additional preceptors would be needed if there is an enrollment increase in AIT programs due to additional pathway proposed. A nursing facility or ALF administrator who serves as a registered preceptor in an approved AIT program would be allowed to receive one hour of continuing education credit for each week of training up to a maximum of ten hours (half of the total required hours). This change would not affect the required continuing education hours but only how credits could be earned by the administrators who are preceptors. The intent is to encourage and reward preceptors for AIT programs especially given the potential increase in enrollment in training programs.

The Board proposes to strengthen training for current and prospective nursing home and ALF administrators in the area of mental impairments, including dementia and Alzheimer’s disease, to ensure that administrators are adequately equipped to handle the needs of residents in their care who are facing these challenges. There is a strong correlation between aging and developing dementia, and according to demographers at the University of Virginia, one in five

Virginians will be over 65 years by 2030.<sup>5</sup> Additionally, DHP notes that many residents of long term care facilities are affected by mental impairment and that continuous education is essential to appropriately plan for and execute their care. There are new and developing techniques and treatments that require administrators to stay current and knowledgeable. Therefore, the Board proposes that current administrators (both nursing home and ALF) complete at least two hours of continuing education for each renewal year shall relate to the care of residents with mental or cognitive impairments, including Alzheimer's disease and dementia and that AIT programs (both nursing home and ALF) provide training on the care of residents with cognitive or mental impairments, including Alzheimer's disease and dementia.

New continuing education and training requirements can be fulfilled by choosing such courses or training as part of existing hourly requirements. This change would likely help residents with cognitive or mental impairments. However, the impact on other residents would depend on the type of training or education that would have been taken instead, if any.

Finally, the Board proposes to specify limitations on the assisted living facilities that qualify for an AIT program. Currently, the regulation states that an ALF AIT program cannot be conducted in an ALF with a provisional license, as determined by the Department of Social Services (DSS). The advisory panel recommended three additional limitations based on the need to train administrators with the competencies to safely run an ALF. Under the proposed changes, an AIT program cannot be operated in an ALF with a conditional license in which the AIT applicant is the owner of the facility; in a facility that is only licensed for residential care (not assisted living); and in a facility with resident capacity of less than 20 residents.

If the person who wants to operate an ALF AIT is the owner of the facility and it has been given a conditional license by DSS, there are concerns that the owner would be serving as the acting AIT of their own new facility, thereby resulting in inadequate AIT training and/or supervision. If a facility is only licensed for residential care, a licensed administrator is not required and there would be insufficient oversight and training opportunities for an ALF AIT. For example, residents handle their own medications, rather than employing medication aides or nurses for that task.

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<sup>5</sup> Ibid.

The panel used data estimates from DSS to make its recommendation about the bed capacity of an ALF facility in which an AIT program could be operated. It concluded that a facility with fewer than 20 beds did not have the breadth and depth of staff and experience to adequately prepare a person in training to safely and effectively operate an assisted living facility.

According to data from DSS, of the 571 facilities licensed to provide assisted living care, there were approximately 100 that are in the range of 3-10 beds (73 of those are located in Fairfax and Central Virginia; none were located in the Western district of the state). Therefore the Board agreed with the recommendation of the panel that there was ample opportunity in all parts of the state for AIT programs in facilities with adequate bed capacity needed for training of competent administrators.

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

According to data from DSS, there are 571 facilities licensed as ALFs; approximately 67 of those facilities are residential only (i.e., do not require a licensed administrator). The total licensed resident capacity across all ALFs is approximately 36,121. For nursing homes, there are nearly 300 licensed nursing homes containing over 32,000 beds.

The proposed regulatory changes would primarily affect persons in AIT programs (nursing home and assisted living) and licensees who are registered as preceptors. There are six acting administrators in ALF AIT programs, 86 persons undergoing an ALF administrator-in-training program, 188 ALF preceptors, 72 persons undergoing a nursing home administrator-in-training program, and 209 nursing home preceptors.

No affected entity appears to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</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

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<sup>6</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.

combined. As noted above, the proposal that at least 15 of the 30 hours required for entry into an ALF AIT program be in business or human services or a combination thereof may disqualify some individuals from enrollment in an AIT program or may force them to acquire more hours than other individuals who already completed 30 hours of coursework in other areas. Although there is no information on whether any such AIT candidates exist, an adverse impact on them would be indicated.

### **Small Businesses<sup>7</sup> Affected:<sup>8</sup>**

#### Types and Estimated Number of Small Businesses Affected

According to DHP, most of the nursing home AIT programs are operated in large facilities that are part of a regional or national group. Many of the ALF AIT programs are in facilities that would be considered small businesses.

#### Costs and Other Effects

As discussed, the new rules may disqualify some assisted living facilities from operating an AIT program even if they wanted to. Although there is no information on whether there exists any such assisted living facility, an adverse impact on them would be indicated.

#### Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

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<sup>7</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>8</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.

**Localities<sup>9</sup> Affected<sup>10</sup>**

The proposed amendments do not appear to disproportionately affect any particular localities or affect costs for local governments.

**Projected Impact on Employment**

One of the proposed amendments would provide an additional pathway to become an administrator to existing assisted living facility employees. While that change may provide a new career opportunity for certain individuals, it does not appear to directly affect total employment.

**Effects on the Use and Value of Private Property**

No significant effect on the use and value of private property or real estate development costs is expected.

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<sup>9</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>10</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.