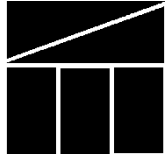


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

12 VAC 35-105 Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services
Department of Behavioral Health and Developmental Services
Town Hall Action/Stage: 5040 / 8546
May 13, 2019

Summary of the Proposed Amendments to Regulation

Pursuant to a settlement agreement,² the State Board of Behavioral Health and Developmental Services (Board) proposes to: 1) categorize types of patient injuries that must be reported, 2) require annual risk assessments to include review of the environment, staff competence, seclusion and restraint, serious incidents, and risk triggers and thresholds, and 3) conduct a root cause analysis within 30 days of discovery of serious incidents.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The purpose of the proposed amendments is to enhance requirements for providers to improve quality and risk management practices as required under the settlement agreement. In order to achieve that goal, the Board proposes to categorize types of patient injuries that must be reported into Levels 1, 2, and 3 according to severity. The types of injuries that would fall in any

¹ Adverse impact is indicated if there is any increase in net cost for any entity, even if the benefits exceed the costs for all entities combined.

² The settlement agreement between the United States Department of Justice and Virginia (*United States of America v. Commonwealth of Virginia*, Civil Action No. 3:12cv059-JAG).

of the three levels are already required to be reported, but not as categorized as such. In addition to the categorization, language has been proposed to clarify when reporting is required. These changes are expected to standardize the reporting process, reduce reporting errors and duplicate reports, which should be beneficial.

The Board proposes to require annual risk assessments to include review of the environment, staff competence, seclusion and restraint, serious incidents, and risk triggers and thresholds. Similarly, annual risk assessments are already required, but the proposed additional language should clarify what needs to be addressed in the assessment and improve its quality. The change that has to do with review of environment will clarify that a facility must maintain adequate staff at all times to safely evacuate all patients in case of a fire. The Department of Behavioral Health and Developmental Services (DBHDS) states that this has already been required, but the additional clarity may bring some facilities that may be currently out of compliance with this requirement into compliance. Since these changes do not impose any new costs on facilities, but may improve compliance, they should produce a net benefit.

The Board proposes to require providers to conduct a root cause analysis within 30 days of discovery of Level II and III serious incidents that occur during the provision of a service or on the provider's premises.³ Even though the root cause analysis has not been required in the past, DBHDS indicates that the facilities would readily have many elements for such analysis and the analysis would not take more than 15 minutes in most cases. Thus, some administrative costs may be imposed on regulated facilities. However, the root cause analysis is also expected to improve quality and risk management at the regulated facilities.

Finally, the Board proposes to require that the person leading risk management activities to possess training and experience in investigations, root cause analysis, and data analysis. DBHDS believe most facilities already have personnel with these qualifications, but the possibility of a few facilities having to hire additional staff cannot be ruled out.

DBHDS also reports that the proposed reporting requirements will be implemented through modifications to the existing reporting system. The modifications would be handled with

³ Root Cause Analysis is a patient safety improvement activity that is focused on identifying, and eliminating or controlling, system vulnerabilities that can result in patient injury.

the resources already slated for ongoing maintenance of the system. Thus, DBHDS does not expect any additional administrative costs from the proposed changes.

Overall, DBHDS expects that the proposed changes would allow more targeted reporting by providers and improve the efficiency in reporting and handling of the reportable cases, while at the same time putting more preventive measures in place for the safety of individuals receiving services.

Businesses and Entities Affected

Approximately 1,100 service providers licensed by DBHDS would be affected by this regulatory action.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments are unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendments are unlikely to affect real estate development costs.

Small Businesses:

Definition

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.”

Costs and Other Effects

Although DBHDS does not know how many of the licensed facilities may be small businesses, most are likely to be so. However, the proposed amendments are unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget 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). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report 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.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): 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 within the 45-day period.

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.