



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

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### **12 VAC 5-412 – Regulations for Licensure of Abortion Facilities Virginia Department of Health**

November 21, 2012 (revised January 7, 2013 based on additional information from the agency)

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

Chapter 670 of the 2011 Virginia Acts of Assembly amended and reenacted § 32.1-127 of the Code of Virginia. Chapter 670 (2011) specified that facilities in which five or more first trimester abortions per month are performed shall be classified as a category of hospital and mandated the Board of Health (Board) to adopt regulations governing the licensure of such entities within 280 days of its enactment. For that reason, the Board utilized the emergency rulemaking process authorized by the Administrative Process Act for promulgating emergency regulations and filing a Notice of Intended Regulatory Action.

Following that regulatory action, the Virginia Department of Health (VDH) has developed proposed permanent regulations to replace the emergency regulations upon their expiration. The permanent regulations are necessary to support the implementation of the amendments to § 32.1-127 enacted by Chapter 670 (2011). The proposed regulations contain provisions pertaining to definitions, procedures for initial licensure and license renewal, organization and management, infection prevention, patient care, quality assurance, medical records and reports, disaster preparedness, facility security, functional safety and maintenance, and design and construction.

### **Estimated Economic Impact**

#### Facilities Impact

As stated above, Chapter 670 (2011) specified that facilities in which five or more first trimester abortions per month are performed shall be classified as a category of hospital. The Code of Virginia § 32.1-127.001 requires the Board of Health to promulgate regulations that

“include minimum standards for the design and construction of hospitals, nursing homes, and certified nursing facilities consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health.” Accordingly, the proposed regulations state that “abortion facilities shall comply with Part 1 and sections 3.1-1 through 3.1-8 and section 3.7 of Part 3 of the 2010 Guidelines for Design and Construction of Health Care Facilities of the Facilities Guidelines Institute.” These are the particular standards that are relevant to facilities that perform first trimester abortions.

The public benefit of this regulation is to ensure that facilities that regularly perform first trimester abortions adhere to minimum health and safety standards. These standards pertain to organization and management, infection prevention, patient care, quality assurance, medical records and reports, disaster preparedness, facility security, functional safety and maintenance, and design and construction.

Based on a survey conducted by the Department of Health, all but one of the 20 abortion facilities licensed under the emergency regulations has to renovate space and/or purchase equipment to comply with these requirements. The costs for each facility to comply with the requirements differ greatly depending on the size of the facility, and in particular on how close the facility already is in following the Guidelines for Design and Construction of Hospital and Healthcare Facilities. VDH surveyed the facilities for this information and their estimated costs of compliance. One facility already meets the requirements and thus will not incur additional costs. Fifteen of the remaining facilities did provide their own estimates which are as follows: \$75,000, \$87,000, \$118,100, \$180,000, \$200,000, \$200,000, \$250,000, \$300,000, \$300,000, \$328,800, \$376,700, \$400,000, \$734,000, \$5,000,000, and \$6,000,000.

Given the Department of General Services’ (DGS) expertise in building design and construction, the Department of Planning and Budget requested that DGS provide their own cost projections. DGS estimates that it costs approximately \$447 per square foot to build a new hospital, and \$200 to \$447 per square foot to convert/renovate existing professional office space to meet hospital standards. Based on a survey, the largest facility which does not already meet the requirements is 12,000 square feet. Using the high end of DGS’ estimated range (\$447 per square foot), this indicates that it could cost up to \$5,364,000 for the largest facility not already in compliance to renovate or build to meet the physical requirements. DGS points out that the

\$447 figure does not include land acquisition or demolition costs. Thus, DGS' high-end cost estimate is consistent with the estimates provided by the facilities.

For those clinics that choose to renovate, there will likely be some reduction in operating capacity while the facility is being renovated. The impact of such adjustments cannot be determined.

#### Administrative Impact

VDH estimates that it will take no more than 16 hours for each facility to comply with the annual reporting, recordkeeping, and other administrative requirements associated with this regulation (including submitting an application, participating in an onsite inspection survey, and developing a plan of correction). Concerning the type of professional skills necessary for preparing required reports and other documents, the proposed regulations specify that each clinics' administrator: 1) ensures the development, implementation, and enforcement of all policies and procedures, including patient rights, 2) employs qualified personnel and ensuring appropriate personnel orientation, training education and evaluation, 3) ensures the accuracy of public information materials and activities, 4) ensures an effective budgeting and accounting system is implemented, and 5) maintains compliance with applicable laws and regulations and implementing corrective action.

The proposed regulations allow entities operating as of the effective date of the emergency regulations to be licensed in the facility's current buildings if the facility submits a plan with the application for licensure that will bring the facility into full compliance with the provisions of the proposed regulations within two years from the date of licensure. The existing clinics were licensed over a four month period (in July, August, September, and October 2012). These facilities will need to show full compliance with the building standards two years after their initial licensure, i.e., in July 2014 through October 2014.

#### Health Department Impact

VDH anticipates that the implementation and enforcement of these regulations will require the addition of two full time medical facility inspector positions at an estimated annual cost of \$145,600. Funds would be non-general fund licensing fees (1%) and general fund (99%)

and would be ongoing expenditures. VDH has received additional funding in the 2012 Appropriation Act which will enable it to cover this expense.

### **Businesses and Entities Affected**

The proposed regulations affect the 20 abortion facilities operating in the Commonwealth. Some architectural and construction firms may receive additional demand for their services due to the statutory and regulatory requirements that abortion facilities meet the minimum standards for the design and construction of hospitals.

### **Localities Particularly Affected**

The 20 abortion facilities operating in the Commonwealth are located in the following localities: Alexandria (2), Blacksburg, Charlottesville (2), Fairfax (2), Falls Church (2), Henrico, Manassas, Newport News, Norfolk (2), Richmond (2), Roanoke (2), and Virginia Beach (2).

### **Projected Impact on Employment**

Some architectural and construction firms may receive additional demand for their services due to the statutory and regulatory requirements that abortion facilities meet the minimum standards for the design and construction of hospitals. This may modestly increase employment at these firms.

Employment at abortion facilities may be impaired if these regulations result in any temporary or permanent closures of abortion facilities.

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

Some architectural and construction firms may receive additional demand for their services due to the statutory and regulatory requirements that abortion facilities meet the minimum standards for the design and construction of hospitals. This may modestly increase the value of these firms. The proposed requirements associated with the new establishment of licensure for abortion facilities increase costs for these entities and could increase the value of these facilities.

### **Small Businesses: Costs and Other Effects**

The majority of abortion facilities in operation in the Commonwealth appear to qualify as small businesses. Several others are affiliated with a large nonprofit organization. Based on

available information, it appears that the majority of small businesses affected will incur between \$100,000 and \$400,000 in construction and equipment costs. For those clinics which choose to renovate, there will likely be some reduction in operating capacity while the facility is being renovated. The clinic may have to find other temporary quarters during the construction work, or temporarily not offer services.

VDH estimates that it will take no more than 16 hours for each facility to comply with the annual reporting, recordkeeping, and other administrative requirements associated with this regulation (including submitting an application, participating in an onsite inspection survey, and developing a plan of correction). Concerning the type of professional skills necessary for preparing required reports and other documents, the proposed regulations specify that each clinic's administrator: 1) ensures the development, implementation, and enforcement of all policies and procedures, including patient rights, 2) employs qualified personnel and ensuring appropriate personnel orientation, training education and evaluation, 3) ensures the accuracy of public information materials and activities, 4) ensures an effective budgeting and accounting system is implemented, and 5) maintains compliance with applicable laws and regulations and implementing corrective action. Finally, there is a \$75 annual licensure fee for each facility.

### **Small Businesses: Alternative Method that Minimizes Adverse Impact**

Chapter 670 (2011) is specific in stating the design requirements of these regulations; thus, there is no apparent method that both minimizes the adverse impact to small businesses (abortion facilities) and still complies with the Code of Virginia.

### **Real Estate Development Costs**

The statutory and regulatory requirements that abortion facilities meet the minimum standards for the design and construction of hospitals increase real estate development costs for these clinics. Facility renovation and equipment costs for the majority of these clinics will be less than \$400,000. For at least three facilities, the costs will likely be less than \$100,000. For two facilities, meeting the proposed requirements will cost several million dollars. The costs depend upon the facility's square footage and how close it currently is in following the Guidelines for Design and Construction of Hospital and Healthcare Facilities. One facility already meets the requirements and will accordingly not incur additional costs.

## Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. A small business is defined in Section 2.2-4007.1 of the Code of Virginia 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.” The analysis presented above represents DPB’s best estimate of these economic impacts.