



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 5-412 – Regulations for Licensure of Abortion Facilities
Virginia Department of Health
November 21, 2012

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.

Result of Analysis

There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic 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.

Most or all of the abortion facilities will have to renovate and/or purchase equipment to comply with these requirements. VDH anticipates that the facilities will be able to be grouped into one of three classifications based on the modifications that will be required to meet deficiencies identified on the agency’s initial licensure survey: a) none to minor renovations and equipment purchases, at an estimated average cost of \$5 per square foot, b) moderate renovations and equipment purchases would have an estimated average cost of \$130 per square foot, and c) major renovations and equipment purchases would have, an estimated average cost of \$525 per square foot.¹ Thus, the costs for each facility to comply with the requirements will 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.

¹ VDH did not have any cost estimates directly applied to abortion facilities; so they looked to outpatient surgical hospitals as an analog. They gathered the cost estimates, (and when available the actual reported expenses for completed projects) presented by applicants for certificate of public need (COPN) for the establishment or renovation of outpatient surgical hospitals over the past 8-10 years. These estimates were not adjusted for inflation

DPB surveyed the 20 abortion facilities (licensed under the emergency regulations) for their square footage; 18 out of 20 provided square footage information. The smallest responding facility was about 1,700 square feet, while the largest was about 13,500 square feet. Using VDH's minor renovations and equipment purchases square foot cost estimate for the low end, and their major renovations and equipment purchases square foot cost estimate for the high end, the table below displays the likely cost ranges for required renovations and equipment purchases, splitting the facilities into five size groupings.

| Square Footage Range | Number of Facilities in Range | Likely Cost Range (depends on how closely facility already meets requirements) ² |
|----------------------|-------------------------------|---|
| 1,700 to 2,500 | 5 | \$8,500 to \$1,312,500 |
| 3,000 to 4,000 | 5 | \$15,000 to \$2,100,000 |
| 4,100 to 5,000 | 4 | \$20,500 to \$2,625,000 |
| 6,000 to 7,500 | 2 | \$30,000 to \$3,937,500 |
| 12,000 to 13,500 | 2 | \$60,000 to \$7,087,500 |

The Department of General Services (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. This does not include land acquisition or demolition costs. DGS notes that in some cases it may be more expensive to renovate a poor quality building than to build a new one. Hence the upper limit on renovations is capped at the new construction value of \$447/SF. The agency also reports that "There is also the potential for the renovation of a high quality existing facility currently being used as a clinic to

or geography. COPN applications include direct construction costs (which include non-movable equipment) and the square footage of the project. From that they calculated minimum, maximum and average costs per square foot.

² Low-end cost calculated by multiplying the low-end of square footage range by the estimated average cost per square foot for minor renovations and equipment purchases (\$5). High-end cost calculated by multiplying the high-end of square footage range by the estimated average cost per square foot for major renovations and equipment purchases (\$525).

cost less than \$200/SF.” DGS emphasizes that these ranges in cost are rough, conservative estimates given the assumed variability with the existing facilities. DGS points out that a high quality existing facility currently being used as a clinic could be renovated for less than \$200/SF. Also, the \$447/SF ceiling excludes other potential costs such as demolition and DGS emphasizes that their estimates are conservative.

For those clinics that 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. Additionally, there is a \$75 annual licensure fee.

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.

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.

The proposed requirements associated with the new establishment of licensure for abortion facilities increase costs for these entities. For some, the increased costs may be large enough to cause the entity to no longer offer abortion services. This would decrease employment at 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.

Small Businesses: Costs and Other Effects

According to VDH, all 20 abortion facilities in operation in the Commonwealth are small businesses. Depending on the facility's square footage and how close it is in following the Guidelines for Design and Construction of Hospital and Healthcare Facilities, the renovation and equipment costs for these clinics may be as low as \$8,500 or as high as \$7,000,000+. 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. Additionally, there is a \$75 annual licensure fee for each facility.

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.

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 these clinics may be as low as \$8,500 or as high as \$7,000,000+, depending upon the facility's square footage and how close it is in following the Guidelines for Design and Construction of Hospital and Healthcare Facilities.

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. The analysis presented above represents DPB's best estimate of these economic impacts.