



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 35-105 – Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services Department of Mental Health, Mental Retardation, and Substance Abuse Services

July 19, 2001

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 9-6.14:7.1.G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1.G requires that such economic impact analyses include, but need not be limited to, 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. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The Department of Mental Health, Mental Retardation, and Substance Abuse Services (Department) proposes to replace its existing licensure regulation (12 VAC 35-102) and case management certification regulation (12 VAC 35-170) with the proposed regulation (12 VAC 35-105). The new regulation:

- Incorporates the process for licensing, including the issuance of variances and sanctions, into the text of the regulation,
- Reflects recent changes in statute (background checks on staff, compliance with human rights regulations, licensing of case management and gero-psychiatric residential services),
- Raises program director and supervisor qualifications and more clearly states requirements for orientation and retraining of employees,
- Establishes requirements for earlier assessments and service planning and sets more specific requirements to fulfill the current expectation that programs be able to adequately respond and care for the medical needs of individuals receiving services,

- Provides more specific requirements concerning physical environment standards (quantifies “acceptable” room and water temperatures) and eliminates the separate facility license,
- Requires physical separation for children and adults in residential and inpatient programs,
- Sets a maximum limit of 20 beds for licensing as an intermediate care facility for the mentally retarded (ICF/MR),
- Addresses additional types of services offered by providers (sponsored residential home services, intensive community treatment programs, programs of assertive community treatment services), and
- Updates the opioid treatment and detoxification services sections to reflect new federal regulations and conform to current practice standards.

Estimated Economic Impact

Many of the proposed changes to this regulation are intended to reduce ambiguity, provide more detailed guidance to providers regarding specific requirements, and improve the agency’s ability to monitor providers’ compliance with these standards. Several of the changes in the proposed regulation address requirements and standards the agency is currently enforcing through other means, such as internal policies or citing violations of more general requirements (“client safety”). Putting these requirements into regulation will make these standards easier to enforce in a court of law but not result in any economic impact, except for the few providers who are not complying with current intentions. In these cases, the additional compliance costs are not likely to outweigh the benefits of having these providers meet what the agency has determined to be minimum standards required for quality care. Significant changes, and those that have not already been incorporated into current practice by the agency, are discussed below.

Statutory Requirements

The *Code of Virginia* has required background checks for employees of licensed providers since 1999. Licensing of providers has been contingent on satisfactory human rights performance as determined by a human rights review performed by the Department since 1999 as well. Since these changes in the regulation reflect current practice, no economic impact is expected.

Licensing of case management and gero-psychiatric residential services will begin at the effective date of these regulations. All of the 40 local community service boards (CSBs) are expected to apply for licensure as case management providers. Currently these CSB programs are certified under 12 VAC 345-170, although the certification process is minimal and does not contain a substantial review. Licensure will require more administrative documentation and reporting but is not likely to have any effect on quality or quantity of services provided. Although, as a licensed service, DMHMRSAS will now have the authority to investigate

complaints by case management clients, which are a large majority of the individuals served by CSBs. In addition to the public CSBs, private entities may also provide case management services. However, there is not sufficient data available to estimate how many may choose to apply for this license.

Few, if any, programs are expected to apply for licenses to provide gero-psychiatric residential services since this type of service is relatively new and is not yet fully developed in the profession or provider community and not reimbursed by third-party payers at this time.

Employee Qualifications

The current regulation requires that “any person who assumes the responsibilities of any staff position meet the minimum qualifications of that position.” The proposed regulation specifies the minimum qualifications for program directors and supervisors for mental health or mental retardation services. The Department based the proposed minimum qualifications on national guidelines and regulatory requirements of other state agencies that interact with these types of providers. The Department does not believe that these new requirements will substantially reduce the supply of program directors or supervisors. If the requirements prevent or remove any individual who is not adequately qualified to direct or supervise the services provided in the program, there may be some increase in the quality of patient care provided in those programs.

Service Requirements

According to the Department, the trend in deinstitutionalization and the promotion of community-based treatment has resulted in individuals receiving services in licensed programs having more complex disabilities and needs than those that have been served in the past. Several of the proposed requirements are intended to address this and ensure that programs have the facilities, staff, and capabilities to appropriately care for the individuals they serve. This is an expectation in the current regulations. By clarifying and emphasizing this expectation, these changes can be expected to increase compliance and may result in improved quality of care provided for certain individuals.

Physical Environment Standards

Appropriate room and water temperatures are required in the current regulations. The new regulations quantify acceptable room temperatures at 65 to 80 degrees and hot water temperatures between 100 and 120 degrees. These temperatures are based upon requirements in similar regulations, input from advocates and other experts in the care of individuals with disabilities, and generally accepted standards. Room temperatures have an impact on the health of the elderly and individuals who use medications that adversely effect the their ability to tolerate warmer temperatures. Specificity in water temperatures is also intended to address recent instances where individual living in group homes have been scalded while bathing. Significant compliance costs associated with meeting these new requirements (such as installing air conditioners or upgrading existing plumbing) can be expected for some facilities. There is no information available on how many licensed residential programs are not currently able to

comply with the proposed requirements. However, the potential benefits in increased safety for residents is likely to outweigh any additional compliance costs incurred.

The new regulation also eliminates the separate facility license, which is currently required for any residential programs with more than five beds. Under the new regulation, all residential programs will now have to comply with facility physical environment requirements, regardless of the number of beds. This reflects the belief by the Department that the physical environmental standards (i.e., bedroom size, conditions of beds, privacy, hot and cold water) are appropriate and applicable to residents of all residential programs, not just those with a certain number of beds. The Department does not expect this new policy to significantly impact the affected residential programs (those with four or less beds) since most of the providers already meet a majority of the new standards. For those providers that do not meet the proposed standards, it is not possible to determine whether the compliance costs incurred will outweigh the potential benefits without knowing how much value residents put on these conditions.

Separation of Children and Adults

The proposed regulation requires that children and adults be housed separately in residential and inpatient programs and that there be separate group programming for children and adults. This requirement is intended to minimize the potential for physical and sexual abuse of children by adults and the exposure of children and adolescents to behavior by adults that are mentally ill or mentally retarded that may be inappropriate, distressing, or even traumatizing. The difficulty in providing appropriate treatment and staffing to a mixed population is another reason for this requirement. DMHMRSAS reports that four currently licensed residential facilities are currently combining adult and children populations.

Maximum Beds for an ICF/MR

The proposed regulation includes a maximum limit of 20 beds for a facility to be licensed as ICF/MR. The agency selected the limit of 20 beds in order to strike a balance between providing a high quality of care for clients that includes the homelike atmosphere that should characterize an ICF/MR and the need to make such programs economically viable. According to the agency, zoning requirements and preferences in program implementation are likely to lead providers to develop smaller group homes, which would minimize the potential economic effects of this requirement.

Additional Licensure Programs

The new regulation includes three new licensure categories: sponsored residential home services, intensive community treatment programs, and programs of assertive community treatment services. Sponsored residential home service providers are organizations that coordinate, supervise, and provide support to families or individuals (sponsors) providing care or treatment in their own homes. These providers are currently licensed as group home, which does not accurately represent their organizational structure. New requirements for these providers will include background checks for other people in the home and unannounced visits to sponsors' homes. The maximum number of beds for individuals receiving services in a sponsored

residential home is two. Homes with more than two beds would continue to be licensed as a group home. By more appropriately addressing the structure of sponsored residential home services, this change is likely to make the regulations clearer for providers and may increase compliance.

The existing regulations do not include specific provisions for licensing intensive community treatment programs or programs of assertive community treatment services. These services are now licensed as outpatient and supported residential services. The proposed licensure categories combine these two licenses into a single, more appropriate license specific to the types of services these programs provide. This change is unlikely to have any negative economic effects since providers who are not able or do not wish to comply with the requirements can remain licensed as outpatient and supported residential service providers.

Opioid Treatment and Detoxification Services

Most of the changes to the opioid treatment and detoxification services sections mirror changes in federal regulations. Some additional requirements are included that reflect current practice standards are not expected to exceed current practice by the providers.

Businesses and Entities Affected

There are approximately 350 licensed providers offering more than 1,000 licensed services at more than 2,000 locations around Virginia.

Localities Particularly Affected

The proposed changes to this regulation will not uniquely affect any particular localities.

Projected Impact on Employment

The proposed changes to this regulation are not expected to have any significant effects on employment in Virginia.

Effects on the Use and Value of Private Property

The proposed changes to this regulation are not expected to have any significant effects on the use and value of private property.

