



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 5-391 – Rules and Regulations for the Licensure of Hospices
Virginia Department of Health
February 15, 2008

Summary of the Proposed Amendments to Regulation

The Board of Health proposes to establish licensure requirements for providers of hospice services in a facility.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The proposed regulations will establish licensure requirements under the authority of the Board of Health for the providers of hospice services in a facility. Hospice programs provide palliative care to terminally ill patients. The main purpose of a hospice program is to provide physical, psychological, and spiritual comfort during the final stages of a terminal illness and during dying and bereavement.

Approximately 100 hospice providers are licensed by the Virginia Department of Health (VDH). Most of these hospice providers provide services at the home of their patients and are already regulated by existing regulations. However, three hospice providers have been providing services at a designated facility in addition to serving most of their patients in their homes. Pursuant to 2003 Acts of Assembly, HB1822, the providers that offer services at a hospice facility were licensed under the Department of Social Services (DSS) regulations as an Assisted Living Facility. The 2003 legislation required a hospice provider wishing to provide services at a facility be licensed as an Assisted Living Facility under DSS regulations. Though not required, all of the facilities provide hospice services at home to most of their patients. Thus, if a facility wanted to provide hospice services at a facility they were subject to dual licensure by two different regulatory entities.

The 2007 Acts of Assembly, HB1965, establishes that providers wishing to provide services at a facility be licensed by VDH instead of DSS. Consequently, the Board of Health proposes regulations to establish rules for hospice providers wishing to provide services at a facility.

Because the providers of hospice services at a facility are already subject to DSS regulations, the net economic impact of the proposed regulations stem from the differences between existing DSS regulations and the proposed VDH regulations.

On one hand proposed regulations may increase compliance costs by adding that a hospice facility must have a registered nurse available at the facility or one must be available to respond to emergency calls within twenty minutes. This particular requirement appears to have created some controversy among the regulated facilities. Whether this proposed requirement is necessary or not is a medical question. As the Commonwealth's regulatory medical authority, VDH believes the presence or accessibility of a registered nurse is essential for a hospice provider to provide services at a facility to ensure the health, safety, and welfare of the patients served. VDH also points out that hospice providers serving patients only at their homes are already required to comply with this requirement. Considering the patients at a facility are under the direct care of a hospice provider, it appears that they should be able to access a level of care at least as high as the level of care afforded to the patients served at their homes.

The economic effect of this proposed change is the cost difference between having a licensed practical nurse (LPN) and a registered nurse on staff. According to VDH, mean hourly wage rate for RN is \$27.89 and for LPN is \$17.73. If the facility pays for an RN for 24 hours everyday and 365 days in a year to comply with this requirement, the added compliance costs would be \$89,002 annually. However, this estimate should be considered as the upper ceiling for the added costs because some facilities may be able to comply with this requirement by utilizing their existing RNs for a much lower compensation.

On the other hand, the proposed regulations may reduce compliance costs because a number of proposed rules are less stringent than the rules the facilities must have complied with under the DSS regulations. Among the less stringent requirements are no longer requiring licensure of the administrator, annual administrative training, Tuberculosis testing, and

medication administration reports and manuals. These less stringent requirements have the potential to create some savings, offsetting some of the added compliance costs.

Businesses and Entities Affected

The proposed regulations apply to hospice providers providing services at a facility. Currently, there are three such facilities serving four or less patients each.

Localities Particularly Affected

The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment

The proposed regulations are expected to increase the demand for RN hours but the likely size of the actual increase cannot be determined.

Effects on the Use and Value of Private Property

The proposed regulations may reduce the asset value of hospice providers providing services at a facility if the additional compliance cost of complying with the RN staffing requirement is not fully offset by the cost savings from less stringent requirements. However, the likely size of net costs cannot be determined.

Small Businesses: Costs and Other Effects

All three hospice facilities affected are considered to be small businesses. Thus, the proposed regulations are estimated to increase the compliance costs as a result of the proposed RN staffing requirement and estimated to decrease the compliance costs as result of the proposed less stringent requirements. However, the likely size of net costs is not known.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Given VDH's determination that the RN services are medically necessary to ensure health, safety, and welfare of patients served at a hospice facility, there is no other alternative method that minimizes potential adverse impact on affected small businesses.

Real Estate Development Costs

The proposed regulations are not anticipated to create any real estate development 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.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H 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. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H 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.