



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

12 VAC 5-220 Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations

Virginia Department of Health

Town Hall Action/Stage: 5707 / 10215

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The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

In response to Chapter 1271 of the 2020 Acts of Assembly,² the State Board of Health (Board) proposes to increase the fee assessed on applications (application fee) for a Certificate of Public Need (COPN) and to establish a new fee for registrations (registration fee).

Background

This regulation requires health care providers seeking to open or expand a health care facility in Virginia to demonstrate that the community needs the services the facility would deliver and to receive approval from the State Health Commissioner. Approval is needed for projects involving services such as general acute care, perinatal, diagnostic imaging, cardiac, general surgical, organ transplantation, medical rehabilitation, psychiatric/substance abuse, mental retardation, and nursing facility.

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

² <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1271>

The COPN program is supported by fees. Chapter 1271 removed the statutory restrictions on the application fee, which were a minimum fee of \$1,000 and a maximum fee of not more than one percent of the proposed expenditure for the project or \$20,000, whichever was less. This legislation also expanded the authority of the Board to assess a registration fee (in addition to the already existing application fee for certification). Moreover, the legislation decreased the review interval for the State Health Services Plan (formerly the State Medical Facilities Plan) from four years to two years, and placed new requirements on the Virginia Department of Health (VDH) to have a publicly available electronic inventory of COPN-authorized capacity.

According to the Board, the legislative changes require an additional two full-time-equivalent (FTE) positions. In order to support the existing COPN program, the new program obligations, and the new FTEs, the Board proposes to 1) revise the application fee to 1.5 percent of the proposed expenditure for the project, but not less than \$1,600 and no more than \$44,000 and 2) establish a registration fee of \$70 for certain capital expenditures, the addition of medical equipment and services, and replacement of existing medical equipment.

Estimated Benefits and Costs

According to the Board, with the inclusion of two new FTEs, the COPN program budget's "annual revenue target" is now \$1,704,141. This represents an increase of \$682,471 compared to FY 2020 fee collections, which the Board states is the best comparable year due to the start of Covid-19 in 2020. Under the proposed changes, both the minimum and the percent fee would be higher, therefore increasing the burden on all applicants. For example, under the current fee schedule, projects with \$100,000 or less in expenses qualify for the minimum \$1,000 fee, projects between \$100,001 and \$2 million in expenses pay between \$1,001 and \$20,000 in fees, and projects greater than \$2 million in expenses pay the maximum allowed fee of \$20,000. More specifically, under the proposed changes the fees assessed on projects would be as follows:

- Projects with \$106,667 or less in expenses would qualify for the minimum \$1,600 fee;
- Projects between \$106,668 and \$1,333,333 in expenses would pay between \$1,601 and \$20,000 in fees;
- Projects between \$1,333,333 and \$2,933,333 in expenses would pay between \$20,001 and \$44,000 in fees; and

- Projects greater than \$2,933,333 in expenses would pay the maximum allowed fee of \$44,000.

Additionally, in the event the Board's revenues exceed its costs, the Board is not allowed to carryforward fees in excess of three month's operating expenses. This limitation on "carryforward" is found in Item 276 A.2 of the 2024 Appropriation Act.³ The limitation provides that any application fees in excess of the amount required to operate the COPN program (less three month's operating expenses) shall not be retained by the program but shall instead be provided to the regional health planning agencies (RHPAs) as supplemental funding. According to the Board, there used to be five RHPAs statewide, but only one RHPA remains active, the Health Systems Agency of Northern Virginia.

The Board also proposes to establish a new \$70 registration fee for certain capital expenditures, the addition of medical equipment and services, and replacement of existing medical equipment. Currently, registration is required, but no fee is assessed. In the five-year period from fiscal year (FY) 2015 to 2020, VDH issued an average of 30 registrations per year. As a result, it appears that in a typical year only \$2,100 in new revenues would be collected from the proposed registration fee; this equates to 0.12 percent of the program's \$1,704,141 "annual revenue target." It is understandable that registration process results in costs that are separate and apart from the application process, and as such these costs could be estimated from available data and so assessed. However, the introduction of a brand-new fee would also be accompanied by administrative complexities in assessing it, keeping track of it, depositing it, and correcting any errors in its administration both for VDH and the regulated entities.

Businesses and Other Entities Affected

The individuals, businesses, or other entities likely to be directly affected by the regulatory change are those that seek to apply for a COPN for projects and those that seek registration of qualified projects. This potentially includes hospitals, nursing homes, intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs), and some physician's offices. There are 103 general hospitals, 73 outpatient surgical hospitals, 8 psychiatric hospitals, 289 nursing homes, 61 ICF/IIDs, and 22,874 doctors of medicine in the Commonwealth. Over the FY 2015 and 2020 period, the number of COPN applications ranged from a low of 38 to a

³ <https://budget.lis.virginia.gov/item/2024/2/HB6001/Chapter/1/276/>

high of 61 per year, 46 being the average. In addition, approximately 30 registrations have been issued per year on average.⁴

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ As noted above, the proposed action would increase the minimum as well as percentage fee assessed and establish a new registration fee. Thus, an adverse impact on applicants and registrants is indicated.

Additionally, to the extent proposed fee changes result in excess revenue more than the program's three month's operating expenses, the RHPA may receive supplemental funding.

Small Businesses⁷ Affected:⁸

The proposed amendments appear to adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected

According to VDH, no data are available to indicate how many doctors of medicine operate a physician's office, and how many of that number would be engaging in services or utilizing equipment that would require either COPN application or registration; however, it is likely that all doctors of medicine would qualify as a small

⁴ Data source: VDH

⁵ Pursuant to Code § 2.2-4007.04(D): 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.

⁶ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁷ 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."

⁸ 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.

business if they did operate a physician's office. Over the five years between FY 2015 and 2020, COPN requests from physician groups made up an average of 18.8 percent of all requests, which translates to an average of 8.8 requests per year.

Costs and Other Effects

The costs and other effects on doctors of medicine that would qualify as a small business if they did operate a physician's office would be the additional fees for COPN and the \$70 registration fee for services or equipment requiring registration as discussed above.

Alternative Method that Minimizes Adverse Impact

Given the small relative size of the expected revenue from the registration fee as a portion of total program revenues and the implied recordkeeping costs and other administrative complexities, VDH may wish to analyze if this fee could be eliminated without any discernible negative impact on the COPN program.

Localities⁹ Affected¹⁰

A locality would be affected by the proposed changes to the extent it is involved in medical services or equipment requiring COPN application or registration. According to VDH, the County of Bedford, Lee County Hospital Authority, and Chesapeake Hospital Authority may be particularly affected by this proposed regulatory change since Bedford operates a nursing home and the two hospital authorities operate a licensed general hospital each and would be affected by this proposed regulatory change.

Projected Impact on Employment

The proposed amendments would provide direct funding for two full time program staff at VDH.

Effects on the Use and Value of Private Property

The proposed increase in COPN application fees and the establishment of a new registration fee would add to the costs of projects requiring such fees. Consequently, the value of the entities subject to the higher application fee and the new registration fee may be moderately

⁹ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

reduced. The proposed amendments do not appear to directly affect real estate development costs.