



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

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**12 VAC 5-391 Regulations for the Licensure of Hospices**  
**Virginia Department of Health**  
**Town Hall Action/Stage: 5940 / 9592**  
September 9, 2022

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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 these economic impacts.<sup>1</sup>

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

Pursuant to a legislative mandate, the State Board of Health (Board) proposes to amend this regulation to require all licensed hospices to establish a protocol allowing patients to receive visits from the clergy of any religious denomination or sect during a declared public health emergency related to a communicable disease of public health threat.

### **Background**

This regulatory action is a result of a legislative mandate from Chapter 525 of the 2021 Acts of Assembly, Special Session I.<sup>2</sup> This mandate amended Code §§ 32.1-127, 32.1-162.5, and 63.2-1732 pertaining to the regulations of hospitals, nursing homes, certified nursing facilities, assisted living facilities, and hospices. For these regulations, the board is required to include that during a declared public health emergency, related to a communicable disease of public health threat, each facility must establish a protocol allowing patients and residents to receive visits

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<sup>1</sup> 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.

<sup>2</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0525>.

from a rabbi, priest, minister, or clergy of any religious denomination or sect. The mandate allows the protocol to: restrict the frequency and duration of visits; require visits to be conducted virtually using interactive audio or video technology; and require the person visiting a patient under this protocol to comply with all reasonable requirements of the facility adopted to protect the health and safety of the person, patients, and staff of the facility. According to Virginia Department of Health (VDH), this legislative mandate occurred as a result of complaints received from the public during the COVID-19 pandemic. However, while VDH received numerous complaints about being unable to visit family and friends in hospitals and nursing homes, only a single complaint concerned denial of access to clergy.

### **Estimated Benefits and Costs**

The proposed changes to the regulatory text are identical to the requirements established in the legislative mandates with the exception of some formatting and technical differences.<sup>3</sup> Thus, any costs associated with implementing the mandated changes result from the legislation rather than these regulations. However, VDH has not identified any costs.

Although the benefits are not quantified, VDH asserts that access to clergy provide spiritual support during end-of-life care, can improve patient well-being by alleviating or reducing anger, fear, or depression, and both patients and their family members can receive assistance in processing grief before, during, and after death.

Federal regulations for hospices that are certified to participate in Medicare and Medicaid already require that visitation with clergy be facilitated, and that an infection control program be in place to protect visitors from communicable diseases (see 42 CFR §§ 418.60 and 418.64(d)(3)(iii)); every licensed hospice in Virginia is certified, so they are already required to adhere to these requirements.<sup>4</sup> Therefore, the changes being made by this regulatory action have no direct or indirect cost or benefit because Chapter 525 does not change the substance of any existing requirements that hospices are meeting.

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<sup>3</sup> According to VDH, this regulatory package was first prepared as an exempt action under § 2.2-4006(A)(4)(a), which requires regulations to be filed with the Registrar within 90 days of the law's effective date. Because the action was not filed within the required timeframe due to personnel changes in the Office of the Commissioner, the regulatory action does not qualify as an exempt action.

<sup>4</sup> ORM Economic Impact Document.

Because hospices are already required to allow visitation with clergy, and they are already required to comply with the Code of Virginia even in the absence of these regulations, the main impact of the proposed changes is to conform the regulatory text to the amended section of the Code of Virginia and eliminate a potential source for confusion among the regulated entities and the public about the requirements (e.g., obligations and rights regarding visitations during a public health emergency).

### **Businesses and Other Entities Affected**

The proposed changes apply to 147 licensed hospices.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposed changes do not introduce any new requirements beyond those already mandated by the Code of Virginia. Thus, no adverse impact on any entity is indicated.

### **Small Businesses<sup>6</sup> Affected:<sup>7</sup>**

According to VDH, twenty of the licensed hospices are estimated to meet the definition of “small business.” However, the proposed amendments to the regulatory text do not adversely affect small businesses.

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<sup>5</sup> 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. 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.

<sup>6</sup> 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.”

<sup>7</sup> 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.

**Localities<sup>8</sup> Affected<sup>9</sup>**

The proposed amendments to the regulatory text do not introduce costs for local governments.

**Projected Impact on Employment**

The proposed amendments to the regulatory text do not appear to affect total employment.

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

The proposed amendments to the regulatory text do not appear to affect the use and value of property or the real estate development costs.

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<sup>8</sup> “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.

<sup>9</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.