



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

12 VAC 30-120 Waiver Services: Intellectual Disability Waiver
Department of Medical Assistance Services
June 23, 2015

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 2 of the 2014 Acts of the Assembly, Item 301 III, the proposed regulation permanently establishes a 25 percent higher reimbursement rate for congregate residential services for individuals with complex medical or behavioral needs currently residing in an institution and unable to transition to integrated settings in the community due to the need for services that cannot be provided within the maximum allowable rate, or for individuals whose needs present imminent risk of institutionalization and who need enhanced waiver services beyond those available within the maximum allowable rate.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

In 2008, the Department of Justice (DOJ) began an investigation, pursuant to the Civil Rights of Institutionalized Persons Act, in the Commonwealth and in 2010 expanded it to examine the Commonwealth's compliance with the Americans with Disabilities Act and the U.S. Supreme Court "Olmstead" ruling. This expansion covered Virginia's entire system of services for citizens with intellectual and developmental disabilities, including all five state training centers and community services serving these individuals.¹ The DOJ investigation concluded that Virginia needed to improve service provision to better integrate community services, and that Virginia's training centers' discharge process required improvement.

¹ The Olmstead decision requires that individuals with disabilities be served in the most integrated settings possible.

The agreement reached between DOJ and the Commonwealth directly ties to this regulatory action. According to the Department of Behavioral Health and Developmental Services (DBHDS), individuals who have exceptional medical care and behavioral health issues, and are being discharged from training centers, require additional supports in order to successfully transition into their communities and remain there safely. Residential support services providers, who will be accepting many of these exceptional care individuals, are facing significant challenges in rendering services for such individuals within the existing rate structure. They are consistently providing services and staff time in excess of the waiver's service maximum reimbursement limits.

As a result, Chapter 2 of the 2014 Acts of the Assembly, Item 301 III mandated the Department of Medical Assistance Services (DMAS) to establish a 25 percent higher reimbursement rate for congregate residential services for individuals with complex medical or behavioral needs currently residing in an institution and unable to transition to integrated settings in the community due to the need for services that cannot be provided within the maximum allowable rate, or for individuals whose needs present imminent risk of institutionalization and who need enhanced waiver services beyond those available within the maximum allowable rate.

DMAS adopted its emergency regulation effective November 1, 2014 and now proposes to permanently adopt the 25 percent additional congregate residential services reimbursement rate for qualifying individuals. In order to receive the additional 25 percent reimbursement rate, interested providers must demonstrate they can meet the support needs of qualifying individuals, be approved by DBHDS to receive the exceptional rate, and provide the documentation in support of their exceptional claims for reimbursement.

DMAS and DBHDS estimate, based on DBHDS' data, that approximately 250 individuals will need, and qualify for, the additional support services that are to be covered by this exceptional reimbursement rate. The main economic effect is expected to be to on the affected individuals, who have complex medical and behavioral care needs and who also reside in training centers, in enabling them to transition to community living. In addition, the providers who agree to accept these individuals with complex care needs could be inferred to benefit from these changes as their participation is voluntary.

The total additional expenditures estimated for this reimbursement expansion is \$7.4 million, with approximately \$3.7 million from state funds and the rest from federal funds, per year. In addition, with the proposed changes the Commonwealth would be on track to implement the settlement agreement with DOJ.

Businesses and Entities Affected

Approximately 250 individuals are estimated to need, and qualify for, the payment of the exceptional congregate residential rate established by this action. The total number of congregate residential services providers is 363. At this time, there are 33 approved providers, 26 approved individuals, and 27 individuals' requests are currently being reviewed for the exceptional services and the reimbursement.

Overall there are about 8,621 individuals being served in this waiver and another 6,512 individuals on the waiting list. For all of the services covered by this waiver, there are 1,573 providers that participate.

Localities Particularly Affected

The proposed changes apply throughout the Commonwealth.

Projected Impact on Employment

As the qualifying individuals are transitioned from state training centers to community settings, training centers' demand for labor is expected to decrease and approved providers' demand for labor is expected to increase. In fact, all but one of the five state training centers are planned to be closed by 2020.

Effects on the Use and Value of Private Property

The proposed exceptional rate is expected to increase revenues of approved congregate residential services providers and have a positive impact on their asset values.

Real Estate Development Costs

The proposed amendments are unlikely to significantly affect real estate development costs.

Small Businesses²:**Costs and Other Effects**

The proposed exceptional rate is expected to have a positive economic effect on approved congregate residential services providers as discussed above.

Alternative Method that Minimizes Adverse Impact

The proposed amendments will not adversely affect small businesses.

Adverse Impacts:**Businesses:**

The proposed amendments will not adversely affect businesses.

Localities:

The proposed amendments will not adversely affect localities.

Other Entities:

The proposed amendments will contribute to closure of all but one of the five training center in the Commonwealth.

Legal Mandates

General: The Department of Planning and Budget 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 Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report 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.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): 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 within the 45-day period.

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

² 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.”

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.

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