



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

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**22 VAC 40-771 – Regulation for Adult Services Providers**  
**Department of Social Services**  
May 8, 2006

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### **Summary of the Proposed Regulation**

The Board of Social Services (board) proposes to promulgate a new regulation that addresses standards and procedures for adult services providers.<sup>1</sup> The proposed regulation will replace the provisions on adult services providers in 22 VAC 40-770.

### **Results of Analysis**

There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

### **Estimated Economic Impact**

Currently the adult services providers are regulated under 22 VAC 40-770, which addresses approval and regulation of service providers including adult service providers, child care providers, and adoptive and foster care providers. Because of the uniqueness of each type of provider, it is no longer appropriate to generically address them in a single regulation. The board proposes to promulgate new regulations to address each type of provider separately. This proposed regulation is reformatted and focuses only on adult services providers that are approved by local departments of social services (local department).

The proposed regulation requires that the out-of-home care providers including adult foster care providers<sup>2</sup> and adult day services providers<sup>3</sup> document all medications taken by adults

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<sup>1</sup> According to 22VAC40-771, an adult services provider provides out-of-home care (including day services and foster care) or in-home care (including chore, companion and homemaker services) for up to three adults. Clients of adult services providers are adults aged 60 and over or aged 18 to 59 who have a disability.

<sup>2</sup> According to 22 VAC 40-771, adult foster care provider means a provider who provides room and board, supervision, and special services to an adult who has a physical or mental condition or an emotional or behavioral problem. Adult foster care may be provided by a single provider for up to three adults.

in care, including over-the counter medications. Currently there is no such requirement. This regulatory change will help better protect the health of the clients while only requiring a small amount of time for the providers.

Another change is being proposed to the medical requirements of the providers in order to conform to the regulations and policies of the Department of Health. All in-home providers shall submit statement from the local health department or licensed physician that he/she is believed to be free of tuberculosis in a communicable form. While under current regulation, tuberculosis testing is not required if an in-home provider is a relative or friend of the client living in the client's home, or a relative or friend outside of the client's home but has had regular ongoing contact with the client. This regulatory change is made in response to increasing tuberculosis cases in recent years and will better protect the health of adults in care. According to Department of Social Services (DSS), tuberculosis test can be done by the health department for free or at low costs, therefore, this proposed change will likely not have any significant impact on applicants of providers.

The proposed regulation eliminates a requirement for criminal background checks for providers due to a finding of the Attorney General's office that the agency does not have the legal authority to require criminal background checks of providers. DSS plans to request that the Governor's office submit a bill that would require a criminal background checks for these providers in the next General Assembly session. According to DSS, although the local departments may not directly request criminal background record from the state police, a client can request the record under his/her name and send it to the local department with signature. Therefore, this regulatory change will likely not have any significant adverse impact before the anticipated new legislation takes effect.

New provisions which relate to provider responsibilities and client rights are being added to the proposed regulation. These provisions are borrowed from DSS licensing regulations/standards. Other proposed regulatory changes expand the current provisions and incorporate current standard practice or rules in the Adult Services Policy Manual (Manual) into the regulations. Therefore, they will likely not have any significant impact on the providers or

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<sup>3</sup> Adult day services provider means a provider who gives personal supervision for up to three adults for part of a day. The provider promotes social, physical and emotional well-being through companionship, self-education, and satisfying leisure activities.

clients. For example, the proposed regulation requires that provider monitoring for in-home providers include interviews not only with the provider, but also with adults receiving care, and that the adult in care or his/her responsible person shall have access to all provider monitoring reports completed by the local department. Under the current regulations, only the provider is required to be interviewed in order to monitor his/her performance. According to the DSS, local department representatives currently interview the clients as well as the provider for annual assessment or special assessment based on changes in clients' situation, and the report is available to the clients on request. The proposed regulation also requires that the local department consult with a DSS regional specialist prior to granting an allowable variance, which is what currently the local departments are normally doing. Policies in the Manual regarding emergency plan, emergency approval, noncompliance (provisional approval, approval suspension and revoke), relocation, and reporting are incorporated into the new regulations.

### **Businesses and Entities Affected**

The proposed regulation revises and expands the current provisions on adult services providers. Most of the regulatory changes are clarification or incorporation of the policies in the Manual to the regulations. The proposed regulations will help ensure the safety and proper care of the clients while having a slight impact on the providers. According to DSS' annual Adult Services Survey, currently there are 2,120 local department approved home-based care providers and approximately 63 adult foster care homes.

### **Localities Particularly Affected**

The proposed regulation affects localities throughout the Commonwealth.

### **Projected Impact on Employment**

The proposed regulation will only slightly affect the providers and will likely not have any significant impact on employment.

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

The proposed regulation will likely not have any significant impact on private property.

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## **Small Businesses: Costs and Other Effects**

Current and future adult service providers that provide out-of-home care and in-home care for up to three adults may incur small book-keeping costs, mainly the value of their time, due to the requirement of documenting of all medication taken by adults in care. Most of the 2,120 home-based care providers and 63 adult foster care homes are small businesses.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

The proposed regulations will help ensure the safety and proper care of the clients while having slight impact on the providers. There is no alternative method that will have a smaller adverse impact on small businesses.

## **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 21 (02). 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.