



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

**12 VAC 30-60 Standards Established and Methods Used to Assure High Quality Care
Department of Medical Assistance Services
Town Hall Action/Stage: 5661 / 9718
November 21, 2022**

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.¹

Summary of the Proposed Amendments to Regulation

Pursuant to Chapters 304 and 365 (identical) of the 2020 General Assembly,² the Director of the Department of Medical Assistance Services (DMAS) proposes on behalf of the State Board of Medical Assistance Services (Board) to make an emergency regulation permanent which: 1) allows qualified nursing facility staff to complete the long-term services and supports (LTSS) screening for individuals who apply for or request LTSS, and who are receiving non-Medicaid skilled nursing services in an institutional setting following discharge from an acute care hospital; 2) requires that qualified nursing facility staff receive training and be certified in the use of the LTSS screening tool and conduct screenings in accordance with state regulations; and 3) protects individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community based services.

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+CHAP0304&201+ful+CHAP0304> and <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0365>.

Background

An individual's level of care for nursing facility is determined through the LTSS screening packet. LTSS screening is also used to determine whether a nursing facility is the appropriate setting for the individual (i.e., that the nursing facility has the capacity to provide to the individual the services and level of care they require).

Before the legislative changes, when private pay individuals were discharged from acute care hospitals and admitted to nursing facilities, the hospitals were responsible for conducting LTSS screening to determine whether the patient would become eligible for Medicaid in the next six months.³ Nursing facilities could not do this screening because they were not authorized under Virginia law or regulation to do so. Chapters 304 and 365 changed that and now allow nursing facilities to conduct the screenings. According to DMAS, the enabling legislation resulted from a request by the Virginia Health Care Association.

Further, the legislative mandate required that nursing facility staff be trained in LTSS screening and that the affected Medicaid member is afforded a choice on the type (i.e., community or institutional) of setting and a specific provider. The LTSS screening team also administers the required choice of setting forms (i.e., community or institutional care) and choice of provider.

The provisions of the mandate were implemented by an emergency regulation effective on February 16, 2022.⁴ This action would permanently replace the emergency regulation.

Estimated Benefits and Costs

Allowing nursing facilities to conduct LTSS screening would replace some of the screening that was previously conducted by other screeners. Since this change affects only who is allowed to conduct a screening, the total number of LTSS screenings should not be affected. DMAS does not anticipate any significant costs, and notes that LTSS screening is already

³ Other authorized LTSS screeners include hospital LTSS screening teams and community-based LTSS Screening teams consisting of (i) a registered nurse, nurse practitioner (ii) a social worker or other assessors designated by DMAS; and (iii) a physician. The Uniform Assessment Instrument (UAI) is one of the required forms in the LTSS screening packet. Va. Code 32.1-330 and DMAS regulations designate the UAI as Virginia's screening tool to evaluate an individual's functional eligibility for community or institutional long-term care services. The Centers for Medicare and Medicaid approved the UAI as the single comprehensive pre-screening tool to determine an individual's care needs. Completion of the Level I and if needed, Level II, preadmission screening and resident review, a federally-required assessment, to assess for a mental illness, intellectual disability or related condition is also a part of the LTSS screening packet.

⁴ <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9150>.

required and conducted by community-based providers and hospitals and that this action merely allows nursing facilities to also screen. The anticipated benefits of this legislatively-driven change include additional flexibility to adjust to the changing financial situations of patients, improvements in the information available to nursing facilities regarding an incoming patient's financials, and an overall improvement in the ability for people to be screened and admitted to nursing facilities.

As mandated by the legislation, this proposed permanent regulation also requires nursing facility staff to have the same training and certification as other LTSS screeners. According to DMAS, the existing training and certification process used for nursing facility screening teams has already been updated to enable nursing facility staff to be trained with minimal effort.

Finally, the legislation and consequently this regulation protect individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community-based services. In addition to bolstering an individual's right to choose the setting and a particular provider, this legislatively-mandated change may also improve competition among providers and lead to improvements in service quality.

It is worth noting that all of the proposed changes to this regulation have been mandated by the legislation and almost all costs and benefits should be attributed to the legislation rather than this regulation. Additionally, the proposed changes have already been implemented through an emergency regulation effective February 2022. Thus, no economic impact is expected from this action, which makes this regulation permanent. Instead, the main impact of the proposed permanent regulation is an improvement in the accuracy of the text by reflecting current practices and aligning it with the requirements in the Code of Virginia.

Businesses and Other Entities Affected

From 2020 through October 31st 2022, on average about 43,000 total screenings were conducted annually by all providers. Since nursing facilities began conducting screenings on January 1, 2020, the screenings conducted by them have increased from 14 in 2020 and 990 in 2021, to 3,376 in the January 1st - October 31st 2022 timeframe. None of the providers appear to be disproportionately affected.

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 revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, all of the proposed changes discussed are mandated by the legislation and not discretionary for the Board. Thus, the main economic impact of this regulatory action is to align it with the Code of Virginia. Thus, no adverse impact is indicated by the proposed regulatory changes.

Small Businesses⁶ Affected:⁷

The proposed amendments do not appear to adversely affect small businesses.

Localities⁸ Affected⁹

The proposed amendments do not disproportionately affect particular localities or introduce costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not affect the use and value of private property or the real estate development costs.

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. 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.

⁶ 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.”

⁷ 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.

⁸ “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.

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