



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

12 VAC 30-130 Amount, Duration and Scope of Selected Services
Department of Medical Assistance Services
Town Hall Action/Stage: 5805 / 9375
December 18, 2023

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

Pursuant to Chapter 449 of the 2021 Special Session I Acts of the Assembly², the Director of the Department of Medical Assistance Services (DMAS), acting on behalf of the State Board of Medical Assistance Services (Board), proposes to incorporate in the regulation paid sick leave benefits for Medicaid consumer-directed (CD) attendants that were implemented in November 2021.

Background

This regulatory action incorporates in the regulatory text the requirements of Article 2.1 of the Virginia Minimum Wage Act (§40.1-33.3 et seq. of the Code of Virginia), which passed during the 2021 General Assembly.³ The legislation provided paid sick leave benefits to “home health workers,” which the legislation defines as individuals who provide “personal care, respite, or companion services to an individual who receives consumer-directed services under the state

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?212+ful+CHAP0449>

³ Ibid.

plan for medical assistance services.” This definition refers to attendants in Medicaid’s consumer directed model of care. These attendants provide personal care, respite, or companion services to Medicaid-eligible individuals in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program, Medicaid Works program, and three of Virginia’s four 1915(c) Home-and-Community-Based Services Waivers: Community Living, Family and Individual Supports, and Commonwealth Coordinated Care Plus.

The parameters of the paid sick leave benefit eventually adopted by DMAS follow the guidelines provided in the legislation. As such, it is available to attendants who work “on average at least 20 hours per week or 90 hours per month.” Attendants accrue one hour of sick leave for every 30 hours of work, up to a total of 40 hours in a given fiscal year. No more than 40 hours of unused sick leave can be rolled over to the next fiscal year.

Eligibility for sick leave is determined by the fiscal-employer agent (F/EA) of the Medicaid member. Under this arrangement, the Medicaid member is the “employer” referred to in the legislation,⁴ and the F/EA is a vendor who serves as the employer’s agent under the Internal Revenue Code as an employer agent on behalf of the employer.⁵ The F/EAs already provide payroll and tax processing for the consumer-directed model for both fee-for-service and managed care members. The F/EA looks at the hours worked in every quarter and if the attendant is deemed eligible, he or she is assumed to be eligible for the rest of the fiscal year. If an attendant is not eligible in one quarter, the F/EA keeps checking the eligibility status in the following quarter.

Estimated Benefits and Costs

During the 2021 legislative session the fiscal impact of this benefit was estimated to be \$3,443,865 in state general funds and an additional \$3,443,865 in federal matching funds, covering approximately 30,390 eligible attendants in a given year. Item 313 BBBB of the 2021 Appropriation Act provided the authority and funds to implement this new benefit, and the federal Centers for Medicare and Medicaid Services approved this change on October 6, 2021. In November 2021, DMAS started determining eligibility and providing sick leave. Therefore the

⁴ See https://vamedicaid.dmas.virginia.gov/sites/default/files/2023-07/CCC%20Plus%20Appendix%20C%20%28updated%209.1.21%29_Final.pdf

⁵ See <https://www.irs.gov/government-entities/federal-state-local-governments/third-party-payer-arrangements-section-3504-agents>

main impact of this regulatory action is to incorporate the sick leave benefit for Medicaid consumer directed attendants into the regulatory text.

The legislation itself however clearly benefits the attendants who accrue sick leave by providing compensation for the times they are sick and cannot work, thereby enabling them to rest and recover. The Medicaid members served by these attendants are also expected to benefit in terms of their attendants being less likely to come in contact with them when sick. When sick, attendants are not likely to be as productive and their sickness may be contagious.

One half of the total costs of this benefit is absorbed by the general fund and the remaining half is provided by the federal government. While general fund dollars represent an expenditure of state funds, which could potentially be used for other purposes, the federal funds are a net injection into the Commonwealth's economy. In other words, if it was not for this purpose, the federal funds would not be available. Thus, the additional federal funds should help expand Virginia's economy.

Businesses and Other Entities Affected

This regulation applies to approximately 30,390 consumer-directed attendants eligible for the paid sick leave benefit.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ 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 main impact of this action is to codify DMAS's procedures and requirements in the regulation as they relate to how consumer-directed attendants become eligible for the paid sick leave benefit, how the eligibility is calculated, and when and how the paid sick leave benefit is issued by the F/EAs. Thus, no adverse impact is indicated.

⁶ 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.

Small Businesses⁷ Affected:⁸

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

Localities⁹ Affected¹⁰

The proposed amendments apply the same in all of the localities of the Commonwealth and do not create costs for local government.

Projected Impact on Employment

The provision of the sick leave as a result of the legislation would increase the demand for labor, because another attendant would be needed to cover for those attendants who use the sick leave benefit. However, the regulation itself is not expected to impact employment because it is implementing pre-existing statutory provisions and the program is already in effect.

Effects on the Use and Value of Private Property

The proposed regulation is not expected to affect the use and value of private property nor real estate development costs.

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.

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.