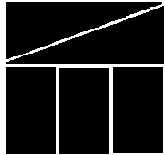


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

12 VAC 35-270 Certified Recovery Residences
Department of Behavioral Health and Developmental Services
Town Hall Action/Stage: 5364/8726
November 7, 2019 (Edited November 14, 2019 with technical corrections.)

Summary of the Proposed Amendments to Regulation

The State Board of Behavioral Health and Developmental Services (Board) seeks to add a new chapter (12 VAC 35-270) titled *Certified Recovery Residences*. The Board proposes in this regulation to certify recovery residences (or sober houses) in order to provide accurate and useful information for individuals in recovery from substance use disorders (SUDs).² Certification would be optional.

The Board reports that individuals in recovery from SUDs benefit from mutual peer support and accountability in a recovery oriented environment. With recent increases in the demand for sober housing, the Board finds it necessary to increase effective recovery supports and reduce instances of unscrupulous management of recovery homes. Voluntary certification would provide a low-cost mechanism for *bona fide* recovery residences to signal their compliance with best practice standards. Houses that are certified would be added to a list of certified recovery residences that would be maintained by the Department of Behavioral Health and Development Services (DBHDS) on its website. This list would be used

¹ 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.

² “Recovery residence” is defined in the proposed regulation as “a housing facility that provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders that does not include clinical treatment services.” Since they are private, self-sustaining and do not provide any SUD treatment, they are ineligible for public funding, and hence generally operate without any public oversight.

as a resource by social workers, parole officers, and others working with individuals who are most likely to look for sober housing.

Background

The 2019 Acts of Assembly (Chapter 220) adds a section to the Code of Virginia (§ 37.2-431.1 *Certified recovery residences*), which (i) prohibits anyone from representing that a recovery residence has been certified, unless it has actually been certified by DBHDS in accordance with regulations adopted by the Board, (ii) directs DBHDS to maintain a list of certified recovery residences on its website, and (iii) allows DBHDS to institute civil proceedings against anyone violating the provisions of this section. The law specifically allows the Board to promulgate regulations that may require accreditation or membership in a credentialing agency as a condition of certification.³

The proposed regulation mirrors the law almost verbatim, except to specify that any person, nonprofit organization, or business entity seeking to operate a certified recovery residence must be credentialed by the Virginia Association of Recovery Residences (VARR) or Oxford House.⁴ DBHDS chose these two accrediting bodies because they were recognized by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) and explained other credentialing entities seeking to become active in Virginia could be eligible if they were to be recognized by SAMHSA as an effective recovery housing model.

Estimated Benefits and Costs

DBHDS' cost of maintaining a list of certified recovery residences on its website is likely to be nominal. Individuals, nonprofits or businesses that operate recovery residences and seek credentialing with VARR must pay a \$500 annual membership fee for the first house and an

³ "Credentialing entity" is defined as "a nonprofit organization that develops and administers professional certification programs according to nationally recognized recovery housing standards."

⁴ See <https://www.oxfordhouse.org/userfiles/file/>, <https://narronline.org/about-us/>, and <http://www.varronline.org/> for information on Oxford Houses, the National Alliance of Recovery Residences, and the Virginia Association of Recovery Residences respectively.

additional \$50 per year for each additional house. Oxford House does not appear to charge a membership fee.

The benefits of access to sober housing for individuals in recovery have been studied extensively and are well documented.⁵ The Oxford House model in particular has been evaluated rigorously and found to be cost-effective because they lower the likelihood of relapse and incarceration.⁶ Due to the opioid crisis, recovery housing has received renewed attention in a Surgeon General's report⁷ and SAMHSA has developed a set of best practices for individuals or organizations wishing to start a recovery residence.⁸

However, increased mainstream interest in recovery housing has also allowed unethical practices to proliferate, such as coercive treatment of residents and Medicaid fraud, increasing calls for oversight by state and local governments⁹ and prompting the U.S. Government Accountability Office (GAO) to examine recovery housing.¹⁰ Because sober houses are financially self-sustaining by design, they generally fall outside the regulatory purview of state and local authorities. Individuals who end up in an abusive shared-housing situation face the same costs as any tenant faced with an abusive landlord or roommates, but with the additional risk of jeopardizing their sobriety and losing their job or parole or other resources that were conditioned on their sobriety.

Further, the central problem is lack of information: individuals looking for sober housing (and the caseworkers who might be helping them) need a reliable source of information indicating which houses are likely to be safe and legitimate recovery residences. This proposed regulation provides a solution to the lack of information by creating a voluntary certification that is sufficiently accessible to recovery residences and creates a network of houses meeting nationally recognized standards. Further, this certification and the information maintained by

⁵ For examples, see Polcin and Henderson, 2008 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2556949/>); Groh, Jason, Ferrari and Davis, 2009 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2916198/>); and Polcin *et al*, 2010 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3008818/>).

⁶ See Lo Sasso *et al*, 2012 (<https://doi.org/10.1016/j.evalprogplan.2011.06.006>).

⁷ See *The Surgeon General's Report on Alcohol, Drugs, and Health*, 2016 (<https://addiction.surgeongeneral.gov/sites/default/files/surgeon-generals-report.pdf> page 5-11) and *Facing Addiction in America – The Surgeon General's Spotlight on Opioids*, 2018 (https://addiction.surgeongeneral.gov/sites/default/files/OC_SpotlightOnOpioids.pdf pages 25-26).

⁸ See <https://www.samhsa.gov/sites/default/files/housing-best-practices-100819.pdf>.

⁹ See <https://www.governing.com/gov-institute/voices/col-regulation-sober-living-homes-recovery-residences-need.html>.

¹⁰ See <https://www.gao.gov/products/GAO-18-315>.

DBHDS would provide caseworkers and caregivers in outpatient settings, who are working with individuals in recovery, with an additional resource to offer their clients. To the extent that these efforts increase the availability of reliable information works as intended, these professionals, the clients they serve, and legitimate sober homes all stand to benefit. Houses that choose not to be certified can continue to provide sober housing, but their pool of clients and referrals may decrease as people seek to choose houses that are less likely to be run in an unscrupulous manner.

Lastly, the proposed regulation does not explicitly state that certification would be voluntary, and leaves a number of operational details to these credentialing entities. Once the regulation takes effect, any lack of clarity about the voluntary nature of the certification, the choice of credentialing entities, or actions taken by those credentialing entities could diminish the informational value of the certification, which would in turn limit the benefits described above.

Businesses and Other Entities Affected

The proposed regulation potentially affects recovery housing owners and operators, their residents, recovery organizations, law enforcement officials, parole or probation officers, courts, and community services boards.

Localities¹¹ Affected¹²

The proposed regulation does not appear to introduce new costs for local governments. Localities that currently have higher rates of SUD prevalence may be more likely to have recovery residences, but the proposed introduction of voluntary certification is likely to benefit them.

Projected Impact on Employment

The proposed regulation is unlikely to affect total employment, except to the extent that individuals in recovery are able to maintain their sobriety and find employment.

¹¹ “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.

¹² § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Effects on the Use and Value of Private Property

The proposed regulation does not appear to directly affect real estate development costs. It is unclear what effect certification may have on the value of private property in neighborhoods that contain recovery houses. Some homeowners may not want homes in their neighborhood to be used as recovery residences because it may be perceived as “undesirable” and could drive down the value of their home. However, obtaining certification could allay such concerns and reduce the risk of the neighborhood actually experiencing any decline in house prices.

Adverse Effect on Small Businesses¹³:

The proposed regulation is unlikely to adversely impact small businesses, other than perhaps recovery residences that either chose to not obtain a certification or are unable to do so.

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 14 (as amended, July 16, 2018). 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(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 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 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.

¹³ 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.”