

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): Yes 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 5-371 Regulations for the Licensure of Nursing Facilities
Virginia Department of Health
Town Hall Action/Stage: 4489 / 7407
September 25, 2017

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 600 of the 2016 General Assembly,¹ the State Board of Health (Board) proposes to establish provisions for voluntary audio-visual recording of residents in nursing facilities.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Electronic monitoring/audio-visual recording of residents in nursing facilities is completely optional. All requests for electronic monitoring must be made in writing and signed by the resident or the resident's responsible party if the resident has been properly assessed incapable of requesting and authorizing the monitoring.

Chapter 600 states that the Board shall promulgate regulations:

... for the audio-visual recording of residents in nursing facilities. Such regulations shall include provisions related to (i) resident privacy, (ii) notice and disclosure, (iii) liability, (iv) ownership and maintenance of equipment, (v) cost, (vi) recording and data security, and (vii) nursing facility options for both nursing facility-managed recording and resident-managed recording. The Department of

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0600>

Health shall convene a workgroup that includes representatives of nursing facilities, advocates for residents of nursing facilities, and other stakeholders to make recommendations to the Board on such regulations and shall report its recommendations to the Board and the General Assembly.

The Board proposes provisions to address each of the items delineated in the legislation. According to the Virginia Department of Health, the proposed amendments are a combination of the Board's 2004 guideline "Electronic Monitoring of Residents' Rooms" which were developed to assist facilities with the privacy issues that may arise when installing electronic monitoring equipment and the work of the workgroup assembled pursuant to Chapter 600.

Concerning cost, the proposed regulation states that:

A facility may require a resident or a resident's responsible party to pay for all costs, other than the cost of electricity, associated with installing electronic monitoring equipment. Such costs shall be reasonable and may include, but are not limited to: equipment, recording media and installation, compliance with life safety and building and electrical codes, maintenance or removal of the equipment, posting and removal of any public notices, or structural repairs to the building resulting from the removal of the equipment. Facilities shall give 45 days notice of an increase in monthly monitoring fees.

The proposed amendments provide clarity concerning rules and requirements for the optional electronic monitoring/audio-visual recording of residents in nursing facilities. The specificity of the proposed language would reduce the likelihood of misunderstandings and disagreements. Under the proposed regulation, nursing facilities would not be burdened by significant costs if residents or their representative request electronic monitoring. Thus, the proposed amendments should produce a net benefit.

Businesses and Entities Affected

The proposed amendments affect the 281 licensed nursing facilities within the Commonwealth of Virginia, as well as the patients or residents of those facilities and their family members or legal representatives. Based upon Virginia Employment Commission data, all but one of the nursing facilities likely qualify as small businesses.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments are unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments would not significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

Small Businesses:**Definition**

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.”

Costs and Other Effects

The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:**Businesses:**

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

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 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.