



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

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**12 VAC 5-381 Home Care Organization Regulations**  
**Virginia Department of Health**  
**Town Hall Action/Stage: 6109 / 9827**  
December 15, 2022

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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.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

The State Board of Health (Board) proposes to incorporate in this regulation a legislative mandate<sup>2</sup> that changed the Home Care Organization (HCO) license renewal cycle from annual to triennial, such that each license is valid for a three-year period, compared to the previous one-year period. The mandate also increased the annual renewal fee from \$500 for a one-year period to \$1,500 for a three-year period. The Board also proposes a discretionary increase in the initial license fee from \$500 to \$1,500 to correspond to the new triennial license renewal cycle that became effective July 1, 2022.

## **Background**

Chapter 172 of the 2022 Acts of Assembly changed the duration of HCO licenses from an annual license to a three-year license beginning on July 1, 2022; the mandate also adjusted the license renewal fee from \$500 per year to \$1,500 every three years. However, the legislation did

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<sup>1</sup> 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.

<sup>2</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0172&221+ful+CHAP0172>

not adjust the initial license application fee of \$500, which is now valid for a three-year period pursuant to the provisions of Chapter 172. The Virginia Department of Health (VDH) does not know why the initial license fee was not also increased in the legislation, but believes that it was an inadvertent omission. Thus, the Board also proposes a discretionary increase in the initial license fee from \$500 to \$1,500 to correspond to the new three-year renewal cycle.

### **Estimated Benefits and Costs**

The legislative increase of the renewal fee from \$500 per year to \$1,500 every three-years would require the regulated HCOs to provide \$1,500 in upfront costs in each three-year renewal cycle. Prior to the legislation, regulants had to expend \$500 annually for the one-year license fee, while under the new renewal cycle they would have to set aside \$1,500 upfront for the next three years. The changes to the licensure fees, both the discretionary initial fee and the mandated renewal fee, would have certain economic effects, as follows.

Some HCOs may incur licensure fees but subsequently cease operations. Virginia's HCO industry appears to experience high turnover. According to VDH, there were 1,580 licensed HCOs as of July 1, 2022, while the annual number of expected initial applications is 300.<sup>3</sup> This indicates that, on average, an HCO operates in Virginia for about five years; in other words, every year about twenty percent of the existing HCOs (approximately 300) leave the industry. This high turnover rate means that some of the HCOs that would be going out of business in the next year and in the year after that would be paying renewal fees for the years they will not be in operation. Assuming 300 HCOs exit the industry annually, approximately \$300,000 per year would be paid by companies that would not be in operation the following year.

Some HCOs may have liquidity problems and may not be able to fund the additional \$1,000 in upfront costs. This may result in the inability of some HCOs to renew their licenses and further exacerbate the already high turnover.

All HCOs would lose the time-value of the additional \$1,000. Prior to the legislation they could use the \$1,000 to purchase other goods or services. Assuming a three percent simple

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<sup>3</sup> Data from VDH shows 242, 326, and 311 new applications per year for fiscal years 2020, 2021, and 2022, respectively. Similarly, there were 890, 1,235, and 919 renewal applications for fiscal years 2020, 2021, and 2022, respectively.

discount rate, the time value of the additional \$1,000 would be \$45 (i.e. \$15 for paying \$500 a year earlier and \$30 for paying \$500 two years earlier).

On the other hand, the new three-year renewal cycle is expected to reduce administrative costs for regulants and VDH as the licenses would be renewed less frequently. VDH expects \$60,204 in savings annually as a result of this effect.

The likely impacts discussed so far directly stem from the legislation and are already in effect. The incorporation of the legislatively amended renewal cycle and adjusted fees in this regulation mainly have the benefit of aligning the regulatory text with the Code of Virginia and eliminating potentially conflicting information.

However, VDH estimates that the \$1,000 increase in initial application fee would discourage about 60 HCOs from applying for an initial license because they tend to have less cash on hand and will not be able to pay the higher fee. As a result, VDH estimates that only 240 (out of the typical 300) applications for initial licensure would be received.

As mentioned above, the proposed adjustment of the initial license fee from \$500 for a one-year period to \$1,500 for a three-year period is discretionary and has not yet been implemented. Unlike the legislatively-mandated increase for the renewal licensure fee, the main impact of this proposed discretionary change to the initial licensure fee is avoidance of revenue that would otherwise be lost by the Board. More specifically, the legislative increase of only one licensure fee had the unintended consequence of effectively reducing the revenues from initial applications by two-thirds, because an initial license is now effective for a three-year period. If not adjusted, VDH estimates that it would lose \$240,000 in fee revenues (i.e., a \$1,000 loss from each of the 240 expected applications for initial licensure). Thus, the proposal would help ensure VDH has adequate fee revenue to support sufficient staff to perform inspections and other oversight functions of HCOs. The legislation may have also inadvertently created an incentive for existing licensees to seek an initial license rather than a renewal; this would be addressed by increasing the fee for initial licensure. If this incentivized behavior occurs, it would result in additional decreases in fee revenue.

### **Businesses and Other Entities Affected**

VDH reports that there are approximately 1,580 licensed HCOs in Virginia as of July 1, 2022. In addition, approximately 240 initial license applications are expected to be received and

60 potential applications are estimated would be discouraged after the increase in initial license fee. None of the HCOs appear to be disproportionately affected within the meaning of Code § 2.2-4007.04.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> 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 discretionary proposal to increase the initial license fee would add \$1,000 to each licensee's compliance costs and would discourage some from applying for an initial license. Thus, an adverse impact is indicated.

### **Small Businesses<sup>5</sup> Affected:<sup>6</sup>**

The proposed amendments appear to adversely affect small businesses.

#### Types and Estimated Number of Small Businesses Affected

VDH estimates that the vast majority (i.e. 90%) of the 1,580 licensed HCOs in Virginia are small businesses.

#### Costs and Other Effects

The proposed increase in the initial license fee would add \$1,000 in compliance costs to each HCO, including those that are small businesses, and discourage some from becoming a licensed HCO. Thus, an adverse economic impact on small HCOs is indicated.

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<sup>4</sup> 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.

<sup>5</sup> 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."

<sup>6</sup> 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.

### Alternative Method that Minimizes Adverse Impact

There does not appear to be an alternative method that both reduce adverse impact and meet the intended policy goals.

### **Localities<sup>7</sup> Affected<sup>8</sup>**

The proposed amendments do not introduce costs for localities.

### **Projected Impact on Employment**

The proposed fee increase is expected to discourage some HCOs from being licensed which would have a negative impact on employment.

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

The expected \$1,000 one-time increase in compliance costs would likely reduce the profitability of HCOs and thus negatively affect their asset values.

No effect on real estate development costs is expected.

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<sup>7</sup> “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.

<sup>8</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.