



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

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**12 VAC 5-391 Regulations for the Licensure of Hospices**  
**State Board of Health**  
**Town Hall Action/Stage: 6326/10137**  
January 19, 2024

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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 the potential economic impacts as of the date of this analysis.<sup>1</sup>

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

Pursuant to the Code of Virginia, the State Board of Health (Board) is updating this regulation to reflect the current edition of the *Guidelines for Design and Construction of Hospital and Health Care Facilities* issued by the Facility Guidelines Institute (FGI).

## **Background**

Subsection B of § 32.1-162.5 of the Code of Virginia requires hospice facility regulations to include minimum standards for the design and construction of hospices that are consistent with the current edition of the *Guidelines for Design and Construction of Hospital and Health Care Facilities* issued by American Institute of Architects Academy of Architecture for Health.<sup>2</sup> The Virginia Department of Health (VDH) has clarified that, “the design and construction standards were published by the American Institute of Architects Academy of Architecture for Health (AIA-AAH) from 1987 to 2006. The AIA-AAH no longer releases its own guidelines for

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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> See <https://law.lis.virginia.gov/vacode/title32.1/chapter5/section32.1-162.5/>.

the design and construction of health care facilities and instead develops these guidelines with the FGI, the nonprofit successor.”<sup>3</sup> The regulation currently references the 2018 *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities*. These guidelines are revised and updated every four years. Accordingly, the Board seeks to update Section 440 of this regulation titled, “General facility requirements” to replace references to parts of the 2018 *Guidelines* with the corresponding parts of the 2022 *Guidelines* as well as *Errata to the 2022 Edition*.<sup>4</sup> The corresponding documents incorporated by reference would also be updated. In addition, the agency is making a few minor non-substantive style and form changes to the text of regulation.

### **Estimated Benefits and Costs**

To comply with Virginia statute, hospice facility construction, renovation, or alterations must comply with the applicable sections of the 2022 FGI *Guidelines*. As a result, VDH anticipates that there may be a quantifiable indirect cost equal to a 0.2% increase in construction costs for a model facility that is multiple stories of non-combustible construction and a 0.4% increase in construction costs for a model facility that is a single story of combustible construction, based on projections developed by FGI.<sup>5</sup> The proposed changes would benefit readers of the regulation by providing updated and accurate references.

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

VDH reports that there are 88 licensed hospice facilities in Virginia, 20 of which are estimated to meet the definition of “small business.”<sup>6</sup> Only hospices that undertake renovations or alterations would be affected by the proposed changes. VDH is unable to quantify the number of entities that will construct a hospice facility, or the number of current facilities that will alter or renovate their facilities.

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<sup>3</sup> Email from VDH dated January 18, 2024.

<sup>4</sup> See <https://fgiguideines.org> and <https://fgiguideines.org/guidelines/errata-addenda/>. More detail about the specific differences between the 2108 and 2022 editions may be found at <https://fgiguideines.org/wp-content/uploads/2022/10/2022-RES-Major-additions-and-revisions.pdf>.

<sup>5</sup> See page 5 of the Agency Background Document (ABD) at [https://townhall.virginia.gov/l/GetFile.cfm?File=58\6326\10137\AgencyStatement\\_VDH\\_10137\\_v2.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=58\6326\10137\AgencyStatement_VDH_10137_v2.pdf).

<sup>6</sup> ABD, page 5.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>7</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. Although the updates to the *Guidelines* are expected to increase construction costs as described above, the Board does not propose to make any discretionary changes that would increase net costs or reduce net revenues. Because any increase in costs results directly from the statutory mandate, an adverse impact from the regulatory change itself is not indicated.

### **Small Businesses<sup>8</sup> Affected:<sup>9</sup>**

As mentioned previously, VDH estimates that 20 of the licensed hospices meet the definition of “small business.” These businesses may face additional costs if they choose to renovate or alter their hospice facilities. New hospices that may be established by small businesses would also be affected. However, any additional costs would result from the statutory mandate to comply with the current version of the *Guidelines*.

### **Localities<sup>10</sup> Affected<sup>11</sup>**

The proposed changes would not disproportionately affect any particular localities and would not affect costs for local governments. Chesapeake Reginal Medical Center, which is

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<sup>7</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>8</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>9</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.

<sup>10</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>11</sup> Code of Virginia § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

governed by the Chesapeake Hospital Authority<sup>12</sup> operates a licensed hospice program but does not have a hospice facility; they would be impacted if they were to open a hospice facility.<sup>13</sup>

### **Projected Impact on Employment**

The proposed regulation would not affect employment.

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

As described above, the updates to the FGI *Guidelines* are expected to marginally increase the construction costs of hospice facilities; thus, the value of entities that operate hospice facilities and choose to renovate or alter the facility structures would marginally decrease. Similarly, real estate development costs for hospice facilities would be increased. However, these effects accrue from the statutory mandate to implement the current *Guidelines* and not directly from the proposed changes.

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<sup>12</sup> The City of Chesapeake's city council appoints members of the Authority; the Authority operates Chesapeake Regional Medical Center. See <https://law.lis.virginia.gov/authorities/chesapeake-hospital-authority/>.

<sup>13</sup> See <https://chesapeakeregional.com/services-specialties/home-health-hospice/hospice>. For