



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 35-105 – Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Disabilities Support Waiver, and Brain Injury Residential Services

State Mental Health, Mental Retardation and Substance Abuse Board

May 9, 2007

Summary of the Proposed Regulation

Pursuant to Chapter 168 of the 2006 Acts of Assembly, the proposed regulations authorize the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services (Commissioner) to issue a summary order of suspension of the license of a group home or residential facility for adults when the conditions or the practices of the provider pose an immediate and substantial threat to individuals receiving services. The proposed regulations have already been in effect since December 2006 under emergency regulations.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Under the previous regulations, the Commissioner did not have the authority to expeditiously remove an immediate and substantial threat to individuals receiving services arising from the conditions or the practices of an adult group home or residential services provider. In the past, a facility could be closed only after a lengthy administrative procedure that normally included informal hearings, formal hearings, a decision, and a possible appeal. According to the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department) the previous administrative procedure could take approximately one year on average during which individuals could have continuously been exposed to an immediate and substantial threat.

With the proposed changes, the Commissioner now has the authority to issue a summary order of suspension of the license of a group home or residential facility for adults when the

conditions or the practices of the provider pose an immediate and substantial threat to individuals receiving services.

The main benefit of the proposed regulations is having an additional and effective mean to be able to expeditiously address an existing immediate and substantial threat to health, safety, and welfare of individuals at a licensed facility's care. Also, by arming the Commissioner with authority to issue a summary order of suspension, the proposed regulations are likely to provide additional incentives to providers in preventing circumstances that could lead to an immediate and substantial threat to residents before they occur.

The main costs of the proposed regulations are expected to accrue to the licensed providers whose residents are exposed to an immediate and substantial threat to health, safety, and welfare. If forced to cease its operations as a result of a summary order of suspension, these facilities would lose revenues they were receiving. Given that a significant part of business costs are contractual obligations and will likely to continue to accrue even if the facility is closed, the licensed businesses will likely suffer financial losses in the absence of inflow of revenues.

Other costs of the proposed changes are administrative costs involved in the issuance of a summary order of suspension by the Department. These could be in terms of additional staff time, additional costs of hearing officers, office supplies etc. However, a significant portion of these costs are expected to be offset by savings from avoiding the monitoring of a troubled facility for a prolonged period of time that would have been necessary without the proposed authority.

Businesses and Entities Affected

There are approximately 800 licensed facilities that are subject to the proposed regulations. These facilities have capacity to serve approximately 4,000 residents. However, due to vacancies, they are estimated to be serving approximately 3,200 residents in a given time. Also, the department expects no more than two cases annually which could affect up to 10 residents based on average capacity of a licensed facility.

Localities Particularly Affected

The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment

The proposed regulations are not expected to have a significant effect on employment. When a facility poses an immediate and substantial threat to individuals receiving services and is ordered to shut down, there would be a reduction in labor demand by that particular facility and a corresponding increase in labor demand by other facilities where the residents are transferred.

Effects on the Use and Value of Private Property

The proposed regulations are not expected to have any significant effect on the use and value of private property unless a facility poses an immediate and substantial threat to individuals receiving services and is ordered to shut down. If a facility is shut down, there would be a negative impact on the asset value of such provider business. However, other facilities where the residents are transferred may experience a positive effect on their asset values.

The effect on the property value of a closed facility depends on its next best alternative use which could be negative or positive.

Small Businesses: Costs and Other Effects

All of the 800 providers subject to these regulations are considered to be small businesses. The proposed regulations do not impose any costs on these small businesses as long as they are in compliance with the regulations. However, if these facilities pose an immediate and substantial risk to the health, safety, and welfare of their residents, they could face closure and significant financial losses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed regulations appear to be cost effective in achieving the intended goal which is to expeditiously address an immediate and substantial risk to health, safety, and welfare of individuals receiving services from a licensed provider.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or

other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.