

Office of Regulatory Management
Economic Review Form

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 35-105
VAC Chapter title(s)	Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services
Action title	Amendments to align with ASAM criteria
Date this document prepared	August 26, 2022

Cost Benefit Analysis

Table 1a must be completed for all actions. Tables 1b and 1c must be completed for actions (or portions thereof) where the agency is exercising discretion, including those where some of the changes are mandated by state or federal law or regulation. Tables 1b and 1c are not needed if **all** changes are mandated, and the agency is not exercising any discretion. In that case, enter a statement to that effect.

- (1) Direct Costs & Benefits: Identify all specific, direct economic impacts (costs and/or benefits), anticipated to result from the regulatory change. (A direct impact is one that affects entities regulated by the agency and which directly results from the regulatory change itself, without any intervening steps or effects. For example, the direct impact of a regulatory fee change is the change in costs for these regulated entities.) When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo. One bullet has been provided, add additional bullets as needed.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of total (overall) direct costs described above.
 - (b) Enter estimated dollar value of total (overall) direct benefits described above.
 - (c) Enter the present value of the direct costs based on the worksheet.
 - (d) Enter the present value of the direct benefits based on the worksheet.
- (3) Benefits-Costs Ratio: Calculate d divided by c OR enter it from the worksheet.
- (4) Net Benefit: Calculate d minus c OR enter it from the worksheet.
- (5) Indirect Costs & Benefits: Identify all specific, indirect economic impacts (costs and/or benefits), anticipated to result from the regulatory change. (An indirect impact is one that results from responses to the regulatory change, but which are not directly required by the regulation. Indirect impacts of a regulatory fee change on regulated entities could include a change in the prices they charge, changes in their operating procedures or employment levels, or decisions to enter or exit the regulated profession or market. Indirect impacts also include responses by other entities that have close economic ties to the regulated entities, such as suppliers or partners.) If there are no indirect costs or benefits, include a specific statement to that effect.

- (6) Information Sources: Describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why they are not.
- (7) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct Costs & Benefits</p>	<ul style="list-style-type: none"> • Describe first proposed impactful change here: This regulatory action amends the Licensing Regulations for substance use disorder providers to align with the ASAM Levels of Care Criteria, which ensures individuals receive clinically driven, individual-directed, and outcome-informed treatment. The regulatory action provides the necessary definitions for the newly aligned services to be provided and creates, staff, program, admission, discharge, and co-occurring enhanced program criteria for ASAM levels of care. <ul style="list-style-type: none"> ○ 4.0 (Medically managed intensive inpatient) ○ 3.7 (Medically monitored intensive inpatients services) ○ 3.5 (Clinically managed high-intensity residential services) ○ 3.3 (Clinically managed population-specific high-intensity residential services) ○ 3.1 (Clinically managed low-intensity residential services) ○ 2.5 (Substance abuse partial hospitalization services) ○ 2.1 (Substance abuse intensive outpatient services) ○ 1.0 (Substance abuse outpatient services), and ○ Medication-assisted opioid treatment services. <p>Direct Costs:</p> <ul style="list-style-type: none"> • The costs associated with this regulatory action are difficult to calculate, as there is significant variability of costs experienced by each provider based on a number of provider-specific factors. The factors include the type of service the provider is transitioning from, the level of care the provider is transitioning to, whether the provider was certified by DMAS as an ASAM provider through Westat in 2015, the volume of patients served (relevant to contract costs with laboratory services and on-call emergency clinicians), and the qualifications of existing staff. <p>Since 2015, Federal policy has required that states demonstrate that providers met the ASAM criteria prior to participating in the Medicaid program. In Virginia, DMAS demonstrated this by hiring the Westat firm to certify that the providers met the Criteria. Therefore, there were no known cost increases to providers who were in compliance prior to the emergency regulatory action aligning licensing criteria. Providers entering the marketplace may experience greater costs to establish and operate substance abuse services, however, the number of future providers planning on entering the marketplace is unknown.</p>
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A complete analysis of actual costs incurred by providers would require surveys of each of the roughly 250 providers impacted by this regulatory change. As stated above, a percentage of these providers' services were in alignment with ASAM criteria as a Medicaid requirement, and therefore, would not experience any costs. Providers who do not accept Medicaid may have been impacted by this regulatory change, however, ASAM criteria have been used as "best practices" throughout the substance use industry in the United States, so many providers likely met some, if not all, of the new licensing requirements. Due to the significant variability of impact on providers, **an exact dollar amount cannot be calculated.**

Additionally, because this regulatory action would make current emergency regulations permanent, any and all costs to providers have already been incurred, and would not be a direct result of this regulatory action.

Direct Benefits:

- This regulatory change will benefit individuals served by ensuring a higher quality of substance use disorder treatment that aligns with the American Society of Addiction Medicine (ASAM) Criteria – the most widely used and comprehensive set of guidelines for the placement, stay, transfer and discharge of patients with addiction and co-occurring conditions. ASAM is comprised of addiction subject matter experts, and its criteria represents the best practices in the area of addiction treatment systems backed by those experts. By aligning provider licensing requirements with best practices, we can expect that quality of substance use disorder treatment will improve, minimizing the number of deaths associated with substance use, increasing rates of recovery, reducing crime and incarceration, reducing recidivism of in-patient hospital stays, and reducing ED utilization for substance use treatment. However, the emergency regulations and DMAS Medicaid regulations have not been in place long enough to garner sufficient data on treatment outcomes, **therefore an exact dollar amount cannot be determined.**

(2) Quantitative Factors	Estimated Dollar Amount	Present Value
Direct Costs	(a)	(c)
Direct Benefits	(b)	(d)

(3) Benefits-Costs Ratio		(4) Net Benefit	
(5) Indirect Costs & Benefits	There are no known indirect costs or benefits.		
(6) Information Sources			
(7) Optional	<p>This regulatory action mandated by the General Assembly coincided in timeline with an increase in Medicaid substance abuse reimbursement rates authorized by the General Assembly in 2017, and the larger effort to redesign the delivery of substance use disorder (SUD) services in Virginia. As a part of the redesign, the number of SUD services covered by Medicaid was expanded, and reimbursement rates were increased for existing services to expand the provider network, and ensure rates were supportive of evidence-based care. Reimbursement rates were increased to match the commercial rates for SUD services.¹ While not a direct impact of this regulatory change, the increase in reimbursement rates as a part of the SUD services redesign was intended to offset any potential increased costs associated with providing evidence-based care.</p> <p>¹ GAO Report to Congressional Committees: <i>Medicaid, States' Changes to Payment Rates for Substance Use Disorder Services</i> https://www.gao.gov/assets/gao-20-260.pdf</p>		

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

This table addresses current requirements and the implications of not making any changes. In other words, describe the costs and benefits of maintaining the current regulatory requirements as is.

(1) Direct Costs & Benefits	<ul style="list-style-type: none"> Describe the current requirement associated with the first proposed impactful change described in Table 1a here. <p>Table is not needed, as this regulation was mandated by the General Assembly, and required to align with DMAS Medicaid Services. DBHDS did not exercise agency discretion in these regulations.</p>	
(2) Quantitative Factors	Estimated Dollar Amount	Present Value
Direct Costs	(a)	(c)
Direct Benefits	(b)	(d)

(3) Benefits-Costs Ratio		(4) Net Benefit	
(5) Indirect Costs & Benefits			
(6) Information Sources			
(7) Optional			

Table 1c: Costs and Benefits under an Alternative Approach

This table addresses an alternative approach to accomplishing the objectives with different requirements. These alternative approaches may include the use of reasonably available alternatives in lieu of regulation, or information disclosure requirements or performance standards instead of regulatory mandates.

(1) Direct Costs & Benefits	<ul style="list-style-type: none"> • Describe first alternative proposed impactful change here. Table is not needed, as this regulation was mandated by the General Assembly, and required to align with DMAS Medicaid Services. DBHDS did not exercise agency discretion in these regulations. 		
(2) Quantitative Factors	Estimated Dollar Amount	Present Value	
Direct Costs	(a)	(c)	
Direct Benefits	(b)	(d)	
(3) Benefits-Costs Ratio		(4) Net Benefit	
(5) Indirect Costs & Benefits			
(6) Information Sources			
(7) Optional			

Impact on Local Partners

- (1) Describe the direct costs and benefits (as defined on page 1) for local partners in terms of real monetary costs and FTEs. Local partners include local or tribal governments, school divisions, or other local or regional authorities, boards, or commissions. If local partners are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of total (overall) direct costs described above.
 - (b) Enter estimated dollar value of total (overall) direct benefits described above.
- (3) Indirect Costs & Benefits: Describe any indirect benefits and costs (as defined on page 1) for local partners that are associated with all significant changes. If there are no indirect costs or benefits, include a specific statement to that effect.
- (4) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why they are not.
- (5) Assistance: Identify the amount and source of assistance provided for compliance in both funding and training or other technical implementation assistance.
- (6) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

Table 2: Impact on Local Partners

(1) Direct Costs & Benefits	This regulation will likely provide benefits to local law enforcement. The regulation aligns DBHDS licensing regulations with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria to ensure the provision of outcome-oriented and strengths based care in the treatment of addiction. As quality of substance use disorder care improves, we can expect treatment outcomes to improve, reducing the burden of substance use disorder on local law enforcement. However, the emergency regulations and DMAS Medicaid regulations have not been in place long enough to garner sufficient data on treatment outcomes, therefore an exact dollar amount cannot be determined.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a)
Direct Benefits	(b)
(3) Indirect Costs & Benefits	

(4) Information Sources	
(5) Assistance	
(6) Optional	

Economic Impacts on Families

- (1) Describe the direct costs and benefits (as defined on page 1) to a typical family of three (average family size in Virginia according to the U. S. Census) arising from any proposed regulatory changes that would affect the costs of food, energy, housing, transportation, healthcare, and education. If families are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of direct costs.
 - (b) Enter estimated dollar value of direct benefits.
- (3) Indirect Costs & Benefits: Describe any indirect costs and benefits (as defined on page 1) to a typical family of three that are most likely to result from the proposed changes.
- (4) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why not.
- (5) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

Table 3: Impact on Families

(1) Direct Costs & Benefits	This regulation would not have any impact to a typical family of three related to the costs of food, energy, housing, transportation, healthcare or education. However, if a family member is struggling with substance use disorder and requires residential treatment services, then we can expect that improved quality of treatment services will increase rates of recovery. Increased rates of recovery would result in lower health care costs associated with additional in-patient hospital stays, ED visits, and medical complications from substance use disorder. However, the emergency regulations and DMAS Medicaid regulations have not been in place long enough to garner sufficient data on treatment outcomes, therefore an exact dollar amount cannot be determined.
(2) Quantitative Factors	Estimated Dollar Amount

Direct Costs	(a)
Direct Benefits	(b)
(3) Indirect Costs & Benefits	
(4) Information Sources	
(5) Optional	

Impacts on Small Businesses

- (1) Describe the direct costs and benefits (as defined on page 1) for small businesses. For purposes of this analysis, “small business” means the same as that term is defined in § 2.2-4007.1. If small businesses are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of direct costs.
 - (b) Enter estimated dollar value of direct benefits.
- (3) Indirect Costs & Benefits: Describe the indirect benefits and costs (as defined on page 1) for small businesses that are most likely to result from the proposed changes.
- (4) Alternatives: Add a qualitative discussion of any equally effective alternatives that would make the regulatory burden on small business more equitable compared to other affected business sectors, and how those alternatives were identified.
- (5) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why not.
- (6) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

Table 4: Impact on Small Businesses

(1) Direct Costs & Benefits	<p>Any costs or benefits associated with this regulatory activity incurred by health care providers can be assumed to also impact small businesses, as some providers may meet the definition of small businesses.</p> <ul style="list-style-type: none"> • Direct Costs
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The costs associated with this regulatory action are difficult to calculate, as there is significant variability of costs experienced by each provider based on a number of provider-specific factors. The factors include the type of service the provider is transitioning from, the level of care the provider is transitioning to, whether the provider was certified by DMAS as an ASAM provider through Westat in 2015, the volume of patients served (relevant to contract costs with laboratory services and on-call emergency clinicians), and the qualifications of existing staff.

Since 2015, Federal policy has required that states demonstrate that providers met the ASAM criteria prior to participating in the Medicaid program. In Virginia, DMAS demonstrated this by hiring the Westat firm to certify that the providers met the Criteria. Therefore, there were no known cost increases to providers who were in compliance prior to the emergency regulatory action aligning licensing criteria. Providers entering the marketplace may experience greater costs to establish and operate substance abuse services, however, the number of future providers planning on entering the marketplace is unknown.

A complete analysis of actual costs incurred by providers would require surveys of each of the roughly 250 providers impacted by this regulatory change. As stated above, a percentage of these providers' services were in alignment with ASAM criteria as a Medicaid requirement, and therefore, would not experience any costs. Providers who do not accept Medicaid may have been impacted by this regulatory change, however, ASAM criteria have been used as "best practices" throughout the substance use industry in the United States, so many providers likely met some, if not all, of the new licensing requirements. Due to the significant variability of impact on providers, **an exact dollar amount cannot be calculated.**

Additionally, because this regulatory action would make current emergency regulations permanent, any and all costs to providers have already been incurred, and would not be a direct result of this regulatory action.

Direct Benefits:

- This regulatory change will benefit patients by ensuring a higher quality of substance use disorder treatment that aligns with the American Society of Addiction Medicine (ASAM) Criteria – the most widely used and comprehensive set of guidelines for the placement, stay, transfer and discharge of patients with addiction and co-occurring conditions. ASAM is comprised of addiction subject matter experts, and its criteria represents the best practices in the area of addiction treatment systems backed by those experts. By

	aligning provider licensing requirements with best practices, we can expect that quality of substance use disorder treatment will improve, minimizing the number of deaths associated with substance use, increasing rates of recovery, reducing crime and incarceration, reducing recidivism of in-patient hospital stays, and reducing ED utilization for substance use treatment. However, the emergency regulations and DMAS Medicaid regulations have not been in place long enough to garner sufficient data on treatment outcomes, therefore an exact dollar amount cannot be determined.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a)
Direct Benefits	(b)
(3) Indirect Costs & Benefits	
(4) Alternatives	
(5) Information Sources	
(6) Optional	

Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed.

Table 5: Total Number of Requirements

	Number of Requirements
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Chapter number	Initial Count	Additions	Subtractions	Net Change
105	1,034*	267**	0	267

(*2020 Baseline Total 968 + 66 Post 2020 Actions [DOJ; provider statement; CSB grace period].)

(**All amendments are state mandates on the regulant due to General Assembly mandate regarding specific criteria.)

(Note: Changes duplicative of changes in the Behavioral Health Expansion action are not counted here.)