Economic Impact Analysis
Virginia Department of Planning and Budget

22 VAC 40-80 – State Board of Social Services
General Procedures and Information for Licensure
July 30, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G 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. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The proposed substantive changes include (i) introducing new language explaining hearing procedures, (ii) incorporating recent statutory changes into the regulations, (iii) making the payment of outstanding civil penalties a condition for licensure, and (iv) requiring pre-application training for all providers.

Estimated Economic Impact

These regulations contain general licensure rules applicable to all programs that are licensed by the Department of Social Services (the department). The facilities regulated under these rules are assisted living facilities, adult day care centers, private child placing agencies, child caring institutions, independent foster homes, family day homes, and child day centers.

The most extensive proposed revision is the inclusion of a new section explaining hearing procedures for these licensed programs. Pursuant to a recommendation by the Office of the Attorney General, the Board of Social Services (the board) proposes to add a new section. This section contains detailed information primarily about initiating, processing, and finalizing appeal requests in addition to other pertinent information. According to the department, the proposed changes are in accordance with the Administrative Process Act and reflect the procedures followed in practice at least in the last two decades. Therefore, the proposed amendments are not expected to produce any significant economic effect, but may create some value by providing information on the appeals procedures and by reducing the potential for confusion among the regulated entities.

The proposed changes will also incorporate recent statutory requirements. One of the changes provides that some acts might make a licensee subject to a class 1 misdemeanor pursuant to a statutory change that occurred in 2002.[1] The main benefit of this change is informing the public about this new law. Another statutory change requires that the licensure period for child day centers is a fixed period of two years rather than up to three consecutive years.[2] The period of licensure remains at "up to three successive years" for all other licensed facilities. In the past, the department issued licenses to child day centers for a period of one, two, or three years. The length of licensure approval was determined according to the guidance document titled "Performance Based Licensing and Monitoring." The varying lengths of licensure approval may have signaled the quality of the facility. Provided that the length of approval correctly reflects the true quality of the facility, this signal inherent in the licensure approval would produce desirable economic outcomes. First, it would allow the department to allocate more resources to facilities with shorter lengths of licensure to improve compliance and quality, and fewer resources to facilities with higher quality. Second, potential customers would have information about the quality of the services they are about to receive and adjust their willingness to pay according to the signaled quality. The economic outcome of both of these effects would be a better allocation of limited public and private resources. However, this outcome would be achieved only if the length of licensure is an appropriate measure of quality, which is beyond the scope of this analysis to determine. Thus, it follows that the fixed two-year licensure period may have introduced some net economic costs.

[1] § 63.2-1712 of the Code of Virginia as amended in 2002.
[2] § 63.2-1701 of the Code of Virginia as amended in 2002.

Additionally, the proposed amendments will incorporate relatively older statutory changes: adding an exception for inspection of financial records of child welfare agencies[3] and adding updated statutorily established inspection frequencies for various facilities and whether the inspections are to be announced or unannounced.[4] The actual effects of these changes should have been realized when the Code of Virginia was amended several years ago. Thus, no significant economic effect is expected upon incorporation of these amendments in the regulations.

The board also proposes to establish a requirement that in order for a renewal application by a licensee to be considered complete, any outstanding civil penalties must be paid. As of June 2003, the department was owed about $36,300 from 56 facilities in unpaid civil penalties. The outstanding fines range from $500 to $1,500 per facility and some fines have been due since 1999. This requirement will likely strengthen enforcement in collecting penalties overdue to the department and probably provide incentives to improve compliance.

Finally, the board proposes to expand the pre-application orientation requirement to include all applicants for licensure. Currently, this requirement is mandatory for assisted living facilities pursuant to § 63.2-1800 of the Code of Virginia but not for others. In practice, however, the department makes this program available to all facilities free of charge and some voluntarily attend. The orientation takes half a day and provides information to new license applicants on health and safety issues and resident's rights. According to the department, voluntary attendance is quite good, but some who need the orientation most may choose not to attend. Also, the department's inspectors have noted improved compliance at the facilities following the orientation. The most recent data indicate that approximately 468 licensees/facilities voluntarily attended the pre-licensure orientation in the last fiscal year. The department anticipates negligible change in the mandatory participation relative to current voluntary attendance. Thus, no significant economic effect is likely to result unless this training prevents a catastrophic health or safety event that would otherwise occur. Prediction of such "low-probability-high-cost" events requires extensive data, which is not available in this case.

[3] § 63.2-1702 of the Code of Virginia as amended in 1997.
[4] § 63.2-1706 of the Code of Virginia as amended in 1999.

Businesses and Entities Affected

The proposed regulations apply to 636 assisted living facilities, 72 adult day care centers, 67 private child placing agencies, 6 child caring institutions, 3 independent foster homes, 1,657 family day homes, and 2,586 child day centers.

Localities Particularly Affected

The proposed regulations are not anticipated to affect any locality more than others.

Projected Impact on Employment

The statutory change introducing a two-year uniform licensure period for child day centers may have increased the demand for services provided by facilities that were receiving shorter licensure approval and may have decreased the demand for services provided by some other facilities. This may have shifted the employment at the facility level, but the net effect on within-industry employment level was probably not significant as the overall demand for these services is unlikely to be affected by this change.

Effects on the Use and Value of Private Property

Similarly, the two-year uniform licensure period for child day centers may have increased the revenues of facilities that would otherwise be granted a shorter license approval and decreased the revenues of other facilities. Thus, this change may have had a positive or negative effect on the value of facilities through changes in profit stream depending on the length of licensure they would have otherwise received.