

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes  Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



## Virginia Department of Planning and Budget Economic Impact Analysis

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**22 VAC 40-60 – Standards and Regulations for Licensed Adult Day Care Centers (to be repealed)**

**22 VAC 40 61 – Standards and Regulations for Licensed Adult Day Care Centers (replacement regulation)**

**Department of Social Services**

**Town Hall Action/Stage: 4452/7528**

March 9, 2017

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

The State Board of Social Services (Board) proposes to reorganize and amend its regulation that governs licensure of adult day care centers. Specifically, the Board proposes to:

- 1) Require a tuberculosis (TB) screening rather than requiring a TB antibody test,
- 2) Remove activated charcoal and syrup of ipecac from the list of required emergency equipment and supplies,
- 3) Require a new quality self-assessment,
- 4) Allow facilities to keep electronic records and allow electronic signatures on forms,
- 5) Require incident reports for any major incidents that negatively affect or threaten the life, health, safety or welfare of day care participants and require a written report of any incident to be sent to the regional licensing office within seven days,
- 6) Allow individuals who are licensed as assisted living facility administrators to work as adult day care center directors,
- 7) Require the list of participant rights and responsibilities to be signed by participants or their representatives and also require that a copy of the list be posted in the day care center,

- 8) Change the length of notification when day care centers are discharging participants from 14 days to 30 days,
- 9) Prohibit physical and chemical restraints,
- 10) Require all vehicles used to transport participants to have working heating and cooling systems,
- 11) Remove the specific number of hours of staff orientation and initial training while retaining the training requirement,
- 12) Require at least 40 hours of additional training for all direct care staff,
- 13) Require first aid and CPR training for all direct care staff,
- 14) Increase annual in-service training required of direct care staff from eight hours to 12 hours,
- 15) Require medication management training for adult day care center directors unless the center has a staff person who is licensed to administer medication (such as a nurse),
- 16) Increase continuing training that is required for individuals who administer medication (from a three-hour refresher course every three years to four hours of additional training every year),
- 17) Require that center activities be managed by a designated person with required training,
- 18) Require that all adult day care centers have meal and snack menus posted and available for participants and require that menus be retained for two years (rather than the currently required three months),
- 19) Require that snacks be made available at all times either in plain view or upon request of day care participants and that second helpings of meals and snacks be provided at no extra charge and
- 20) Require that the religious dietary practices of the participants be respected and followed unless the participant and care provider mutually agree that the “religious dietary practices of the director, staff or licensees” may be imposed.

### **Result of Analysis**

Benefits likely outweigh costs for most proposed regulatory changes. For some proposed regulatory changes, there is insufficient information to ascertain whether benefits outweigh costs. For several proposed changes, costs likely outweigh benefits.

## Estimated Economic Impact

Most changes that the Board proposes for this regulation will not change any substantive requirement for regulated entities but, instead, are aimed at reorganizing regulatory requirements in a more logical order and changing language to clarify regulatory requirements. No affected entities will incur costs on account of changes such as these. Interested parties will benefit from the changed structure of the regulation as it will make it both easier to find and read any particular standard. Benefits likely outweigh costs for all reorganizing and clarifying changes.

Current regulation requires employees of adult day care centers to have a TB antibody test no earlier than 30 days before employment and no later than seven days after employment. Because there has been a shortage of serum to conduct antibody tests for several years now, the Virginia Department of Health guidelines now call for a TB screening that assesses risk factors for, and possible exposure to, TB. The Board now proposes to require that employees undergo TB screening instead of requiring a TB antibody test. This change will allow employees undergoing screening (or their employers) to save at least the lab costs that they would have incurred for the antibody test. Additionally, Board staff reports that adult day care centers that have employee medical staff can have those staff perform the TB screenings for newly hired employees thus saving the cost of an office visit to a doctor. Board staff reports that all adult day care centers that receive funds from either the Elderly or Disabled with Consumer Direction (EDCD) waiver program or the Programs of All-Inclusive Care for the Elderly (PACE) program are required to have medical staff (usually a nurse) and that all but 15 of the 73 adult day care centers in the Commonwealth receive funds from one or both of those two programs. Although there is likely a slightly higher risk of missing a non-symptomatic TB case when employees are screened rather than tested, the shortage of serum makes the changing policy necessary. Nonetheless, risk is likely mitigated by screening to the extent that the benefits to this change likely outweigh its costs.

Current regulation requires adult day care centers to have a list of emergency equipment and supplies so that they can render first aid to center participants. The Board now proposes to remove syrup of ipecac and activated charcoal from the list of required supplies. Board staff reports that both of these items<sup>1</sup> are difficult to administer correctly and that Poison Control no

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<sup>1</sup> Both syrup of ipecac and activated charcoal are used to counteract poisoning.

longer recommends that they be kept in first aid supplies. This change will save some small initial and ongoing costs for adult day care centers as these items expire and would need to be periodically replaced. The benefits of this change likely outweigh its costs.

Current regulation has provision for adult day care centers to be inspected. The Board now proposes to add a requirement that all centers perform an annual self-assessment. Board staff reports that the proposed regulation is not prescriptive as to how the self-assessment is produced and that the self-assessment will not be used as part of the inspection process. The self-assessment will involve center staff as well as participants and their families or legal representatives and can take many forms from a formal written survey to informal discussions with participants and their families to ask how well the center is providing services. The Board does propose to require that centers prepare and keep a written record of the results of their self-assessments. There will likely be some time costs for staff as well as copying costs associated with this proposed change. Those costs would need to be measured against any improvements in quality of care that might arise as a result of the self-assessment. There is insufficient information to ascertain whether benefits will outweigh costs.

Current regulation requires centers to keep many types of records and reports but does not have provision for any records to be kept in electronic form. The Board now proposes to allow facilities to keep electronic records and allow electronic signatures on forms. These changes will benefit centers as they will be able to store reports and participant records electronically rather than assigning (or paying for) space to physically store them. Centers will also likely save some time costs not spent on copying reports for physical storage and forms to be signed by center participants. There may be some small costs to purchase electronic memory if centers have a large volume of records that they wish to store electronically. Centers will likely not choose to store records electronically unless they expect the costs of doing so to be less than physically storing the same records, thus the benefits of this proposed change likely outweigh its costs for all centers that choose to store records electronically and/or have forms signed electronically.

Current regulation requires that centers keep a written report of all incidents that involve fire, natural disaster or criminal activity; centers are also required to report such incidents to the State Department of Social Services' Division of Licensing Programs within 24 hours. The

Board now proposes to require centers to additionally report any major medical incidents and to send a written report of any major incidents of any sort to the Division of Licensing Programs within seven days. Board staff reports that there is no bright line (such as transport of a center participant to a hospital) that would trigger the necessity for reporting. Instead, center directors and staff will have to use their judgment to decide what medical issues would constitute a major incident. Board staff reports that medical incidents that include heart attack, severe head injury or death would qualify as major incidents. This change will presumably benefit center participants as requiring the additional reporting will allow licensing staff to be aware of incidents that might indicate that there are problems with standards of care that might need to be investigated. Centers may incur some time costs because they will have to report a greater number of incidents and because they will have to newly submit reports to the Division of Licensing Programs. Those costs are likely to be minimal since reports can be submitted electronically. Benefits likely outweigh costs for this proposed change.

Current regulation lays out what qualifications the director of an adult day care center must have. The Board now proposes to expand the kinds of qualifications that are allowed for directors to include licensure as an assisted living facility (ALF) administrator. Board staff reports that licensed ALF administrators have training and education requirements that are at least as stringent as other qualification paths. Expanding the list of individuals who may work as a director for an adult day care center will likely benefit center owners as it expands the pool of potential applicants for positions and allows owners a greater range of choices. Because owners will not be forced to hire ALF administrators, they will likely only take advantage of their additional choice if they judge that benefits of doing so will outweigh the costs.

Current regulation lists participant rights and responsibilities. The Board now proposes to require that centers prominently post a copy of participant rights and responsibilities in the center and get participants or their legal representatives to read and sign a copy of the participant rights and responsibilities. Centers will likely incur some small time costs for meeting this requirement and will also incur some copying costs. These costs would need to be measured against any benefit that might accrue to center participants on account of greater understanding of, and access to, their regulatory rights and responsibilities. There is insufficient information to ascertain whether benefits that may accrue to participants would outweigh the small costs that centers would incur.

Currently regulation requires that centers that, for whatever reason, intend to discharge a participant, and no longer offer them care, give that participant (or their legal representative) 14 days' notice of the intended discharge. Current regulation also allows that notification period to be waived and a participant to be discharged immediately if a "participant's condition presents an immediate and serious risk to the health, safety or welfare of the participant or others."<sup>2</sup> The Board now proposes to extend the notification requirement to 30 days. The Board also proposes to revise the language that allows the notification period to be waived to reflect that extension. This change will likely benefit participants who are being discharged for reasons that do not present an immediate and serious risk to anyone's health or safety, and their representatives, as it will give them longer to make alternate arrangements for care. Centers that are discharging participants whose conditions or behaviors do not present an immediate and serious risk, however, will likely be adversely impacted by this change as it will lengthen the time that they have to care for participants when presumably they feel unable or unwilling to provide that care. There is insufficient information to ascertain whether the benefits that would likely accrue to participants outweigh the adverse impact on centers.

The Board proposes to add definitions for chemical restraint<sup>3</sup> and physical restraint<sup>4</sup> and prohibit both in adult day care centers. This change will likely benefit center participants as the regulatory prohibition will help ensure that they are not chemically or physically restrained to their detriment. Adult day care centers may incur some costs for modifying the adult day care environment on account of this proposed change. Board staff reports that any physical barrier to free movement, even such things as recliners if they restrict a participant's ability to get up, can constitute a physical restraint. That being the case, owners of adult day care centers will likely have to reexamine their center's physical environment to ensure that any furniture meant to

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<sup>2</sup> This waiver language is in 22 VAC 40-60-660 (C) in the regulation to be repealed and in 22 VAC 40-61-270 (E) in the new regulation.

<sup>3</sup> Chemical restraint is defined as a psychopharmacologic drug that is used for discipline or convenience and not required to treat the participant's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits an individual from reaching his highest level of functioning.

<sup>4</sup> Physical restraint is defined as any manual method or physical or mechanical device, material, or equipment attached or adjacent to the participant's body that the participant cannot remove easily, which restricts freedom of movement or access to his body.

increase the comfort of participants does not constitute a physical restraint. There is insufficient information to ascertain whether the benefits of this change will outweigh its costs.

Current regulation includes rules for vehicles that are used to transport participants. The Board proposes to add to these rules a requirement that any vehicle used for transport have working heat and air conditioning. This change may benefit participants, who tend to be older and may be in fragile health, by ensuring that they are not exposed to temperature extremes. Owners of adult day care centers who may have vehicles used for transport that do not have working heat or air conditioning will have to pay to get those systems repaired or installed. Such heating and air conditioning repairs can cost as little as \$50 or as much as over \$4,000.<sup>5</sup> Alternately, an adult day care center owner could choose to not allow field trips or otherwise provide transportation for participants if he judges the costs of repair too high. There is insufficient information to ascertain whether the benefits of this proposed change would outweigh its costs.

#### **Changes to Training Requirements:**

Current regulation requires that new employees of adult day care centers complete 24 hours of staff orientation and initial training that cover specific topics. The Board now proposes to retain the requirement that specific topics be covered in staff orientation and initial training but proposes to remove the hours of training requirement. This change will benefit all adult day care centers as it will give them greater flexibility to accomplish training on the specified topics as efficiently as possible. These centers will likely save costs in staff time if they are able to complete training on required topics in less than 24 hours. No entity is likely to incur costs on account of this proposed change because new staff will still have to be trained on all required topics. Benefits likely outweigh costs for this proposed change.

The Board proposes to newly require that direct care staff complete additional training. This training can take the form of:

1. Certification as a nurse aide issued by the Virginia Board of Nursing (100 hours),
2. Successful completion of Virginia Board of Nursing approved nurse aide education program (100 hours),

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<sup>5</sup> Cost estimates obtained from <http://cars.costhelper.com/car-air-conditioning.html> and <http://www.autotrader.com/car-news/common-problems-and-typical-repair-costs-33197>

3. Successful completion of a personal care aide program that meets EDCD waiver program requirements (40 hours),
4. Successful completion of certain Board approved out-of-state training as a geriatric assistant, home health aide or nurse aide,
5. Successful completion of a 40-hour Assisted Living Facility Direct Care Training curriculum or
6. Successful completion of at least 40 hours of training that covers specified topics listed in the proposed regulation and taught by a licensed health care professional or, if online, accredited by a national association.

Board staff reports that this change is being made at the behest of advisory panel participants from the industry. Board staff further reports that this training is already required for adult day care centers that participate in the EDCD waiver or PACE programs. This means that the 15 adult day care centers that do not participate in those programs would be the only ones affected. Board staff does not have actual enrollment information but does report that impacted centers have a rated participant capacity of between eight and 65 (with 80% having a rated capacity of 45 participants or lower). This means that if these centers only used full time employees at the staff to participant ratios required by regulation, and assuming enrollment matched capacity,<sup>6</sup> approximately 84 direct care staff would have to undergo at least 40 hours of training. If centers employ part time direct care staff, more staff might need this training than is indicated by full time staff analysis. Additionally, any staff turnover that brings in new direct care staff will necessitate those staff also receiving this training.

Board staff reports that the fee for training option 6 in the list above would be \$300. Owners of centers or their employees will incur fee costs as well as time costs for time spent in training. Board staff reports that direct care staff may earn between \$7.25 per hour and about \$12.50 per hour (depending on experience). Using a rough average of \$10 per hour, either owners or employees would incur about \$400 in time costs in addition to the \$300 fee for training. Other training options would be at least as expensive in time and fee costs and might be much more expensive. These costs will have to be borne by either owners of adult day care centers or by the new employees themselves. For owners, particularly owners of small adult day

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<sup>6</sup> Enrollment may be lower than capacity at some affected centers.



care centers, these costs will constitute a fairly large burden and may be passed on to participants in the form of higher day care prices. If employees have to pay for training, such training will constitute a considerable disincentive to take employment in an adult day care center when other, similarly low paying, jobs are available and would not require the purchase of training. Absent some showing that current training standards are inadequate to protect the health and safety of center participants, the costs for this proposed change likely outweigh its benefits.

Current regulation requires that at least one direct care staff member trained in cardiopulmonary resuscitation (CPR) and first aid be on premises at all times. The Board now proposes to require all direct care staff be trained in CPR and first aid. To the extent that the current requirement does not allow staff to adequately respond in a timely fashion to participant emergencies, this change may provide a benefit of increased protection of health and safety for center participants. Either center owners or employees who are not currently receiving CPR and first aid training will incur increased costs. Board staff reports that CPR and first aid certification training each cost approximately \$50 every three years and that each would require about four hours of staff time. Using a rate of \$10 per hour, this means that costs every three years would equal \$180 times the number of direct care staff that would newly be required to complete training. Benefits would likely outweigh these costs only if there are incidents where participant health has suffered because there was only one person required to be in the facility that had CPR and first aid training at any given time.

Current regulation requires adult day care center direct care staff to complete eight hours of in-service training per year. The Board does not currently dictate topics for this training but instead requires that it be “relevant to the needs of the population in care.” The Board now proposes to require two hours of training in infection control and four hours of training on center participants’ mental impairments. The Board also proposes to raise the total number of in-service training hours to 12. Board staff reports that adult day care centers are seeing an increasing number of participants who suffer from age related mental impairments and also report that infection control training is inadequate right now. Given this, training on these topics would likely be beneficial to both center participants and direct care staff who might feel more adequately prepared to meet participant needs. No additional costs are likely to be incurred solely on account of specifying these training topics. Accordingly, benefits likely outweigh costs for those two changes.

The same may not be true, however, for the proposed increase in total in-service hours. Since current training is undirected, training on these two topics could be accomplished within the currently required eight hours of training (which would leave two additional hours for training on topics directed by center owners or directors). Board staff reports that eight hours of training may be inadequate to cover the two proposed topics and general training. Without a showing of other necessary training that would be getting short shrift, however, there may be little benefit to raising total hours of training to 12. The total costs of this change will be mainly time costs but may also include fees if adult day care owners contract with individuals outside of their center to provide specific training. The costs for direct care staff time will be equal the number of extra hours of in-service training required (four) times the wage rate of the employees completing the training (which likely roughly averages about \$10 per hour) times the number of direct care staff statewide.<sup>7</sup> Costs for extra training may also include time costs for other center employees who may provide training. The costs associated with adding additional required training hours will likely exceed any benefit if specified training can be completed in the currently required eight total hours without any loss of staff effectiveness.

Current regulation requires:

1. That adult day care centers have a medication management plan,
2. That staff who will be dispensing medication either successfully complete a medication training program developed by the State Department of Social Services and approved by the Board of Nursing or be licensed in Virginia to administer medication and
3. That staff who dispense medication after successfully completing the program developed by the State Department Social Services complete a three-hour refresher course every three years.

The Board now proposes to require the directors of adult day care centers complete medication management training unless they have medical personnel on staff. Board staff reports that adult day care centers that participate in the EDCD waiver or PACE programs are required to have

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<sup>7</sup> Board staff does not know how many people are employed statewide as adult day care center direct care staff but does report that, as of October 7, 2016, all adult day care centers statewide had a combined rated participant capacity of 3,991. Using the direct care staff to participant ratio of one to six, there would be slightly over 665 full time equivalent (FTE) direct care staff if enrollment was equal to capacity. In reality enrollment is unlikely to be as high as capacity. If enrollment number are below capacity, fewer than 665 FTE direct care staff would be affected. To the extent that centers have part time direct care staff, a greater number of individuals may be subject to the increased training requirement than the number of FTEs would indicate.

medical personnel (usually a nurse) on staff so only directors of the 15 centers that do not participate in either of these programs, and do not have medical personnel in their employ separate from any reimbursement requirements, will be required to complete medication management training. Board staff reports that medication management course consists of 32 hours of training and the fee for the course is \$300. Owners of affected adult day care centers, or the directors themselves, will incur training costs that include the \$300 fee plus the hourly equivalent of their salary times 32. Board staff reports that directors of adult day care centers likely receive rather low compensation but does not have sufficient information to quantify what the average salary would be. Even without salary information it is likely safe to conclude that time costs for each director will likely be at least several hundred dollars.

The Board also proposes to increase periodic retraining for direct care staff who administer medication from three hours every three years to four hours every year. Board staff reports that the medication administration retraining will cost \$50 plus time costs of approximately \$40 for each person taking the course. Board staff reports that the increased retraining requirement mimics what is required for registered medication aides. Board staff further reports that medication administration and management are areas where many violations are found during inspections of adult day care centers. To the extent that the additional training that the Board proposes to require decreases the number of times that medications are mishandled or administered incorrectly, center participants are likely to benefit from these changes. However, there is insufficient information to measure those benefits or ascertain whether they would outweigh quantifiable costs.

Current regulation requires that activities of various sorts be planned and that the planning occur under the supervision of the director. Board staff reports that any employee under the supervision of the director can currently plan and manage activities. The Board now proposes to require that activities be managed by a designated staff person who is:

1. A qualified therapeutic recreation specialist or an activities professional,
2. Eligible for certification as therapeutic recreation specialist or activities professional by a recognized accrediting body,
3. A qualified occupational therapist or an occupational therapy assistant or

4. An individual who has one year of full time experience within the last five years in an activities program in an adult care setting.

Board staff reports that this change is being proposed at the behest of advisory panel participants from the industry. This change will limit the flexibility of centers to assign activities planning tasks in the way they best see fit and may additionally cause them to incur costs for obtaining the services of an individual who has one of the listed qualifications (if they do not have such a person employed as direct care staff now). Absent some empirical evidence that current activity planning is deficient in some way that this requirement would address, costs likely outweigh benefits for this proposed change.

#### **Changes to Nutrition Requirements:**

Current regulation requires that adult day care centers post menus for snacks and meals and that menus be retained for three months. An exception to this rule is currently allowed for centers that have meals and snacks catered or contract for food services if the contractor refuses to provide menus. The Board proposes to remove this exception. This change will provide a benefit to participants at centers that currently do not post menus as it will allow participants to know which foods will be available to them and plan accordingly (for instance, packing a lunch if they dislike what is being served on any given day). There should be minimal copying costs for contractors attached to this change. There is a possibility, however, that contractors would continue to refuse to provide menus. If this happens, centers may incur additional costs for searching out and hiring a new food service contractor.

The Board also proposes to require that menus be retained for two years. Board staff reports that this change is proposed as part of an effort to harmonize all record retention requirements. Centers may incur some additional storage costs on account of this requirement.

Current regulation requires that centers serve scheduled snacks and meals. The Board now proposes to also require that snacks be available at all times throughout the day and that second servings of meal and snacks be made available at no additional charge to participants. These changes may benefit some center participants who are still hungry after eating meals or snacks but it also might harm some participants who might fill up on additional snacks and then refuse to eat a meal that might provide more balanced nutrition to them. These changes taken together will likely increase food costs for centers and have the potential to more than double

those costs. While the Board plans to prohibit centers from charging for additional food beyond the planned meals and snacks, additional food costs will have to be priced into the costs of day care and day care rates are likely to rise. The magnitude of price increases that can be attributed to these changes will likely be dictated by the magnitude of food cost increases that centers experience. Unless current required meals and snacks are leaving participants underfed, costs likely outweigh benefits for these proposed changes.

Finally, the Board proposes to newly require that the religious dietary practices of center participants be “respected and followed” unless the participants and the care provider mutually agree that “the religious dietary practices of the director, staff or licensees” may be imposed. Although Board staff reports that the Board’s intention with this change is to ensure that center participants are not forced to eat food that is prohibited by their religion’s dietary restrictions, the proposed language as written appears to require that either centers provide food that meets the strictures of any participant’s religious dietary restrictions or that participant must agree to have the religious dietary restrictions of the director, staff or licensee imposed on them. As written, this requirement has the potential to increase costs for centers that do not currently consider participants’ religions when planning and preparing meals or choosing a food service or caterer. This is particularly true if participants follow religious dietary restrictions that dictate not only what food may be eaten but also how meat animals may be killed, which cuts of meat from those animals may and may not be eaten and how food must be prepared.<sup>8</sup> On the other hand, participants with religious dietary restrictions who have reached an agreement with the center they attend<sup>9</sup> that does not involve the center providing food compliant with their religion or them signing an agreement that allows any diet to be imposed on them will also be worse off on account of this proposed change. This change may also make it more difficult for individuals who have religious dietary restrictions to find placements in secular adult day care centers that do not currently supply meals compliant with the individuals’ particular religion. As written the costs of this proposed change likely outweigh its benefits.

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<sup>8</sup> See <http://www.jewfaq.org/kashrut.htm> for rules for kosher dietary practices. See <https://en.wikipedia.org/wiki/Halal> for rules for observant Muslim dietary practices. See [https://en.wikipedia.org/wiki/Diet\\_in\\_Hinduism](https://en.wikipedia.org/wiki/Diet_in_Hinduism) for an explanation of various Hindu dietary restrictions.

<sup>9</sup> If these participants are bringing meals and snacks from home that comply with their religious dietary restrictions, for instance.

Considered in total, increased costs that adult day care centers will likely incur on account of all of these proposed changes may affect the profitability of these businesses. Owners of centers that are currently only marginally profitable may choose to close their centers if they judge that their capital and effort can be more profitably spent on other endeavors.

### **Businesses and Entities Affected**

These proposed regulatory changes will affect all adult day care centers licensed by the Board as well as all of their staff and all individuals enrolled in those centers. Board staff reports that there are currently 73 such centers in the Commonwealth. Board staff reports that most centers likely qualify as small businesses.

### **Localities Particularly Affected**

No localities are likely to be particularly affected by these proposed regulatory changes.

### **Projected Impact on Employment**

Increased training requirements in this proposed regulation may marginally increase employment for trainers. Proposed requirements for specific certification or experience for designated activities staff will likely allow individuals with specified certifications or experience a competitive advantage over other candidates for employment at adult day care centers. These proposed requirements are unlikely to increase total employment at adult day care centers, however.

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

These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

### **Real Estate Development Costs**

These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

### **Small Businesses:**

#### **Definition**

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.”

### **Costs and Other Effects**

Small business adult day care centers will likely incur increased food costs on account of these proposed changes. Centers, or their employees, will incur increased costs for various types of training. Several training costs will fall disproportionately on centers that do not participate in the EDCD waiver or PACE programs or on their employees.

### **Alternative Method that Minimizes Adverse Impact**

The adverse impacts of this proposed regulation may be further minimized if increased training and credential requirements that are not specifically addressing identified deficiencies are eliminated. Allowing greater flexibility for providers and participants to mutually agree on provision of food in participant agreements may lower costs and minimize adverse impacts for all parties. For instance, a provider and participant could agree that the participant will bring food that meets religious dietary requirements from home, that the provider will plan on not providing food for that participant and that the provider will decrease day care fees to account for the decreased care costs for that participant.

### **Adverse Impacts:**

#### **Businesses:**

Adult day care centers will likely incur increased food costs on account of these proposed changes. Centers, or their employees, will incur increased costs for various types of training. Several training costs will fall disproportionately on centers that do not participate in the EDCD waiver or PACE programs or on their employees.

#### **Localities:**

Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

#### **Other Entities:**

No other entities are likely to be adversely affected by these proposed changes.

### **Legal Mandates**

**General:** The Department of Planning and Budget 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 Number 17 (2014). Code § 2.2-

4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report 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.

**Adverse impacts:** Pursuant to Code § 2.2-4007.04(C): 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 within the 45-day period.

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.

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