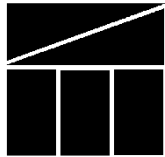


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

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

12 VAC 30-50 Amount, Duration, and Scope of Medical and Remedial Care Services
12 VAC 30-60 Standards Established and Methods Used to Assure High Quality Care
12 VAC 30-70 Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services
12 VAC 30-80 Methods and Standards for Establishing Payment Rates; Other Types of Care
12 VAC 30-130 Amount, Duration, and Scope of Selected Services
Department of Medical Assistance Services
Town Hall Action/Stage: 3968/7032
June 29, 2016

Summary of the Proposed Amendments to Regulation

As the result of a federal court decision,¹ the Department of Medical Assistance Services (DMAS) proposes to change the requirements for inpatient psychiatric facilities (IPFs) and for providers who offer certain services (such as physician services, medical and psychological services, vision, dental and emergency services) to residents of IPFs.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The US Department of Health and Human Services Office of Inspector General (OIG) audited DMAS' claims for non-facility services furnished to individuals younger than 21 years of age who reside in IPFs and issued its report on March 17, 2004. The report concluded that DMAS must refund to the federal Centers for Medicare & Medicaid Services (CMS) \$3.9

¹ See [https://www.cadc.uscourts.gov/internet/opinions.nsf/0B411CD77E39203C852579F8004E388A/\\$file/11-5161-1372715.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/0B411CD77E39203C852579F8004E388A/$file/11-5161-1372715.pdf).

million for disallowed claims (mostly physician and pharmacy claims) for services furnished to children who resided in IPFs from July 1, 1997 through June 30, 2001 because these services were not part of the allowable inpatient psychiatric benefit. These services were not included in the reimbursement rates for the IPFs but were billed and paid separately to other providers of services.

Based on the OIG report, CMS issued a disallowance on February 29, 2008. DMAS appealed the CMS disallowance but each appeal was denied resulting in a final decision being issued by the U.S. Court of Appeals on May 8, 2012.

In response to that decision, and in accordance with CMS' guidance on the inpatient psychiatric benefit, DMAS implemented emergency regulations to permit separate billing for services (referred to by CMS and in the regulations as “services provided under arrangement”) when rendered to members under age 21 in IPFs when the IPF: i) arranges for and oversees the provision of all services, including services furnished through contracted providers; ii) maintains all records of medical care furnished to these individuals; and iii) ensures that all services are furnished under the direction of a physician. DMAS proposes to make the amendments made in the emergency regulation permanent.²

The proposed amendments are necessary in order to continue to use federal Medicaid funds to reimburse for the IPF services detailed above. DMAS receives and passes on to the IPFs approximately \$25 million from CMS annually. The proposed amendments require additional IPF staff time for records keeping, billing, physician oversight, and time educating and attempting to obtain contracts from providers in the community in a timely manner. Based on a small survey of IPFs, the proposed requirements in effect currently under the emergency regulation have cost IPFs approximately \$50,000 to \$150,000 (on annual basis) per facility for additional required staff time. There are 29 IPFs in the Commonwealth. Thus the proposed requirements increase costs statewide by approximately \$1.45 million to \$4.35 million. The proposed amendments do produce a net benefit in that they help ensure that approximately \$25 million in federal dollars are received for IPF services, whereas the cumulative cost of the additional staff time is less than \$5 million.

² There are minor wording differences in this proposed regulation versus the emergency regulation. The differences do not substantially change requirements.

Businesses and Entities Affected

The proposed amendments affect the approximately 21 residential treatment centers, 6 private psychiatric hospitals, and 2 state facilities serving members under the age of 21 in the Commonwealth, and numerous providers of services under arrangement (physicians, psychologists, pharmacies, outpatient hospitals, dentists, etc.).

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments increase staffing needs for inpatient psychiatric facilities.

Effects on the Use and Value of Private Property

The proposed amendments require private inpatient psychiatric facilities to employ additional staff hours. This may moderately reduce their value. The proposed amendments are necessary in order to continue to receive federal funding that exceeds the increased cost of additional staff time.

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

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

The 21 residential treatment centers are likely small businesses. The proposed amendments increase costs for the residential treatment centers through required additional staff time.

Alternative Method that Minimizes Adverse Impact

The proposed amendments are necessary in order to continue to receive federal funding that exceeds the increased cost of additional staff time. Thus there is no alternative method that minimizes adverse impact.

Adverse Impacts:**Businesses:**

The proposed amendments increase costs for the residential treatment centers and private psychiatric hospitals through required additional staff time.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments increase costs for the two affected state facilities through required additional staff time.

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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