



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 and Substance Abuse Services
Department of Mental Health, Mental Retardation and Substance Abuse Services
June 2, 2006

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 725 of 2005 Virginia Acts of Assembly, the State Mental Health, Mental Retardation and Substance Abuse Services Board (board) proposes to amend the existing Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services to include provisions for licensing providers of brain injury services. The proposed regulations include a definition of “brain injury” and incorporate brain injury service providers into the definition of service “provider” that is subject to licensing provisions. Several other definitions have been added or revised to encompass the providers of brain injury services. The amended regulation also includes requirements for provider staffing and supervision of brain injury services and adds requirements for the individualized services plan that address the specific needs individuals receiving brain injury services.¹

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

In December 2005, the board adopted emergency regulations to implement the provisions of Chapter 725 of 2005 Virginia Acts of Assembly which designate the Department of Mental Health, Mental Retardation and Substance Abuse Services (department) as licensing authority for residential services serving individuals with brain injuries. Prior to that there was no designated

¹ The board also proposes to expand the description of providers that are issued licenses include providers offering residential services to persons with brain injury under the Brain Injury Waiver, although presently there currently is no Brain Injury Waiver in Virginia. Thus, this will have no immediate impact.

licensing authority for residential services serving individuals with brain injuries; and some applicants had been denied licensing as a result. Other facilities were licensed as assisted living facilities by the Department of Social Services.²

According to the department, affected providers are generally small facilities that are medically based; and the requirements that they must meet for insurance or medical standards are similar to the regulatory requirements imposed by the proposed regulations. Also, the department does not believe its paperwork requirements are significantly greater than those of the Department of Social Services. Thus, for most providers the proposed regulations add no significant costs other than those associated with human rights committee membership.

Section § 37.2-400 of the Code of Virginia explicitly states that all facilities licensed by the department are subject to the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (the human rights regulations). The human rights regulations require that providers affiliate with a Local Human Rights Committee (LHRC). According to the department LHRC affiliation fees typically range from \$100 to \$250. At least one staff member per provider must attend the LHRC meetings. LHRCs must meet at least 4 times a year. Some meet monthly. According to the department LHRC meetings typically last 2 to 3 hours.

In addition to introducing costs for providers, the required human rights committee membership is beneficial for the public in that it produces due process for complaints, helps protect individual rights, and LHRC oversight may decrease the likelihood that patients are maltreated. The proposed regulations are also beneficial in that the availability of residential services for individuals with brain injuries will likely increase now that there is a clear designated licensing authority.

For patients the benefits of the proposed amendments will likely exceed the costs. There will most likely be additional brain injury services available and the LHRC affiliation requirement may reduce the likelihood of poor treatment. Potential providers who have been unable to obtain licensure due to the absence of a designated licensing authority will clearly be better off by gaining the opportunity to become licensed and operate. Providers who have been able to operate through Department of Social Services licensure may be worse off. These

² Source: Department of Mental Health, Mental Retardation and Substance Abuse Services

providers will likely encounter new competition for patients and will incur additional costs associated with the required LHRC affiliation.

Businesses and Entities Affected

The department estimates that 5 existing residential facilities will be affected, and that five additional facilities will be established in response to the proposed regulations.

Localities Particularly Affected

The proposed amendments to the regulations are not expected to disproportionately affect particular localities more than others.

Projected Impact on Employment

The proposed regulations will most likely have a moderate positive effect on employment. As mentioned earlier, some provider applicants were unable to become licensed while there was no clear licensing authority for residential services serving individuals with brain injuries. The department estimates that five additional facilities will be established in response to the proposed regulations. New facilities will hire new staff.

Effects on the Use and Value of Private Property

The proposed regulations will likely increase the use of property for residential services serving individuals with brain injuries. The value of these properties will likely increase.

Small Businesses: Costs and Other Effects

Providers that have been licensed by the Department of Social Services will encounter additional costs by being licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services in regard to required human rights committee membership. All or most providers are small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Section § 37.2-400 of the Code of Virginia explicitly states that all facilities licensed by the department are subject to the human rights regulations. Thus, there is no alternative method that minimizes costs for small businesses available to the board.

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 21 (02). 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.