



Virginia Department of Planning and Budget **Economic Impact Analysis**

12 VAC 35-260 Certified Recovery Residences
Department of Behavioral Health and Developmental Services
Town Hall Action/Stage: 6151 / 9876
July 19, 2023

The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The State Board of Behavioral Health and Developmental Services (Board) proposes amendments to 12 VAC 35-260 *Certified Recovery Residences* to implement two legislative mandates from the 2022 General Assembly Session concerning recovery residences.

Background

Under the current regulation, “recovery residence” is defined as “a housing facility that (i) provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders and (ii) does not include clinical treatment services.” Further, “certified recovery residence” is defined as “a recovery residence that has been certified by a credentialing entity and is on the certification list maintained by [the Department of Behavioral Health and Developmental Services] DBHDS.” The current regulation defines “credentialing entity” as “a nonprofit organization that develops and administers professional certification programs according to

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

nationally recognized recovery housing standards.” Per the regulation and statute prior to the 2022 General Assembly Session, DBHDS maintains a list of certified recovery residences on its website.²

Chapters 732 and 755 (identical) of the 2022 *Virginia Acts of Assembly*³ require that all recovery residences be certified by DBHDS. In addition, as a condition of such certification all recovery residences must comply with minimum square footage requirements related to beds and sleeping rooms established by the credentialing entity or the Uniform Statewide Building Code, whichever is greater. The law further requires every person who operates a recovery residence to disclose to potential residents its credentialing entity. If the credentialing entity is the National Alliance for Recovery Residences (NARR), the law requires the recovery residence to disclose the level of support provided by the recovery residence; if the credentialing entity is Oxford House, Inc., the law requires the recovery residence to disclose that the recovery residence is self-governed and unstaffed. The law also requires DBHDS to include such information on the list of all recovery residences maintained by the agency on its website.

Item 312.L.2 of the 2022 *Appropriation Act*, Special Session I,⁴ states that DBHDS, “shall monitor credentialed recovery homes for regulatory compliance and consult with the Virginia Association of Recovery Residences to keep the agency's public website's list of credentialed recovery homes up to date.”

In order to comply with the legislation, the Board proposes to:

- Amend definitions to shift the ‘certification’ to DBHDS rather than the credentialing entities. The recovery residences would still need to hold a credential from one of the credentialing entities.
- Specify that recovery residences must comply with any minimum square footage requirements related to beds and sleeping rooms established by the credentialing entity or the square footage requirements set forth in the Uniform Statewide Building Code, whichever is greater.

² See <https://dbhds.virginia.gov/office-of-recovery-services/recovery-residences/>

³ See <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0732>

⁴ See <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/312>

- Specify that DBHDS shall monitor recovery residences for regulatory compliance and shall consult with the credentialing entities to keep the list of credentialed recovery homes up to date.
- Specify that every recovery residence shall disclose to each prospective resident its credentialing entity. If the credentialing entity is NARR, the recovery residence shall disclose the level of support provided by the recovery residence. If the credentialing entity is Oxford House, Inc., the recovery residence shall disclose that the recovery residence is self-governed and unstaffed.

Estimated Benefits and Costs

The proposed change in definitions, to indicate that the “certification” is from DBHDS rather than the credentialing entities, does not have substantive impact. No fee is charged for certification. Instead of submitting an application form to be on the agency’s certification list, the recovery residences would submit an application form to DBHDS to be certified.

DBHDS is not aware of any recovery residence credentialing entity besides NARR and Oxford House, and all recovery residences on the list maintained by the agency are credentialed by either NARR or Oxford House. According to DBHDS, the minimum square footage required by both NARR and Oxford House is equal to that in the Uniform Statewide Building Code.⁵ Thus, the proposed requirement that recovery residences comply with any minimum square footage requirements related to beds and sleeping rooms established by the credentialing entity or the square footage requirements set forth in the Uniform Statewide Building Code, whichever is greater, would have no impact.

In response to the proposed requirement that DBHDS shall monitor recovery residences for regulatory compliance and shall consult with the credentialing entities to keep the list of recovery homes up to date, the agency has indicated that it is developing a proactive, more frequent status report from the credentialing entities that confirms all residences that remain in good standing rather than waiting to hear when one has lost their standing with the credentialing entity. Thus, this requirement would add a small amount of additional administrative cost for the

⁵ See https://townhall.virginia.gov/L/GetFile.cfm?File=65\6151\9876\ORM_EconomicImpact_DBHDS_9876_v1.pdf

credentialing agencies and DBHDS. It would likely be beneficial for the public in that the list of certified recovery residences maintained by the agency on its website would be more current.

The proposed new disclosure requirements for recovery residences would moderately increase their administrative costs. The disclosures would be beneficial in that they would provide greater transparency to prospective residents of recovery residences regarding the credentials of each recovery residence and the level of professional staff support available.

Businesses and Other Entities Affected

The proposed amendments affect the 260 certified recovery residences in the Commonwealth,⁶ their current and prospective residents, and DBHDS.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁷ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As all proposed amendments are required by legislation, no adverse impact is indicated.

Small Businesses⁸ Affected:⁹

Types and Estimated Number of Small Businesses Affected

According to DBHDS, some of the recovery residences are nonprofit and others are for profit; and that those that are for profit would seem to qualify as small businesses.

The agency does not know how many of the recovery residences are for profit.

⁶ Data source: DBHDS

⁷ Pursuant to Code § 2.2-4007.04(D): 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. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁸ 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.”

⁹ 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.

Costs and Other Effects

As stated above, DBHDS would require more frequent status reports from both credentialing entities in response to the proposed requirement that the agency monitor recovery residences for regulatory compliance and consult with the credentialing entities to keep the list of recovery homes up to date. That, along with the proposed disclosure requirements, would moderately add to administrative costs for small for-profit recovery residences.

Alternative Method that Minimizes Adverse Impact

There are no alternative methods since all proposed requirements are required by legislation.

Localities¹⁰ Affected¹¹

The proposed amendments do not disproportionately affect particular localities and do not introduce costs for local governments.

Projected Impact on Employment

Some of the proposed amendments increase administrative costs, but are unlikely to do so to the extent that total employment would be substantively affected.

Effects on the Use and Value of Private Property

Some proposed amendments moderately increase administrative costs. Consequently, there may be a very small negative impact on the value of for-profit recovery residences. The proposed amendments do not affect real estate development costs.

¹⁰ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.