



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

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### **12 VAC 35-105 Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services**

**Department of Behavioral Health and Developmental Services**

**Town Hall Action/Stage: 6617 / 10532**

January 2, 2025

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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.<sup>1</sup>

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

Pursuant to the Executive Directive Number One (2022) (ED 1),<sup>2</sup> the State Board of Behavioral Health and Developmental Services (Board) proposes numerous discretionary changes to reduce the administrative burdens and compliance costs on licensed providers by repealing or simplifying regulatory provisions that are deemed obsolete, overly prescriptive, duplicative, or confusing.

### **Background**

ED 1 requires executive branch agencies to remove “regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth.” In response, the Board proposes numerous changes by repealing or simplifying discretionary regulatory provisions that are deemed

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<sup>1</sup> 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.

<sup>2</sup> <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>

obsolete, overly prescriptive, duplicative, or confusing. The providers regulated under this regulation offer various behavioral health and developmental disability services.<sup>3</sup> Currently, there are 2,153 licensed providers offering 450 types of services. The specific changes that are substantive are discussed below.

## **Estimated Benefits and Costs**

### *License modification*

The proposal would decrease from 45 to 30 days the advance written notice providers must give the Department of Behavioral Health and Developmental Services (DBHDS) for requested license changes (i.e., disability, age, or gender characteristics of individuals served, the services offered, the locations where services are provided, existing stipulations, or the maximum number of individuals served under the provider license). According to DBHDS, this change reflects current practice and would streamline and modernize operations.

### *Variances*

The Board proposes to remove the requirement to demonstrate a hardship that is unique to the provider in order to qualify for a variance, thereby allowing providers to request a temporary exemption from a specific regulatory provision after demonstrating only that it will not jeopardize the individuals being served. This change is expected to reduce the administrative costs on licensed providers, reflects current practice and would streamline processing and modernize operations.

### *Fiscal accountability*

The proposal would eliminate the obligation for providers to prepare annual financial information (i.e., an operating statement showing revenue and expenses for the fiscal year just

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<sup>3</sup> In Va. Code § 37.2-403, service or services means:

1. Planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to persons with mental illness, developmental disabilities, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community geropsychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and
2. Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

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ended and a balance sheet showing assets and liabilities for the fiscal year just ended) in accordance with generally accepted accounting principles (GAAP) or those standards promulgated by the Governmental Accounting Standards Board (GASB) and the state Auditor of Public Accounts (APA). This change is proposed in part because DBHDS does not have the staff resources to analyze financial information in a meaningful way. However, providers would still be required to show that they have enough financial resources to operate for 90 days. The main expected economic impact is a reduction in the administrative costs on licensed providers associated with preparing financials according to GAAP/GASB/APA standards.

The Board also proposes to no longer require that the fiscal manager be bonded. With this change, the fiscal manager would continue to be covered under the provider's general or professional liability insurance. As a result, a reduction in provider bond costs is expected. However, unlike liability policies that cover only errors and omissions, fidelity bonds or employee dishonesty insurance policies generally cover fraud or embezzlement, thus a reduction in provider bonds may lead to lack of protection if a fiscal manager commits such crimes. DBHDS points out that requirements for written internal controls, which would remain in the regulation, would minimize the risk from theft or embezzlement.

#### *Tuberculosis screening*

The proposal would require staff, students, and volunteers at substance use disorder outpatient or residential providers to receive annual tuberculosis (TB) education, rather than be certified as TB-free by a licensed practitioner every year. According to DBHDS, this change reflects the current best practice for small and medium enterprises. With this change, providers are expected to avoid current TB certification costs, although this savings would be offset by new TB education expenses.

#### *Physical examination for residential and inpatient services patients*

The Board proposes to eliminate language enumerating components of a physical exam that it has deemed to be overly prescriptive. These components are: general physical condition (history and physical); evaluation for communicable diseases; recommendations for further diagnostic tests and treatment, if appropriate; and other examinations that may be indicated. According to DBHDS, some licensed providers encounter specific physicians who refuse to use the provider's forms. More generally, physicians follow professional standards and typically

prefer to use their own office forms and do not want to use a different form. This change would allow health care practitioners to follow professional standards and use their own office forms, which would reduce the administrative burden on providers.

In summary, the proposed changes are expected to reduce compliance costs (e.g., administrative costs, bond costs, TB certification costs) for licensed providers. The changes would also give providers more discretion over standard business operations such as financial reporting. However, there are no available data to quantify such cost savings and benefits.

### **Businesses and Other Entities Affected**

Currently, there are 2,153 licensed providers offering 450 types of services.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>5</sup> As noted above, the proposed changes are expected to reduce compliance costs or provide operational flexibility to the regulated providers. Thus, an adverse impact is not indicated.

### **Small Businesses<sup>6</sup> Affected:<sup>7</sup>**

It is likely most of the providers would meet the definition of a small business, but the proposed amendments do not appear to adversely affect them.

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<sup>4</sup> 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.

<sup>5</sup> 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>6</sup> 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.”

<sup>7</sup> 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

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### **Localities<sup>8</sup> Affected<sup>9</sup>**

According to DBHDS, approximately 40 of the regulated entities are Community Service Boards (CSB), which are a part of local governments. However, the proposed changes do not introduce costs for CSBs nor do they particularly affect any locality more than others.

### **Projected Impact on Employment**

Although the proposed changes are expected to reduce administrative requirements and may affect employment positions related to such requirements, the net impact of these changes on total employment is not known.

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

Generally, a reduction in compliance costs should improve profits and consequently add to the asset values of regulated providers that are owned by private businesses. No direct impact on real estate development costs is expected.

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proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>8</sup> "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.

<sup>9</sup> § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.