



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

12 VAC 35-46 Regulations for Children's Residential Facilities
Department of Behavioral Health and Developmental Services
Town Hall Action/Stage: 6618 / 10533
January 2, 2025

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

Pursuant to the Executive Directive Number One (2022) (ED 1),² the State Board of Behavioral Health and Developmental Services (Board) proposes numerous changes primarily to remove and modify discretionary administrative requirements for children's residential facilities to reduce compliance costs and to clarify and simplify language.

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 primarily to the administrative requirements for the children's residential facilities.

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.

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

These facilities include group homes³ and residential treatment programs.⁴ Currently, there are 68 licensed providers with 1,953 bed capacity offering 122 types of services. The specific changes that are substantive are discussed below.

Estimated Benefits and Costs

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 ended, a working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate, and a balance sheet showing assets and liabilities for the fiscal year just ended); replace the requirement for written policy on handling funds with a mandate to keep individuals' accounts separate; and add a requirement for children's residential providers to notify the Department of Behavioral Health and Developmental Services (DBHDS) if minimum working capital is reduced or canceled. These changes are proposed in part because DBHDS does not have the staff resources to analyze financial information in a meaningful way. The main expected economic impact is a reduction (of unknown magnitude) in the administrative costs on licensed providers as well as on DBHDS.

Bond/insurance

The Board proposes to replace the requirement for a blanket fidelity bond or employee dishonesty insurance policy (covering members of the governing body and staff who have been authorized to handle the facility's or residents' funds) with a mandate that only financial managers be bonded. As a result, a reduction in bond/insurance costs is expected because fewer individuals would be required to be bonded/insured. However, DBHDS does not have an

³ "A group home is a children's residential facility that is a community-based, homelike single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12.

⁴ A residential treatment program means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services include, but not limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, neurobehavioral services, and family therapy necessary to treat the child. The service provides active treatment or training beginning at admission related to the resident's principal diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs including personal care, habilitation, or academic educational needs of the resident.

estimate on the number of employees that would no longer be required to be bonded/insured nor on the cost of such coverage per individual.

Staff development

The proposal would require targeted staff training in any area of quality improvement as identified from the results of the quality improvement plan rather than requiring training for all staff, and also eliminate the 15-hour additional annual continuing education (CE) that is required above and beyond other required training for full-time staff. DBHDS states that staff training, including CE, is provided by the licensed providers rather than independent CE providers. This change is expected to reduce training costs in terms of the time and resources devoted to such training.

The chief administrative officer & records management designee

The Board proposes to strike the requirement for providers to appoint a chief administrative officer (CAO). A CAO is currently responsible for: compliance with these regulations and other applicable regulations; all personnel; oversight of facility operations in its entirety, including approving the design of the structured program of care and its implementation; and the facility's financial integrity. Under the current language a CAO must have at a minimum of two to four years of experience depending on the education level (baccalaureate or master's degree). According to DBHDS, this change reflects the current practice and gives providers discretion to devise organizational structures that work for their service model.

Similarly, the Board proposes to remove the requirement for providers to name a records management designee, which would also allow providers to devise organizational structures that work for their service model.

Child care staff

The proposal would lower the minimum age for private sector childcare workers from 21 to 19. This change is expected to expand the pool of childcare workers for providers and assist with the workforce challenges they face.

Recordkeeping

The proposal would also strike requirements that the Board has deemed to be unnecessary: permanent retention of face sheets;⁵ requirements for face sheets to include transfer or discharge information; the requirement for providers to retain copies of menus for six months; and requirements related to assessing individual suitability for recreational activities and activity preparation. According to DBHDS, the proposed changes would decrease compliance costs by removing unnecessary recordkeeping and administrative burdens.

In summary, the proposed changes are expected to reduce administrative costs for DBHDS and providers, including the compliance costs (e.g., administrative costs, staffing costs, bond/insurance costs, training costs, and recordkeeping costs) for licensed providers. The changes would also provide more discretion over standard business operations and allow providers to find organizational structures that work for their service model. However, there is no available data to quantify such cost savings and benefits.

Businesses and Other Entities Affected

Currently, there are 68 licensed providers with 1,953 bed capacity offering 122 types of services.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ 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.⁷ As noted above, the proposed changes are expected to reduce administrative costs or provide operational flexibility to the regulated providers. Thus, an adverse impact is not indicated.

⁵ A face sheet contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, emergency contacts, and parents, if appropriate.

⁶ 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.

⁷ 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.

Small Businesses⁸ Affected:⁹

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

Localities¹⁰ Affected¹¹

According to DBHDS, some 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

Several of the changes could potentially affect employment, however, the net impact of these changes on total employment is not known. One of the proposed changes would reduce the eligibility age from 21 to 19 for child care staff, which would increase the supply of potential child care employees. It is reasonable to expect that some of the new staff hired from this expanded pool would be under 21 years of age, which may potentially reduce employment of staff who are 21 years of age or older. Another change would remove the requirement to appoint a CAO who must currently have a bachelor's or master's degree with two to four years of experience, potentially affecting the existence of this position or the eligible pool of employees for this position. Similarly, providers would no longer be required to designate an individual responsible for records management, which may or may not eliminate an existing employment opportunity. Finally, the changes expected to reduce administrative and record keeping requirements may affect employment positions related to such requirements.

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.

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.

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 children's residential facilities that are owned by private businesses. No direct impact on real estate development costs is expected.