

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 30-40 Eligibility Conditions and Requirements

Department of Medical Assistance Services

Town Hall Action/Stage: 4339 / 7505

August 4, 2016

Summary of the Proposed Amendments to Regulation

The Director of the Department of Medical Assistance Services (Director) proposes to amend this regulation to not count payments made to compensate individuals who were involuntarily sterilized as income¹ for the purpose of determining Medicaid eligibility.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Chapter 665, item 307 T of the 2015 Acts of Assembly² required the Director to exempt involuntary sterilization compensation from Medicaid eligibility determinations through an emergency regulation. Accordingly, the Department of Medical Assistance Services promulgated an emergency regulation on November 23, 2015, which is scheduled to be effective through May 22, 2017. This action replaces that regulation on a permanent basis.

¹ Specifically, the Board proposes to state that “For all aged, blind, or disabled individuals, both categorically needy and medically needy, the Commonwealth shall disregard as resources amounts received as payment for involuntary sterilization under the Virginia Eugenic Sterilization Act, beyond the allowable nine-month exclusion by the SSI program's resource methodologies.”

² See <http://budget.lis.virginia.gov/item/2015/1/HB1400/Chapter/1/307/>

From 1924 to 1979, at least 7,325 individuals were sterilized in Virginia under the Virginia Eugenical Sterilization Act (1924). Of those sterilized about half were deemed “mentally ill” and the other half deemed “mentally deficient.” Approximately 62% of those sterilized were female. Some estimate the total number of sterilizations to be as high as 8,300 individuals.³ In 2015, the Virginia Appropriation Act provided compensation to these individuals involuntarily sterilized and who were living as of February 1, 2015. Chapter 780, item 313 Q of the 2016 Acts of Assembly continued the funding for the sterilization compensation program. Each qualified applicant receives \$25,000.

Disregarding payments for the purpose of Medicaid eligibility determinations made to compensate individuals who were involuntarily sterilized increases the likelihood that such individuals will qualify for Medicaid. Thus far 24 individuals have been awarded compensation through the program, while two individuals are currently having their claims reviewed.⁴ The Medicaid applications do not ask applicants to report whether or not they have received sterilization compensation. Consequently it is not known whether any of the 24 compensation recipients have applied for Medicaid while the emergency regulation has been in effect.

The Commonwealth pays approximately fifty percent of Medicaid costs, with the federal government paying for the other fifty percent. The average annual cost for individuals in the Aged, Blind and Disabled category⁵ of Medicaid is approximately \$17,000.⁶ Thus if disregarding the compensation enables a recipient to qualify for Medicaid who otherwise would not have, the additional cost to Virginia would on average be about \$8,500 per such individual.⁷

Businesses and Entities Affected

The proposed amendment applies to individuals involuntarily sterilized and who were living as of February 1, 2015. Thus far 24 individuals have been awarded compensation through the program, while two individuals are currently having their claims reviewed.

Localities Particularly Affected

The proposed amendment does not disproportionately affect particular localities.

³ For more information, see <https://www.uvm.edu/~lkaelber/eugenics/VA/VA.html>

⁴ Source: Department of Behavioral Health and Developmental Services

⁵ All (or almost all) surviving individuals who were sterilized in Virginia under the Virginia Eugenical Sterilization Act are aged, and would therefore fall into the Aged, Blind and Disabled category. Additionally, as stated in note 1 above, the proposed amendment is for “For all aged, blind, or disabled individuals ...”

⁶ Source: 2015 Virginia Medicaid and CHIP Data Book, Department of Medical Assistance Services

⁷ The actual cost for each person can vary widely.

Projected Impact on Employment

The proposed amendment does not significantly affect employment.

Effects on the Use and Value of Private Property

The proposed amendment does not significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendment does 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 proposed amendment does not affect small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendment does not affect small businesses.

Adverse Impacts:**Businesses:**

The proposed amendment does not affect businesses.

Localities:

The proposed amendment does not affect localities.

Other Entities:

The proposed amendment does not adversely affect other entities.

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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