

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 30-90 – Nursing Facility Price-Based Reimbursement Methodology
Department of Medical Assistance Services
Town Hall Action/Stage: 4542/7527
August 12, 2016

Summary of the Proposed Amendments to Regulation

The Director of the Department of Medical Assistance Services (DMAS) proposes two changes to its regulation governing payment rates for long term care. The Board proposes to add language to reflect that the inflation adjustment for nursing facility operating rates was set to zero percent for fiscal year 2016 (July 1, 2015 through June 30, 2016) and to allow nursing homes with specified decreased bed capacity, but increased demand, to be reimbursed at a higher, price-based rate¹ rather than at the lower transition operating rate².

Result of Analysis

Benefits likely outweigh costs for this proposed change.

Estimated Economic Impact

Item 301.III of Chapter 665, 2015 Acts of the Assembly, required DMAS to “amend the State Plan for Medical Assistance to eliminate nursing facility inflation [adjustments to payments] for fiscal year 2016.” Item 301.KKK(6) of this Chapter required the DMAS to

¹ Price-based nursing facility reimbursement methodology is described in 12 VAC 30-90-44 (A) at <http://law.lis.virginia.gov/admincode/title12/agency30/chapter90/section44/>.

² Transition operating rate reimbursement is described in 12 VAC 30-90-44 (B) at <http://law.lis.virginia.gov/admincode/title12/agency30/chapter90/section44/>. This transition rate will be phased completely out at the end of fiscal year 2017 as all nursing facility will be reimburse 100% at an adjusted price-based rate starting in fiscal year 2018.

“amend the State Plan for Medical Assistance to reimburse the price-based operating rate rather than the transition operating rate to any nursing facility whose licensed bed capacity decreased by at least 30 beds after 2011 and whose occupancy increased from less than 70 percent in 2011 to more than 80 percent in 2013.” DMAS submitted these two changes to the Center for Medicare and Medicaid Services (CMS) and they have been approved. Now the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, proposes to amend this regulation to harmonize it with Chapter 665.

As the elimination of the inflation adjustment for nursing facilities was only in effect from July 1, 2015 to June 30, 2016, no nursing facilities are likely to incur any costs or reduced reimbursements³ after June 30, 2016. Board staff reports that nursing facility reimbursements in fiscal year were reduced by \$19.6 million⁴ on account of the elimination of inflation adjustments for that year. Board staff reports that one nursing facility has thus far seen an increased reimbursement from the expedited changeover to price-based operating rate reimbursement required by Item 301.KKK(6) of Chapter 665. This nursing facility received \$320,000 more in reimbursements in fiscal year 2016 than they would have seen under transition operating rate reimbursement. Board staff reports that they know of no other nursing facilities that would be affected by Item 301.KKK(6) before all nursing facilities would move to 100 percent price-based operating rate reimbursement at the beginning of fiscal year 2018 (July 1, 2017). All affected entities will benefit from this regulation being harmonized with relevant requirements in Chapter 665 as this will eliminate any confusion as to what standards have to be followed.

Businesses and Entities Affected

Board staff reports there are approximately 265 nursing facilities that are affected by changes in reimbursement. Board staff further reports that 220 of these nursing facilities are part of a chain or hospital and would likely not be small businesses. The remaining approximately 40 nursing facilities likely are small businesses.

Localities Particularly Affected

No locality will be particularly affected by these regulatory changes.

³ Reduced from what they would have been had they been subject to an inflation adjustment.

⁴ This represents a savings of \$9.8 million in state general fund expenditures.

Projected Impact on Employment

These proposed regulatory changes are unlikely to have any impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

This proposed regulation is unlikely to have any impact on the use or value of private property.

Real Estate Development Costs

This proposed regulation is unlikely to 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

No small business is likely to incur ongoing costs on account of these proposed regulatory changes. In fiscal year 2016, nursing facilities were reimbursed \$19.6 million less on account of the elimination of an inflation adjustment for that year. One small business nursing facility thus far has benefited from the early change to price-based reimbursement for nursing homes that experienced reductions in capacity of at least 30 beds after 2011 but whose occupancy increased (from less than 70 percent to greater than 80%) between 2011 and 2013.

Alternative Method that Minimizes Adverse Impact

No small business is likely to incur compliance costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses:

No business is likely to incur compliance costs on account of these proposed regulatory changes. In fiscal year 2016, nursing facilities were reimbursed \$19.6 million less on account of the elimination of an inflation adjustment for that year. One nursing

facility thus far has benefited from the early change to price-based reimbursement for nursing homes that experienced reductions in capacity of at least 30 beds after 2011 but whose occupancy increased (from less than 70 percent to greater than 80%) between 2011 and 2013.

Localities:

No locality is likely to be adversely affected by these proposed regulatory changes.

Other Entities:

No other entities are likely to suffer any adverse impact on account of this proposed regulation.

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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