



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

24 VAC 35-80 Alcohol Safety Action Program
Commission on the Virginia Alcohol Safety Action Program
Town Hall Action/Stage: 6094/9868
January 13, 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 these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Commission on Virginia Alcohol Safety Action Program (VASAP) proposes to create a new regulation, 24 VAC 35-80 *Alcohol Safety Action Program*, that would govern the state-wide Virginia Alcohol Safety Action Program.

Background

The Alcohol Safety Action Program (ASAP) is a criminal justice program that uses community and state services to address the problem of driving under the influence of alcohol and other drugs. The ASAP system is composed of 24 local programs that provide services throughout the Commonwealth.² Local ASAPs receive referrals from local courts or the Commission, and then deliver intervention services within locally-administered programs to specific municipal jurisdictions within Virginia pursuant to §§ [18.2-271.1](#) and [18.2-271.2](#) of the

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 See <https://vasap.virginia.gov/>.

Code of Virginia. Local ASAPs are certified by the Commission on VASAP every three years; they were last certified in 2021 and would thus need to be certified again in 2024.

The proposed regulation would contain requirements for local ASAPs to maintain their certification. The new chapter would include definitions, authorization for the Commission to suspend certain requirements if a federal or state disaster or emergency is declared, requirements for ASAP staffing and accessibility to the public, various requirements regarding ASAP budgets, unexpended revenues, financial reporting and audits, case management process and procedures, privacy and security procedures, and personnel policies and employee certification. The chapter would include the requirement that ASAPs be certified every three years, authorize the Commission to certify, de-certify, regionalize, re-organize, or merge local ASAPs, and covers what would happen if an ASAP was found to be out of compliance and what actions would lead to a suspension or revocation of certification. The chapter also includes requirements for staff certification, including the actions that could lead to the suspension or revocation of certification.

Most of the requirements in the proposed chapter have been in place through the Certification Manual or reflect current practice for ASAP operations.³ However, the proposed chapter includes a number of new requirements. The Commission on VASAP reports that the requirements in this chapter would, “set forth a standardization of processes and ensures financial solvency throughout the state ensuring that citizens receive equitable, high-quality services no matter where they reside and improves transportation safety in the Commonwealth of Virginia.”⁴ New requirements for local ASAPs are as follows:

- Section 40 (ASAP administrative structure and accessibility) requires local ASAPs to maintain a staff size and hours of operation as determined by the Commission,
- Section 50 (ASAP policy boards) would require that each ASAP’s policy board include a defense attorney member who practices DUI [driving while under the influence] law,
- Section 60 (ASAP revenues) would authorize the Commission to collect unexpended revenues from individual ASAPs,⁵

³ Note that 24 VAC 35-40 *Certification Requirements Manual* was repealed effective August 1, 2022. This manual has been updated and published as a guidance document, effective January 3, 2023; see <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7385>.

⁴ See Agency Background Document (ABD), page 4.

https://townhall.virginia.gov/L/GetFile.cfm?File=130\6094\9868\AgencyStatement_VASAP_9868_v3.pdf

⁵ This is intended to address discrepancies among ASAPs throughout the state. See ABD, page 9.

- Section 70 (ASAP audits and financial records) would add late fees of \$25 per day for the first five days and \$100 per day after the fifth day for monthly financial reports due on the 15th day of the following month, and establish August 1 of each calendar year as the deadline for submitting annual income statements,⁶
- Section 80 (ASAP budgets and requests for allocation of Commission funds) would add an allowance for some local programs (provided they meet their target collection rate, do not own their own building, and do not have the means to sustain six months' operating expenses) to submit a request for Commission funds as part of the budget approval process,
- Section 90 (ASAP certification) would allow the Commission's Executive Director, at their discretion, to establish a Regional Leadership Team to assist an ASAP in maintaining certification standards,
- Section 100 (Suspension or revocation of certification) would provide reasons for suspension and the process when a suspension, or revocation, of an ASAP certification occurs,⁷
- Section 130 (ASAP personnel policies) would require ASAP directors to perform an annual in-person employee evaluation on an official Commission-issued evaluation form,
- Section 140 (ASAP employee certification, revocation or suspension) contains entirely new requirements for individual employees to obtain a certification letter, and provides reasons for denial, suspension, or revocation of certification. The certification requirements include a local and national criminal history, a complete driver's record, and successful completion of the VASAP Certification Exam.⁸ ASAP directors would also be subject to these certification requirements. This section also includes ten hours of Commission-approved annual continuing education for employees to maintain their

⁶ While monthly financial and annual income statement reporting is already required, these changes are intended to increase compliance and timeliness of reporting. The Commission state office is also working with some local ASAP directors to create a new web-based financial platform that is intended to simplify report submission. See ABD, page 10.

⁷ While the authority to suspend certification is not new, clarifying these details in the regulation is intended to increase accountability of local programs, improve the quality of customer service, improve highway safety, and protect the integrity of the state-wide VASAP program. See ABD, page 11.

⁸ These requirements are modeled on current state-wide VASAP requirements for vendors contracted to provide ignition interlock and remote alcohol monitoring services. New employees would have 90 days to obtain certification.

certification. ASAPs would have to pay a \$250 fee to the Commission for employees who need to re-take the certification exam due to failing the first attempt (scoring less than 80 percent) and a \$500 per occurrence fee if an ASAP employee provides services without a valid certification letter.⁹

The Commission on VASAP has indicated that although the regulation contains a number of new requirements, they expect local ASAPs will be able to fulfil these requirements in time for the next round of certification in 2024.

Estimated Benefits and Costs

The proposed regulation contains a number of new requirements, particularly with respect to employee certification, background checks requirements, and continuing education. In addition, ASAPs would be subject to fines if they fail to meet the monthly financial reporting deadline, and if employees have to retake the certification exam, or provide services without a valid certification.

ASAPs are primarily funded through the fees paid by offenders who are legally required to obtain services; however, some ASAPs also receive substantial financial contributions from their localities. The proposed changes would allow the Commission to regionalize expenditures so that unexpended revenues could be collected and reallocated to ASAPs that meet their target collection rate but do not own their own buildings or carry a balance that would cover six months' operating expenses. These changes would directly benefit less well-funded ASAPs while passing on the costs to more well-funded ASAPs. In aggregate, this flexibility would benefit the overall state-wide VASAP system by allowing local ASAPs to remain financially solvent and continue to provide services in their region.¹⁰

The Commission on VASAP reports that there were 42,657 referrals for services into the state-wide VASAP system in 2021, and 39,909 referrals in 2022.¹¹ Individuals referred to the state-wide VASAP system are legally mandated to obtain these services, which are exclusively provided at local ASAPs. Depending on their location, these individuals may only have one

⁹ The Commission on VASAP covers the training and credentialing costs; only the cost of conducting background checks would be passed on the ASAPs and is expected to be minimal.

¹⁰ The Commission has clarified that if unexpended revenues were collected, any locality funds would be excluded and remain in the ASAPs specifically for use in their jurisdictions and would not be subject to re-distribution to any other ASAPs.

¹¹ The 2022 figure is current as of December 29, 2022. See ABD, page 6.

ASAP that they can reasonably access, especially if they are legally prevented from driving. The proposed changes would directly benefit the individuals referred to ASAP services, as well as their families and communities, to the extent that they are effective in increasing accountability and program compliance throughout the Commonwealth, thereby standardizing and improving service quality. Further, to the extent that these programs effectively reduce recidivism among drivers under the influence of alcohol and drugs, other motorists would be protected, and highway safety would be improved by higher quality and more effective ASAP service provision.

Businesses and Other Entities Affected

The proposed changes would primarily affect the Commission on VASAP and the 24 local ASAPs that would be required to meet these requirements for certification in 2024.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹² 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 noted above, the new requirements would require additional staff time, at least initially as they are implemented, and require ASAPs to contract with and pay for background checks for employees.¹³ Thus, an adverse impact is indicated.

Small Businesses¹⁴ Affected:¹⁵

The proposed regulation would not affect small businesses.

¹² 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.

¹³ The only direct cost to ASAPs would be for employees’ background checks; these costs are expected to be minimal.

¹⁴ 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.”

¹⁵ 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

Localities¹⁶ Affected¹⁷

The proposed amendments would not create new costs for local governments. Localities that are currently served by ASAPs that may be financially precarious or that receive a high volume of customer complaints would indirectly benefit to the extent that the proposed regulation improves accountability and oversight.

Projected Impact on Employment

The Commission reports that the staffing standards, financial reporting, and other programmatic changes would not require additional hiring. Thus, the proposed amendment does not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendment would not affect the value of any private property or real estate development costs.

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

¹⁶ “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.

¹⁷ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.