



Virginia Department of Planning and Budget Economic Impact Analysis

18 VAC 85-130 Regulations Governing the Practice of Licensed Midwives
Department of Health Professions
Town Hall Action/Stage: 6313/10115
April 26, 2024

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

As a result of a 2023 legislative mandate,² the Board of Medicine (Board) proposes to amend the requirements for midwife disclosures to patients.

Background

Chapter 673 and 674 of the 2023 *Acts of Assembly*, which were identical, allow licensed midwives to obtain, possess, and administer drugs and devices within the scope of their practice. The legislation also required the Board to develop and publish best practice and standards of care guidance. Accordingly, the Board developed a “Formulary and Best Practices” and published it on the Department of Health Professions (DHP) website.³

In response to the legislation, the Board proposes to amend the list of general disclosure requirements for licensed midwives who are contacted by clients seeking midwifery care. 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://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0673>.

³ See https://www.dhp.virginia.gov/media/dhpweb/docs/med/Formulary_practice_midwifery.pdf. This document lists several different drugs which may be administered by midwives, as well as the appropriate dosages, the length of treatment, and the symptoms for which the drugs may be administered.

current requirement states that the disclosure shall include “a statement that a licensed midwife is prohibited from prescribing, possessing or administering controlled substances.” The Board proposes to eliminate the phrase “possessing or administering” since midwives may now do so. The Board is also proposing to add a qualifier that the licensed midwife is “only permitted to possess or administer medications and devices listed in the Formulary and Best Practices adopted by the board.”

Estimated Benefits and Costs

The proposed amendments would align the regulation with statute. Thus, any benefits or costs that may accrue result from the underlying 2023 legislation. Licensed midwives would be allowed to provide more comprehensive services by including the administration of certain medications, as allowed by the Formulary and Best Practices, without having to refer their clients to another health professional for the same. Individuals that hire licensed midwives would benefit from not having to either (i) obtain these medications from another health professional, or (ii) forego them altogether, and thus avoiding the monetary and/or nonmonetary costs associated with those options. Licensed midwives may incur nominal costs in updating the disclosure documents to reflect the regulation.

The Fiscal Impact Statement for Chapter 673 indicates that the provisions of the legislation could result in more complaints against licensed midwives, which would create costs for DHP.⁴ DHP reports that complaints against licensed midwives are largely based on failing to meet the standard of care in a home delivery, resulting in death of the infant or significant medical care for the infant and mother; and that although it is possible that one aspect of future complaints could involve the administration of medication (or a failure to do so,) the overall number of complaints is unlikely to substantively increase as a result of this regulatory action.

Businesses and Other Entities Affected

As described above, the proposed changes would benefit licensed midwives and the individuals and families that hire them. DHP reports that there were 117 licensed midwives as of December 2023.⁵ An adverse impact is indicated if there is any increase in net cost or reduction

⁴ See <https://lis.virginia.gov/cgi-bin/legp604.exe?231+oth+HB1511FER122+PDE>. DHP re

⁵ See <https://www.dhp.virginia.gov/about/stats/2024Q2/04CurrentLicenseCountQ2FY2024.pdf>, page 5.

in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ The proposed amendments may result in a nominal cost for licensed midwives to update their disclosure documents. However, any costs would be a result of the 2023 legislative mandate. Thus, an adverse impact is not indicated.

Small Businesses⁷ Affected:⁸

The proposed amendments would not adversely affect small businesses.

Localities⁹ Affected¹⁰

The proposed amendments neither disproportionately affect any particular localities, nor affect costs for local governments.

Projected Impact on Employment

The proposed regulation does not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not appear to affect the value of private property. Real estate development costs would not be affected.

⁶ 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.

⁷ 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.”

⁸ 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.

⁹ “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.

¹⁰ Virginia Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.