



Economic Impact Analysis Virginia Department of Planning and Budget

6 VAC 35-20 – Regulations Governing the Monitoring, Approval and Certification of Juvenile Justice Programs

Department of Juvenile Justice

June 26, 2008

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 168 of the 2006 Virginia Acts of the Assembly, the Board of Juvenile Justice (Board) proposes to set forth procedures for summarily suspending the license of any group home or residential facility that poses an “immediate and substantial threat to the health, safety and welfare of its residents”.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

During its 2006 session, the General Assembly passed legislation which gives the Director of the Department of Juvenile Justice (DJJ) the power to “issue a summary order of suspension of the license or certificate of any group home or residential facility” regulated by DJJ that is deemed an immediate threat to the health and safety of its residents. This legislation stipulates that any such suspension would be effective upon issuance. The legislation further stipulates that affected licensees (certificate holders) had to be served with notice of the suspension “as soon as practicable... by personal service and certified mail” and that such notice has to include the time, date and location of a hearing to determine if the suspension is appropriate. The legislation mandates that all suspension hearings occur no later than three days after the summary suspension order is issued.

Since the code section that this legislation amended has a clause that requires the affected agencies to promulgate regulations to implement the legislation’s provisions within 280 days of

enactment, the Board promulgated emergency regulations. These emergency regulations did not differ in any substantive way from the specific requirements enumerated in Chapter 168.

Emergency regulations became effective on August 1, 2007 and will expire on July 31, 2008.

The Board now proposes to promulgate regulations to replace the emergency regulations that will soon expire. The Board proposes new regulations that differ from expiring regulations in several substantive ways. The Board proposes to specifically list conditions and actions that would constitute an “immediate and substantial threat” to residents of affected facilities. A facility will be subject to summary suspension under these proposed regulations if, for example, facility staff are “permitting, aiding or abetting the commission of any illegal acts in... the facility” or are “engaging in conduct or practices that are in violation of statutes related to abuse or neglect of children”. This change will very likely benefit regulated entities since it clearly lays out the behaviors that can trigger licensure suspension so that those behaviors can be avoided.

The Board also proposes several other changes to emergency regulations. The Board proposes to:

- Notify license holders of summary suspension, verbally and by facsimile, on the day the summary suspension is issued. Because notification by certified mail very likely would not get to a licensee before the three day hearing deadline, the Board believes that all parties would be better protected by regulations that require quicker notice than does the mandating legislation,
- Allow license holders to appear at the hearing by phone or video as well as in person and
- Explicitly promulgate language that recognizes the right of license holders to be represented by counsel and to present evidence and witnesses.

These changes will likely all benefit the licensees, who will have their procedural rights better preserved. These changes may also help to protect children; not only from the imminent harm that these regulations aim to stop, but also from the harm that can be caused by unnecessarily disrupting their placements.

While Chapter 168, these proposed regulations, and the emergency regulations that they will replace, all grant the Director of DJJ a new power to summarily suspend licensure, in

practice the Director has been able to shut down shoddily run facilities since 1992. Other DJJ regulations dating from this time allow the Director to both refuse to fund licensed facilities and the power to refuse to place and/or remove children from placements for cause. Because the Director's new power is duplicative in its effects, no regulated entity is likely to face any increased costs on account of this regulatory action.

Businesses and Entities Affected

The Department of Juvenile Justice reports that the Board currently certifies 26 community and family-oriented group homes. All of these are subject to the requirements of these proposed regulations.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.