



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

6 VAC 35-41 Regulation Governing Juvenile Group Homes and Halfway Houses
Department of Juvenile Justice
Town Hall Action/Stage: 4638 / 8936
August 4, 2020

Summary of the Proposed Amendments to Regulation

The Board of Juvenile Justice (Board) proposes to: 1) voluntarily adopt staffing ratios of the federal 2003 Prison Rape Elimination Act, 2) require facility staff to conduct periodic room checks, 3) change the specific number of hours applicable to different types of annual training, 4) require facilities to act on rather than hear a resident's emergency grievances within a specific time period, 5) establish information sharing requirements when individuals who do not work in the facility transport residents off-site, 6) require that a first-aid kit be maintained in facility and in transport vehicles, 7) no longer require facilities to make visitation procedures available to persons other than the resident, parents, or legal guardians, 8) incorporate existing variances granted to one independent living program, 9) no longer require parental consent for work assignments, and 10) streamline many existing requirements and clarify regulatory language.

Background

This regulation establishes the minimum standards with which staff in non-secure juvenile group homes and similar non-secure facilities must comply. These facilities are operated by local governments or group thereof (commissions), but are subject to certification by the Board. The primary purpose of the regulation is to ensure safety and rehabilitation of residents within these facilities. The regulation addresses a wide range of topics applicable to group homes, including personnel requirements, physical plant, facility safety and security, residents' rights, program operations, health care services, and behavior support and management. The

regulation also applies to other non-secure facilities such as independent living programs,¹ wilderness programs,² and family-oriented group homes.³ Currently, there are 13 group homes and 3 independent living programs. However, there are no wilderness or family-oriented group homes operated in the Commonwealth currently.

The proposed amendments are a result of a comprehensive review conducted by the Department of Juvenile Justice (DJJ) staff and facility administrators from group homes regulated by DJJ.

Estimated Benefits and Costs

This action contains proposals for numerous changes. Most of the changes are intended to eliminate requirements that the Board either believes are impractical or that impose small but undue burdens on regulated facilities; other proposed changes would improve the clarity of the language. The changes that appear to be substantive are discussed below.

Federal Prison Rape Elimination Act

In 2003, Congress enacted the Prison Rape Elimination Act (PREA) to “provide for the analysis of the incidence and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.” The act created a commission charged with developing standards for the elimination of prison rape. The final rule for these standards became effective in 2012; however, juvenile correctional facilities had until October 2017 to comply with the standards related to staffing requirements and staffing ratios. Although group homes under the department’s jurisdiction are not “secure facilities” as contemplated by PREA, according to DJJ the staffing ratios in the PREA provide a safe and reasonable benchmark for ensuring the safety of residents in non-secure juvenile facilities, both while on campus and during facility-sponsored events held off campus. Currently, the regulation’s existing requirements regarding staffing ratios in group

¹ "Independent living program" is defined as “a competency-based program specifically approved by the director to provide residents with the opportunity to develop the skills necessary to become independent decision makers and self-sufficient adults and to live successfully on their own following completion of the program.”

² "Wilderness program" is defined as “a residential program that provides treatment and services to residents primarily through experiential wilderness expeditions.”

³ "Family-oriented group home" is defined as “a private home in which residents may reside upon placement by a lawful placing agency.”

homes and independent living programs do not align with the staffing ratios in PREA, and the proposed amendments would conform Virginia's regulations to these requirements.

The proposal changes the current 1:10 on-site staffing ratio (staff/residents) during awake hours applicable in group homes to 1:8 in order to conform to the PREA staffing ratios. The proposal also gives the facility administrator the discretion to increase appropriate staffing ratios while residents are off-site and participating in facility sponsored activities or events. The administrator must consider which residents are participating, the nature of the event, and other factors, but shall never allow less than one direct care staff member for every eight or fewer residents off-site.

Although, this change represents a 25 percent increase in the staffing ratio, at present there are no group homes with more than seven residents based on information received from 12 out of 13 facilities in response to a recent survey. It must be noted that the recent resident counts reflected in the survey were significantly impacted by COVID-19 and do not reflect the average daily population numbers for previous years. Even then though, DJJ reports that the majority of the group homes were already in compliance with the PREA staffing ratios. In the unlikely event that a specific facility does not meet the proposed ratios under their existing staffing policies, this change may result in additional personnel costs. If additional personnel are needed, such additional costs will be borne by the locality or commission responsible for the facility's operation. On the other hand, an increased staffing ratio would help ensure that residents are accounted for and properly monitored, which may reduce the likelihood of injuries or other incidents.

The three independent living programs have been and would continue to be exempt from the above staffing ratios. Instead, they are currently required to maintain at least one direct care staff member awake, on duty, and responsible for supervision of every 15 residents on the premises during all hours, regardless of whether residents are scheduled to be awake or asleep. The proposal relaxes the 1:15 staffing requirement in independent living programs to 1:16. Although, this change represents a 6.25 percent reduction in required staffing at independent living programs, it would have no immediate impact on current facilities because no independent living program has more than eight residents at this time.

Room checks

Unlike the other residential facilities regulated by the board (secure juvenile correctional centers and secure juvenile detention centers), group homes and other similar non-secure facilities are prohibited from placing residents alone behind locked doors or in secure areas where they are not free to leave. Whenever residents are confined in their rooms in secure facilities, staff must conduct periodic room checks to ensure the resident is safe. This requirement is not in place for group homes and similar non-secure facilities. The regulation proposes to change this, by directing staff in all types of non-secure facilities except independent living programs to conduct periodic checks on residents in the facility once every 30 minutes, or more often if the circumstances justify additional checks. The proposal directs that these checks be documented in accordance with written procedures. Independent living programs are exempt from this requirement. According to DJJ, residents in independent living programs are developing skills to live independently; therefore, periodic checks are not necessary for such programs. The proposal is intended to ensure that group homes are adequately monitoring residents within their independent living programs to ensure their safety.

DJJ conducted a survey of the 13 group homes and three independent living programs regulated to determine what impact the proposed new requirements would have. The respondents indicated that the proposed change would not affect their facilities because staff were already conducting these checks.

Emergency grievances

The proposal requires that resident's emergency grievances be acted on, rather than heard, within eight hours. The proposal adds language that requires the grievance responses to be completed and documented in accordance with facility procedures. According to DJJ, grievances of this nature may pose an immediate risk of hardship or harm to a resident and demand urgency. This provision would prevent the facility from hearing the grievance within the eight-hour period but then extending the review or determination regarding the grievance well beyond the eight-hour limit.

This change may necessitate additional resources to meet the deadline depending upon the complexity of the grievance or reallocation of existing resources currently available, but would ensure both a prompt review and response. While the specific costs associated with the

change cannot be determined, DJJ does not expect this change to result in significant administrative expenses.

Information to external parties

The proposal directs all types of non-secure facilities to provide a DJJ-approved form to external parties when they transport residents flagged for additional monitoring due to recent suicide attempts or ideations or because of special medical needs. The form must identify pertinent information concerning the resident's additional monitoring needs if such information reasonably could be considered necessary for the resident's safe transportation and supervision. This directive would not apply if the carrier is the resident's parent or guardian or if an emergency renders completion of the form impracticable or infeasible.

This proposal would create additional responsibilities for existing staff, but is intended to ensure that such external parties take measures necessary to help the resident's and their safety during transportation. The facilities would have flexibility regarding how to implement this provision and may be able to control the burden on facility resources. Therefore, the magnitude of the impact cannot be determined. On the other hand, when external parties are transporting certain residents off-site, the proposed change would put such parties on notice that additional monitoring may be warranted.

First-aid kits

The proposal adds language requiring that a first-aid kit must be maintained within the facility and in facility vehicles used to transport residents. This amendment is intended to help staff of facilities respond to minor resident injuries while on premises and in transporting residents off-site. According to DJJ, this requirement is consistent with most facilities' current practices. Thus, non-secure facilities are not expected to incur significant additional expenses because most already meet this requirement.

Staff training

The proposal removes the obligation of staff in group homes and other non-secure facilities to complete 40 hours of training annually on specified topics (i.e. suicide prevention, child abuse and neglect, mandatory reporting, residents' rights, standard precautions, and behavior intervention procedures), in favor of a requirement that they receive an unspecified

volume of training on those topics. The proposal also establishes that the currently unspecified volume of additional annual training be appropriate to individual's job duties, and that it must be at least 15 hours. According to DJJ, these two changes would allow non-secure facilities to better tailor staff training to meet the needs of staff while ensuring enough training appropriate to the individual's job duties. The net impact of these two changes is expected to be a reduction in annual training hours, freeing up resources to devote to facility operations and to residents, and a likely reduction in administrative expenses.

The proposal also strikes the requirement to maintain a training plan. Non-secure facility training plans generally ensure that staff are complying with existing regulations. DJJ points out that a training plan is not required under the comparable regulations that govern secure facilities, that a training plan is unnecessary, and that the absence of a training plan would not prevent facilities from satisfying the training mandates in this section. Thus, no significant effect is expected from this particular change.

Visitation procedures

The proposal removes the obligation to make visitation procedures available to "other interested persons important to the resident" in addition to the resident, parents or legal guardians. According to DJJ, the phrase "other interested persons important to the resident" is vague, impractical, and has the potential to strain unnecessarily facility resources. Under the proposal, facilities would maintain the discretion to provide other interested parties with these procedures, but would no longer be under a mandate. Eliminating the requirement to provide visitation procedures to "other interested persons important to the resident" may reduce the amount of materials needed for distribution, which may result in a small administrative savings.

Inclusion of active variances

The proposed amendments incorporate existing variances currently in place for one of the independent living programs addressing resident nutrition and staffing during resident emergencies. Because these variances are not permanent, the affected independent living program must seek re-authorization periodically from the board prior to the variance expiration date in order to renew its provisions.

One of the variances proposed to be incorporated allows the sole direct care staff member on duty to leave an independent living program facility in emergencies for no longer than one hour to attend to a resident off-site who needs immediate assistance. This language reflects an active variance currently in place for one independent living program.

The other variance proposed to be incorporated is the exemption to the requirement that the facility maintain a file with menus of all meals served. According to DJJ, this provision is not practical for residents in independent living programs who may work several jobs or hours that prevent them from preparing their own meals and maintaining documentation of what they prepared. This change is consistent with a variance issued to the same independent living program in 2016 that excuses its apartment-style program from the menu retention requirement due to these limitations.

Because the proposed regulatory change is consistent with the existing variances, the change should have no significant impact on the program with the variances other than producing small administrative cost savings due to avoidance of repeated variance applications. Under the proposal, the other two independent living programs would also be eligible for the same exceptions and may realize some administrative cost savings.

Parental consent for employment

The proposal removes the requirement to obtain consent from the parent or legal guardian for work assignments (paid or unpaid) including chores or outside employment, and instead requires the facility administrator to collaborate with the parent or legal guardian and the referring agency before approving such work assignments. This provision preserves the parent's right to weigh in on these decisions, but ultimately recognizes the possibility that parents or legal guardians may not always be considering the resident's best interests in making these determinations. According to DJJ, this change could improve employability of some of the residents.

Businesses and Other Entities Affected

The Board currently regulates 13 group homes and 3 independent living programs operated by local governments or local commissions.⁴ Proposed changes to the regulatory

⁴ Data source: DJJ

provisions would affect these facilities as well as their staff. According to a recent survey conducted by DJJ, to which 15 of the 16 facilities responded, there are 62 residents at 15 of these facilities. The range of residents per facility is between 0 and 8, the average being 4.1 residents.

As noted above, the proposals for maintaining first-aid kits and acting on emergency grievances may introduce additional administrative costs. On the other hand, the proposals to provide more flexibility in staff training, narrowing who must be given the visitation procedures, and incorporation of active variances may provide some administrative cost savings. An adverse economic impact⁵ on affected facilities is not indicated because the magnitude of the possible costs that may be introduced to them appears to be insignificant.

Local law enforcement, divisions of social services, and other local entities that work closely with residents or are responsible for transporting residents in these facilities may benefit from the enhanced notification provisions as to the mental state of the resident being transported. Aside from the administrative benefits from incorporation of the existing variances made available to the other two independent living programs, no other entities appear to be disproportionately affected.

Small Businesses⁶ Affected:

The proposed regulation may indirectly affect small businesses only insofar as a small business provides a program or service subject to this regulation. Also, none of the proposed changes appears to have a significant economic impact. Thus, the proposed amendments should not have an adverse effect on small businesses.

Localities⁷ Affected⁸

As stated above, the 16 facilities are operated by local governments or local commissions. These facilities are located in County of Arlington, City of Falls Church, City of Fredericksburg, County of Fairfax (3), Prince William County, City of Alexandria, City of

⁵ 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.

⁶ 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.”

⁷ “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.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Virginia Beach (3), City of Lynchburg, City of Portsmouth, Chesterfield County, City of Martinsville, and York County.

The additional administrative costs that may be introduced by the amendments appear to be insignificant. Thus, the amendments do not appear to affect any locality adversely or disproportionately.

Projected Impact on Employment

According to DJJ, the removal of the parental consent for a resident's work assignments may improve employability of some of the residents, which would moderately add to the labor supply. No significant impact on employment is expected from other changes.

Effects on the Use and Value of Private Property

The proposed amendments do not affect private property or real estate development costs.

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 14 (as amended, July 16, 2018). 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(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 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.