



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

12 VAC 5-220 Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations

Virginia Department of Health

Town Hall Action/Stage: 5707 / 9238

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Summary of the Proposed Amendments to Regulation

In response to Chapter 1271 of the 2020 Acts of Assembly,¹ the State Board of Health (Board) proposes to increase the cap on the fee for applications (application fee) for a Certificate of Public Need (COPN), and to establish a new fee for registrations (registration fee).

Background

This regulation requires health care providers seeking to open or expand a health care facility in Virginia to demonstrate that the community needs the services the facility would deliver and to receive approval from the State Health Commissioner. Approval is needed for projects involving services such as general acute care, perinatal, diagnostic imaging, cardiac, general surgical, organ transplantation, medical rehabilitation, psychiatric/substance abuse, mental retardation, and nursing facility.

The COPN program is supported by fees. Chapter 1271 removed the statutory restrictions on the application fee: a minimum fee of \$1,000 and a maximum fee of not more than one percent of the proposed expenditure for the project or \$20,000, whichever was less. This legislation also expanded the authority of the Board to assess a registration fee (in addition to the already existing application fee for certification). Moreover, the legislation decreased the review interval for the State Health Services Plan (formerly the State Medical Facilities Plan) from four years to two years, and placed new requirements on the Virginia Department of Health (VDH) to have a publicly available electronic inventory of COPN-authorized capacity.

¹ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1271>

According to the Board, the legislative changes require an additional two full-time-equivalent (FTE) positions. In order to support the existing COPN program, the new program obligations, and the new FTEs, the Board proposes to 1) revise the application fee to one percent of the proposed expenditure for the project, but not less than \$1,000 and no more than \$60,000 and 2) establish a registration fee of \$70 for certain capital expenditures, the addition of medical equipment and services, and replacement of existing medical equipment.

Estimated Benefits and Costs

According to the Board, the fiscal year (FY) 2020 budget to administer the COPN program was \$981,368. After adding two new FTEs (at \$85,417 each) and other adjustments, the program's "annual revenue target" for FY 2021 is now \$1,189,849. The number of applications received in the last five years has varied from a low of 38 to a high of 61, with 46 being the average. Based on historical data, setting the maximum application fee at \$60,000 would be \$4,751 short of the target in a year with the lowest expected number (38) of applications, and would exceed the target by \$244,743 in a year with an average number (46) of expected applications.

It appears the Board has used the lowest expected number of applications (38) as the basis for establishing the \$60,000 fee cap. This results in part from a limitation on program funding that prevents the program from retaining from one year to the next any unspent revenues in excess of one month's operating expenses. This limitation on "carryforward" is found in Item 300 A.1 of the 2020 Appropriation Act,² which provides that any application fees in excess of the amount required to operate the COPN program (less one month's operating expenses) shall not be retained by the program but shall instead be provided to the regional health planning agencies (RHPAs) as supplemental funding. For example, given the current statutory framework, if the actual number of applications turns out to be the average (46) rather than the lowest (38), the program would generate \$244,743 in excess revenues. Pursuant to the budget language, the program would be allowed to keep \$99,154 (one month's operating expenses) and would transfer the remaining \$145,589 to the RHPAs. According to the Board, there used to be five RHPAs statewide, but currently only one RHPA, the Health Systems Agency of Northern Virginia, remains active.

² <https://budget.lis.virginia.gov/item/2020/2/HB5005/Chapter/1/300/>

The main effect of the revised application fee schedule is to increase the fee cap from \$20,000 to \$60,000. As before, the actual amount of the fee would be equal to one percent of the project's costs. Therefore, the proposed change would have a larger effect as the cost of the project increases. Projects with capital expenditures of \$2 million or less would not be affected as they would continue to pay an application fee of no more than \$20,000. Projects with a cost of between \$2 million and \$6 million would be assessed an application fee that would exceed the previous cap of \$20,000, but would be less than the new cap of \$60,000. Lastly, projects with a cost of greater than \$6 million would be assessed an application fee of \$60,000, which would represent an additional \$40,000 in comparison to the fee that would have been charged under the previous cap of \$20,000. In FY 2020, 63 percent of projects seeking COPN authorization had estimated capital costs of greater than \$2 million, and thus would have paid a higher fee amount under the new cap proposed by the Board.

The Board also proposes to establish a new \$70 registration fee for certain capital expenditures, the addition of medical equipment and services, and replacement of existing medical equipment. Currently, registration is required, but no fee is assessed. In the past five years, VDH has issued an average of 30 registrations per year. As a result, it appears that in a typical year only \$2,100 in new revenues would be collected from the proposed registration fee; this equates to 0.18 percent of the program's \$1,189,849 "annual revenue target." It is understandable that registration process results in costs that are separate and apart from the application process, and as such these costs could be estimated from available data and so assessed. However, the introduction of a brand new fee would also be accompanied by administrative complexities in assessing it, keeping track of it, depositing it, and correcting any errors in its administration both for VDH and the regulated entities. It is not clear whether the administrative costs to assessing a new fee, given the small revenue impact relative to overall program revenues, would outweigh the benefits from implementing it.

Businesses and Other Entities Affected

The individuals, businesses, or other entities likely to be directly affected by the regulatory change are those that seek to apply for a COPN for projects that are valued at more than \$2 million, and also those that seek registration of qualified projects. This potentially includes hospitals, nursing homes, intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs), and some physician's offices. There are 104 general hospitals, 65

outpatient surgical hospitals, 8 psychiatric hospitals, 283 nursing homes, 61 ICF/IIDs, and 37,567 doctors of medicine in the Commonwealth. In the past five years, the number of COPN applications ranged from a low of 38 to a high of 61 per year, 46 being the average. Of those, 63 percent were projects with greater than \$2 million capital expenditures. In addition, approximately 30 registrations have been issued per year on average. An adverse economic impact³ on such affected entities is therefore indicated.

Additionally, to the extent proposed fee changes result in excess revenue more than the program's one month's operating expenses, the RHPA may receive supplemental funding.

Small Businesses⁴ Affected:

Types and Estimated Number of Small Businesses Affected

According to VDH, no data are available to indicate how many doctors of medicine operate a physician's office, and how many of that number would be engaging in services or utilizing equipment that would require either COPN application or registration; however, it is likely that all doctors of medicine would qualify as a small business if they did operate a physician's office. Over the past five years, COPN requests from physician groups made up an average of 18.8 percent of all requests, which translates to an average of 8.8 requests per year.

Costs and Other Effects

The costs and other effects on doctors of medicine that would qualify as a small business if they did operate a physician's office would be the additional fees for applications involving more than \$2 million and the \$70 registration fee for services or equipment requiring registration as discussed above.

Alternative Method that Minimizes Adverse Impact

Given the small relative size of the expected revenue from the registration fee as a portion of total program revenues and the implied recordkeeping costs and other administrative complexities, it appears this fee could be eliminated without any discernible negative impact on the COPN program.

³ 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.

⁴ 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."

Localities⁵ Affected⁶

A locality would be affected by the proposed changes to the extent it is involved in medical services or equipment requiring COPN application or registration. According to VDH, there are no pending applications involving a locality. However, there were three COPN authorizations in the past 25 years that could be identified as issued to a locality: in 2003 to Bedford County for nursing home beds, in 2004 to Orange County for nursing home beds, and in 2005 to the City of Virginia Beach for a 24 bed ICF/IID.

Projected Impact on Employment

The proposed amendments would provide direct funding for two full time program staff at VDH.

Effects on the Use and Value of Private Property

The proposed increase in COPN application fees and the establishment of a new registration fee would add to the costs of projects requiring such fees. Consequently, the value of the entities subject to the higher application fee and the new registration fee may be moderately reduced. The proposed amendments do not appear to directly affect 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

⁵ “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.

⁶ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

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.