



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 35-105 – Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services
Department of Mental Health, Mental Retardation and Substance Abuse Services
December 25, 2008

Summary of the Proposed Amendments to Regulation

The State Mental Health, Mental Retardation and Substance Abuse Services Board (Board) proposes to make several substantive amendments to its regulations governing licensure of non-residential care providers and residential facilities. Specifically, the Board proposes to:

- Update definitions (and other text throughout these regulations) to reflect current practices,
- Require applicants for licensure to disclose “the legal names and dates of any services licensed to the applicant in other states or in Virginia” as well as disciplinary actions or sanctions taken against the applicant (in relation to any previously licensed services) and any crimes of which the applicant has been convicted,
- Eliminate the requirement that food services at licensed group homes and community residential homes must be inspected and approved by local health department authorities,
- Eliminate the requirement that providers undergo an audit every three years and replace it with a statement that the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) may, at its discretion, ask for an audit,
- Eliminate the requirement that service locations that are not hooked into public water and sewer lines have their wells and septic fields inspected annually and replace it with requirements that these service locations be in compliance with state and local laws for such inspections,
- Limit per bedroom occupancy in Medicaid waiver group homes licensed after the effective date of these proposed regulations to two individuals and

- Limit maximum patient capacity of Intermediate Care Facility for the Mentally Retarded (ICF/MR) facilities licensed after the effective date of these proposed regulations to 12 individuals.

Result of Analysis

The benefits likely exceed the costs for several proposed changes. There is insufficient information to accurately gauge whether benefits will outweigh costs for several other of these proposed changes. The potential costs associated with further limiting maximum capacity of ICF/MR facilities, however, likely outweigh the potential benefits of making this change. All likely substantive costs and benefits are discussed below.

Estimated Economic Impact

Since these regulations were promulgated, common terminology amongst professionals who care for individuals who are mentally ill, mentally retarded or who have substance abuse issues has changed. The Board proposes to amend not only the definitions section in these regulations, but also language throughout all other sections, to reflect these changes; for instance, the Board proposes to insert the phrase intellectual disabilities next to each iteration of the phrase mental retardation because intellectual disabilities is more used by individuals who work with the disabled. These changes to language are not likely to increase costs for regulated entities but will likely provide the benefit of additional clarity (since regulatory language will more closely resemble language in common use in this field).

Current state law does not allow the Board to deny licensure to individuals on account of criminal record or sanctions or disciplinary actions levied against them with regard to other licenses that may have been held in the past; current regulations do not require disclosure of conviction or disciplinary action, either. The Board proposes to require that this information be disclosed on any application for licensure. The Board will not be able, at this point, to deny licensure to individuals who have been convicted of crimes or who have been subject to disciplinary action either in Virginia or any other state but they will be able to initiate disciplinary action (which may include loss of licensure) against licensees who fail to disclose this information.

This proposed change will not (absent legislative action) cost applicants with less than pristine past behavior the ability to engage in enterprise for which Board licensure is required but

it will provide the benefit of additional information, both for the Board and for citizens who will be able to better choose service providers with this additional information. This proposed change will also allow the Board to discipline individuals who do not fully disclose information about past behavior and, so, may allow the Board to better protect client populations.

Current regulations require service providers that offer food services to have those food services inspected and approved by local health authorities. DMHMRSAS reports that such inspections are not among the tasks that local health authorities normally perform. Since this requires licensees to obtain a service that is not available, the Board proposes to eliminate this provision. This regulatory change will benefit licensees in that it will conform these regulations to reality and clarify what is required of licensee for any entities who might choose to read them.

Current regulations require that licensed service providers have their financial records audited by a certified public accountant every three years. DMHMRSAS reports that these audits usually cost service providers between \$1,500 and \$2,000. The Board proposes to eliminate the strict time frame for obtaining an audit and instead require that audits be done upon request of the Board. If the Board asks for audits less frequently than every three years, then this proposed change will likely benefit service providers. If, on the other hand, the Board asks for audits more frequently than every three years, this change will likely raise costs for service providers. In practice, the Board will likely ask for audits more frequently from some licensees and less frequently from others (because of complaints, appearance of financial struggle, etc). Whether this proposed change provides a net benefit for service providers as a whole will depend on whether the majority of service providers are audited less often or more often than every three years.

Current regulations require facilities that have septic systems or well water, or both, to inspect those systems on an annual basis. The Board proposes to eliminate this requirement. Instead, regulations will have language that indicates that facilities will have to follow applicable state and local laws. Since facilities are already subject to these laws, this proposed change will only remove any additional inspections imposed by the Board's current regulations. Whether this change provides a benefit for regulated entities will depend on whether state and local laws require inspections less frequently than every year.

Current regulations do not contain a limit on the number of patients per bedroom for Medicaid waiver group homes. The Board proposes to limit group homes (licensed after the effective date of these proposed regulations) to only housing two patients per room. DMHMRSAS reports that this change is being proposed to further therapeutic ends for patients. Patients who reside in these group homes often have sensory issues which cause them to react badly when surrounded by many people or much noise and confusion. This change may benefit patients who have the issues reported by DMHMRSAS but will also decrease the flexibility that group homes currently have to house patients in the most efficient manner possible. This change will also give existing licensed facilities a competitive advantage over future group homes that will be differentially affected by this rule. DMHMRSAS reports that waivers will be available so that more than two patients may be housed in a single room if it would not be adversely impact therapeutic outcomes. Whether this proposed change proves to be a net benefit for patients and licensees will depend on how much patients benefit and how responsive the Board is in issuing waivers.

Current regulations set the maximum capacity for ICF/MR facilities at 20 patients. The Board proposes to lower this capacity for facilities that are licensed after the effective date of these proposed regulations to a maximum of 12 patients. This proposed change would reduce the operational flexibility for facilities licensed in the future and would increase the per patient overhead costs for facilities that would choose to take in more than 12 patients but will be precluded from doing so. DMHMRSAS reports that there are currently four facilities that house more than 12 patients and that facilities must obtain a certificate of public need (COPN) if they plan to house more than 12 patients. DMHMRSAS further reports that there is no evidence that larger facilities are more unsafe or that patients in those facilities have worse outcomes. This change will also give existing licensed facilities a competitive advantage over future group homes that will be differentially affected by this rule. Costs will likely outweigh benefits for this proposed change.

Businesses and Entities Affected

DMHMRSAS reports that the Board currently licenses 524 facilities, 484 of which qualify as small businesses. All of these licensees and the clients that they serve will be affected by these proposed regulations.

Localities Particularly Affected

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

Projected Impact on Employment

The proposal to further limit capacity of IFC/MR facilities licensed in the future may artificially lower demand for the labor of individuals who would be hired if these facilities were working under current rules. This might limit growth in employment in these fields.

Effects on the Use and Value of Private Property

The proposal to further limit capacity of IFC/MR facilities licensed in the future will likely increase per patient costs (compared to costs for current facilities. This will put such facilities at a competitive disadvantage and will likely limit profits for such facilities.

Small Businesses: Costs and Other Effects

The proposal to further limit capacity of IFC/MR facilities licensed in the future will likely increase per patient costs (compared to costs for current facilities. This will put such facilities at a competitive disadvantage and will likely limit profits for such facilities. DMHMRSAS reports that 484 of the facilities licensed by the Board qualify as small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The extra costs incurred by small businesses licensed in the future would be further minimized if maximum capacity for ICF/MR facilities were not lowered by 40%.

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.