

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

12 VAC 35-105 Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services
Department of Behavioral Health and Developmental Services
Town Hall Action/Stage: 4928/8261
June 12, 2018

Summary of the Proposed Amendments to Regulation

Pursuant to legislative mandates, the State Board of Behavioral Health and Developmental Services (Board) proposes to: 1) defer the definitions of certain mental health professionals to those of the Board of Counseling and 2) include occupational therapists and assistants in the definitions of certain mental health professionals.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Virginia's Medicaid program has long relied on the Board's definitions of certain mental health professionals to determine who is a qualified professional for reimbursement. These definitions are Qualified Mental Health Professional (QMHP), Qualified Mental Health Professional-Adult (QMHP-A), Qualified Mental Health Professional-Child (QMHP-C), and Qualified Mental Health Professional-Eligible (QMHP-E). The Board's definitions have included varying education and experience requirements. However, these professionals were not issued any licenses or certificates concerning being designated a qualified mental health professional. The eligibility was checked and determined on a case-by-case basis when random checks were conducted, when there were questions raised, etc.

Chapter 418 of the 2017 Acts of Assembly¹ required these professionals to register with the Board of Counseling. As a result, the Board proposes to revise its definitions to state that these professionals must be registered with the Board of Counseling and defers all qualification, education, and experience criteria to the definitions of the Board of Counseling regulations currently under development (18 VAC 115-80).² In essence, going forward, the Board of Counseling will determine standards and register those who comply with the standards being adopted.

The Board of Counseling's current proposed definitions are the same as the Board's. Thus, everyone currently eligible under the Board's definitions should be able to comply with and register with the Board of Counseling. In addition, individuals who are currently providing services as professionals as of December 31, 2017 would be grandfathered in as long as they register within one year. The required registration would likely strengthen enforcement and prevent unqualified individuals from performing such services to the Medicaid population. However, the registration requirement would introduce costs on affected professionals, as there would be a \$50 fee for initial registration and \$30 fee for annual renewal under the Board of Counseling regulation. In addition, the affected mental health professions would have to spend time to prepare their applications for initial registration and subsequent renewals.

Pursuant to Chapter 136 of the 2017 Acts of Assembly, the Board proposes to include occupational therapists in the definitions of QMHP-A, QMHP-C, and Qualified Developmental Disability Professional and occupational therapy assistants in the definition of Qualified Paraprofessional in Mental Health. These proposed changes would expand the number of mental health professionals and paraprofessionals allowed to provide services to the Medicaid population. Affected occupational therapy providers would have more venues for employment and the Medicaid population would have access to more professionals for mental health services. According to the Department of Behavioral Health and Developmental Services, occupational therapy practitioners are qualified to provide services within the scope of their professional license. Thus, there should not be any increase in health and safety risks to the Medicaid mental health patients.

¹ <http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0418>

² <http://townhall.virginia.gov/L/ViewStage.cfm?stageid=8297>

Businesses and Entities Affected

Because there is no current license or registration requirements for affected professionals, it is not known how many professionals may be affected. However, the Board licenses 1,307 service providers. While some of these providers use several mental health professionals, others do not use any. According to the Department of Health Professions, 5,831 applicants have so far applied for the QMHP-A, QMHP-C, QMHP-E and Peer Recover Specialist registration. However, the proposed amendments do not apply to Peer Recover Specialists. In addition, DHP currently do not have way of capturing how many occupational therapists and assistants have registered for QMHP.

Localities Particularly Affected

The proposed changes do not affect particular localities disproportionately.

Projected Impact on Employment

The proposed amendments will broaden employment opportunities for occupational therapists and assistants.

Effects on the Use and Value of Private Property

No significant impact on the use and value of private property is expected.

Real Estate Development Costs

No impact on real estate development costs is expected.

Small Businesses:

Definition

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.”

Costs and Other Effects

The proposed changes do not have direct costs and other effects on small businesses. Indirectly, mental health providers, most of which are small businesses, will have a larger pool of employees to hire from with the inclusion of certain occupational therapy practitioners in mental health professional definitions.

Alternative Method that Minimizes Adverse Impact

No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses:

The proposed amendments do not have an adverse impact on businesses.

Localities:

The proposed amendments will not adversely affect localities.

Other Entities:

The proposed amendments will not adversely affect other entities.

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 Number 17 (2014). 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(C): 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.