



## Economic Impact Analysis Virginia Department of Planning and Budget

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**22 VAC 40-72 –Standards for Assisted Living Facilities**  
**Department of Social Services**  
August 1, 2014

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### **Summary of the Proposed Regulation**

As mandated by Chapter 320 of the 2013 Acts of the Assembly, the State Board of Social Services (Board) proposes to amend its Standards for Assisted living Facilities to stipulate insurance amounts for which assisted living facilities will be required to provide disclosure.

### **Result of Analysis**

Benefits likely exceed costs for all proposed regulatory changes.

### **Estimated Economic Impact**

In 2013, the General Assembly passed legislation that directed the Board to promulgate regulations,

*“9. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Board, to any resident or prospective resident and his legal representative, if any, and upon request, that discloses whether the assisted living facility maintains liability insurance in force to compensate residents or other individuals for injuries and losses from the negligent acts of the facility, provided that no facility shall state that liability insurance is in place unless such insurance provides a minimum amount of coverage as established by the Board; and 10. Establishing the minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in accordance with subdivision 9.”*

The Board now proposes to amend its regulation for assisted living facilities to implement these requirements. Specifically the Board proposes to disclose to prospective residents whether they

have insurance that will pay out up to \$500,000 per occurrence and \$500,000 aggregate to compensate residents or other individuals for injuries or losses suffered due to the negligence of the facility. The Board also proposes to require that the same insurance disclosure be contained in resident agreements signed by residents (or their legal representative) at the time of, or prior to, admission. The Department of Planning and Budget suggested that the board create a separate section of the regulatory text that specifically lists the required liability amounts, rather than just including it in the text of the disclosure section and in the section describing the resident agreement with the facility. DSS agreed to consider presenting this idea to the Board at the final stage for this proposed regulation.

Assisted living facilities are not required by the Standards for Assisted Living Facilities to actually have liability insurance. Disclosure requirements likely will, however, encourage facilities to have at least \$500,000 in insurance since not having such insurance, and having to disclose that fact to potential residents, would put them at a competitive disadvantage to similarly priced assisted living facilities that do have such insurance. Board staff reports that the cost for insurance with \$500,000 per occurrence/\$500,000 aggregate coverage would likely average \$125-\$250 per facilities bed. Facilities with poorer quality of care, more regulatory complaints, an older physical plant or residents who are generally in poorer health (amongst other risk factors) may pay the higher side of that average; facilities that rate as better risks would likely pay on the lower side of that average. Residents and their families will benefit from these proposed regulatory changes as they will allow a more informed choice of facilities where residents will be compensated for any losses incurred on account of negligence on the part of facility owners or staff.

### **Businesses and Entities Affected**

Board staff reports that the Board regulates 544 assisted living facilities in the Commonwealth. All of these facilities will be affected by the proposed regulatory changes. Board staff further reports that most of these facilities would qualify as small businesses.

### **Localities Particularly Affected**

No locality will be particularly affected by this proposed regulation.

## **Projected Impact on Employment**

This proposed regulation is unlikely to have any impact on employment in the Commonwealth.

## **Effects on the Use and Value of Private Property**

Assisted living facilities are not required by the Standards for Assisted Living Facilities to actually have liability insurance. Disclosure requirements likely will, however, encourage facilities to have at least \$500,000 in insurance since not having such insurance, and having to disclose that fact to potential residents, would put them at a competitive disadvantage to similarly priced assisted living facilities that do have such insurance. To the extent that purchasing insurance lowers the profits of assisted living facilities, the value of those facilities will also be lowered.

## **Small Businesses: Costs and Other Effects**

This regulatory action does not directly impose any costs but the likely very minimal staff cost for revising disclosure documents.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

There are likely no alternative methods of regulation that would both meet the aims of the legislature and the Board and be less costly.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an adverse effect on small businesses, Section 2.2-4007.04 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.

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