



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

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### **22 VAC 40-71 – State Board of Social Services Standards and Regulations for Licensed Adult Care Residences March 29, 2002**

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 9-6.14:7.1.G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1.G 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. The analysis presented below represents DPB's best estimate of these economic impacts.

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

State Board of Social Services proposes over 30 changes to current assisted living regulations. The most significant changes include prohibiting locking the doors of a facility providing services to mixed populations and allowing locking the doors of a special care unit, requiring primary and periodic diagnosis of dementia for special care residents, introducing new training requirements for assisted living facility operators, changing training requirements for facility personnel, modifying orientation requirements for new employees, establishing new qualifications for training personnel, allowing a facility to share a facility administrator with a nursing home, establishing an approval requirement to place a resident in a special care unit, changing on-site employee requirements, establishing a new standard to have a glazed window in at least one of the common rooms of an assisted living facility, and allowing a "do not resuscitate" order to be honored in the presence of a CPR licensed personnel.

The proposed changes have been in effect since October 9, 2001 as emergency regulations. Thus, the proposed permanent regulations are not expected to create new economic effects. Most of the economic effects discussed below may have been already realized and are expected to continue.

## **Estimated Economic Impact**

The proposed regulations will amend the rules for the assisted living facilities. These facilities provide services to people needing assistance with daily activities and wishing to live as independently as possible. The need for assistance may originate from inability to recognize danger or protect safety due to cognitive impairments. The sources of the impairment may be various which may include dementia, mental retardation, or some other diseases.<sup>1</sup> These facilities offer help to their residents with activities such as eating, bathing, dressing, housekeeping, laundry, transportation, and taking medications. An assisted living residence may be a part of a nursing home, or it may be a stand-alone facility. Main advantages of assisted living facilities are providing the needed services and the security of living with others in a supervised setting.

Based on the most recent data available to the Department of Social Services (the department), there are 702 assisted living facilities in the Commonwealth. A facility size may vary from 4 to 600 beds, but the average size is reported to be between 40-50 residents. In addition to the general maintenance, care, and supervision, some facilities offer special care services to residents in a secure unit. Residents in these secured units are diagnosed with dementia and cannot recognize danger or protect themselves. The department estimates that of the 702 facilities, there may be as many as 255 facilities with a special care unit. It is reported that the statewide licensed capacity is 34,206 for all types of residents of which 4,500 are estimated to be in special care units. Although the number of residents living in assisted living facilities is not known, it is believed to be considerably less than the licensed capacity. Assisted living residences may offer their services for a price ranging from \$800 a month to \$4,000 or more a month, depending on the services and accommodations offered and the size of the room or the apartment.

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<sup>1</sup> Dementia is loss of mental abilities. Typical symptoms include memory loss and difficulty in performing complex tasks.

The proposed changes will prohibit locking the doors of a facility providing services to mixed populations and allow locking the doors of a special care unit serving residents with dementia. The locking of doors of a special care unit is an option among others a licensee has in securing the unit. Mixed populations include residents with or without serious cognitive impairments. The department indicates that some of the facilities have been locking the doors in lieu of monitoring the residents with serious cognitive impairments. Since the doors of the environment containing a mixed population will not be locked, these facilities will have to either monitor the residents with serious cognitive impairments or discharge them. If the facility continue to provide services to these residents, there are likely to be additional monitoring costs associated with door alarms, cameras, constant staff oversight, security bracelets, or delayed egress mechanisms. If the facility discharges them, transfer of revenues from facilities discharging residents to facilities receiving residents will likely to take place. Also, if discharged, the residents will likely incur additional costs such as moving expenses to relocate from a facility to another. However, the number of facilities that will continue to provide services to these residents and the facilities that will discharge them are not known. Also, the size of additional compliance costs to the facilities, the size of potential revenue transfers, and relocation costs to the residents are not known.

Facilities with special care units may also discharge some of their residents, or relocate them to unsecured units because they will not be allowed to detain residents without serious cognitive impairments. Similarly, this may cause some revenue transfers among the assisted living facilities or increase supervision costs, and introduce relocation costs to the residents.

The main benefits of these proposed changes are providing enhanced protection, via the special care unit provisions, for residents who have dementia and cannot recognize danger, and allowing residents who need not be restricted to freely leave the facility. Removing restrictions on leaving the facility could contribute to mental and emotional well-being of residents who do not need to be restricted.

Also, the proposed regulations will add new areas to be included in assessment of a person entering a special care unit. Currently, every resident entering an assisted living facility must have a physical examination. Due to the proposed changes, a determination for dementia will have to be made for residents entering a special care unit. Dementia determination may take

about 45 minutes to one hour.<sup>2</sup> Thus, this requirement has the potential to increase physician fees paid by the residents. Also, some patients who are currently in special care units will likely be diagnosed as not suffering from dementia. Residents without the diagnosis may have to be transferred to another facility if the facility has a special care unit only, or the facility may choose to provide additional monitoring. As before, there may be additional monitoring costs for some facilities, or revenue transfers between the facilities discharging and receiving these residents as well as relocation costs to the patients. The benefit of dementia assessment will be increased potential for more appropriate placement of residents into special care units. Some of the current residents of special care units who do not suffer from dementia will be allowed to freely leave the facility. This could contribute to mental and emotional well-being of these residents.

Further, the proposed regulations will require facilities to make a determination periodically as to whether a patient's continued residence in the special care unit is appropriate. A periodic determination will be required every six months for special care unit residents. In some cases, a resident's condition may improve over time and his/her stay at the special care unit may no longer be needed. The determination will be made by the facility. The facility may consult with family members, employees, and the resident himself to make the determination. Each periodic determination is expected to take about one hour of staff time and is expected to cost the facility about \$25.<sup>3</sup> Since up to 4,500 periodic determinations will be required every six months, the annual total costs to the assisted living facilities may be up to \$225,000. In exchange for these compliance costs, the need for continued residence in a special care unit may be more appropriately assessed and this may improve the resident's welfare.

Additionally, the proposed regulations will introduce new training requirements. An operator applying for an initial assisted living facility license will be required to receive training on health and safety regulations and resident rights. Based on the average number of applications between 1999 and 2001, about 90 new facility operators may be required to receive initial training annually. Since it takes about five to eight hours to complete initial training, about 450 to 750 hours of operator time will likely be devoted to comply with this requirement.<sup>4</sup>

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<sup>2</sup> Source: The Department of Social Services

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

This time should be valued at the operator's wage rate. However, the operators will be voluntarily undertaking the initial training, which indicates that the benefits to the operator exceed the costs. The department offers initial training to the operators at no charge at about ten different locations every month. To provide this training, the department incurs about \$241,000 in terms of 5 ½ full time equivalent staff positions and training materials.<sup>5</sup> On the other hand, this change may reduce health and safety risks to the residents by educating the first-time facility operators on health and safety requirements.

The proposed regulations will also amend the employee training requirements. There are four different types of training. The requirements vary between facility staff and administrator and between cognitive impairments related to dementia and not related to dementia. One of the proposed changes will allow employees and administrators to meet the initial training requirements on cognitive impairments by providing documentation of training received in the year prior to employment in an assisted living facility. The main effect of this proposed change will be allowing transfer of previous training. The department offers provider training at \$10 per person. Currently, this expense may be incurred by the facility or by the employee. Thus, the facility or the employees may avoid \$10 training expense per training session. Additionally, wages corresponding to training hours should be considered as cost savings to the employees or the facility. However, there is not enough data to determine the size of the potential cost savings.

Further, the direct care staff will be required to receive dementia related training within 2 months instead of 6 months of employment. Currently, there is a chance that by the time an employee quits his job within six months, he/she may not have received training. Due to the proposed changes, facilities may incur increased costs associated with ensuring that staff receives the training by an earlier date. Employees who quit working between the second and the sixth months of employment will be more likely to be trained. On the other hand, they will be provided information, which may improve their performance early on at their new position.

With another change, the annual training required for direct care staff in special care units will be increased to 16 hours of annual training during the first year of employment. Currently, annual training requirement is 12 hours. There will be an additional four hours of training required per employee for the first year of employment. The expected cost of the employee time

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<sup>5</sup> Ibid.

is about \$24 for four hours.<sup>6</sup> Training costs may be incurred by the facility but in some cases employees may incur them out of their pocket. Most employees are expected to be paid during the training because they are believed to be provided training at company's time. This change will likely result in increased costs for the facilities with special care units, but may also improve employee productivity and quality of services offered.

Furthermore, the proposed regulations will increase the qualifications of the persons developing and providing the training for facility staff in special care units. A licensed health care professional that has at least 12 hours of training in dementia related impairments must provide the training. Additional requirement to be a licensed professional and the requirement for hours of training may increase the costs to the facilities with special care units. However, this requirement may improve the quality of training provided. The number of training staff that may be affected and the sizes of the additional costs and benefits are not known.

Moreover, the proposed changes will increase the time frame in which the new employee orientation must be completed. Orientation of non-direct care staff at assisted living facilities with a special care unit or with a mixed population will have to be completed within one month of employment rather than within one week. This provision will likely provide flexibility for the facilities to meet the orientation requirement. There may be cost savings for facilities because of the additional flexibility and because they will not have to provide orientation to staff members who remain employed only a short time. However, this may negatively affect the quality of services provided by new employees.

Also, the proposed regulations will allow the use of a shared administrator for an assisted living facility and a nursing home provided both are part of the same building. If the shared administrator does not provide the direct management of the assisted living facility, the proposed regulation requires that a manager be designated. This manager must meet lesser qualifications and training requirements than the administrator is required. Currently, both an assisted living facility and a nursing home must have separate administrators. Facilities that can use a shared administrator are expected to incur some managerial cost savings. In these cases, cost savings could be in the range from \$35,000 to \$70,000, which is the estimated annual salary for the

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<sup>6</sup> Ibid.

facility administrator.<sup>7</sup> Some other facilities may choose to designate a manager in which case cost savings will probably be lower. The number of facilities under the same building with a nursing home is not known. Reduced managerial oversight is a potential cost of this proposed change.

Additionally, the proposed regulations will require a written approval prior to placing a resident with diagnosis of dementia in a special care unit. Currently, there is no requirement for approval. Someone who is on the statutory priority list must issue the written approval. The order of priority is the following: the resident (if capable of making informed decisions), guardian or legal representative, spouse, adult child, parent, adult sibling, adult grandchild, adult niece or nephew, aunt or uncle, and an independent physician. The proposed priority order may change the person who may currently be making a placement decision for a resident. Thus, it is not known if this requirement will increase or decrease the number of placements in special care units. The costs and benefits of this proposed change will depend on the changes in welfare of the resident. The likely effect on residents' welfare is not known.

The proposed regulations will require an employee responsible for managing or coordinating the activities program to be on-site in the special care unit 20 hours each week. This employee must have specific qualifications which include being a therapeutic recreation specialist, an activities professional, or being eligible for such certification, having one year experience in a similar position, being a qualified occupational therapist or being an assistant to one, or having completed an adult group activities training. Current regulations already require the presence of an employee. Thus the facilities may incur additional costs to provide required qualifications to their existing personnel through training, or may hire new employees with the required qualifications. Facilities with special care units that do not have a trained staff person in charge of activities will incur additional costs as a result of this proposed change. However, there is no accurate data to determine the size of these additional costs. On the other hand, the proposed change may improve the quality of activities provided in special care units.

Further, the proposed regulations will provide an exception for the current requirement that two direct care staff members to be awake and on duty in each special care unit. This requirement will not apply if there are less than five residents in the unit and certain conditions

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<sup>7</sup> Source: Conversations with Department of Social Services and industry representatives.

are met. This change has the potential to provide some cost savings to the facilities with special care units, but also has the potential to reduce the oversight provided by direct care staff.

Another proposed amendment will require the facility with a special care unit to have a glazed window above ground level in at least one of the common rooms in newly constructed facilities and those with a change in use group. Facilities purchasing older buildings may have to renovate the building while new facilities may have to add a glazed window to construction design. The number of facilities that may be subject to this change and the cost of providing a glazed window are not known. It is indicated that most new facilities already have a glazed window. Thus, additional costs may be small. On the other hand, the requirement for a glazed window may contribute to well being of a special care resident.

Finally, the proposed regulations will allow carrying out a “do not resuscitate” (DNR) order by an employee with a certification in cardiopulmonary resuscitation (CPR) in addition to a licensed nurse. The proposed change will incorporate the statutory changes occurred in 1996. Since then honoring a DNR order by an employee with a certification in CPR has been allowed in practice. Thus, no significant effect from this change is expected.

## **Businesses and Entities Affected**

Approximately 702 assisted living facilities in the Commonwealth will be subject to the proposed regulations. Although these facilities are licensed to serve up to 34,206 residents, actual occupancy level at assisted living facilities is not known, but believed to be considerably lower than the permitted capacity.

## **Localities Particularly Affected**

The proposed regulations apply throughout the Commonwealth.

## **Projected Impact on Employment**

The proposed changes are likely to affect employee needs of assisted living facilities and the department. Although some of the proposed requirements are expected to have opposite effects, it seems that majority of the changes will increase the labor demand by the department and the assisted living facilities. For example, the department may need additional staff to provide required training and the facilities may need additional staff to comply with periodic



diagnostic requirement for dementia. Thus, there may be a positive effect on employment in or related to assisted living industry.

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

Similarly, most of the proposed requirements are likely to increase compliance costs while a few are likely to provide cost savings to the assisted living facilities. If the increase in compliance costs have a significant effect on profitability, a decline in the value of assisted living facilities may be experienced. Additionally, if a significant number of residents are discharged from some facilities, the revenue transfers among the facilities may be large enough to affect profitability and the value of some of the individual assisted living facilities.