



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: 6301 / 10099

June 17, 2024

The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 1271 of the 2020 Acts of General Assembly,² the State Board of Health (Board) proposes to incorporate in the regulatory text comprehensive legislative amendments made to the Certificate of Public Need Program in 2020. The Board also proposes at its discretion, but consistent with the mandate, to revise the application timeline and to make numerous editorial changes to clarify the regulatory language.

Background

This regulation governs the process of determining the public need for medical facilities and services that various healthcare providers propose. In Virginia, healthcare providers who wish to develop certain types of medical care facilities or introduce specific services must first obtain a Certificate of Public Need (COPN) from the State Health Commissioner. A certificate is needed for establishment of new medical care facilities, increases in capacity (e.g., addition of

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

² <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1271>

new beds), relocation of beds, addition of new services, introduction of medical equipment (e.g., computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET), etc.), and repurposing existing capacity (e.g., conversion of psychiatric inpatient beds to nonpsychiatric inpatient beds).³

According to the Board, Chapter 1271 mandated comprehensive changes to this program, in response to requests from the Virginia healthcare industry. The changes made by this legislation are as follows:

- i) *removes from the list of reviewable medical care facilities specialized centers or clinics or that portion of a physician's office developed for the provision of lithotripsy, magnetic source imaging, or nuclear medicine imaging;*
- ii) *removes from the definition of project introduction into an existing medical care facility of any new lithotripsy, magnetic source imaging, or obstetrical service that the facility has never provided or has not provided in the previous 12 months and the addition by an existing medical care facility of any medical equipment for the provision of lithotripsy and magnetic source imaging;*
- iii) *creates a new process for registration of projects exempted from the definition of project by the bill;*
- iv) *renames the State Medical Facilities Plan as the State Health Services Plan and establishes a State Health Services Plan task force to provide recommendations related to the content of the State Health Services Plan;*
- v) *clarifies the content of the application for a certificate;*
- vi) *reduces the timeline for a person to be made party to the case for good cause from 80 calendar days to four days following completion of the review and submission of recommendations related to an application;*
- vii) *requires the Commissioner of Health to condition issuance of a certificate upon the agreement of the applicant to provide care to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq. and permits the Commissioner to condition the issuance of a*

³ Code of Virginia § 32.1-102.1:3.

certificate on the agreement of the applicant to provide specialty medical services in addition to existing options for conditioning certificates;

- viii) requires every certificate holder to develop a financial assistance policy that includes specific eligibility criteria and procedures for applying for charity care, which shall be provided to a patient at the time of admission or discharge or at the time services are provided, included with any billing statements sent to uninsured patients, posted conspicuously in public areas of the medical care facility for which the certificate was issued and posted on a website maintained by the certificate holder;*
- ix) eliminates the requirement that a person willfully fail, refuse, or neglect to comply with a plan of correction to be subject to a civil penalty so that any failure, refusal, or neglecting to comply with a plan of correction may subject the person to a civil penalty;*
- x) and provides that the Commissioner may consider any changes in the circumstances of the certificate holder resulting from changes in the financing or delivery of health care services, including changes to the Commonwealth's program of medical assistance services, and any other specific circumstances of the certificate holder when determining whether conditions imposed on a certificate continue to be appropriate.*

The bill also

- a) directs the Department of Health to develop recommendations to reduce the duration of the average review cycle for applications for certificates of public need to not more than 120 days and to report on its recommendations to the Governor and the General Assembly no later than December 1, 2020,*
- b) directs the Secretary of Health and Human Resources to implement a system to ensure that data needed to evaluate whether an application for a certificate is consistent with the State Health Services Plan and is timely and reliable by January 1, 2023;*
- (c) and directs the Secretary of Health and Human Resources to make an inventory of capacity authorized by certificates of public need, both operational and not yet*

operational, available in a digital format online and to establish a public education and outreach program designed to improve public awareness of the certificate of public need process and the public's role in such process by January 1, 2021.

The Board reports that these legislative amendments became effective on July 1, 2020 and have been implemented. Additionally, the scope of Chapter 1271 is broader than the scope of this particular regulatory action in that some of the legislative amendments have not been addressed in this regulation either because they would be addressed in a separate action, or they are addressed outside the regulation. The items that are beyond the scope of this regulatory action are viii, a, b, and c.

Estimated Benefits and Costs

Generally, the legislatively mandated changes to the COPN program provide additional exemptions from the need to obtain a certificate, create a registration process for exempted projects that do not require a certificate, and reduce the duration of the average review cycle to fewer than 120 days. As mentioned, these changes have been already implemented under the authority of the legislation and are not expected to create any significant economic impact when this action becomes final.

In addition to the mandated changes, this action contains two changes. One of these changes is directly related to the Chapter 1271 in reducing the certificate review timelines. The proposal would reduce the application submission deadline from 40 days prior to the first day of the batch review cycle to 10 days before the cycle in order to reduce the regulatory burden by giving applicants more time to submit their applications. Even though this change is made at the discretion of the Board, it is clearly aligned with item “a” of the legislative directive.

The remaining changes are mainly clarifications of the current language in that they remove non-regulatory language such as authority, administration, purpose of the regulation as well as making editorial changes to incorporate the mandated changes in the regulatory text.

Thus, the main economic impact of this regulatory action is to incorporate the mandated changes in COPN program in the regulatory text and improve the clarity of the regulation.

Businesses and Other Entities Affected

The proposed changes apply to entities seeking a COPN certificate from the Health Commissioner. According to the Board, there were approximately 570 applications for a certificate in the last 10 years. No applicants appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁵ As noted above, the proposal mainly incorporates in the regulation the legislative changes that occurred in 2020 and has been in effect since then. Thus, no adverse impact is indicated on account of this action.

Small Businesses⁶ Affected:⁷

The proposed amendments do not adversely affect small businesses.

Localities⁸ Affected⁹

The proposed action by itself does not introduce any costs or other effects on localities.

Projected Impact on Employment

The proposed regulatory language changes do not affect total employment.

⁴ 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.

⁵ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁶ 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.”

⁷ 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.

⁸ “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.

⁹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Effects on the Use and Value of Private Property

No effects on the use and value of private property nor on real estate development costs are expected as a result of this regulatory action.