



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

12 VAC 5-410 Regulations for the Licensure of Hospitals in Virginia
Virginia Department of Health
Town Hall Action/Stage: 5939 / 9591
September 9, 2022

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 these economic impacts.¹

Summary of the Proposed Amendments to Regulation

Pursuant to several legislative mandates, the State Board of Health (Board) proposes to amend this regulation to require all licensed hospitals: 1) to establish and implement policies to ensure a patient's access to and use of an intelligent personal assistant, provided by a patient, while receiving inpatient services; 2) to establish a protocol allowing patients to receive visits from the clergy of any religious denomination or sect during a declared public health emergency related to a communicable disease of public health threat; and 3) with an emergency department, to establish a protocol for the treatment and discharge of individuals experiencing a substance use-related emergency.

Background

This regulatory action is a result of legislative mandates from Chapters 219, 233, and 525 of the 2021 Acts of Assembly, Special Session I.

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.

Chapter 219² amended Code § 32.1-127 to require that the regulations, “require each hospital, nursing home, and certified nursing facility to establish and implement policies to ensure the permissible access to and use of an intelligent personal assistant provided by a patient, in accordance with such regulations, while receiving inpatient services.” According to the Virginia Department of Health (VDH), this legislative mandate occurred as the result of a complaint from a constituent, whose mother became seriously ill with COVID-19 and had to be transported to a hospital. The hospital refused to allow her to use her Amazon Echo to communicate with her family, claiming that they had a policy prohibiting its use, despite no such policy existing.

Chapter 233³ amended Code § 32.1-127 to require that each hospital with an emergency department establish a protocol for the treatment and discharge of individuals experiencing a substance use-related emergency. This protocol is required to include the following provisions: appropriate screening and assessment of individuals experiencing substance use-related emergencies, to identify medical interventions necessary for the treatment of the individual in the emergency department; and recommendations for follow-up care following discharge of certain patients, which may include dispensing or prescribing an opioid antagonist used for overdose reversal at discharge. In addition, Chapter 233 allows the protocol to provide for referrals of individuals experiencing a substance use-related emergency to peer recovery specialists and community-based providers of behavioral health services, or to providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses. VDH is not aware of any constituent complaint or other background information regarding the impetus for Chapter 233.

Chapter 525⁴ amended Code §§ 32.1-127, 32.1-162.5, and 63.2-1732 pertaining to the regulations of hospitals, nursing homes, certified nursing facilities, assisted living facilities, and hospices. For these regulations, the board is required to include that during a declared public health emergency, related to a communicable disease of public health threat, each facility must

² <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0219&212+ful+CHAP0219>. Chapter 219 also defined “personal digital assistant” to mean, “a combination of an electronic device and a specialized software application designed to assist users with basic tasks using a combination of natural language processing and artificial intelligence, including such combinations known as “digital assistants” or “virtual assistants.”

³ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0233>.

⁴ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0525>.

establish a protocol allowing patients and residents to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect. The mandate allows the protocol to: restrict the frequency and duration of visits; require visits to be conducted virtually using interactive audio or video technology; and require the person visiting a patient under this protocol to comply with all reasonable requirements of the facility adopted to protect the health and safety of the person, patients, and staff of the facility. According to VDH, this legislative mandate occurred as a result of complaints received from the public during the COVID-19 pandemic. However, while VDH received numerous complaints about being unable to visit family and friends in hospitals and nursing homes, only a single complaint concerned denial of access to clergy.

Estimated Benefits and Costs

The proposed changes to the regulatory text are identical to the requirements established in the legislative mandates with the exception of some formatting and technical differences.⁵ Thus, the costs associated with implementing the mandated changes result from the legislation rather than these regulations. VDH estimates that these legislative requirements amount to onetime compliance costs of \$867,000 to hospitals, which is broken down as follows: onetime cost of \$525,000 to 105 hospitals (\$5,000 per hospital) to establish and implement policies related to patient access and use of intelligent personal assistants; onetime cost of \$212,500 to 170 hospitals (\$1,250 per hospital) to develop a protocol to allow patients to receive visits from a clergy of any religious denomination or sect during public health emergencies related to communicable diseases; onetime cost of \$130,000 to 104 hospitals (\$1,250 per hospital) to amend protocols for substance use-related emergencies to incorporate new statutory minimums such as: referrals to providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses, and expanding what information and access is provided about opioid antagonists.⁶

Although the benefits are not quantified, VDH asserts that intelligent personal assistants are often utilized by persons with disabilities and the elderly to access information or stay connected with friends and family; access to clergy provides spiritual support during end-of-life

⁵ According to VDH, this regulatory package was first prepared as an exempt action under § 2.2-4006(A)(4)(a), which requires regulations to be filed with the Registrar within 90 days of the law's effective date. Because the action was not filed within the required timeframe due to personnel changes in the Office of the Commissioner, the regulatory action does not qualify as an exempt action.

⁶ ORM Economic Impact Document.

care and can improve patient well-being by alleviating or reducing anger, fear, or depression and that both patients and their family members can receive assistance in processing grief before, during, and after death; the changes to protocols for substance use-related emergencies improve the likelihood of positive outcomes for individuals experiencing a substance use-related emergency, as the changes are based on recommended best practices.

However, all licensed hospitals are already required to comply with the Code of Virginia. Thus, the main impact of the proposed changes is to conform the regulatory text to the amended sections of the Code of Virginia and eliminate a potential source for confusion among the regulated entities and the public about the requirements (e.g., obligations and rights regarding intelligent personal assistants; visitation during a public health emergency; and the treatment and discharge of individuals experiencing a substance use-related emergency).

Businesses and Other Entities Affected

The proposed changes apply to 106 licensed general hospitals and 63 outpatient surgical hospitals.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁷ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposed changes do not introduce any new requirements beyond those already mandated by the Code of Virginia. Thus, no adverse impact on any entity is indicated on account of the proposed regulations.

Small Businesses⁸ Affected:⁹

According to VDH, three of the outpatient surgical hospitals are estimated to meet the definition of “small business.” However, the proposed amendments to the regulatory text do not

⁷ 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. 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.

⁸ 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.”

⁹ 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

adversely affect small businesses as they do not impose any additional costs beyond what the legislation requires.

Localities¹⁰ Affected¹¹

The proposed changes also apply to the Lee County Hospital Authority and the Chesapeake Hospital Authority. However, the proposed amendments to the regulatory text do not introduce costs for local governments as they do not impose any additional costs beyond what the legislation requires.

Projected Impact on Employment

The proposed amendments to the regulatory text do not appear to affect total employment as they do not impose any additional impacts beyond what the legislation requires.

Effects on the Use and Value of Private Property

The proposed amendments to the regulatory text do not appear to affect the use and value of property or the real estate development costs as they do not impose any additional impacts beyond what the legislation requires.

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.

¹⁰ “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.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.