



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

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### **12 VAC 35-115 – Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded or Operated by the Department of Behavioral Health and Developmental Services**

**Department of Behavioral Health and Developmental Services**

November 24, 2014

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### **Summary of the Proposed Amendments to Regulation**

The State Board of Behavioral Health and Developmental Services (Board) proposes to amend its regulation that governs procedures for protecting the human rights of individuals who are receiving mental health services, developmental services or substance abuse services through providers that are licensed or operated by the Department of Behavioral Health and Developmental Services (DBHDS). The Board specifically proposes to update obsolete language in this regulation and consolidate all processes for human rights complaints into one place in the regulation. The Board also proposes to change the regulatory responsibilities of local human rights committees (LHRC) so that they will no longer handle administrative tasks but will instead have more authority to oversee treatment plans that contain restrictions on human rights as defined by this regulation.

### **Result of Analysis**

Benefits likely outweigh costs for most of the Board's proposed regulatory changes. For at least one proposed change, there is insufficient information to ascertain whether benefits will likely outweigh costs.

### **Estimated Economic Impact**

Currently this regulation contains many obsolete references to terms no longer commonly used by DBHDS and has various rules for the rights and responsibilities of care providers and clients as well as complaint procedures scattered throughout various regulatory sections. The Board now proposes to update obsolete regulatory language and to gather all rules for the human

right complaint process into one section of this regulation. No entity is likely to incur any costs on account of these changes. These changes will, however, benefit interested parties in that the regulatory language now reflects currently used terminology and all rules for the human rights complaint process will be more easily found because they will all be in one place.

The current regulation also contains rules for providers and the 80 LHRCs in the Commonwealth to interact and cooperate. Included in these rules are the requirements that providers supply all monetary support needed by the LHRCs, attend LHRC meetings and get LHRC approval for any treatment plans that include physical restraint of clients. Board staff reports that, while all LHRCs receive support from their provider assignees, only about half of LHRCs (about 40) actually have an explicit dollar cost attached that providers had to pay. These costs range between \$25 and \$450 annually. Board staff reports that LHRCs currently handle many administrative and operational tasks that the Board believes could better be handled by DBHDS which would leave LHRCs more time to expand their oversight of more client treatment plans and to provide more client support during the complaint process.

Accordingly, the Board proposes to reorganize and amend these regulations so that DBHDS is responsible for administrative and training tasks currently provided through provider funding. Board staff reports that the Board anticipates reducing the number of LHRCs from the current 80 to fewer than 10. Under this proposed regulation, LHRCs will be responsible for approving treatment plans where human rights as defined by this regulation may be impacted in addition to approving any treatment plans that include plans for physical restraint. Providers that currently pay an explicit amount per year to support their affiliate LHRCs will see savings of between \$25 and \$450 per year. Providers that do not currently pay explicit dollar amounts but instead volunteer staff to provide administrative help and pay for other support like gas cards for LHRC members on an ad hoc basis will save the value of their staff's paid time spent on LHRC administration plus the costs of any other ad hoc support currently provided. These cost savings may be partially or completely offset by increased travel costs for providers to attend meetings with a drastically reduced number of LHRCs that presumably would be housed farther from at least some assigned providers. Provider savings may also be offset by increased travel and staff costs associated with gaining approval for treatment plans that may impact clients human rights to freedom of movement, freedom to communicate, associate and meet privately with anyone the

client chooses, freedom to have and spend personal money or any of the other human rights listed in 12 VAC 35-115-100.

### **Businesses and Entities Affected**

This proposed regulation will affect all service providers licensed or operated by the Board as well as the clients they serve. Board staff estimates that approximately 900 providers will be affected and that all of these providers would qualify as small businesses. Additionally, Board staff reports that there are approximately 55 public facilities that will be affected.

### **Localities Particularly Affected**

No localities will be particularly affected by this proposed regulatory change.

### **Projected Impact on Employment**

This regulatory action will likely have little impact on employment in the Commonwealth.

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

This regulatory action will likely have no impact on the use or value of private property.

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

Small business service providers may see some cost savings as they will no longer be responsible for fully funding the operations of the LHRCs to which they are assigned. However, any savings may be partially or completely offset by increased time and travel costs incurred if they have to travel greater distances to attend LHRC meetings that would likely be farther away once the number of LHRCs is drastically cut.

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

There are likely no alternative methods that would both satisfy the Board's aims and further reduce travel and time costs that either service providers or members of LHRCs will likely have to incur.

### **Real Estate Development Costs**

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

## Legal Mandate

**General:** 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 and Executive Order Number 17 (2014). Section 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:

- the projected number of businesses or other entities to whom the proposed 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.

**Small Businesses:** If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 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 (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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Town Hall ID: Action # 3824/Stage # 6810