Virginia Department of Planning and Budget

Economic Impact Analysis

12 VAC 35-46 Regulations for Children's Residential Facilities
Department of Behavioral Health and Developmental Services
Town Hall Action/Stage: 5564/9363
December 17, 2021

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 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation

The State Board of Behavioral Health and Developmental Services (Board) proposes to amend the licensing regulation for children's residential facilities to align with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria. The proposed amendments were mandated by the 2020 Appropriation Act and implemented via an emergency regulation; the Board now seeks to make those changes permanent. The proposed changes are intended to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment.

Background

Item 318.B of Chapter 1289, 2020 Virginia Acts of Assembly, directs the Department of Behavioral Health and Developmental Services (DBHDS) to promulgate emergency regulations to: "i) ensure that licensing regulations support high quality community-based mental health services and align with the changes being made to the Medicaid behavioral health regulations for

[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.

the services funded in this Act that support evidence-based, trauma-informed, prevention-focused and cost-effective services for members across the lifespan; and ii) amend the licensing regulations to align with the American Society of Addiction Medicine Levels of Care Criteria or an equivalent set of criteria into substance use licensing regulations to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction."[2] Accordingly, the proposed changes were initially implemented via an emergency regulation that became effective February 2021.[3]

DBHDS reports that Virginia's children and adolescents face significant risks and challenges relating to substance use and addiction. The 2017 Virginia Youth Survey conducted by the Virginia Department of Health found that approximately three percent of respondents indicated that they used marijuana before age 11 and almost ten percent drank alcohol before age 11. The same survey found that over 30 percent of high school students reported using alcohol in the past 30 days. The survey also indicated that 25 percent of respondents reported binge drinking, 20 percent reported using marijuana, and approximately three percent reported using heroin in a 30 day period.[4]

DBHDS reports that ASAM Levels of Care Criteria are the "most widely used and comprehensive guidelines" for addiction treatment.[5] In addition, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) also recommends ASAM standards.[6] The proposed amendments would add definitions for certain terms as they appear in the ASAM Criteria and add specific service delivery requirements for residential facilities to meet the

[2] See https://budget.lis.virginia.gov/item/2020/1/HB30/Chapter/1/318/.
[3] See https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9016. The emergency regulation is currently scheduled to expire on August 19, 2022.
[4] See https://www.vdh.virginia.gov/virginia-youth-survey/data-tables/. The proposed amendments, especially the incorporation of medication assisted treatment, are particularly relevant for opioid use disorder. In 2017, 12.6 percent of high school students reported ever taking prescription pain medication without a doctor's prescription or differently than how a doctor told them to use it.
[5] ASAM's website indicates that it is a professional medical society, founded in 1954, representing over 6,000 physicians, clinicians and associated professionals in the field of addiction medicine. ASAM describes its mission as being dedicated to increasing access and improving the quality of addiction treatment, educating physicians and the public, supporting research and prevention, and promoting the appropriate role of physicians in the care of patients with addiction. For additional information, see https://www.asam.org/about-us.
[6] SAMHSA is an agency within the U.S. Department of Health and Human Services whose mission is to reduce the impact of substance abuse and mental illness on America's communities. For more information about SAMHSA, see their website: https://www.samhsa.gov/.

ASAM standards of care. In addition, two new documents would be partially incorporated by reference into the regulation, making those specific sections of the documents a legally enforceable part of the Virginia Administrative Code: the *ASAM: Treatment for Addictive, Substance-Related and Co-Occurring Conditions, Third Edition* and the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition*.[7]

Accordingly, definitions would be added for "clinically managed, medium-intensity residential care" and "clinically managed, low-intensity residential care," as well as for "allied health professional," "medication assisted treatment," and "motivational enhancements." Specifically, "clinically managed, medium-intensity residential care" would mean "a substance use treatment program that offers 24-hour supportive treatment of children with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. The children served by clinically managed, medium-intensity residential care are children who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service." The proposed amendments would include new sections (1160-1200) that establish staffing criteria, programmatic requirements, admission criteria, discharge criteria, and residential co-occurring enhanced programs.

Similarly, "clinically managed low-intensity care" would be defined to mean "providing an ongoing therapeutic environment for children requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the child into work, education, and family environments; and strengthening adaptive skills that may not have been achieved or have been diminished during the child's active addiction. A clinically managed, low-intensity residential care is also designed for the child suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system." As before, the proposed amendments include new sections (1210-1250) that would establish staffing criteria, programmatic requirements, admissions and discharge criteria, and co-occurring enhanced programs.

[7] This appears to be the same as *The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions, Third Edition.*

DBHDS reports that many children's residential providers are already familiar with ASAM levels of care because this is how they must bill to receive reimbursement for addiction treatment services from the Department of Medical Assistance Services (DMAS). This has been the case since April 1, 2017, when DMAS promulgated its *Addiction and Recovery Treatment Services* (ARTS), a regulation that adopted ASAM level of care for billing purposes.[8] The ARTS program offers an enhanced substance use disorder treatment benefit to Medicaid recipients by expanding access to a comprehensive continuum of addiction treatment services for all enrolled members in Medicaid, Family Access to Medical Insurance Security (FAMIS), FAMIS MOMS (for uninsured pregnant women), including expanded community-based addiction and recovery treatment services and coverage of inpatient detoxification and residential substance use disorder treatment.[9]

Estimated Benefits and Costs[10]

The proposed amendments would primarily benefit youth receiving substance use disorder treatment at children's residential facilities in Virginia by providing comprehensive services in a manner commensurate to their individual needs. To the extent that children's residential facilities accept Medicaid and have been in compliance with DMAS' requirements for provider reimbursement, they would face no new costs. Children's residential facilities that do not currently accept Medicaid would be required to meet the ASAM Criteria as adopted by the proposed amendments. As a result, they may incur costs if they have to expand the scope of treatment provided, especially if they need to provide training to current employees.

[8] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=4692. The changes made in that action simply indicate that facilities will be reimbursed as per 12VAC30-130-5000 *et seq*. DMAS regulations pertaining to clinically managed low-intensity residential services can be found in section 5110 (https://law.lis.virginia.gov/admincode/title12/agency30/chapter130/section5110/) and clinically managed medium intensity residential services (adolescent) can be found in section 5130 (https://law.lis.virginia.gov/admincode/title12/agency30/chapter130/section5130/.) The amendments proposed by DBHDS do not appear to be more stringent than DMAS' requirements.

[9] For additional information on ARTS, see https://www.dmas.virginia.gov/for-providers/addiction-and-recovery-treatment-services/ .

[10] The Economic Impact Analysis compares the proposed regulation to the regulation in the Virginia Administrative Code. The emergency regulation is: 1) not in the Virginia Administrative Code (see http://law.lis.virginia.gov/admincode) and 2) temporary. Thus, the Economic Impact Analysis assesses the impact of changing the permanent regulations. Consequently, to the extent that the proposed text matches the emergency text, some of the benefits and costs described here have likely already accrued.

Businesses and Other Entities Affected

DBHDS reports that there are 59 children's residential facilities throughout the Commonwealth, six of which offer substance use disorder treatment services. Those six facilities have already transitioned to ASAM licenses and would be affected by the proposed changes.[11] Of the children's residential facilities that provide substance use disorder services, only those that do not participate in Medicaid would face new requirements and incur costs to comply with the new requirements. In addition, some facilities that accept Medicaid may also incur costs if DBHDS' staff inspections reveal that they have not implemented the ASAM Criteria correctly and need to make changes to comply with the proposed requirements.

DBHDS also reports that the agency would incur costs relating to training providers and conducting additional inspections. Specifically, DBHDS would issue conditional licenses for six months and conduct an inspection to ensure regulatory compliance after the initial six months. The outcome of those inspections would determine if an additional inspection is required later that year. Additionally, the agency would need to provide technical assistance to providers, to include issuing corrective action plans and confirming their implementation. DBHDS estimates requiring one additional full-time specialist to absorb the increased workload associated with this regulatory change.[12]

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[13] 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 amendments could increase costs for private children's residential facilities that do not accept Medicaid but do offer substance use disorder treatment,

[11] Email to DPB from DBHDS dated December 22, 2021. The email also noted that DBHDS does not collect information on whether providers accept Medicaid.
[12] Agency Background Document, see page 5: https://townhall.virginia.gov/l/GetFile.cfm?File=65\5564\9363\AgencyStatement_DBHDS_9363_v2.pdf. The costs to the agency reflect this regulatory action, as well as costs arising from Action 5563/Stage 9364, which implements ASAM Criteria for other providers. See https://townhall.virginia.gov/l/viewstage.cfm?stageid=9364.
[13] 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.

although the number of such facilities and the magnitude of the costs are unknown. Thus, an adverse impact is indicated.

Small Businesses[14] Affected:[15]

The proposed amendments appear to adversely affect small businesses; however, the number of affected entities that are small businesses is unknown.

Types and Estimated Number of Small Businesses Affected

The proposed amendments would affect the six private children's residential facilities that have ASAM licenses; however, the number of affected entities that are small businesses is unknown.

Costs and Other Effects

Children's residential facilities that do not participate in Medicaid would face the highest costs since they would face new requirements. Children's residential facilities that participate in Medicaid would only face higher costs if they are found to be implementing the ASAM Criteria incorrectly and need to invest in training or hire additional personnel to correctly implement the requirements. Thus, an adverse economic impact[16] on children's residential facilities is indicated to the extent that they face new requirements that result in new costs.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

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[14] 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."

[15] 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.

[16] 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.

Localities[17] Affected[18]

The proposed amendments potentially affect all 132 localities, since the facilities serve individuals from all parts of the state. The proposed amendments do not introduce costs for local governments. Consequently, an adverse economic impact[19] is not indicated for any localities.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments would not affect the value of children's residential facilities. Even if some facilities incur costs to implement changes or provide training, they would benefit by maintaining compliance with DMAS' reimbursement requirements and/or the requirements of this regulation. The proposed amendments do not affect real estate development costs.

[17] "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.

[18] § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[19] 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.