



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

22 VAC 40-160 Fee Requirements for Processing Applications

Department of Social Services

Town Hall Action/Stage: 5895/9509

March 28, 2022; edited March 31, 2022 to incorporate information on affected localities; edited September 28, 2022 to reflect updated and accurate cost information.

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 Social Services (Board) proposes to amend the acceptable payment methods used by facilities or agencies to pay license application processing fees. The Department of Social Services (DSS) is developing an online system that will allow the fees for processing applications for licenses to be paid electronically. The proposed amendment would add online payments and remove money orders as an acceptable payment method.

Background

The regulation is derived from § 63.2-1700, which allows the Board to “adopt regulations and schedules for fees to be charged for processing applications for licenses to operate assisted living facilities, adult day care centers, and child welfare agencies.”² The regulation currently allows these facilities to make payments to DSS via personal check, money order, or certified

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 Although these fees are referred to as application fees, the regulation notes that the fees are collected annually over the length of the applicable licensure period (one, two, or three years).

check. The Board proposes to remove money orders as an acceptable payment method and add “the online process determined by the Department.” DSS expects that allowing facilities to use online payments would make it more convenient for them to pay the annual license application fees. All payments would be made through a third-party payment processor who does not accept money orders; thus, money orders would be removed as an allowable payment method. Lastly, the text would be amended to replace “personal checks” and “certified checks” with simply “checks” to reflect current practice, since DSS no longer distinguishes between personal and certified checks.

Estimated Benefits and Costs

The online option is primarily intended to benefit facilities by offering a convenient and secure payment option for annual license application fees. Providers choosing to use the DSS online payment process will be assessed an additional 2.3 percent transaction processing fee if they choose to use a debit or credit card. This fee will be directly paid to the third-party payment processor. In addition, DSS will pay the payment processor \$10 per month for each “Merchant Identification” (merchant IDs) used. DSS currently has 10 merchant IDs, which allow for different types of payments and program cost codes. If the provider pays by e-check there is an 18 cent fee per transaction. DSS expects to absorb these costs. Thus, the third-party payment processor would also benefit from the fees they collect. The full amount of the transaction processing fees paid by facilities and DSS to the payment processor will depend on the number of facilities that elect to use this option.

DSS will continue to accept payments made by check and will not charge a transaction processing fee for paper or electronic check payments. DSS does not anticipate that removing money orders as an allowable payment method would create any costs for facilities, since money orders are typically more expensive than checks. DSS does not track the payment type for licensing fees, so the number of facilities that regularly use money orders is unknown. Lastly, the proposed changes are not expected to impact recordkeeping costs for facilities or DSS.

Businesses and Other Entities Affected

DSS reports that there are currently 816 licensed programs that are all required to pay license application fees every year. These programs would be affected to the extent that they choose to use the online payment process; they would not be affected if they continue to pay

license application fees using a check. Five of these licensed programs are operated by localities, while the other 811 licensed programs are privately operated. No facilities appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.³ 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 are intended to provide greater convenience by offering an online payment process as an option. Only entities choosing to use the online payment option would face the additional 2.3 percent transaction processing fee. Although some facilities that have chosen to use money orders in the past would no longer be allowed to do so, the use of checks is reported to be less expensive and the number of money orders is not known, therefore any potential impact is unclear. Accordingly, an adverse impact is not indicated.

Small Businesses⁴ Affected:⁵

In accordance with the above analysis, the proposed amendments do not appear to adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected

DSS reports that the 811 privately-run licensed facilities that would be affected by the proposed changes are all small businesses.

³ 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.

⁴ 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.”

⁵ 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.

Costs and Other Effects

The proposed amendments would not appear to create new costs for small businesses unless they choose to use the online payment process to pay license application fees.

Alternative Method that Minimizes Adverse Impact

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

Localities⁶ Affected⁷

DSS reports there are five locality-operated licensed programs. Four are Assisted Living Facilities (ALF), each operated by a different community services board (CSB) and one ALF is operated by a Health Center Commission under local government. The breakdown of the affected localities is listed below.

Region Ten CSB	New River Valley CSB	Mt. Rogers CSB	Western Tidewater CSB	Health Center Commission
Charlottesville City	Floyd	Bland	Franklin County	Chesterfield
Albemarle	Giles	Carroll	Suffolk	
Fluvanna	Montgomery	Grayson	Isle of Wight	
Greene	Pulaski	Smyth County	Southampton	
Louisa	Radford City	Wythe		
Nelson		Galax City		

However, localities would only be affected if they choose to use the online payment process to pay license application fees. Consequently, an adverse economic impact⁸ is not indicated for localities.

Projected Impact on Employment

The proposed amendments would not be expected to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments would not affect the value of private facilities that operate children's welfare or adult services programs. The proposed amendments do not affect real estate development costs.

⁶ "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.

⁷ § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

⁸ 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.

