

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

12 VAC 30-120 Waivered Services
Department of Medical Assistance Services
Town Hall Action/Stage: 4343/7437
June 14, 2016

Summary of the Proposed Amendments to Regulation

The Board of Medical Assistance Services proposes to 1) allow nursing providers to train their nurses in place of the currently required six months of clinical experience, 2) permit families greater flexibility to use their authorized private duty nursing hours over the span of a week rather than limiting them to 16 hours of private duty nursing services in a 24-hour period, and 3) remove the language related to making up or rescheduling missed nursing hours.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

This regulation governs Technology Waiver (TW) services provided to individuals who require some form of a mechanical device, such as a ventilator, to compensate for loss of a vital body function. One of the proposed changes will allow service providers to train private duty nurses in lieu of the required clinical experience. Under the current regulation, all nurses must have at least six months of clinical experience comparable to the care needs of the patient. This experience must be acquired prior to providing skilled private duty nursing services or skilled private duty respite services. The Department of Medical Assistance Services (DMAS) notes that provider agencies are experiencing increasing difficulty finding nurses who have the required six

months of clinical experience. As more individuals with complex medical needs choose to remain in their communities, a corresponding decline has occurred in nursing facility population where nurses have traditionally gained their clinical experience. Additionally, acute care hospitals have shifted many of the responsibilities for direct respiratory care and tracheostomy/ventilator maintenance from staff nurses to respiratory therapists, further reducing opportunities for nurses to acquire experience. As a result of the experienced nursing shortage, provider agencies are unable to meet the care needs of some of their TW patients.

Under the proposed changes, provider agencies will be allowed to train their nurses. Providers, who choose to implement a training program for their nurses, must assure that the health, safety, and welfare of the TW individuals continues to be met. The trainer may be either a licensed registered nurse or a licensed respiratory therapist who has at least 6 months hands-on experience in the area of care to be provided (such as ventilator, tracheostomy, peg tube, nasogastric tube, etc.). Training programs developed by providers will be required to contain certain elements. A satisfactory training program will include classroom time as well as direct hands-on demonstration of skills by trainees. Training must include the following subject areas related to the care to be provided: (i) human anatomy and physiology, (ii) frequently used medications for this population of individuals, (iii) emergency management, and (iv) operation of equipment. While a training program may introduce additional costs for the providers, they would undertake such a program only if their anticipated benefits are greater than their costs. The main expected benefits to providers may include their increased ability to meet the demand by increasing the pool of potential nurses eligible to provide TW services and potentially lower advertising costs spent to attract the limited number of qualified nurses.

Another proposed change will allow families to use their authorized private duty nursing hours over the span of a week rather than a day. Currently, families are required to provide at least 8 hours of care in every 24-hour day to TW individuals leaving up to 16 hours of authorized private duty nursing to be publicly funded. If not all of the authorized hours are utilized in a given day, the family loses the nursing hours authorized but not used for that day. The proposed change will allow families to keep the authorized but unused nursing hours across a week. This change will provide greater flexibility to TW individuals and their families to receive the care they need. In addition, such flexibility would allow TW individuals' schedules to include longer work days to accommodate physician appointments, community activities,

caregiver work schedules, etc. Even though the added flexibility will likely increase the nursing hours utilized, the hours reimbursed cannot exceed the number of authorized hours. DMAS believes the cost effectiveness of this waiver which is a necessary condition to continue to receive federal funding can be maintained while permitting these individuals and their families greater flexibility.

The proposed changes will also remove language related to making up or re-scheduling of missed hours as it would be no longer relevant. When a skilled private duty nurse cancels a scheduled work shift (due to illness or family issues) with the TW individual, it is considered to be “missed” nursing hours. Under the current regulations, TW individuals are allowed to “make up” missed authorized private duty nursing hours within the same week of the missed shift. Since one of the proposed changes allows TW individuals to keep the authorized but unused nursing hours across a week, this language is no longer needed.

Considered together, the proposed changes will increase the supply of available nursing hours by allowing provider agencies to train their nurses and increase demand for such hours by allowing TW individuals to retain their authorized but unused nursing hours over a week. The likely effect of these changes is an increase in utilization. In fiscal year 2015, approximately 1.7 million hours were authorized. Of the authorized hours, 1.1 million hours were used at a cost of \$28.5 million.¹ Thus, approximately only 2/3 of the authorized hours were used. The proposed changes will likely increase utilization above 2/3 and increase the total expenditures while making it easier for providers to increase their number of trained nurses available to staff TW individuals’ authorized nursing hours and improving their access to waiver services. Any increase in expenditures will be split 50% by the Commonwealth and 50% by the federal government.

Businesses and Entities Affected

Currently there are approximately 143 private duty nursing provider agencies with approximately 500 nurses on staff serving the needs of approximately 280 waiver recipients.

Localities Particularly Affected

The proposed changes apply statewide.

¹ The hourly reimbursement rates for nurses under this waiver are as follows: Registered Nurse, Northern Virginia - \$33.08; Registered Nurse, Rest of State -\$27.24; Licensed Practical Nurse, Northern Virginia -\$28.67; Licensed Practical Nurse, Rest of State -\$23.65.

Projected Impact on Employment

Under the proposed changes nursing agencies would hire training personnel if they choose to train their own nurses, and potentially be able to supply additional nursing hours to their clients. Also, the additional flexibility afforded to waiver recipients and their families to retain their authorized but unused nursing hours may add to the demand for nursing services. All of these effects individually or together would have a positive impact on employment.

Effects on the Use and Value of Private Property

A nursing agency would train its nurses only if benefits exceed the costs. Thus, a positive impact on their asset values may be expected.

Real Estate Development Costs

No impact on real estate development costs is expected.

Small Businesses:

Definition

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.”

Costs and Other Effects

All of the 143 nursing provider agencies are believed to be small businesses. Thus, the costs and other effects discussed above apply to them.

Alternative Method that Minimizes Adverse Impact

The proposed changes do not adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed changes will not adversely affect non-small businesses.

Localities:

The proposed amendments will not adversely affect localities.

Other Entities:

The proposed amendments will not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget 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 Number 17 (2014). Code § 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: (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.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): 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 within the 45-day period.

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.

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