



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 35-105 –Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services
State Mental Health, Mental Retardation and Substance Abuse Services Board
June 2, 2006

Summary of the Proposed Regulation

The proposed regulations will establish criteria for need determination for new opioid addiction treatment providers as mandated by Chapter 7 of the 2005 Acts of Assembly. The proposed regulations have been already in effect since December 2005 under emergency regulations.

Result of Analysis

The costs likely exceed the benefits for the proposed changes.

Estimated Economic Impact

The proposed regulations will establish specific standards in order to evaluate the need and appropriateness for the issuance of new licenses for providers of treatment of persons with opioid addiction through the use of methadone or other opioid replacements.

Opioid addiction may be caused by illegal or legal use of opiates which include opium, morphine, heroin, and codeine. Some of the opiates may be synthetic (man-made) such as methadone, Demerol®, and Dilaudid®. Among these, the most commonly abused opiate is heroin. Among the treatments of opioid addiction are medical withdrawal, counseling, psychotherapy, use of non-addictive drugs, and the use of opiate replacements. The use of opiate replacements, particularly the methadone treatment, is probably the most common form of the treatment utilized for opiate addiction. Methadone treatment provides medically prescribed methadone to relieve withdrawal symptoms, reduce opiate craving, and allow normalization of the body's function in addition to providing health, social, and rehabilitation services. The literature indicates that this method has been in use effectively for over 35 years.

The proposed need determination will apply to new facilities wishing to start providing opiate treatment services. Currently licensed 19 clinics are not subject to the need determination, but may be affected slightly by some of the facility standards included in the proposed regulations. Thus, the main economic impact of the proposed regulations will be on the new opiate treatment facilities seeking a license from the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS).

The proposed criteria to evaluate the need and appropriateness appear to be quite lenient given the statutory mandate. Under the proposed rules, an applicant could demonstrate need for treatment services by using variety of demographic data in a geographic area chosen. The only limitations to the geographic area are that it must be located entirely in Virginia and it must not exceed more than 100 miles from the proposed location of service. The criteria that may be used in demonstrating need may include number of persons on waiting lists for opioid treatment, number of opioid disorder cases, estimated future use of opioid treatment, data for opioid related suicidal and accidental deaths, data for opioid related arrests, data for opioid related communicable diseases, data for availability of alternate treatments, and letters of support from, citizens, governmental officials, or health care providers.

Collection of the data for need determination may create some administrative costs to potential providers if they would not otherwise collect this type of data. However, most of the information that could be used for need determination appears to be what a rational entrepreneur would be interested in order to determine the economic viability of an opioid treatment enterprise. In other words, most of this data could and may already be used to do a market analysis. Thus, if the data supports starting up a business it is likely that it would also help pass the need determination. In this sense, for areas where there are no existing providers, the economic impact of the proposed need criteria is expected to be minimal.

However, for areas with existing providers the need determination may create a significant barrier to market entry. For example, if the need criteria support a facility of a certain size in a geographic area, a new applicant wishing to compete in the same market may be prevented from doing so based on the grounds that the need in the area is already met by the existing provider. Thus, the proposed need determination may create an artificial barrier for entry into a geographic market.

Barriers to entry have significant economic consequences as they affect the long-term dynamics of a market and consequently the market structure. It is well established in economics that a barrier to entry provides protection to firms already in the market and enables them to charge prices higher than the prices that would result in a competitive market by restricting supply. Also, firms with market power are able to extract more of the consumer welfare for their own benefit. Finally, lack of competition results in efficiency losses known as “deadweight losses” that nobody in an economy receives. In short, the criteria for need determination is expected to result in higher prices for opioid treatment, lower quantity of services utilized, transfer of economic welfare from consumers to providers, and waste of economic resources in terms of “deadweight losses.”

Limited supply of opioid treatment is likely to create additional economic losses. There is a substantial body of research literature strongly and consistently indicating that the economic benefits of substance abuse treatment is significantly greater than the costs¹. The primary benefits stem from reduced crime including incarceration and victimization costs, post-treatment reduction in healthcare costs, reduction in risk of HIV/AIDS, increased productivity and employment, and increased social functioning. Thus, likely limiting of supply by existing providers in the absence of competitive market pressures is likely to add to the costs of the proposed need determination in terms of forgone reductions in crime and forgone increases in health outcomes and social functioning as well as productivity and employment.

Finally, adding a barrier to entry into opioid treatment market may be particularly damaging access to services because of the stigma surrounding the opioid treatments.

Businesses and Entities Affected

The substantive provisions of the proposed regulations apply to opioid treatment providers seeking a license. DMHMRSAS received three applications since December 1, 2005 and is aware of two more applications that are likely to be submitted in the near future. Some of the facility standards also apply to 19 existing opioid treatment facilities. Furthermore, the opioid treatment facilities provide services approximately 4,000 consumers a day who are likely to be affected indirectly.

¹ Belenko, S., N. Patapis, M. T. French, February 2005, “Economic Benefits of Drug Treatment: A critical Review of the Evidence for Policy Makers,” Treatment Research Institute, University of Pennsylvania.

Localities Particularly Affected

The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment

The proposed regulations are expected to have adverse effects on demand for labor as new facilities wishing to enter a geographic market where there is an existing provider may not be able to pass the need determination and as existing providers shielded from competition by a barrier to entry have incentives to limit the quantity of services offered for profit maximization.

Effects on the Use and Value of Private Property

The proposed regulations are expected to add value to the asset value of providers with a license to provide opioid treatment services as they will be able to charge higher prices and extract more of the consumer welfare for their benefit relative to firms in competitive markets. On the other hand, firms currently planning to enter into a geographic market with existing providers may experience a loss in their asset values as a result of forgone market share.

Small Businesses: Costs and Other Effects

According to DMHMRSAS, all of the providers are small businesses. As discussed, the proposed need determination is expected to create a barrier to entry into a geographic area if there are existing providers. The small businesses with a license to provide opioid treatment are likely to benefit from the proposed regulations in terms of the reduced chance for competition.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The alternative method that minimizes the adverse impact on businesses would be not promulgating the proposed regulations. However, given the statutory mandate for the need determination, this option does not appear to be feasible.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the 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. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.