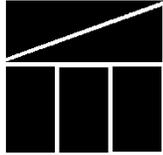


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes  Not Needed

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

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### **18 VAC 115-80 Regulations Governing the Registration of Qualified Mental Health Professionals**

**Department of Health Professions**

**Town Hall Action/Stage: 4891 / 8297**

August 22, 2018

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

Chapters 418<sup>1</sup> and 426<sup>2</sup> of the 2017 Acts of the Assembly (the legislation) require that the Board of Counseling “promulgate regulations for the registration of qualified mental health professionals, including qualifications, education, and experience necessary for such registration.” The Board of Counseling proposes to promulgate such regulations with this action. An emergency regulation for registration of qualified mental health professionals (QMHP) is currently in effect, and will expire on June 17, 2019.

### **Result of Analysis**

The benefits likely exceed the costs for the proposed regulation.

### **Estimated Economic Impact**

#### *Background*

The legislation defines "qualified mental health professional" (QMHP) as a person who by education and experience is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for adults or children. Further, the

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<sup>1</sup> See <http://leg1.state.va.us/cgi-bin/legp504.exe?171+ful+CHAP0418>

<sup>2</sup> See <http://leg1.state.va.us/cgi-bin/legp504.exe?171+ful+CHAP0426>

legislation requires that a QMHP provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services (DBHDS) or a provider licensed by DBHDS.

Virginia's Medicaid program has long relied on the State Board of Behavioral Health and Developmental Services' (BDHS Board) definitions of QMHPs to determine who is a qualified professional for reimbursement. These definitions are Qualified Mental Health Professional (QMHP), Qualified Mental Health Professional-Adult (QMHP-A), Qualified Mental Health Professional-Child (QMHP-C), and Qualified Mental Health Professional-Eligible (QMHP-E). The BDHS Board's definitions have included varying education and experience requirements. However, these professionals were not issued any licenses or certificates concerning being designated a qualified mental health professional. The eligibility was checked and determined on a case-by-case basis when random checks were conducted, when there were questions raised, etc.

As mentioned, the legislation requires these professionals to register with the Board of Counseling. As a result, in another action (Action 4928),<sup>3</sup> the BDHS Board is proposing to revise its definitions to state that these professionals must be registered with the Board of Counseling and defers all qualification, education, and experience criteria to the definitions of the Board of Counseling regulation.

#### *Proposed Regulation*

In this action (Action 4891) the Board of Counseling proposes an initial \$50 fee and an annual \$30 renewal fee for registration. The fee is designed to cover DHP's cost, which is necessary for the registration program. The Board of Counseling also proposes to require that applicants for registration provide a current report from the National Practitioner Data Bank (NPDB). DHP has noted that in reviewing applicants for registration under the emergency regulation, that some persons held a license in Virginia or another state. If that license has been disciplined or suspended, there may be grounds to deny registration as a DMHP if there is evidence of risk to patients. In order to have the information necessary to determine whether such grounds exist, it is necessary to have an NPDB report. The applicant would be charged \$4 by the data bank for requesting a report be sent to the Board of Counseling. To the extent that the

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<sup>3</sup> See <http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4928>

required provision of the NPDB report may reduce potential harm to patients, the benefits likely exceed the \$4 cost per applicant.

Further, the Board of Counseling proposes to require that registrants complete a minimum of eight contact hours of continuing education (CE) for each annual registration renewal. A minimum of one of these hours must be in courses that emphasize ethics. There is an extensive list of choices of areas and providers for CE. Registrants would likely be able to obtain the required CE with little or potentially no fees. The proposed requirement would, of course, require at least 8 hours of the registrant's time annually. Some of the registrants may already satisfy all or part of the CE requirement through meeting professional licensure requirements.

The Board of Counseling's proposed qualifications are the same as currently exists (prior to the revision) in the BDHS regulation. Thus, all individuals eligible under the BDHS Board's definitions would be able to comply and register with the Board of Counseling. The required registration would likely strengthen enforcement and prevent unqualified individuals from providing services to the Medicaid population.

### **Businesses and Entities Affected**

The proposed regulation affects the Department of Behavioral Health and Developmental Services, providers licensed by DBHDS, the Department of Medical Assistance Services, the 1,634 persons currently registered as QMHP-A, the 1,461 persons currently registered as QMHP-C, the 124 persons currently registered as trainees, and persons wishing to obtain such registrations.

### **Localities Particularly Affected**

The proposed regulation does not disproportionately affect particular localities.

### **Projected Impact on Employment**

The proposed regulation would not likely significantly affect total employment.

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

The proposed regulation is unlikely to significantly affect the use and value of private property.

### **Real Estate Development Costs**

The proposed regulation is unlikely to affect real estate development costs.

**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**

The proposed regulation is unlikely to significantly affect costs for small businesses.

**Alternative Method that Minimizes Adverse Impact**

The proposed regulation does not adversely affect small businesses.

**Adverse Impacts:****Businesses:**

The proposed regulation does not adversely affect businesses.

**Localities:**

The proposed regulation does not adversely affect localities.

**Other Entities:**

The proposed regulation does 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 14 (as amended, July 16, 2018). 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

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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.