



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

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### **12 VAC 5-371 – Regulations for the Licensure of Nursing Facilities and 12 VAC 5-410 – Regulations for the Licensure of Hospitals in Virginia Virginia Department of Health**

June 2, 2001

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 9-6.14:7.1.G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1.G 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. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

As a result of the passage of SB1282 and HB2369 of the 1999 session of the Virginia General Assembly, Section 32.1-102.2 of the Code of Virginia requires the State Health Commissioner, through regulation, to condition the issuing or renewing of a nursing facility or hospital license on whether the applicant has complied with any agreement as a result of the granting of a Certificate of Public Need (COPN) or upon the up-to-date payment of any civil penalties owed as a result of the willful failure to honor the condition of a COPN. Emergency regulations reflecting these requirements became effective on December 31, 1999. The Virginia Department of Health (department) proposes to amend the permanent regulations to reflect the requirements.

## **Estimated Economic Impact**

In order to obtain a COPN, hospitals are typically required to agree to attempt to serve a set minimum percentage of charity care cases. If an existing hospital wishes to purchase new medical equipment, it must obtain a COPN for that specific equipment, and typically agree to attempt to serve a minimum amount of charity care cases using that equipment. According to the department, failure to comply with COPNs has been a common occurrence for hospitals. Nursing facilities are typically not required to serve a minimum number of charity cases as part of their COPN. Thus, failure to comply with COPN has not been problematic with nursing facilities.

Prior to the 1999 legislative action, Section 32.1-102.2 of the Code of Virginia required that the State Health Commissioner consider, when issuing or renewing a nursing facility or hospital license, whether the applicant has complied with any agreement as a result of the granting of a Certificate of Public Need (COPN). The proposed new language for the regulations specifically states that: 1) nursing facility and hospital licensure applications must include a statement of any agreement made as a condition for COPN approval to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care, 2) renewal of such licenses is conditional on the nursing facility or hospital demonstrating substantial compliance with their COPN, and 3) renewal of such licenses is also conditional on the up-to-date payment of any civil penalties owed by the nursing facility or hospital as a result of willful refusal, failure, or neglect to honor conditions established in their COPN. Thus, the change in language regarding COPN compliance is a matter of degree; whereas before COPN compliance was considered in license renewal, now license renewal is conditional upon substantial compliance. Also, failure to pay fines is newly listed as grounds for denial of license renewal. Depending on how strictly the department enforces these amended provisions, hospitals will face new incentive to comply with their COPN.

Under the emergency regulations, the department did not deny license renewal to any hospitals, despite the failure of some hospitals to make significant progress toward meeting their minimum assigned percentage of charity cases. Also, the department has not assessed fines for failure to comply with COPN. To the extent that hospitals find the threat of lost licensure to be credible, they may make greater efforts to serve charity cases. If some of these individuals

would not have otherwise received care, then if the value of those individuals' potentially improved health outcome exceeds the cost absorbed by the hospitals, there may be some net benefit. On the other hand, for some hospitals in areas where few indigents reside, finding enough indigent charity cases to meet their COPN may be costly and inefficient. For example, transporting patients long distances so that hospitals can meet their COPN when closer hospitals with comparable care are available may be unnecessarily costly.

### **Businesses and Entities Affected**

The proposed amendments will affect the 265 licensed nursing facilities and 123 licensed hospitals in Virginia, as well as potential new nursing facilities and hospitals. In addition, to the extent that hospitals respond to the new incentives to comply with their COPN, some indigent individuals and patients requiring specialized may be affected.

### **Localities Particularly Affected**

The proposed amendments potentially affect localities throughout the Commonwealth.

### **Projected Impact on Employment**

The proposed amendments are not likely to have a large impact on employment.

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

Some private hospitals may make a greater effort to serve charity cases. The value of these hospitals may diminish slightly.