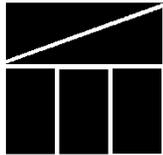


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

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 30-50 Amount, Duration, and Scope of Medical and Remedial Care Services
12 VAC 30-120 Waivered Services
Department of Medical Assistance Services
Town Hall Action/Stage: 4634/7918
November 15, 2017

Summary of the Proposed Amendments to Regulation

Pursuant to 2017 Virginia Acts of Assembly, Chapter 836, Item 306 PPPP (Item 306 PPPP),¹ the Board of Medical Assistance Services proposes to amend this regulation to disallow overtime pay to attendants hired by the Medicaid recipients receiving services under the consumer directed models of service delivery in the Early and Periodic Screening and Diagnostic Treatment (EPSDT) and Elderly or Disabled Consumer Direction Supports (EDCD) programs.

Result of Analysis

There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact

The federal Department of Labor recently revised its regulations to extend the application of the Fair Labor Standards Act to companion services.² Previously workers employed to provide “companionship services” to elderly persons or persons with illnesses, injuries, or disabilities were not required to be paid the minimum wage or overtime pay. As a result, Virginia Medicaid had to pay half of over \$11 million in overtime payments to approximately 7,000 consumer

¹ <https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/306/>

² <https://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-22799.pdf>

directed attendants between January 1, 2016 to June 30, 2016. These attendants provided personal care services, respite care services, and companion services under the consumer directed model of service delivery in the EPSDT or EDCD programs. Item 306 PPPP eliminated overtime pay for these services effective July 1, 2016.

The proposed regulation implements the statutory disallowance. It prevents Virginia Medicaid from paying and attendants receiving overtime pay. The disallowed payments amounted to \$11 million over a six-month period. Virginia had responsibility to pay one half of that amount and the remainder was the federal government's responsibility. The Department of Medical Assistance Services already implemented the disallowance on overtime pay administratively under the authority of Item 306 PPPP. Thus, no significant economic impact is expected upon promulgation of the proposed regulation other than improving the clarity of the regulatory language and the consistency between the regulation and the statute.

Under the proposed regulation, Medicaid recipients in the consumer directed program may continue to receive more than 40 hours per week of services from multiple attendants. Also, attendants may work over 40 hours per week for multiple recipients. However, an attendant may not provide services to the same Medicaid recipient that would require overtime pay under federal or state laws. Thus, this rule inconveniences those recipients who need more than 40 hours of service per week in that they need to hire an additional attendant. Similarly, attendants whose Medicaid client needs more than 40 hours of service per week are financially worse off under this rule as they cannot be paid time and a half of their regular hourly rate.

Businesses and Entities Affected

There were approximately 7,000 attendants who received overtime pay during the first six months of 2016. The number of recipients who received the services are also estimated to be approximately 7,000.

Localities Particularly Affected

The proposed changes do not affect any locality more than others.

Projected Impact on Employment

The proposed rule necessitates hiring of an additional attendant by recipients who use more than 40 hours of services per week. However, it does not prohibit an attendant working

more than 40 hours a week for multiple recipients. Thus, whether the proposed rule will have a significant positive impact on employment is unknown.

Effects on the Use and Value of Private Property

No impact on the use and value of private property is 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

The proposed amendments do not affect small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not have an adverse impact on small businesses.

Adverse Impacts:

Businesses:

The proposed amendments do not have an adverse impact on non-small businesses.

Localities:

The proposed amendments will not adversely affect localities.

Other Entities:

The rule provides approximately \$11 million in savings over a six-month period to the state and federal governments at the expense of 7,000 attendants. The proposed rule also forces Medicaid recipients to hire an additional attendant for services in excess of 40 hours a week.

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.