

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 35-240 – Victims of Eugenics Sterilization Compensation Program
Department of Behavioral Health and Developmental Services
Town Hall Action/Stage: 4414/7737
February 7, 2017

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 665 of the 2015 Acts of the Assembly, the Board of Behavioral Health and Development Services (Board) proposes to promulgate a replacement for an emergency regulation that is set to expire May 20, 2017. This regulation, and the emergency regulation it replaces, sets rules for the compensation of individuals involuntarily sterilized under the Virginia Eugenic Sterilization Act of 1924 (repealed in 1974).

Result of Analysis

The benefits of this proposed regulatory action outweigh its costs.

Estimated Economic Impact

In 1924, Virginia passed a law that allowed individuals who had been committed to state institutions¹, and who were deemed mentally ill or mentally defective, to be forcibly sterilized. In 1974, the Virginia Eugenic Sterilization Act was repealed and in 1979, other statutory language

¹ In 1924 these institutions included 1) the Virginia Colony for the Epileptic and Feeble-minded in Lynchburg, Virginia (now the Central Virginia Training Center), 2) Western State Hospital in Staunton Virginia, 3) Central State Mental Hospital in Petersburg, Virginia, 4) Eastern State Hospital in Williamsburg, Virginia and 5) Southwestern State Hospital in Marion, Virginia. See <https://www.uvm.edu/~lkaelber/eugenics/VA/VA.html> for more details.

that contained authorization for most involuntary sterilization was also repealed.² Between 1924 and 1979, it is estimated that between 7,325 and 8,300 individuals were forcibly sterilized in Virginia.³

In 2015, the General Assembly approved a compensation program for victims of Virginia's involuntary sterilization program who were living as of February 1, 2015 (or their estates if they were living on that date but subsequently died before their claim could be filed or processed). The General Assembly approved compensation up to \$25,000 per individual⁴ and directed the Department of Behavioral Health and Developmental Services (DBHDS) to establish a process and standards under which claims would be considered and paid. The General Assembly also authorized the Board to promulgate an emergency regulation containing the process and standards for considering claims. The Board promulgated an emergency regulation which became effective on November 20, 2015. This proposed regulation will replace the emergency regulation that is set to expire May 20, 2017.

This proposed regulation, and the emergency regulation that it replaces, requires that claimants who meet the legislative criteria submit a notarized claim application along with proof of identity and proof that they were involuntarily sterilized pursuant to the Virginia Eugenic Sterilization Act. The proposed regulation, and the emergency regulation it replaces, also set standards for proof of name change (if the name on the proof of identity is different than the name on the records of involuntary sterilization) and documentation that lawfully authorized representatives of claimants must submit to prove lawful authorization. The proposed regulation additionally sets parameters for a screening process to ensure that applications are complete and all documentation has been submitted, sets the process for appointing the review panel and for application reconsideration and sets the rules under which compensation will be dispersed. This proposed regulation will benefit victims of forced sterilization in the Commonwealth by partially compensating them for the losses they would have incurred on account of being unable to bear or

² Compulsory sterilization is still allowed but in much narrower circumstances and with much more stringent patient protections. Now, a compulsory sterilization patient must be unable to give informed consent, in need of contraception, unable to use any other form of contraception, and permanently unable to raise a child.

³ <https://www.uvm.edu/~lkaelber/eugenics/VA/VA.html>

⁴ The General Assembly appropriated \$1.2 million dollars between the fiscal year 2016 and fiscal year 20167 budgets to pay claims under this program. If claims exceed that amount, DBHDS will pay claims in the order they were submitted, retain claims that are not paid and request an additional appropriation to pay them.

father children. Victims will also receive a non-monetary benefit from this program as the monetary compensation is also an acknowledgement of the harm they wrongly suffered. The Commonwealth, and therefore the taxpayers of Virginia, will incur costs of up to \$25,000 for each claim paid. The benefits that will accrue to claimants likely outweigh these costs.

Businesses and Entities Affected

This proposed regulation affects all individuals who were involuntarily sterilized under the Virginia Eugenical Sterilization Act and who were still living on February 1, 2015. Although estimates exist for how many individuals were likely sterilized, no good estimates are available for the number of individuals who were involuntarily sterilized and were still living on February 1, 2015. Board staff reports that 28 individuals have filed claims since the emergency regulations became effective November 20, 2015.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory program.

Projected Impact on Employment

These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property

These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs

These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

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

No small businesses are likely to be affected by this proposed regulation.

Alternative Method that Minimizes Adverse Impact

No small businesses will be adversely affected by these proposed regulatory changes.

Adverse Impacts:

Businesses:

No businesses will be adversely affected by these proposed regulatory changes.

Localities:

Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities:

No other entities are likely to be adversely affected by these proposed changes.

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.

