

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 35-225 Requirements for Virginia’s Early Intervention System
Department of Behavioral Health & Developmental Services
Town Hall Action/Stage: 4106/7323
November 17, 2015

Summary of the Proposed Amendments to Regulation

The proposed regulation will consolidate and make permanent requirements for Early Intervention (EI) services that are currently located in permanent certification regulations, policy manuals, and emergency regulations.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The proposed regulation will consolidate and make permanent requirements for EI services. EI is a system of services that helps eligible babies and toddlers learn the skills that typically develop during the first three years of life, such as: physical (reaching, rolling, crawling, and walking); cognitive (thinking, learning, solving problems); communication (talking, listening, understanding); social/emotional (playing, feeling secure and happy); and self-help (eating, dressing).

Provision of EI services started in 1986 when the federal Individuals with Disabilities Education Act (IDEA) was enacted. IDEA governs how states and public agencies provide EI, special education, and related services to children with disabilities. Part C of IDEA refers to the section of the act included in 1986 (originally ‘Part H’ until 1997) authorizing the federal grants

for the Infants and Families Program that serves infants and toddlers with developmental delays or who have diagnosed physical or mental conditions with high probabilities of resulting in developmental delays.

Early intervention is available in every state and territory of the United States. Virginia has participated in the federal EI program under IDEA since its inception in 1986. In Virginia, the Department of Behavioral Health and Developmental Services (DBHDS) acts as the lead agency for the statewide system of EI services. The name of the system is ‘The Infant & Toddler Connection of Virginia.’ There are 40 local lead agencies. The purpose of the program is to: identify children who could benefit from EI services; establish their eligibility under Part C of the IDEA; coordinate care; and, assure the availability of needed services. In fiscal years (FY) 2014 and 2015, 16272 and 17022 infants and toddlers were served in this system, respectively.

EI services bring together families and service providers from many aspects of the community, including public and private agencies, parent child centers, local school districts, and private providers. Supports and services come together to meet each child's unique needs and the needs of their family in their home and community. Funding for services comes from a variety of sources, including the federal grant (\$8.5 million), state funds (\$15 million), local funds (\$8.1 million), Medicaid (\$13.8 million), targeted case management (\$5.7 million), private insurance (\$10.5 million), family cost share (\$0.9 million), and other sources (\$4.9 million).¹

EI expenditures by type of service, on the other hand, are as follows: assessment for service planning (\$2.8 million); developmental services (\$3.3 million); eligibility determinations (\$1.1 million); occupational therapy (\$1.8 million); physical therapy (\$2.7 million); service coordination (\$12.4 million); speech language pathology (\$8.4 million); services by private providers (\$29.6 million); and \$1 million for assistive technology, audiology, counseling, health, nursing, nutrition, social work, transportation, vision, and other services combined.²

Until now, EI has been provided under a framework that was comprised of permanent certification regulations, policy manuals, and emergency regulations. The provider certification and case manager certification requirements were added to the Virginia Administrative Code in 2011 and 2013, respectively. In September 2011, federal IDEA regulations were revised

¹ Source: Report on Virginia’s Part C Early Intervention System, submitted to the Chairs of the House Appropriations and Senate Finance Committees of the General Assembly, December 1, 2014.

² Ibid.

increasing family protections and requirements for transitioning infants and toddlers from EI (Part C) to educational services for school children 3-21 years of age (Part B). DBHDS implemented the changes through the policy guidance in the Virginia Early Intervention Practice Manual in June 2012.

The 2012 changes included: Providing details regarding the state infrastructure for early intervention services; clarifying Virginia's referral system to EI services; outlining the intake, eligibility determination, and assessment processes; providing details for the expectations regarding service planning and delivery, including transition or discharge from the early intervention system of care; explaining the service funding and payment expectations; establishing the procedural safeguards that individuals can expect; addressing the alternative to resolve disputes; and continuing the certification process for certain EI practitioners and a comprehensive system of personnel development.

However, the US Department of Education, Office of Special Education Programs (OSEP) required that the Commonwealth promulgate state regulations rather than a policy manual to reflect the totality of the federal regulations in order to continue to be eligible for federal grant funds. In response, DBHDS adopted emergency regulations in December 2014 addressing the required elements. In the months since the adoption of emergency regulations additional non-substantive amendments have been made at the request of OSEP and are reflected in the proposed language in this action. Furthermore, DBHDS now proposes to eliminate two notification requirements that were in the emergency regulations as DBHDS does not have the capacity in its data system to send the notices. These include the requirement that DBHDS notify practitioners when their EI certification expires and that their status is inactive one year after their certification lapses.

In short, the proposed regulations consolidate permanent certification regulations, policy manuals, and emergency regulations in one chapter of the Virginia Administrative Code.

No significant change in the administration of EI services, funding sources, or service delivery is expected upon promulgation of the proposed regulations. However, without permanent regulations, Virginia's current \$10.7 million federal grant would be at risk.³ Thus, the main benefit of the proposed regulation is that Virginia will be in compliance with federal

³ The federal deadline for approval is June 30, 2016.

regulations and will remain eligible for EI Part C of IDEA grant funding for infants and toddlers with disabilities. Continued federal funding will help infants and toddlers to continue to receive services and supports to promote their functional abilities and prevent complications. Available literature also shows that EI services not only benefit infants and toddlers and their families, they also produce net benefits for society. For example, EI services have been shown to produce public benefits in academic achievement, behavior, educational progression and attainment, reduced delinquency and crime, and labor market success.⁴ Early childhood programs are estimated to produce \$3.23 to \$9.20 in public benefits for each dollar spent.⁵

Businesses and Entities Affected

The proposed permanent regulation will help maintain Virginia's current EI system in its current state. In FY 2015, there were 17,022 infants and toddlers served in the EI program. There are 40 local EI programs, and approximately 70 small businesses that provide early intervention services.

Localities Particularly Affected

The proposed regulation applies throughout the Commonwealth.

Projected Impact on Employment

The proposed regulation is not likely to have a significant impact on employment upon promulgation. However, it has a positive impact on employment in that it will help maintain Virginia's current EI system and the jobs of people employed in the system.

Effects on the Use and Value of Private Property

No impact on the use and value of private property is expected upon promulgation of the proposed regulation.

Real Estate Development Costs

No impact on real estate development costs is expected.

⁴ National Assessment of IDEA Overview, US Department of Education, 2011.

⁵ Early Intervention, IDEA Part C Services, and the Medical Home: Collaboration for Best Practice and Best Outcomes, American Academy of Pediatrics, 2013.

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 will not impose costs or other effects on small businesses upon promulgation. However, it will help maintain Virginia’s current EI system and ensure small businesses currently providing goods and services in the system continue to do so.

Alternative Method that Minimizes Adverse Impact

No adverse impact on small businesses is expected.

Adverse Impacts:**Businesses:**

The proposed regulation will not have an impact on non-small businesses upon promulgation.

Localities:

The proposed regulation will not adversely affect localities.

Other Entities:

The proposed regulation will 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 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.

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