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HOUSE BILL NO. 1944

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact § 2.2-4007.04 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 32.1-324.4 and 37.2-203.1, relating to certain regulations of the Department of Medical Assistance Services and the Department of Behavioral Health and Developmental Services.

Patrons—Peace, Head and Greason

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4007.04 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 32.1-324.4 and 37.2-203.1 as follows:

§ 2.2-4007.04. Economic impact analysis.

A. Before delivering any proposed regulation under consideration to the Registrar as required in § 2.2-4007.05, the agency shall submit on the Virginia Regulatory Town Hall a copy of that regulation to the Department of Planning and Budget. In addition to determining the public benefit, the Department of Planning and Budget in coordination with the agency shall, within 45 days, prepare an economic impact analysis of the proposed regulation, as follows:

1. The economic impact analysis shall 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 by the regulation; the projected number of persons and employment positions to be affected; the impact of the regulation on the use and value of private property, including additional costs related to the development of real estate for commercial or residential purposes; and the projected costs to affected businesses, localities, or entities of implementing or complying with the regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation. A copy of the economic impact analysis shall be provided to the Joint Commission on Administrative Rules;

2. If the regulation may have an adverse effect on small businesses, the economic impact analysis shall also include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. As used in this subdivision, "small business" has the same meaning as provided in subsection A of § 2.2-4007.1; and

3. In the event the Department cannot complete an economic impact statement within the 45-day period, it shall advise the agency and the Joint Commission on Administrative Rules as to the reasons for the delay. In no event shall the delay exceed 30 days beyond the original 45-day period.

B. *In conducting the economic impact analysis, the Department shall provide an opportunity for comment to a business or other entity to which a proposed regulation would apply regarding the anticipated economic impact of the proposed regulation. Any such comment shall be considered by the Department and included in the economic impact analysis.*

C. Agencies shall provide the Department with such estimated fiscal impacts on localities and sources of potential funds. The Department may request the assistance of any other agency in preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation, which shall comment thereon as provided in § 2.2-4007.05, a copy to the Registrar for publication with the proposed regulation, and an electronic copy to each member of the General Assembly. No regulation shall be promulgated for consideration pursuant to § 2.2-4007.05 until the impact analysis has been received by the Registrar. For purposes of this section, the term "locality, business, or entity particularly affected" means any locality, business, or entity that bears any identified disproportionate material impact that would not be experienced by other localities, businesses, or entities. The analysis shall represent the Department's best estimate for the purposes of public review and comment on the proposed regulation. The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with or otherwise follow the procedures set forth in this subsection create any cause of action or provide standing for any person under Article 5 (§ 2.2-4025 et seq.) or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed

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59 regulation.

60 ~~C.~~ D. In the event the economic impact analysis completed by the Department reveals that the
61 proposed regulation would have an adverse economic impact on businesses or would impose a
62 significant adverse economic impact on a locality, business, or entity particularly affected, the
63 Department shall advise the Joint Commission on Administrative Rules, the House Committee on
64 Appropriations, and the Senate Committee on Finance within the 45-day period. The Joint Commission
65 on Administrative Rules shall review such rule or regulation and issue a statement containing the
66 Commission's findings in accordance with § 30-73.3.

67 **§ 32.1-324.4. Additional requirements for regulations relating to licensed providers; provider**
68 **manuals.**

69 A. In addition to the requirements of the Administrative Process Act (§ 2.2-4000 et seq.), for any
70 regulation related to licensed provider manuals, the Department shall provide to all licensed providers
71 to which any such proposed or final regulation applies:

72 1. A Notice of Intended Regulatory Action in accordance with § 2.2-4007.01, which Notice shall also
73 include (i) a summary statement of the substance and purpose of the proposed rulemaking, (ii) specific
74 references to any applicable legal authority that authorizes the proposed rulemaking, (iii) the timetable
75 for promulgation of any rulemaking, and (iv) the opportunity for oral or written public comment on the
76 proposed rulemaking;

77 2. A copy of (i) any proposed regulation and (ii) the economic impact analysis prepared by the
78 Department of Planning and Budget; and

79 3. A (i) copy of any final regulation, (ii) summary of any comments received during the promulgation
80 of the regulation, and (iii) summary of the Department's response to such economic impact analysis or
81 comments received during the public comment period provided in subsection A of § 2.2-4007.01.

82 B. A licensed provider shall have 90 days from the effective date of any final regulation applicable
83 to such provider to comply with the regulation, and such provider shall not be subject to any
84 enforcement action by the Department during such period.

85 C. For the purposes of this section, "provider" means any provider licensed by the Department of
86 Health or the Department of Behavioral Health and Developmental Services.

87 D. For the purposes of this section, provider manuals shall be deemed regulations.

88 **§ 37.2-203.1. Additional requirements for regulations relating to providers; requirements for**
89 **licensure.**

90 A. In addition to the requirements of the Administrative Process Act (§ 2.2-4000 et seq.), for any
91 regulation related to requirements for licensure, the Department shall provide to all licensed providers
92 to which any such proposed or final regulation applies:

93 1. A Notice of Intended Regulatory Action in accordance with § 2.2-4007.01, which Notice shall also
94 include (i) a summary statement of the substance and purpose of the proposed rulemaking, (ii) specific
95 references to any applicable legal authority that authorizes the proposed rulemaking, (iii) the timetable
96 for promulgation of any rulemaking, and (iv) the opportunity for oral or written public comment on the
97 proposed rulemaking;

98 2. A copy of (i) any proposed regulation and (ii) the economic impact analysis prepared by the
99 Department of Planning and Budget; and

100 3. A (i) copy of (a) any final regulation and (b) the economic impact analysis prepared by the
101 Department of Planning and Budget, (ii) summary of any comments received during the promulgation of
102 the regulation, and (iii) summary of the Department's response to such economic impact analysis or
103 comments received during the public comment period provided in subsection A of § 2.2-4007.01.

104 B. A licensed provider shall have 90 days from the effective date of any final regulation applicable
105 to such provider to comply with the regulation and such provider shall not be subject to any
106 enforcement action by the Department during such period.

107 C. For the purposes of this section, "provider" means the same as that term is defined in § 37.2-403.