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HOUSE BILL NO. 1944

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 2, 2017)

(Patron Prior to Substitute—Delegate Peace)

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.

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~~ *which* 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; *and*

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. ~~B.~~ 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.~~ 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 regulation.

~~C.~~ D. In the event the economic impact analysis completed by the Department 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 shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period. The Joint Commission on Administrative Rules shall review such rule or regulation and issue a statement containing the

60 Commission's findings in accordance with § 30-73.3.

61 *E. The Department shall revise and reissue its economic impact analysis within the time limits set*
62 *forth for the Department's review of regulations at the final stage pursuant to the Governor's executive*
63 *order for executive branch review if one of the following conditions is present that would materially*
64 *change the Department's analysis:*

65 *1. Public comment timely received at the proposed stage indicates significant errors in the economic*
66 *impact analysis; or*

67 *2. There is significant or material difference between the agency's proposed economic impact*
68 *analysis and the anticipated negative economic impacts to the business community as indicated by*
69 *public comment.*

70 *The determination of whether a condition is present under this subsection shall be made by the*
71 *Department and shall not be subject to judicial review.*

72 **2. That at or prior to the time a new regulation is posted to the Virginia Regulatory Town Hall,**
73 **the Department of Medical Assistance Services shall provide direct notice to stakeholders affected**
74 **by the new regulatory change that such change has been initiated. If it is anticipated that the**
75 **change shall have an impact on staffing or payment matters for the affected stakeholders, licensed**
76 **providers shall have a minimum of 90 days to comply with such regulation. At the time that the**
77 **final stage of a regulation is posted to the Virginia Regulatory Town Hall, the Department of**
78 **Medical Assistance Services shall provide direct notice to stakeholders affected by the regulatory**
79 **change that such final stage has been posted.**

80 **3. That at the time a change to a provider manual is being developed, the Department of Medical**
81 **Assistance Services shall provide direct notice to stakeholders affected by the provider manual**
82 **change that such change has been initiated. The Department shall post a notice of such change to**
83 **the Virginia Regulatory Town Hall, to include a public comment forum, for a period of 30 days.**
84 **Such notice shall include a description of the change and provide contact information for the**
85 **Department's designated contact person. If it is anticipated that the change shall have an impact**
86 **on staffing or payment matters for the affected stakeholders, licensed providers shall have a**
87 **minimum of 90 days to comply with such regulation.**

88 **4. That, at or prior to the time a new regulation is posted to the Virginia Regulatory Town Hall,**
89 **the Department of Behavioral Health and Developmental Services shall provide direct notice to**
90 **stakeholders affected by the new regulatory change that such change has been initiated. If it is**
91 **anticipated that the change shall have an impact on staffing or payment matters for the affected**
92 **stakeholders, licensed providers shall have a minimum of 90 days to comply with such regulation.**

93 **5. That, at the time that the final stage of a regulation is posted to the Virginia Regulatory Town**
94 **Hall, the Department of Behavioral Health and Developmental Services shall provide direct notice**
95 **to stakeholders affected by the regulatory change that such final stage has been posted.**

96 **6. That, at the time any change to licensure requirements is being developed, the Department of**
97 **Behavioral Health and Developmental Services shall provide direct notice to stakeholders affected**
98 **by the change that such change has been initiated. The Department shall post a notice of such**
99 **change to the Virginia Regulatory Town Hall, to include a public comment forum, for a period of**
100 **30 days. Such notice shall include a description of the change and provide contact information for**
101 **the Department's designated contact person. If it is anticipated that the change shall have an**
102 **impact on staffing or payment matters for the affected stakeholders, the direct notice to**
103 **stakeholders shall note this fact and request specific comments regarding an appropriate time**
104 **frame for the implementation of such changes.**