



Fast Track Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60 -20-10 et seq.
Regulation title	Regulations Governing the Practice of Dentistry and Dental Hygiene
Action title	Expansion of time limit on general supervision
Document preparation date	12/6/06

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed action expands from seven to ten months the time limit for an order given by the dentist to be performed by a hygienist under general supervision without the presence of the dentist.

Statement of agency final action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On September 15, 2006, the Board of Dentistry took action to amend 18VAC60-20-10 et seq., Regulations Governing the Practice of Dentistry and Dental Hygiene, through the fast-track regulatory process.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- ...
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The Board has become aware that many dentists encounter situations in which a patient who has an order for dental care by a hygienist under general supervision is not able to get that care within the seven-month limitation on the order. The recommended interval for dental care is six months, but for a variety of reasons, a patient is not always able to return for an appointment within that time frame. The Board believes the dental hygienist should be able to provide the prescribed care under general supervision (without the presence of the dentist) for a period not to exceed ten months, if so specified by the dentist writing the order. The ability of dental hygienists to care for patients under general supervision expands access and potentially reduces the cost of dental care. Therefore, any expansion of care by hygienists while still under supervision by dentists is in the best interest of public health and safety.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

As stated above, the Board is aware that many dentists across Virginia are having difficulty complying with the seven-month limitation on orders for care under general supervision. There is agreement within the dental and dental hygiene community that the limit needs to be

expanded. If care of patients by hygienists practicing under general supervision is to be more efficient and cost effective, it is necessary to revise the requirement as soon as possible.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed action will allow the dentist to enter an order for dental care in a patient’s record with services to be provided by a dental hygienist practicing under general supervision within a specific time period, not to exceed ten months from the date the dentist last saw the patient. The current limitation is seven months from the last time the dentistry saw the patient.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

There are no disadvantages to the public of this amendment. Consumers of dental services will have more opportunities to be seen in the dental office by either the dentist or by the hygienist practicing under the order of a dentist. In any case, the dentist must see a patient to write the order for routine care by the hygienist for the intervening visit.

There are no disadvantages to the agency or the Commonwealth; a revised regulation should reduce the number of comments and potential violations of the rule

There are no other pertinent matters of interest.

Economic impact

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings. There are no ongoing expenditures related to this amendment. As a special fund agency, the Board must generate sufficient</p>
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	revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The individuals that may be affected by the regulation are dentists and their patients.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.	There are 5826 dentists licensed in Virginia, the majority of which would be considered small businesses. There are 4261 dental hygienists; all of whom work are employees of a dental practice.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	The proposed change would have a positive impact on many practices in that regulations would no longer require that a patient be seen by the hygienist within 7 months of the last visit to the dentist. Patients will be able to receive care and treatment by the hygienist while the dentist is engaged in practice in another office or is away from practice altogether.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

There were no alternatives to an amendment to the requirement that would accomplish the purpose.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods that will accomplish the objective which is to eliminate a barrier to dental hygiene care for patients that do not back to the office within a

seven-month time frame. Failure to enact the proposed change would have an adverse impact on small businesses.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

Current section number	Current requirement	Proposed change and rationale
210	Sets out the requirements for duties that can be delegated to a dental hygienist under general supervision, including a time limit of 7 months from the original order by the dentist who examined the patient.	<p>The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed seven <u>ten</u> months from the date the dentist last examined the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment.</p> <p><i>The intent of treatment under general supervision is routine prophylaxis and follow-up care by the hygienist after examination by a dentist who writes an order for the next visit by the patient. Sometimes, it is problematic for the patient to see the hygienist within the seven-month limitation on that order, so the only option is to schedule an appointment with the dentist, which further delays care. The Board believes the extension to 10 months will enable more patients to receive the routine and follow-up care by a hygienist and will allow dentists more time and opportunity to perform those dental tasks that cannot be delegated.</i></p>