



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 60-21 Regulations Governing the Practice of Dentistry
18 VAC 60-25 Regulations Governing the Practice of Dental Hygiene
18 VAC 60-30 Regulations Governing the Practice of Dental Assistants
Department of Health Professions
Town Hall Action/Stage: 6149 / 9870
April 16, 2024

The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

Pursuant to periodic reviews of three of its regulations, the Board of Dentistry (Board) proposes to grant additional continuing education credit for the uncompensated provision of services by dentists and dental hygienists and also introduce one new notification and three documentation requirements. The proposal also includes numerous editorial changes.

Background

This action would implement amendments identified during 2022 periodic reviews of Chapters 21 (Practice of Dentistry), 25 (Practice of Dental Hygiene), and 30 (Practice of Dental Assistants).² According to the Board, when the dentistry regulation was split from a single

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

² <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2105>
<https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2106>
<https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2107>

chapter (Chapter 20) into three separate chapters (Chapters 21, 25, and 30),³ many provisions were copied over into each chapter regardless of their applicability to the practice they governed. Therefore, this action would mainly remove provisions from each chapter that do not apply to the profession governed by that chapter.

Additionally, the proposal would create definitions where needed; delete outdated provisions that were limited to specific time periods; clarify requirements for what must be recorded in a patient's record, including post-operative care following sedation; eliminate requirements to attest to review and comprehension of applicable laws and regulations and to adhere to those requirements; eliminate prohibitions that do not involve actions which the Board has jurisdiction over; clarify unprofessional conduct requirements; eliminate overly-restrictive advertising requirements; and clarify that some practitioners are exempt from needing permits from the Board to provide sedation.

Estimated Benefits and Costs

The majority of the proposed changes are related to clarification of existing requirements, removal of language duplicative of the Code of Virginia or language that has no applicability, etc., that would create no economic impact other than improving the clarity and readability of the regulatory text. However, several proposed changes are new and would have some effect on practice. These changes are discussed below.

Practice of Dentistry

Presently, up to two of the required fifteen hours of continuing education can be satisfied through delivery of dental services without compensation to low-income individuals or through free healthcare clinics; this proposal would increase this amount to three hours. The proposal would also delete the language stating that only one hour may be credited for every three hours of providing such service, thereby allowing each hour of service to be fully credited (making the ratio of credit to service one-to-one instead of one-to-three). According to the Board, the one-to-three limitation does not make sense, it discourages the provision of these services to earn continuing education credit, and dentists may be more likely to provide the services if they can receive credit at the one-to-one ratio. With this change, dentists would be able to get two

³ <https://townhall.virginia.gov/l/ViewAction.cfm?actionid=3252>.

additional hours of credit for every three hours of service and all three hours would be counted toward the continuing education requirement. In essence, this change would increase the reward for provision of free dental services to needy patients and encourage this behavior.

Another change would require that the holder of a sedation permit must notify the Board within 30 days of a change of address. This applies to either (a) the location at which sedation is provided, or (b) that the provision of sedation at a permitted location has ceased. Presently, no notification is required when either event occurs. According to the Board, this change is necessary because some permit holders have either ceased providing sedation at locations or have moved to a different location without notifying the Board. If sedation is no longer provided at a location, then the Board does not need to send an inspector to the location annually. Likewise, if a location changes, going forward the new annual inspections must be performed at the new location. When providers fail to notify the Board of these changes, inspectors either arrive for the annual inspection to find it is no longer necessary or arrive for the annual inspection to find the practice has moved locations. This change is intended to and should reduce the costs associated with unnecessary inspection visits.

Three of the proposed changes would introduce documentation requirements. First, a dentist would be required to document that equipment used in the office for administration and monitoring of general anesthesia, deep sedation, or moderate sedation is in good working order and that the individual administering anesthesia or sedation is appropriately licensed and trained. The Board states that there is no proof of compliance with the existing requirements unless there is documentation. Through the sedation inspections, it has become evident that permit holders are not documenting that equipment is in good working order. This is especially important when a dentist is utilizing an anesthesia or sedation provider who brings their own equipment, such as a certified registered nurse anesthetist (CRNA). The dentist is responsible for ensuring that the equipment is in good working order and the Board would require documentation to ensure that the dentist complied with this requirement prior to the administration of anesthesia. The Board notes that this assurance is especially important when the equipment is not available onsite for an inspection or when it is being brought into the dental facility by an outside practitioner like a CRNA. This change should help ensure equipment is properly working and add to the safety of patients who receive treatment under anesthesia, deep sedation, or moderate sedation; it may also help reduce professional liability.

Second, the proposal would require documentation in the patient's record that oxygen was administered for five minutes, following the administration of nitrous oxide, in order to minimize the risk of diffusion hypoxia. Inspections and investigations revealed that practitioners were not documenting compliance with this requirement, which is necessary for the safety of patients. This is similar to the previous change in that the Board states there is no evidence of compliance unless documentation is maintained. The dentists may also benefit from documenting that proper procedures are followed, which may help reduce professional liability.

The third change in this category would require that after the administration of moderate sedation, the provision of post-operative discharge instructions must be documented in the patient's chart for evidentiary purposes. The Board has had several discipline cases related to patients who were discharged without receiving appropriate discharge instructions, and there is no evidence of the discharge instructions without documentation. This change should encourage compliance and patient safety, and may help reduce professional liability.

Practice of Dental Hygiene

In order to encourage the provision of free dental services to needy patients, the Board proposes to adopt the same approach for dental hygienists as it is proposing for dentists. Accordingly, the Board proposes to make the same change by allowing up to three (instead of two) of the fifteen required continuing education hours to be satisfied through delivery of hygienist services without compensation to low-income individuals or through free healthcare clinics. The proposal would also delete the language stating one hour may be credited for three hours of providing dental hygiene service, making the ratio of credit to service one-to-one. As in the case of dentists, this change would increase the reward for provision of free hygiene services to needy patients and encourage this behavior.

Businesses and Other Entities Affected

These regulations apply to dentists, dental hygienists, and dental assistants. As of December 31, 2023, there were 7,802 licensed dentists, 6,026 licensed dental hygienists, and 49 registered dental assistants.⁴ Additionally, there were 41 cosmetic procedure certifications; 72 deep sedation permits; 105 conscious/moderate sedation permits; 275 moderate sedation permits;

⁴ See <https://www.dhp.virginia.gov/about/stats/2024Q2/04CurrentLicenseCountQ2FY2024.pdf>

284 oral and maxillofacial surgeon registrations; and 568 sedation permit holders. None of the regulated entities are expected to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ As noted above, there is one new notification requirement and there are three changes that would require documentation. These notification and documentation requirements do not seem to be significant as they are being used to ensure compliance with existing requirements. Additionally, they would also add to patient safety and would benefit the practitioners. Thus, an adverse impact is not indicated.

Small Businesses⁷ Affected:⁸

The proposed amendments do not appear to adversely affect small businesses.

Localities⁹ Affected¹⁰

The proposed amendments do not introduce costs for localities, nor do they have a disproportional impact on them.

⁵ Pursuant to Code § 2.2-4007.04(D): 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.

⁶ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁷ 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.”

⁸ 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.

⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Projected Impact on Employment

The proposed amendments are not expected to affect total employment.

Effects on the Use and Value of Private Property

No significant effects on the use and value of private property nor on real estate development costs are expected.