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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC60-21-10 et seq. 18VAC60-25-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Dentistry Regulations Governing the Practice of Dental Hygiene
Action title	Conforming regulations to ADA Guidelines on Sedation in Dentistry
Date this document prepared	2/24/17

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

A revision of the American Dental Association (ADA) *Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry* was published in October of 2016. Currently, Board regulations specify that education and training for conscious/moderate sedation must be consistent with the ADA Guidelines. With the revision, certain training requirements and uses of terminology are now inconsistent with the Guidelines, now entitled *Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students*.

Consequently, the Board will: 1) amend the use of the term *conscious/moderate* sedation throughout the chapter to refer to *moderate* sedation; 2) change the name of the Guidelines consistent with the 2016 title; and 3) eliminate the training for dentist to administer moderate

sedation by the enteral method only, as the Guidelines no longer make a distinction for enteral administration and specify the same training for all who administer moderate sedation.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which 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. ...

The statutory authority for the Board to promulgate regulations to determine required equipment standards for safe administration and monitoring of sedation and anesthesia is found in Chapter 27 of Title 54.1:

§ 54.1-2709.5. Permits for sedation and anesthesia required.

A. Except as provided in subsection C, the Board shall require any dentist who provides or administers sedation or anesthesia in a dental office to obtain either a conscious/moderate sedation permit or a deep sedation/general anesthesia permit issued by the Board. The Board shall establish by regulation reasonable education, training, and equipment standards for safe administration and monitoring of sedation and anesthesia to patients in a dental office.

B. A permit for conscious/moderate sedation shall not be required if a permit has been issued for the administration of deep sedation/general anesthesia.

C. This section shall not apply to:

1. An oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the Board with reports which result from the periodic office examinations required by AAOMS; or

2. Any dentist who administers or prescribes medication or administers nitrous oxide/oxygen or a combination of a medication and nitrous oxide/oxygen for the purpose of inducing anxiolysis or minimal sedation consistent with the Board's regulations.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

As stated in the ADA Guidelines, “because sedation and general anesthesia are a continuum, it is not always possible to predict how an individual patient will respond. Hence, practitioners intending to produce a given level of sedation should be able to diagnose and manage the physiologic consequences (rescue) for patients whose level of sedation becomes deeper than initially intended.” Therefore, the Guidelines no longer specify a lesser amount of training for dentists who only intend to administer by the enteral route. The Guidelines now specify training in moderate sedation adequate to prepare a dentist for an unintended loss of consciousness or greater alteration of the state of consciousness than is the intent of the dentist. Accordingly, regulations of the Board of Dentistry are amended to ensure the same level of training and experience as specified in the ADA Guidelines that are necessary to protect the health and safety of patients in the Commonwealth.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board will: 1) amend the use of the term *conscious/moderate* sedation throughout the chapter to refer to *moderate* sedation; 2) change the name of the ADA Guidelines consistent with the 2016 title; and 3) eliminate the training for dentist to administer moderate sedation by the enteral method only, as the Guidelines no longer make a distinction for enteral administration and specify the same training for all who administer moderate sedation.

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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no alternatives to the proposal; the ADA Guidelines are the professional standard for all dentistry and dental education.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.