



Proposed Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60-15
Regulation title	Regulations Governing the Disciplinary Process in Dentistry
Action title	Promulgation of new chapter resulting from periodic review and reorganization
Date this document prepared	8/31/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The new regulations result from a periodic review of Chapter 20 and the action of the Board to divide the Chapter into three separate sets of regulations for dentists, dental hygienists and dental assistants. Therefore, the two sections of current Chapter 20 that would apply to all professions in the disciplinary process have been moved to a new Chapter 15 rather than repeating regulations in the three new chapters.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

None

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe 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, 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:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 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. ...*

Specific regulatory authority for the Board of Dentistry is found in Chapter 27 of Title 54.1.

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, the environmental benefits, and the problems the proposal is intended to solve.

The two sections of this chapter set out provisions for recovery of disciplinary costs in a case in which there is a finding of a violation and for establishment of criteria for delegation of informal fact-finding to an agency subordinate. Final regulations for the recovery of costs were adopted in April 2011 and are not yet effective, but are included in proposed Chapter 15 since Chapter 20 will be repealed in this action. The regulations are intended to facilitate the disciplinary process so cases can be adjudicated in a more timely and cost-effective manner. Assessment of costs for

violations of the dental practice act may have the effect of deterring unprofessional conduct that is detrimental to the health and safety of dental patients.

Substance

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

The two sections of this chapter set out provisions for recovery of disciplinary costs in a case in which there is a finding of a violation and for establishment of criteria for delegation of informal fact-finding to an agency subordinate.

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 indicate.

- 1) The primary advantage to the public is the potential to reduce expenditures of the Board and its licensees for the investigation and monitoring by assessing a dentist who has violated law and/or regulation a portion of the costs the Board incurred. Offsetting expenditures relating to discipline will have a positive effect on the Board's budget and may result in stability in fees charged to licensees, which in turn benefits patients of those licensees. There are no disadvantages.
- 2) The ability to delegate non-patient care cases to an agency subordinate allows a board to expedite some disciplinary proceedings and meet agency goals for case resolution. There are no disadvantages.
- 3) These are current regulations restructured in a new chapter.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233 or by fax to (804) 527-4434 or to elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will</p>
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	<p>incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings and meetings already scheduled. On-going expenditures would be administrative costs for collection of such a fee and for possible action against a licensee who is delinquent or non-compliant, so the net income to the board is presently unknown.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>There are no costs on localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>The individuals affected by the proposed amendments are those who have been found in violation and have had disciplinary action imposed.</p>
<p>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.</p>	<p>There have been approximately 70 disciplinary actions on licensees of the Board of Dentistry per year for the past five years (76 in 2008). It is estimated that most of those would be small businesses with the exception of any dental hygienists who are employed by dentists and not be operating a small business.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Projected costs for the new regulation would be related to costs for the investigation of a licensee and, if applicable, the costs for monitoring compliance with terms and conditions – total costs for investigation and monitoring could not exceed \$5,000.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The amendment should result in a modest increase in revenue for the Board of Dentistry. If revenue is sufficient, this action might result in a reduction in the amount of future fee increases for dentists and dental hygienists. Other boards at the Department are watching this regulatory action and its implementation to determine whether similar authorization is advisable.</p>

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.

The alternative is to continue Chapter 20, which includes all requirements for dentists, dental hygienists, dental assistants, mobile dental clinics, oral and maxillofacial surgeons, anesthesia and sedation, and provisions for recovery of costs and delegation to an agency subordinate. The complexity of Chapter 20 has made it difficult for applicants and regulators to find the applicable requirements. Additionally, the Chapter is no longer organized in a logical fashion. The result of a thorough review of Chapter 20 indicates a need for reorganization into four separate chapters.

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 to accomplish the intent of the statutory language.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published on August 2, 2010 and comment requested until September 1, 2010. No comment on these sections was received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Detail of changes

Section	Proposed requirements	Other regulations and	Intent and likely impact
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number		law that apply	of proposed requirements
10	<p>18VAC60-15-10. Recovery of disciplinary costs.</p> <p>A. Assessment of cost for investigation of a disciplinary case.</p> <ol style="list-style-type: none"> 1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant, the board may assess the hourly costs relating to investigation of the case by the Enforcement Division of the Department of Health Professions and, if applicable, the costs for hiring an expert witness and reports generated by such witness. 2. The imposition of recovery costs relating to an investigation shall be included in the order from an informal or formal proceeding or part of a consent order agreed to by the parties. The schedule for payment of investigative costs imposed shall be set forth in the order. 3. At the end of each fiscal year, the board shall calculate the average hourly cost for enforcement that is chargeable to investigation of complaints filed against its regulants and shall state those costs in a guidance document to be used in imposition of recovery costs. The average hourly cost multiplied times the number of hours spent in investigating the specific case of a respondent shall be used in the imposition of recovery costs. <p>B. Assessment of cost for monitoring a licensee or registrant.</p> <ol style="list-style-type: none"> 1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant and in which terms and conditions have been imposed, the costs for monitoring of a licensee or registrant may be charged and 	<p>The new section in Chapter 15 is identical to current regulation in 18VAC60-20-18. Recovery of disciplinary costs</p>	<p>The intent and impact is to continue the current regulation without any change.</p>

	<p>shall be calculated based on the specific terms and conditions and the length of time the licensee or registrant is to be monitored.</p> <p>2. The imposition of recovery costs relating to monitoring for compliance shall be included in the board order from an informal or formal proceeding or part of a consent order agreed to by the parties. The schedule for payment of monitoring costs imposed shall be set forth in the order.</p> <p>3. At the end of each fiscal year, the board shall calculate the average costs for monitoring of certain terms and conditions, such as acquisition of continuing education, and shall set forth those costs in a guidance document to be used in the imposition of recovery costs.</p> <p>C. Total of assessment.</p> <p>In accordance with § 54.1-2708.2of the Code of Virginia, the total of recovery costs for investigating and monitoring a licensee or registrant shall not exceed \$5,000, but shall not include the fee for inspection of dental offices and returned checks as set forth in 18VAC60-20-30or collection costs incurred for delinquent fines and fees.</p>		
<p>20</p>	<p>18VAC60-15-20. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.</p> <p>A. Decision to delegate.</p> <p>In accordance with §54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate at the time a determination is made that probable cause exists that a practitioner may be subject to a disciplinary action. If delegation to a subordinate is not recommended at the time of the probable cause determination, delegation may be approved by the president of the board or his designee.</p>	<p>The new section in Chapter 15 is identical to current regulation in 18VAC60-20-17.</p>	<p>The intent and impact is to continue the current regulation without any change.</p> <p>Current regulations were initially effective June 29, 2005 and amended effective November 29, 2007.</p>

	<p>B. Criteria for an agency subordinate.</p> <ol style="list-style-type: none">1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.		
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Proposed Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60-21
Regulation title	Regulations Governing the Practice of Dentistry
Action title	Promulgation of new chapter resulting from periodic review and reorganization
Date this document prepared	9/30/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The new regulations result from a periodic review of Chapter 20 and the action of the Board to divide the Chapter into three separate sets of regulations for dentists, dental hygienists and dental assistants. Chapter 21 is promulgated as a new chapter with all the sections and provisions from current regulation that pertain to the licensure requirements for and practice of dentists.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CODA = Commission on Dental Accreditation of the American Dental Association

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe 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, 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:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 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 specific statutory authority for the licensure and practice of dental hygienists is found in Chapter 27 of Title 54.1.

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, the environmental benefits, and the problems the proposal is intended to solve.

The new regulations are a reorganization and restatement of current requirements for licensure and practice found in Chapter 20, Regulations Governing Dental Practice. Such requirements are necessary to ensure the health and safety of dental patients, while assuring appropriate access to care by dentists.

Substance

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

There are no substantive changes to regulations governing dentists, as amended by emergency action pursuant to Chapter 526 (Senate Bill 1146) of the 2011 Acts of the Assembly requiring the Board of Dentistry to revise its regulations for issuance of permits for dentists who provide or administer conscious/moderate sedation or deep sedation/general anesthesia in a dental office. Provisions in Chapter 20 on Dental Practice that are applicable to the licensure and practice and of dentists and oral and maxillofacial surgeons were identified and included in a new Chapter 21.

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 indicate.

- 1) Regulations for the practice of dentistry are necessary to assure minimal competency in the provision of dental services that protect public health and safety. There are no substantive new regulations, but reorganization and clarification should make current requirements more understandable and encourage compliance. There should be no disadvantages.
- 2) There are no disadvantages of these provisions to the agency or the Commonwealth; registration is required by law. Specificity about practice and qualifications should allow Board staff to direct persons with questions about those issues to the regulations.
- 3) These are generally current regulations restructured in a new chapter.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233 or by fax to (804) 527-4434 or to elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into</p>
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	anticipated mailings and meetings already scheduled. On-going expenditures would be
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	There are no costs on localities.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	The individuals affected by the proposed amendments are 6,471 dentists, 3 dental teachers, 9 full-time faculty, and 231 oral and maxillofacial surgeons (24 with cosmetic procedure certification).
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.	It is estimated that a large majority of affected entities would constitute small businesses, since most dentists practice in solo or group practices with fewer than 500 full-time employees.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no additional costs. Equipment required for administration of sedation or anesthesia is either the current standard in dental practices or required under the emergency regulations for administration of conscious/moderate sedation or deep sedation/general anesthesia.
Beneficial impact the regulation is designed to produce.	The benefit of reorganization by profession under the Board of Dentistry is ease of understanding and compliance with regulations.

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.

The alternative is to continue Chapter 20, which includes all requirements for dentists, dental hygienists, dental assistants, mobile dental clinics, oral and maxillofacial surgeons, anesthesia and sedation, and provisions for recovery of costs and delegation to an agency subordinate. The complexity of Chapter 20 has made it difficult for applicants and regulators to find the applicable requirements. Additionally, the Chapter is no longer organized in a logical fashion. The result of a thorough review of Chapter 20 indicates a need for reorganization into four separate chapters.

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 to accomplish the intent of the statutory language.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published on August 2, 2010 and comment requested until September 1, 2010. No comment on these sections was received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Detail of changes

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Several words and terms used in regulation are being defined in all chapters broken out from Chapter 20. They are: CODA Code	This section repeats applicable definitions from section 10 in Chapter 20 that is being repealed. Several terms relating to the administration of anesthesia or sedation were revised or newly	The intent and impact is to continue the current regulation with the additional definitions for words and terms which are used but have previously been undefined.

	Monitoring	<p>defined in emergency regulations for sedation/anesthesia permits:</p> <p>“Deep sedation” was previously joined with “general anesthesia.” The terms are now separately defined consistent with <i>Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (2007)</i> of the American Dental Association.</p> <p>“Immediate supervision” is defined as a level of direction used in the regulation.</p> <p>“Minimal sedation” replaces the term “anxiolysis” and the definition is updated for consistency with current standards.</p> <p>“Topical oral anesthetic” is defined as used in this chapter and Chapter 25 for dental hygienists.</p>	
20	Sets out requirements for address of record to be maintained with the board.	This section repeats requirements from section 16 A in Chapter 20.	The intent and impact is to continue the current regulation without change.
30	Sets out requirements for posting of the dental license and other additional credentials.	<p>Subsection A on display of names of dentists practicing under a firm or another dentist’s name is required by § 54.1-2720 of the Code.</p> <p>Subsection B, requiring display of a dental license is currently in section 16 B in Chapter 20 and also required by § 54.1-2721 of the Code.</p> <p>Subsection C, requiring display of a current DEA registration for dentists who administer, prescribe or dispense controlled substances is current required for dentists in the anesthesia/sedation requirements (sections 110 C and 120 D) but is added for all dentists.</p> <p>A requirement to display a copy of the permit issued to a dentist administering anesthesia/sedation is currently in sections 110 C and 120 D.</p>	<p>The intent and impact is to continue the current regulation and Code requirements without change.</p> <p>An additional requirement for all dentists who prescribe, administer or dispense controlled substances to display a current DEA registration is intended to inform the public of the practitioner’s authorization to possess such drugs.</p>
40	Establishes the fees applicable to all dentists regulated under this chapter.	This section repeats requirements for fees from sections 20, 30, and 40 in Chapter 20. It also includes fees	The intent and impact is to continue the current regulation without change.

		<p>currently listed in sections 106, 250, 310 and 320. Other requirements for renewal, etc. in section 20 are set out in other sections in the new chapter for dentists.</p> <p>Fees for anesthesia or sedation permits are identical to those established in emergency regulations for such permits.</p>	
50	Sets out the scope of practice for dentists.	Language in section 50 relating to treatment and prescribing based on a bona fide patient/practitioner relationship is the current standard for the profession.	The intent is to specify and clarify scope of practice consistent with current professional standards and law.
60	Sets out the general responsibilities of dentists for patients.	<p>Section 60 enumerates responsibilities and standards of care that are consistent with safeguards for patient protection and professional practice including:</p> <ul style="list-style-type: none"> • Maintaining a safe and sanitary practice, including containing or isolating pets away from the treatment areas of the dental practice. An exception shall be made for a service dog trained to accompany its owner or handler; • Consulting with or referring patients to other practitioners with specialized knowledge, skills and experience when needed to safeguard and advance the health of the patient; • Treating according to the patient’s desires only to the extent that such treatment is within the bounds of accepted treatment and only after the patient has been given treatment recommendation and an explanation of the acceptable alternatives; • Only delegating patient care and exposure of dental x-rays to qualified, properly trained and supervised ; • Giving patients at least 30 days written notice of a decision to terminate the dentist-patient relationship; 	The intent and impact is incorporate standards of professional practice that are currently set out in a guidance document (60-15) into regulations, so a violation of standards could be grounds for disciplinary action. In its review of some investigations, the Board has become aware of behaviors or actions that may not currently constitute a violation of law or regulation but which are clearly unprofessional and fail to adequately protect the public. The specification of professional practice detailed in section 60 is intended to provide a regulatory framework for dental practices and grounds for disciplinary action for deviation from the professional standard.

		<ul style="list-style-type: none"> • Knowing the signs of abuse and neglect and reporting suspected cases to the proper authorities consistent with state law; • Accurately representing to a patient and the public the materials or methods and techniques to be used in treatment. <p>Subsection B enumerates the dentist’s responsibility for conducting his financial responsibilities to patients and third party payers in an ethical and honest manner by:</p> <ul style="list-style-type: none"> • Maintaining a listing of customary fees and representing all fees being charged clearly and accurately; • Making a full and fair disclosure to his patient of all terms and considerations before entering into a payment agreement for services; • Not obtaining, attempting to obtain or cooperating with others in obtaining payment for services by misrepresenting procedures performed, dates of service or status of treatment; • Making a full and fair disclosure to his patient of any financial incentives he received for promoting or selling products; • Not exploiting the dentist and patient relationship for personal gain related in non-dental transactions. 	
70	Specifies the acts which may constitute unprofessional practice	The provisions of section 70 are taken from the current section on acts constituting unprofessional conduct found in section 170 of Chapter 20. Language about adherence to requirements on maintenance and dispensing of scheduled drugs and on sexual misconduct have been added to include standards that are understood but not currently specified in regulation.	The intent is to continue the current regulation; with the addition of provisions on violating drug laws and engaging in sexual misconduct, the impact will be more clarity and specificity about conduct that is considered unprofessional and grounds for disciplinary action. The Board reviewed regulations of other professions on sexual

			misconduct and concluded that the emphasis should be on non-consensual contact and on exploitation of the professional relationship.
80	Specifies the standards for advertisement of dental services	The provisions of section 80 are taken from the current section on advertising in 180 of Chapter 20.	The intent and impact is to continue the current regulation without any substantive change.
90	Specifies the required content of a patient record and the information that must be provided to a patient	<p>The provisions of section 90 are taken from the current requirements for recordkeeping found in section 15 of Chapter 20.</p> <p>Subsection A on the retention period for patient records is taken from regulations for medical doctors in 18VAC85-20-26.</p> <p>Subsection B is taken from the current regulation in section 15 for dentists, but expanded to address questions from practitioners and to include recordkeeping requirements currently found in other sections of regulation. For example, the current regulation requires an “updated health history” but it is unclear about how often that must occur. Board members determined that it was unnecessary to update the history at each visit but it should be done when analgesia, sedation or anesthesia are to be administered, when medically indicated or at least annually. Radiographs are currently required in the record, but digital images or photographs are not referenced. There are other examples of how the regulations have been updated or further specified to produce a patient record that accurately indicates the services rendered.</p> <p>Subsection C references the law on confidentiality and provisions of patient records upon request.</p> <p>Subsections D – H provide a regulatory standard for handling, copying and disposal of records. All</p>	<p>The intent of the provisions in section 90 is to continue the current requirements for recordkeeping but include additional specificity and clarity.</p> <p>The record should include options discussed and consent for treatment. The intent and impact is also to ensure that patient information is held in confidence or disclosed as permitted or required by law. Additionally, the Board has added several provisions that address specific situations in which patient records have been incomplete, destroyed or abandoned inappropriately or withheld for financial reasons. Practitioners are often uncertain about their responsibilities for patient records or about the amount that can be charged to copy such records.</p>

		are consistent with current law on patient records.	
100	Sets out the requirements for reporting within 15 days patient events resulting in physical injury, respiratory, cardiovascular or neurological complication that necessitated admission to the hospital or a patient death.	<p>Currently, section 140 of Chapter 20 requires a written report of any adverse reaction from the administration of any form of analgesia, sedation or anesthesia whether in the facility or during the first 24 hours after the patient’s departure.</p> <p>The revised regulation expands the reporting requirement to include any event but offers more specificity about what constitutes a reportable event.</p>	The intent and impact is to continue the current requirement for reporting but to give dentists more direction about what type of patient harm triggers a report.
110	Sets out the rule for utilization of dental hygienists and dental assistants II	Provisions in section 110 are identical to current section 100 of Chapter 20.	The intent and impact is to continue the current regulation.
120	Sets out the requirements for direction and general supervision.	Provisions in section 120 are identical to current section 210 of Chapter 20. Practice of dental hygienists is currently established in section 220, which specifies the duties that may be performed under indirect supervision (defined in section 10).	The intent and impact is to continue the current regulation without change.
130	Sets out those duties that are non-delegable and may only be performed by a dentist	Provisions in section 130 are identical to current section 190 of Chapter 20 with the clarification that performance of gingival curettage by a dental hygienist is an exception to the prohibition on delegating surgical or cutting procedures.	The intent and impact is to continue the current regulation with one clarification.
140	Sets out those duties that may only be delegated to a dental hygienist	<p>Provisions of section 140 are taken from section 220 in the current chapter 20.</p> <p>Subsection A sets out those duties that may only be performed under indirect supervision.</p> <p>Subsection B sets out those duties that be performed under indirect supervision or may be delegated to be performed under general supervision.</p>	<p>The intent and impact is to continue the current regulation without change.</p> <p>Subsection B has been updated to include instruments and procedures not currently included in delegated tasks.</p>
150	Sets out those duties that	Provisions of section 150 are identical	The intent and impact is to

	may only be delegated to a dental assistant II who has been qualified under requirements set forth in the new chapter 30.	to subsection C of section 230 in current regulations.	continue the current regulation without change.
160	Sets out those duties that may be delegated to a dental assistant I or II	Provisions of section 160 are identical to subsections A and B of section 230 in current regulations.	The intent and impact is to continue the current regulation without change.
170	Sets out the qualifications necessary for a person who exposes dental x-ray film in a dental office	Provisions of section 170 are identical to the provisions of section 195 in chapter 20, as amended by a fast-track action in June 2011.	The intent and impact is to continue the current regulation without change.
180	Delineates the dental activities that do not constitute the practice of a licensed profession	Provisions of section 180 are taken from section 230 in current regulations.	The intent and impact is to continue the current regulation without change.
190	Establishes the general application provisions for dentistry	Provisions of subsections A and C of section 190 are taken from section 100 in chapter 20. Subsection B, requiring an attestation on laws and regulations for all applicants for licensure, is taken from subsection E of section 70 in chapter 20. Subsections D and E are current requirements but are included in section 190 for clarification.	Applicants for a restricted volunteer license or a volunteer exemption are exempted from these requirements to make such applications less burdensome.
200	Establishes the educational requirements for licensure as a dentist	Provisions of section 200 are taken from subsection A of section 60 in current regulations.	The additional clarification of a post-doctoral dental education in a specialty other than general dentistry (<i>at least 24 months which includes a clinical component</i>) is consistent with the Board's current interpretation of a qualifying post-doctoral dental education.
210	Establishes the qualifications for an unrestricted dental license	Subsection A of section 210 (licensure by examination) is taken from subsection A of section 70 in current regulations. Subsection B of section 210 (licensure by credentials) is taken	The intent and impact is to continue the current regulation without change.

		from section 71 in current regulations.	
220	Establishes the process for obtaining or reactivating an inactive dental license	Subsection A of section 220 is taken from subsection A of section 105 in Chapter 20. Subsection B on reactivation is taken from subsection B of section 105. In addition to consideration of continuing education as evidence of competency to return to active practice, the Board lists other evidence that may be evaluated, such as active practice in another state or federal service, specialty board certification, recent passage of a clinical examination or a refresher course.	The intent of the regulation is to mirror the current requirements for reactivation of an inactive license, with some additional evidence of competency required if continuing education is not sufficient to indicate minimal competency to return to active practice on patients in Virginia.
230	Establishes the qualifications for a restricted license to practice dentistry.	<p>Subsection A (temporary permit for practice in public health settings or charitable organizations) is taken from provisions in section 90 of Chapter 20. Section 54.1-2715 provides that such a permit cannot be issued to an applicant who has failed an examination for licensure; the regulation reiterates that restriction.</p> <p>Subsection B (teacher's license) is authorized in § 54.1-2713, and the regulation further clarifies those provisions of law.</p> <p>Subsection C (full-time faculty license) is taken from section 90 of Chapter 20 and authorized by § 54.1-2714.</p> <p>Subsection D (temporary license for persons enrolled in advanced dental education programs) is taken from section 91 of Chapter 20.</p> <p>Subsection E (restricted volunteer license) is taken from subsection A of section 106 in Chapter 20.</p> <p>Subsection F (registration for voluntary practice by out-of-state licensees) is taken from subsection B of section 106 in Chapter 20.</p>	There are several types of restricted licenses in the practice of Virginia. The intent is to describe the qualifications for all types in one section for ease of compliance. There are no substantive changes to the qualifications or requirements for practice.
240	Sets out the requirements for renewal of licensure	Provisions of section 240 are taken	The intent and impact is to continue the current

	in dentistry	from section 20 in Chapter 20, with the exception of the fees which are set out separately in the new chapter in section 40.	regulation without change.
250	Establishes the requirements for continuing education for renewal of licensure	Provisions of section 250 are taken from section 50 in Chapter 20. All substantive requirements, provisions for exemptions, maintenance of documents, and sponsoring organizations or entities remain the same.	The intent and impact is to continue the current regulation with only one change. An additional requirement is an attestation that the licensee has read, understands and will remain current with laws and regulations governing practice. CE credit is available for passage of the online law exam.
260	Sets out the general provisions for administration of anesthesia or sedation	<p>Provisions in section 260 are taken from section 107 in current Chapter 20 as amended in the emergency action for sedation and anesthesia permits.</p> <p>Subsection A sets out the practice settings in which the regulations are applicable (dental offices, mobile dental clinics, and portable dental operations).</p> <p>Subsection B states the requirement for a DEA registration is the dentist administers or dispenses controlled substances.</p> <p>Subsection C describes the evaluation required to determine whether the patient is an appropriate candidate for anesthesia or sedation in a dental office. The dentist must <u>document</u> that he has had a consultation with a medical doctor prior to administration of general anesthesia or any type of sedation to a patient in risk category Class III. Without documentation in the record, there is no assurance that consultation took place.</p> <p>The complete required content of the patient record is set forth in subsection D and includes all information necessary to assure that the patient has been appropriately</p>	The intent and impact is to continue the current regulation (as amended for issuance of anesthesia and sedation permits) without change.

		<p>assessed, administered and monitored. The Board used curriculum included in <i>Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (2007)</i> to determine elements of a patient record. Some guidelines for monitoring and management specify that vital signs and physiological measures must be recorded at regular intervals. Others, such as, <i>Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures (2006)</i>,” specify that monitoring records should be recorded every five minutes. The Board adopted the specific standard as consistent with patient safety.</p> <p>Subsection E specifies that no sedating medication can be prescribed or administered to a child aged 12 and under prior to arrival at the dental office due to the risk of unobserved respiratory obstruction during transport by untrained individuals. The standard is found in the 2007 ADA Guidelines and in the 2006 pediatric guideline.</p> <p>Subsection F is taken from subsection C in section 107. It specifies the consent that must be obtained and <i>recorded</i> prior to administration of sedation or anesthesia to include the risks, benefits and alternatives.</p> <p>Subsection G is taken from subsection D in Chapter 20. While the requirement is identical, an additional standard is added: <i>The drugs and techniques used must carry a margin of safety wide enough to render an unintended reduction of or loss of consciousness unlikely factoring in titration, and the patient’s age, weight and ability to metabolize drugs.</i></p> <p>Subsection H specifies that: <i>If a patient enters a deeper level of</i></p>	
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		<p><i>sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.</i> The standard is quoted from the 2007 ADA Guidelines.</p> <p>Subsection I, on use of ancillary personnel, is taken from section 135 in current Chapter 20 (as amended for the sedation and anesthesia permits). The amendment to the qualification clarifies that the BCLS training must be a course for health providers and must include hands-on airway training, which is a recommendation of the American Society of Anesthesiologists and the 2007 Guidelines.</p> <p>Subsection J generally states who can assist in administration of anesthesia or sedation, depending on the level of anesthesia or sedation planned and appropriate to the qualifications of the practitioner used for such assistance.</p> <p>Subsection K specifies the requirements for monitoring a patient for whom anesthesia or sedation has been administered. Monitoring requirements are taken from sections 110 and 120 in Chapter 20.</p> <p>ADA Guidelines and recommendations of other bodies such as the American Society of Anesthesiologists specify that the dentist must have written procedures in place to handle emergencies and staff regularly trained on such procedures.</p>	
270	Sets out the requirements for administration of local anesthesia	This section lists the personnel and their qualifications who may administer local anesthesia in a dental office. Currently, this information is found in Guidance Document 60-13.	The intent of this regulation is to set apart requirements for local anesthesia from other more stringent requirements for anesthesia.
280	Sets out the requirements for administration of minimal sedation	Subsection A is taken from subsection A in section 108 in Chapter 20 (Administration of anxiolysis or inhalation analgesia).	The intent and impact is to continue the current regulation as stated in section 108 and interpreted in Guidance Document 60-13.

		<p>Subsection B repeats the prohibition stated in section 260 about administration of sedating medication to children under age 12 prior to arrival at the dentist’s office.</p> <p>Subsection C sets out those practitioners who may administer minimal sedation or may administer local anesthesia to numb an injection or treatment site. There are no new restrictions or expansions in scope of practice; the qualifications are listed for clarity.</p> <p>Subsection D lists the equipment requirements for minimal sedation and is taken from subsection B in current regulations with the addition of suction apparatus.</p> <p>Requirements for staffing and monitoring are currently found in subsection C of section 108, with the exception that the new regulations make it clear that a second person is not needed to monitor the patient if only nitrous oxide is administered by either a dentist or qualified dental hygienist.</p> <p>Subsection E specifies that baseline vital signs should be taken and that monitoring should include checking those indicators.</p> <p>Subsection F specifies the requirements for discharge of patients for whom minimal sedation has been administered. Currently, the regulation states that the patient cannot be discharged until he exhibits “normal responses.” For some patients, the baseline vital signs may not be “normal” for most patients, so the amended regulation is more specific about the expectations for discharge.</p>	
290	Establishes the requirements for a conscious/moderate	Requirements in section 290 are taken from subsections A through F of	The intent and impact is to continue the emergency regulation without change.

	sedation permit	section 120, as amended in the emergency action for issuance of sedation or anesthesia permits.	
291	Establishes the requirements for administration of conscious/moderate sedation	Requirements in section 291 are taken from subsections H through K of section 120, as amended in the emergency action for issuance of sedation or anesthesia permits.	The intent and impact is to continue the emergency regulation without change.
300	Establishes the requirements for a deep sedation/general anesthesia permit	Requirements in section 300 are taken from subsections A through C of section 110, as amended in the emergency action for issuance of sedation or anesthesia permits.	The intent and impact is to continue the emergency regulation without change.
301	Establishes the requirements for administration of deep sedation/general anesthesia	Requirements in section 301 are taken from subsections E through H of section 110, as amended in the emergency action for issuance of sedation or anesthesia permits.	The intent and impact is to continue the emergency regulation without change.
310	Sets out the requirements for registration of oral and maxillofacial (O/M) surgeons	With the exception of fees listed in section 250 in Chapter 20, section 310 is identical. All fees are now found in section 40.	The intent and impact is to continue the current regulation without change.
320	Sets out required content of a profile of O/M's	This section is identical to section 260 in Chapter 20.	The intent and impact is to continue the current regulation without change.
330	Establishes the criteria for reporting of malpractice paid claims and disciplinary actions.	This section is identical to section 270 in Chapter 20.	The intent and impact is to continue the current regulation without change.
340	Sets out the consequence for noncompliance or falsification of one's profile	This section is identical to section 280 in Chapter 20.	The intent and impact is to continue the current regulation without change.
350	Establishes the requirements for certification to perform cosmetic procedures	This section is identical to section 290 in Chapter 20.	The intent and impact is to continue the current regulation without change.
360	Lists the types of procedures for which certification is not required	This section is identical to section 300 in Chapter 20.	The intent and impact is to continue the current regulation without change.
370	Sets out the credentials required for certification to perform cosmetic procedures	This section is identical to section 310 in Chapter 20.	The intent and impact is to continue the current regulation without change.

380	Establishes the requirements for renewal of certification	This section is identical to section 320 in Chapter 20.	The intent and impact is to continue the current regulation without change.
390	Establishes the requirements for a quality assurance review of procedures performed by certificate holders	This section is identical to section 330 in Chapter 20.	The intent and impact is to continue the current regulation without change.
400	Sets out the process for handling complaints against certificate holders	This section is identical to section 331 in Chapter 20.	The intent and impact is to continue the current regulation without change.
410	Establishes the requirements for registration of mobile dental clinics or portable dental operations	This section is identical to section 332 in Chapter 20.	The intent and impact is to continue the current regulation without change.
420	Establishes the requirements for operation of a clinic or operation	This section is identical to section 342 in Chapter 20.	The intent and impact is to continue the current regulation without change.
430	Sets out the entities that are exempt from the requirements for registration	This section is identical to section 352 in Chapter 20.	The intent and impact is to continue the current regulation without change.



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Proposed Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60-25
Regulation title	Regulations Governing the Practice of Dental Hygienists
Action title	Promulgation of new chapter resulting from periodic review and reorganization
Date this document prepared	8/31/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The new regulations result from a periodic review of Chapter 20 and the action of the Board to divide the Chapter into three separate sets of regulations for dentists, dental hygienists and dental assistants. Chapter 25 is promulgated as a new chapter with all the sections and provisions from current regulation that pertain to the licensure requirements and practice for dental hygienists.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CODA = Commission on Dental Accreditation of the American Dental Association

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe 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, 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:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 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 specific statutory authority for the licensure and practice of dental hygienists is found in Chapter 27 of Title 54.1.

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, the environmental benefits, and the problems the proposal is intended to solve.

The new regulations are a reorganization and restatement of current requirements for licensure and practice found in Chapter 20, Regulations Governing Dental Practice. Such requirements are necessary to ensure the health and safety of dental patients, while assuring appropriate access to care by dental hygienists.

Substance

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

There are no substantive changes to current regulations governing dental hygienists. Provisions in Chapter 20 on Dental Practice that are applicable to the registration, practice and renewal for dental hygienists were identified and included in a new Chapter 25.

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 indicate.

- 1) Regulations for the practice of dental hygiene establish the qualifications for licensure and standards of practice. There are advantages to the public if those standards and requirements are reasonable and clearly stated, so practitioners and consumers understand the scope of practice of a hygienist. There should be no disadvantages.
- 2) There are no disadvantages of these provisions to the agency or the Commonwealth; licensure is required by law. Specificity about direction and the levels of supervision should allow Board staff to direct persons with questions about those issues to the regulations.
- 3) These are current regulations restructured in a new chapter.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233 or by fax to (804) 527-4434 or to elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings and meetings already scheduled. On-going expenditures would be</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs on localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new</p>	<p>The individuals affected by the proposed</p>

regulations or changes to existing regulations.	amendments are 5, 136 dental hygienists.
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.	Dental hygienists are employed by dentists; there is no estimation of how many dentists employ dental hygienists licensed by the board. There are approximately 6,000 dentists.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no <u>new</u> costs for dental hygienists licensed by the Board since these regulations are part of a reorganization of Chapter 20. For dental hygienists who may seek reinstatement or reactivation of a license and who have not been actively practicing in another jurisdiction recent or who have not recently passed a clinical competency examination, the evidence of continued competency would entail an additional cost for a refresher program offered by a CODA accredited program.
Beneficial impact the regulation is designed to produce.	The benefit of reorganization by profession under the Board of Dentistry is ease of understanding and compliance with regulations.

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.

The alternative is to continue Chapter 20, which includes all requirements for dentists, dental hygienists, dental assistants, mobile dental clinics, oral and maxillofacial surgeons, anesthesia and sedation, and provisions for recovery of costs and delegation to an agency subordinate. The complexity of Chapter 20 has made it difficult for applicants and regulants to find the applicable requirements. Additionally, the Chapter is no longer organized in a logical fashion. The result of a thorough review of Chapter 20 indicates a need for reorganization into four separate chapters.

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 to accomplish the intent of the statutory language.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published on August 2, 2010 and comment requested until September 1, 2010. No comment on these sections was received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Detail of changes

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Several words and terms used in regulation are being defined in all chapters broken out from Chapter 20. They are: CODA Code Monitoring	This section repeats applicable definitions from section 10 in Chapter 20 that is being repealed. Two terms used in this new chapter are defined: "Active practice" is defined as 600 hours per year in order to have clarity about the qualification for licensure by endorsement or for evidence of active practice to reinstate or reactive a license. "Topical oral anesthetic"	The intent and impact is to continue the current regulation with the additional definitions for words and terms that are used but have previously been undefined.

		is defined as used in section 40 on Scope of Practice	
20	Sets out requirements for address of record to be maintained with the board and for posting of the dental hygienist license.	This section repeats requirements from section 16 in Chapter 20.	The intent and impact is to continue the current regulation without change.
30	Establishes the fees applicable to dental hygienists	This section repeats requirements for fees from sections 20, 30 and 40 in Chapter 20. Other requirements for renewal, etc. in section 20 are set out in other sections in the new chapter for dental hygienists.	The intent and impact is to continue the current regulation without change.
40	Sets out the scope of practice for dental hygienists.	<p>Subsection A summarizes all the services that may be provided by a hygienist under direction of a dentist.</p> <p>Subsection B delineates the duties of a dentist that may not be delegated. The duties are identical to those in section 190 of Chapter 20. Since there are exceptions for administering and monitoring in #6 of section 190, only the administration of deep sedation, general anesthesia or conscious sedation are listed in proposed section 40 as non-delegable.</p> <p>Subsection C lists those services that may only be provided under indirect supervision; they are currently found in subsection A of section 220 of Chapter 20.</p> <p>Subsection D lists those services that may be</p>	The intent and impact is to continue the current regulation without substantive changes. Some provisions are clarified consistent with current practice and updated by inclusion of new techniques or technology (such as use of athermal lasers).

		<p>provided under indirect supervision or may be delegated to be performed under general supervision. They are currently found in subsection B of section 220 in Chapter 20.</p> <p>Subsection E lists those duties that may be delegated to a dental assistant II; they are currently found in subsection C of section 230 in Chapter 20.</p>	
50	Specifies the utilization of dental hygienists and dental assistant II by a dentist.	All provisions of section 50 are the same as those in section 200 in Chapter 20	The intent and impact is to continue the current regulation without change.
60	Sets out the requirements for delegation of services to a dental hygienist.	<p>Subsection A is identical to subsection A of section 210 in Chapter 20.</p> <p>Subsection B is identical to subsection B of section 210 in Chapter 20, with the exception of the reference to teaching licenses or providing oral health education. The provisions of section 60 are not applicable so an exception is unnecessary.</p> <p>Subsection C is taken from subsection C of section 210. The requirements are substantively the same, but the current provision stating that no anesthesia can be provided is amended to state that “only topical oral anesthetics” can be administered to manage pain.</p> <p>Subsection D is substantively the same as subsection D of section</p>	<p>The intent and impact is to continue the current regulation without change. The current regulation on provision of anesthesia under general supervision is misleading because the hygienist is allowed to provide topical oral anesthetics to manage pain.</p> <p>In subsection D, language is amended for consistency with definitions. “Direction” is defined as the level of supervision required, so the current regulation is unclear. The proposed regulation specifies that the dentist may choose to direct another level of supervision if it is necessary to meet the needs of the patient.</p>

		210.	
70	Specifies requirements for delegation to a dental assistant I or II.	Provisions of subsection A are similar to subsection A of section 230 in Chapter 20. Provisions of subsection B are identical to subsection B of section 230.	The intent and impact is to continue the current regulation without any substantive change.
80	Specifies the requirements for an unregulated person to place or expose dental x-rays.	Provisions of section 80 are similar to section 195 in Chapter 20.	Since the Board does not regulate unlicensed persons, the responsibility is placed on a dentist or dental hygienist to not permit someone to do dental x-rays unless she has the specified qualifications.
90	Specifies the acts that do not constitute dental or dental hygiene practice.	Similar to section 240 is Chapter 20 but amends “preliminary dental screenings in any setting” to specific screening in free clinics, public health programs or in voluntary practice.	The Board amended dental screening because dental hygienists are allowed to practice under general supervision with written orders in those settings.
100	Sets out the scope of practice for a hygienist in the administration of controlled substances and the qualifications necessary for such administration.	Subsection A, ## 1 and 2 are restatements of provisions in the Drug Control relating to current authority for hygienists to administer. # 3 in subsection A is similar to subsection A of section 81 in current regulations. Subsection B is identical to subsection B in section 81. Subsection C is identical to subsection C in section 81. Subsection D is identical to subsection D in section 81.	The intent and impact is to continue the current regulation without change.
110	Sets out the requirements for maintenance of patient records and	The content in subsection	The intent and impact of the requirements for

	for confidentiality of patient information.	<p>A is similar to section 15 on recordkeeping in Chapter 20. The hygienist is responsible for recording those services she is authorized to provide. The requirement is updated to include digital images and photographs.</p> <p>Requirements in subsection B for compliance with patient record confidentiality and disclosure law is added in this chapter and those for dentists and dental hygienists.</p>	<p>patient records is assurance that records are complete and accurate. In proposed regulations for both hygienists and dentists, the health history requirement is clarified so it is not required to take a health history at each appointment but only annually, when medically indicated, or when administering anesthesia or analgesia. Additionally, the record should include consent for treatment, with the exception of a prophylaxis, which is routine. For hygienists, treating a patient under general supervision, it is necessary to note or document an order given by the dentists. The intent and impact is also to ensure that patient information is held in confidence or disclosed as permitted or required by law.</p>
120	Establishes the acts constituting unprofessional conduct.	Section 120 is taken from section 170 in Chapter 20, with the exception of ## 8 and 9 which are specific to the practice of dentists rather than hygienists.	The intent and impact is to continue the current regulation and to include general provisions of Chapters 1 and 24 in Title 54.1 and the Drug Control Act.
130	Establishes the general application requirements.	Section 130 is taken from section 100 in Chapter 20. The requirement for an attestation on laws and regulations is currently found in the separate sections on licensure by examination or endorsement.	The intent and impact is to continue the current regulation without change.
140	Sets out the qualifications for licensure by examination, including completion of a CODA-accredited	Subsections A and B are taken from subsection B of	The intent and impact is to continue the current regulation without

	program and passage of the national examination and a board-approved clinical competency exam.	section 60 and subsection A of section 70 of Chapter 20. Subsection C is taken from subsection D of section 70 of Chapter 20.	change.
150	Sets out the qualifications for licensure by endorsement.	Provisions of section 150 are currently found in section 80 of Chapter 20, with the exception of a current requirement for “good moral character.”	The intent and impact is to continue the current regulation but to eliminate the requirement for which there is currently no proof or documentation.
160	Establishes the criteria for issuance of a temporary permit or a teacher’s license.	Provisions in section 160 are taken from section 90 in the current Chapter 20.	The intent and impact is to continue the current regulation without change.
170	Establishes the criteria for voluntary practice by a dental hygienist.	All requirements in section 70 are currently found in section 106 of the current regulations.	The intent and impact is to continue the current regulation without change
180	Sets out requirements for renewal of a hygienist license.	The schedule for renewal of a hygienist license (annually by March 31 st) is identical to subsection A of section 20 of Chapter 20. The deadline for annual renewal of other licenses under this new chapter is set as June 30. The provisions in subsection B are currently specified in subsection C of section 20 in Chapter 20. Subsection C in the new chapter is similar to subsection B of section 20.	The intent of the change to June 30 for certain licenses is to have staggered renewals for some professions to lessen the workload at one time of year.
190	Sets requirements for continuing education for renewal of a dental hygiene license.	All requirements and provisions for continuing education are currently found in section 190 of Chapter 20. Other than some reorganization of provisions, there are no changes.	The intent and impact is to continue the current regulation without change.
200	Sets requirements for holding an inactive license.	Section 200 is identical to	The intent and impact is to continue the current

		subsection A of section 105 in Chapter 20.	regulation without change.
210	Sets requirements for reactivating an inactive license or reinstating a lapsed license.	<p>Subsections A and B on reinstatement and reactivation are similar to subsection C in section 20 and subsection H of section 50 in Chapter 20.</p> <p>Currently, the Board may require evidence of competency including active practice or board certification. The proposed regulations would allow recent passage of a clinical competency examination accepted by the board or completion of a refresher program offered by a CODA accredited program as evidence.</p>	<p>The basic regulation for reinstatement or reactivation is similar to current regulations, but the additional evidence of continuing competency such as practice in another state or a refresher course will be “required” rather than at the discretion of the Board. Simple completion of CE hours is not sufficient evidence that a dental hygienist has maintained skills adequate to protect the public during a period in which her license was lapsed or inactive. There are several options for demonstration of competency, including active practice in another state, so fulfillment of the requirement will not be burdensome.</p>



**Proposed Regulation
Agency Background Document**

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60-30
Regulation title	Regulations Governing the Practice of Dental Assistants
Action title	Promulgation of new chapter resulting from periodic review and reorganization
Date this document prepared	8/31/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The new regulations result from a periodic review of Chapter 20 and the action of the Board to divide the Chapter into three separate sets of regulations for dentists, dental hygienists and dental assistants. Chapter 30 is promulgated as a new chapter with all the sections and provisions from current regulation that pertain to the registration requirements and practice for dental assistants II.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

DAII – dental assistant II

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe 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, 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:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 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 specific statutory authority for promulgation of regulations pertaining to dental assistants II is found in:

§ [54.1-2729.01](#). Practice of dental assistants.

A. A person who is employed to assist a licensed dentist or dental hygienist by performing duties not otherwise restricted to the practice of a dentist, dental hygienist, or dental assistant II, as prescribed in regulations promulgated by the Board may practice as a dental assistant I.

B. A person who (i) has met the educational and training requirements prescribed by the Board; (ii) holds a certification from a credentialing organization recognized by the American Dental Association; and (iii) has met any other qualifications for registration as prescribed in regulations promulgated by the Board may practice as a dental assistant II. A dental assistant II may perform duties not otherwise restricted to the practice of a dentist or dental hygienist under the direction of a licensed dentist that are reversible, intraoral procedures specified in regulations promulgated by the Board.

The Dental Practice Act (Chapter 27 of Title 54.1) permits the practice of dental assistants:
 § 54.1-2712. *Permissible practices.*

The following activities shall be permissible:

1. Dental assistants or dental hygienists aiding or assisting licensed dentists in accordance with regulations promulgated pursuant to § [54.1-2729.01](#); ...

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, the environmental benefits, and the problems the proposal is intended to solve.

To ensure the services can be safely provided by a dental assistant II, the Board set in the regulation the evidence of minimal competency that a dental assistant must demonstrate in order to be registered and authorized to perform expanded duties. Qualifications include specified hours of didactic education, clinical training and experience and examination in modules for the performance of specific duties delegated under direct supervision. While the applicant will have to demonstrate clinical knowledge and skills to be registered as a DAII, the dentist will have to be present in the facility, will have to examine the patient both before and after treatment by a DAII and will remain responsible for the care of the patient. Such requirements are necessary to ensure the health and safety of dental patients, while increasing the number of qualified dental personnel and access to care.

Substance

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

There are no substantive changes to current regulations governing dental assistants. Provisions in Chapter 20 on Dental Practice that are applicable to the registration, practice and renewal for Dental Assistants II were identified and included in a new chapter for the registration of dental assistants.

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 indicate.

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- 1) Regulations for expanded duty dental assistants became effective March 2, 2011. In promulgating those regulations, the agency stated that the primary advantage to the public is more accessibility for dental care by persons who are qualified by education, training and examination to perform certain restorative and prosthetic dental functions. The ability of dental practices to provide services to populations of patients is enhanced with expanded duty dental assistants and with an increase in the ratio of dentists to dental hygienists and/or dental assistants II from two per dentist to four per dentist. To the extent dental assistants acquire the additional qualifications and credentials for expanded functions as a DAII, the regulation has the potential to improve accessibility and reduce costs. If the dental assistants II are appropriately trained and clinically competent, and if the dentist provides direct supervision as specified in regulation, there should be no disadvantages.
 - 2) There are no disadvantages of these provisions to the agency or the Commonwealth; registration is required by law. Specificity about direction and the levels of supervision should allow Board staff to direct persons with questions about those issues to the regulations.
 - 3) These are current regulations restructured in a new chapter.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1

of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233 or by fax to (804) 527-4434 or to elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings and meetings already scheduled. On-going expenditures would be</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>There are no costs on localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>The individuals affected by the proposed amendments are 3, 695 dental assistants II and the dentists for whom they work.</p>
<p>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.</p>	<p>Dental assistants are employed by dentists; there is no estimation of how many dentists employ dental assistants registered with the board.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities.</p>	<p>There are no <u>new</u> costs since these regulations are part of a reorganization of Chapter 20 and there are</p>

<p>Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>no new requirements for dental assistants.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The benefit of reorganization by profession under the Board of Dentistry is ease of understanding and compliance with regulations.</p>

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.

The alternative is to continue Chapter 20, which includes all requirements for dentists, dental hygienists, dental assistants, mobile dental clinics, oral and maxillofacial surgeons, anesthesia and sedation, and provisions for recovery of costs and delegation to an agency subordinate. The complexity of Chapter 20 has made it difficult for applicants and regulants to find the applicable requirements. Additionally, the Chapter is no longer organized in a logical fashion. The result of a thorough review of Chapter 20 indicates a need for reorganization into four separate chapters.

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 to accomplish the intent of the statutory language.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published on August 2, 2010 and comment requested until September 1, 2010. No comment on these sections was received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Detail of changes

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Several words and terms used in regulation are being defined in all chapters broken out from Chapter 20. They are: CODA Code Monitoring	This section repeats applicable definitions from section 10 in Chapter 20 that is being repealed. “Immediate supervision” is defined in Chapter 30 because it is a term used to describe direction for the practice of dental assistants.	The intent and impact is to continue the current regulation with the additional definitions for words and terms that are used but have previously been undefined.
20	Sets out requirements for address of record to be maintained with the board and for posting of the DA II registration.	This section repeats requirements from section 16 in Chapter 20.	The intent and impact is to continue the current regulation without change.
30	Establishes the fees applicable to dental assistants II	This section repeats requirements for fees from sections 20, 30 and 40 in Chapter 20. Other requirements for renewal, etc. in section 20 are set out in other sections in the new chapter for DAII’s.	The intent and impact is to continue the current regulation without change.
40	Sets out the general responsibilities for supervision and delegation of a dentist to a dental assistant.	Subsection A of section 40 is virtually identical to section 200 in Chapter 20.	The intent and impact is to continue the current regulation without

		Subsection B of section 40 is identical to subsection A of section 210 in Chapter 20.	change.
50	Sets out the duties that cannot be delegated by a dentist to other personnel.	All provisions of section 50 are the same as those in section 190 in Chapter 20	The intent and impact is to continue the current regulation without change.
60	Sets out the duties that can be delegated by a dentist to a DAII	The duties set out in section 60 are identical to those in subsection C of section 230 in Chapter 20	The intent and impact is to continue the current regulation without change.
70	Specifies requirements for delegation to a dental assistant I or II	Provisions of subsection A are similar to subsection A of section 230 in Chapter 20. Provisions of subsection B are identical to subsection B of section 230.	The only change in the new regulations is the type of supervision applicable for delegation. Currently, regulations specify delegation under “direction” or “general supervision. “Direction” is defined as the level of supervision required, so in the new regulations the level is specified as “indirect” or “general.”
80	Specifies the requirements for an unregulated person to place or expose dental x-rays.	Provisions of section 80 are similar to section 195 in Chapter 20.	Since the Board does not regulate unlicensed persons, the responsibility is placed on a dentist or dental hygienist to not permit someone to do dental x-rays unless she has the specified qualifications.
90	Specifies the acts that do not constitute dental or dental hygiene practice.	Similar to section 240 is Chapter 20 but omits “preliminary dental screenings in any setting”	The Board omitted dental screening because there is no exception from licensure in the Code for performing “dental screenings.”
100	Sets out the requirements for accurate and complete patient records and the content of a patient record for which a DAII can be responsible	The content in subsection A is similar to section 15 on recordkeeping in Chapter 20. The assistant is only responsible for recording those services she is authorized to provide. The requirement	The intent and impact of the requirements for patient records is assurance that records are complete and accurate, that it is apparent who provided services to the patient and that patient information is held in

		is updated to include digital images and photographs. Requirements in subsection B for compliance with patient record confidentiality and disclosure law is added in this chapter and those for dentists and dental hygienists.	confidence or disclosed as permitted or required by law.
110	Sets out the act that constitute unprofessional conduct, as stated in §54.1-2706.	The provisions of section 110 are taken from section 170 in Chapter 20; only those applicable to a DAII are noted in this chapter.	The intent and impact is to continue the current regulation and to include general provisions of Chapters 1 and 24 in Title 54.1 and the Drug Control Act.
120	Establishes the educational qualifications for an applicant to be registered as a DAII.	Section 120 is identical to section 61 in Chapter 20.	The intent and impact is to continue the current regulation without change.
130	Establishes the general requirements for registration as a DAII.	Section 130 is identical to subsections C, D and E of section 70 in Chapter 20.	The intent and impact is to continue the current regulation without change.
140	Sets out the qualifications for registration by endorsement.	Section 140 is identical to section 72 in Chapter 20, except the requirement for “good moral character” is omitted.	The intent and impact is to continue the current regulation but to eliminate the requirement for which there is currently no proof or documentation.
150	Sets our requirements for renewal of a DAII registration, including current certification from the Dental Assisting National Board or other credentialing body.	The schedule for renewal (annually by March 31 st) and the requirement for a late fee is identical to subsection A of section 20; the requirements in subsection C and D are specified in subsection A of section 50 in Chapter 20. Subsection F is identical to subsection I of section 50.	The intent and impact is to continue the current regulation without change.
160	Sets out requirements for taking an inactive status and for reactivating one’s registration.	Section 150 is identical to subsection C of section 105 in Chapter 20.	The intent and impact is to continue the current regulation without

			change.
170	Sets out requirements for reinstating a registration that has expired.	Provisions in section 170 are taken from section 20 of Chapter 20.	The intent and impact is to continue the current regulation without change