



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

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**18 VAC 60-25 Regulations Governing the Practice of Dental Hygiene**  
**Department of Health Professions**  
**Town Hall Action/Stage: 5323/8854**  
February 14, 2020

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### **Summary of the Proposed Amendments to Regulation**

The Board of Dentistry (Board) proposes to amend 18 VAC 60-25 *Regulations Governing the Practice of Dental Hygiene* in order to authorize the remote supervision of dental hygienists employed by the Department of Health (VDH) and by the Department of Behavioral Health and Developmental Services (DBHDS) by dentists employed by VDH and DBHDS, respectively. The proposed amendment would make permanent the existing emergency text and incorporate by reference two documents that lay out the protocols for dental hygienists to practice under remote supervision by dentists for VDH and DBHDS respectively.

### **Background**

Section 54.1-2722 of the Code of Virginia (Code) allows dental hygienists employed by VDH to practice remotely under the supervision of a dentist also employed by VDH.<sup>1</sup> Accordingly, 18 VAC 60-25-40 *Scope of Practice* allows licensed dental hygienists to perform services that are “educational, diagnostic, therapeutic, or preventive under the direction and indirect, or general supervision of a licensed dentist.”<sup>2</sup> 18 VAC 60-25-40 also specifies the tasks that are not to be delegated to dental hygienists, or can only be delegated under specific conditions, and incorporates by reference a protocol dated September, 2012 for dental hygienists to practice in an expanded capacity under remote supervision by VDH dentists.

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<sup>1</sup> See <https://law.lis.virginia.gov/vacode/54.1-2722/>

<sup>2</sup> See <https://law.lis.virginia.gov/admincode/title18/agency60/chapter25/section40/>

Chapter 86 of the 2019 Acts of Assembly expanded this to include dental hygienists and dentists employed by DBHDS.<sup>3</sup> In particular, Chapter 86 required VDH and DBHDS to jointly develop protocols for remote supervision in consultation with the Virginia Dental Association and the Virginia Dental Hygienists' Association. This act also amended the Code to state that "such protocols shall be adopted by the Board as regulations" and required that the Board promulgate emergency regulations to implement these changes. The emergency regulation took effect on October 1, 2019 and is scheduled to expire on March 31, 2021.<sup>4</sup> The emergency text brings dental hygienists and dentists employed by DBHDS under the purview of the regulation and incorporates by reference two separate protocol documents, one replacing the 2012 protocol for VDH and a new one for DBHDS.<sup>5</sup>

It should be noted that the Board chose to adopt the protocols by incorporating the documents by reference rather than including the protocols verbatim in the text of the 18 VAC 60-25-40. On the one hand, this requires readers of the regulation to find and refer to the protocol documents on the Board of Dentistry website. On the other hand, the remote supervision protocol only applies to dental hygienists employed by VDH and DBHDS, who are likely a small fraction of all licensed dental hygienists. These dental hygienists would likely be informed of the protocol documents directly by the agency that hires them, and all the other dental hygienists are unlikely to be confused language that does not apply to them in a section of the regulation that is otherwise entirely directed at them.

### **Estimated Benefits and Costs**

The proposed amendments would allow DBHDS to provide a range of educational and preventative dental services to the individuals they serve, including mobile dental care to individuals with developmental disabilities, at a lower cost than they would have incurred if their dental hygienists had to be directly supervised by a dentist. This would likely benefit the

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<sup>3</sup> See <http://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0086>

<sup>4</sup> See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8672>

<sup>5</sup> These documents can be found at [https://www.dhp.virginia.gov/dentistry/dentistry\\_laws\\_regs.htm](https://www.dhp.virginia.gov/dentistry/dentistry_laws_regs.htm)

populations they serve in addition to decreasing costs to the agency. The proposed amendments are unlikely to increase costs.

### **Businesses and Other Entities Affected**

Businesses would not be affected. The Board reports that it licenses 6,028 dental hygienists in Virginia. However, only the dental hygienists employed by VDH and DBHDS would be affected by the proposed amendments.

### **Small Businesses<sup>6</sup> Affected**

Small businesses would not be affected.

### **Localities<sup>7</sup> Affected<sup>8</sup>**

The proposed amendments are not expected to disproportionately affect particular localities. The proposed amendments are unlikely to introduce new costs for local governments.

### **Projected Impact on Employment**

The proposed amendments are unlikely to affect total employment in the industry.

### **Effects on the Use and Value of Private Property**

The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

### **Legal Mandates**

**General:** The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

**Adverse impacts:** Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and

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<sup>6</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>7</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>8</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.