



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

18 VAC 60-21 Regulations Governing the Practice of Dentistry
Department of Health Professions
Town Hall Action/Stage: 5600 / 9629
August 18, 2022

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

In response to Chapters 37 and 220 (identical bills), of the 2020 Acts of Assembly,² the Board of Dentistry (Board) proposes to require dentists to ensure that digital scan technicians that engage in the practice of teledentistry are trained and supervised. The legislation defines teledentistry as “the delivery of dentistry between a patient and a dentist who holds a license to practice dentistry issued by the Board through the use of telehealth systems and electronic technologies or media, including interactive, two-way audio or video.”

Background

According to the Department of Health Professions (DHP), complaints were expressed by Virginia residents who were improperly fitted for dental appliances provided by dental improvement companies. Dental scans taken of a patient’s oral cavity by a digital scan technician

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0037> & <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0220>

serve as the blueprint for the fitting and fabricating of dental appliances. Improper or inaccurate dental scans often result in ill-fitting dental appliances, causing pain and discomfort.

In response to these concerns, the Virginia General Assembly enacted Chapters 37 and 220. The legislation requires digital scan technicians to practice under the supervision of a dentist licensed in Virginia and to complete training approved by the Board. Although the legislation authorizes the Board to approve training programs for digital scan technicians and require dentists to ensure technicians have received appropriate training, it does not authorize the direct regulation of digital scan technicians. According to DHP, “the board does not have the statutory authority to license, certify, or register digital scan technicians. The [Virginia] Code requires the board to approve training and does not grant authority to regulate digital scan technicians.”

Although the legislation did not authorize the Board to regulate dental improvement companies or digital scan technicians, the Board is authorized to regulate dentists. Accordingly, the Board proposes to require dentists to supervise the technicians and ensure that technicians complete training offered by any of the following: 1) Any sponsor listed in subsection C of 18VAC60-21-250;³ 2) The American Association of Orthodontists and their constituent and component/branch associations, including the Virginia Association of Orthodontists; or 3) A training program certified by the manufacturer of the digital scanner.

Estimated Benefits and Costs

As evidenced by the consumer complaints the Board has received, the use of digital scans in the dental industry is not new, though DHP does not have data to assess its extent. For a variety of concerns such as consumer satisfaction, liability, and productivity, it would be reasonable to assume that dentists and manufacturers of the scans have an incentive to ensure that such technicians are equipped with proper training. Thus, it is likely that most digital scan technicians are already provided with some basic skills. The main purpose and effect of the legislation and the proposed regulatory language would therefore be to strengthen enforcement. Currently, the Board does not have authority to take action against dentists who may employ

³ <https://law.lis.virginia.gov/admincode/title18/agency60/chapter21/section250/>

technicians who are not trained in the practice of teledentistry.⁴ To the extent the proposed changes deter unscrupulous or untrained individuals from participating in teledentistry, health and safety risks to patients should be mitigated to some degree.

The proposed language does not specify the scope of training, only that the technician receive training provided by one of the entities listed above and works under the supervision of the dentist. Thus, there appears to be flexibility in designing the contents, length, and the method of training, which would ultimately determine its cost. It appears the most common form of training is provided by the manufacturers, which is offered online free of charge to promote their equipment. The Board is proposing to authorize this training and also the two additional sources noted above. There are no fees associated with this action, and no requirement for a scan technician to attend subsequent digital scan training sessions after initial training is complete. However, the Board currently does not have an estimate on what the training could cost.

Businesses and Other Entities Affected

The proposed amendments directly affect dentists who employ digital scan technicians in the practice of teledentistry, and indirectly affects the technicians themselves. The Board does not have information on the number of entities that are likely to be affected by the regulatory change. The legislation requires a Virginia license for any dentist who directs the taking of a digital scan via teledentistry, but there is no identifiable license for teledentistry. While the Board does not have specific data on dentists practicing by teledentistry, it notes that there was a substantial increase in the number of applicants for licensure from out-of-state in fiscal (FY) 2021; in FY 2020, there were 184 applicants from out-of-state and in FY 2021 there were 259 such applicants.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ An adverse impact is indicated if there is any increase in net cost or

⁴ It should be noted that the scope of the proposed changes is limited to use of digital scans in the practice of teledentistry (i.e. taking of digital dental scans outside of a dentist's office). If the digital scans are taken at a dentist office, the Board already has authority to take action against the dentist.

⁵ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As discussed above, the main effect of the proposed changes is to strengthen enforcement. Thus, no adverse economic impact⁶ on any entities is indicated.

Small Businesses⁷ Affected:⁸

Although the proposed regulation applies to any dentist employing digital scan technicians in the practice of teledentistry, the Board reports that most dentists who are affected would likely be employees of a national corporation. No adverse economic impact on small businesses is indicated.

Localities⁹ Affected¹⁰

No effect on localities is expected.

Projected Impact on Employment

The proposed changes should deter untrained individuals from participating in teledentistry. Otherwise, no effect on total employment is expected.

Effects on the Use and Value of Private Property

The proposed changes do not appear to have an effect on the use and value of private property or the real estate development costs.

⁶ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

⁷ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁸ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

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