



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

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### **18 VAC 60-20 – Regulations Governing the Practice of Dentistry and Dental Hygiene Department of Health Professions September 25, 2002**

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

Pursuant to a legislative mandate, the Board of Dentistry (board) proposes to: 1) establish registration for voluntary dental or dental hygienist practice by out-of-state licensees, and 2) change regulatory language on temporary permits to properly reflect the Code of Virginia.

### **Estimated Economic Impact**

Chapter 740 of the 2002 Acts of the Assembly mandates that the board promulgate regulations to permit individuals licensed as dentists or dental hygienists in other states to volunteer their dental services in Virginia without needing to obtain a Virginia license. The legislation sets very narrow criteria for who may qualify. Only individuals who are licensed in other states, but not in Virginia, and who volunteer "to provide free health care in an underserved area of the Commonwealth under the auspices of a publicly supported, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved

people throughout the world”<sup>1</sup> may register to perform volunteer dental work in the Commonwealth without a Virginia dental license or dental hygiene license.

The board’s proposed regulatory language essentially reiterates the requirements listed in Section § 54.1-2701 of the Code of Virginia with details on how the applicant is to present their qualifications, as well as establishes a \$10 processing fee for the Department of Health Professions’ administrative costs.

The requirement that not only must the volunteer not receive remuneration, but that the nonprofit organization have no paid employees is very restrictive. Many, if not most, charitable organizations would not meet this criterion. For example, the Red Cross has paid employees and an out-of-state dentist could not volunteer to provide dental services through the Red Cross in Virginia under this provision. The requirement that the nonprofit organization sponsors the provision of health care to populations of underserved people throughout the world is vague and potentially extremely restrictive. It seems to exclude all non-international organizations. Read literally, it also seems to exclude international organizations that do not provide health care to populations of underserved people in all areas of the world. The proposed regulatory language was adopted as emergency regulations on July 19, 2002. As of now, mid-November 2002, no one has completed an application to register for voluntary dental or dental hygienist practice in Virginia. Given how highly restrictive the qualification criteria are, it is unlikely that more than a very small number of individuals will apply for voluntary dental or dental hygienist practice registration in the future.

For the small population of individuals who could potentially meet the qualification criteria and wish to perform volunteer dental work in Virginia and are licensed in another state but not in Virginia, the registration for voluntary practice could be beneficial. Otherwise such individuals would need to obtain either a restricted volunteer license or a temporary permit in the case of dentists, or a restricted volunteer license or a license by endorsement in the case of dental hygienists. According to the Department of Health Professions, all of these avenues to practice take a considerably longer time to obtain than the registration for voluntary practice. All also have higher fees than the registration for voluntary practice.<sup>2</sup>

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<sup>1</sup> Source: Section § 54.1-2701 of the Code of Virginia

<sup>2</sup> Fees: restricted volunteer dental license (\$25), temporary dental permit (\$225), restricted volunteer dental hygienist license (\$25), dental hygienist license by endorsement (\$225).

When an out-of-state dentist or dental hygienist applies for and qualifies for the registration and performs their volunteer work, citizens in Virginia will benefit by receiving dental services that they may not have otherwise received. The Code of Virginia (§ 54.1-2701) stipulates that the voluntary services must be for an underserved population and thus will most likely not provide competition for existing services. Since registration for volunteer services is expected to happen very infrequently, the proposed regulatory amendment will have little effect.

Section § 54.1-2715 (dentists) of the Code of Virginia specifies that temporary permits “shall be valid for no more than two years and shall expire on the second June 30 after their issuance, or shall terminate when the holder ceases to serve as a clinician with the certifying agency<sup>3</sup> or charitable organization.” Section § 54.1-2726 (dental hygienists) of the Code has the same language, with the exception that dental hygienists may only use temporary permits for work with a state agency clinic (Department of Health or Department of Mental Health, Mental Retardation and Substance Abuse Services), not with charitable organizations. Depending on when during the year the temporary permit is issued, it will last between one year and one day to as much as two years. The current Regulations Governing the Practice of Dentistry and Dental Hygiene state that the temporary permit shall expire at “... the release of grades of the next licensure examination given in this Commonwealth, after the issuance of the temporary permit.” Since dental licensure exams are given three times a year in the Commonwealth,<sup>4</sup> and it takes about two to four weeks for the release of the grades,<sup>5</sup> temporary permits last between about three and one half months to four months under the current regulatory language. This is clearly contrary to the Code of Virginia. The board proposes to amend the regulatory language so that it will no longer be contrary to the Code. According to the Department of Health Professions, the board has not used the regulatory language concerning temporary permit length in practice; it has abided by the permit length in the Code. Thus, this proposed change to the regulations will have no impact.

Graduates of a dental or dental hygiene school who have neither passed nor failed a licensure exam may obtain a temporary permit and work as a dentist or dental hygienist in a clinic operated by the Department of Health or Department of Mental Health, Mental Retardation

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<sup>3</sup> Department of Health or Department of Mental Health, Mental Retardation and Substance Abuse Services

<sup>4</sup> Source: Department of Health Professions

<sup>5</sup> Ibid

and Substance Abuse Services or, in the case of dentists, in a clinic operated by a charitable organization.<sup>6</sup> Individuals who have not passed the licensure examination are not permitted to treat patients in a private non-charitable setting. The effect of this language is that the standards of care are lower for patients at clinics operated by the Commonwealth or charitable organizations. Practitioners who may fail to pass the licensure examination are permitted to treat patients at state-run clinics or through charitable organizations before they take the exam, but are not permitted to treat patients in a private non-charitable setting. If performance on the examination is positively correlated with competence, then by allowing dentists and dental hygienists who have yet to take their licensure exam, some of who will fail their respective exams, to practice at certain settings but not others, puts patients in settings employing temporary permit holders (state-run clinics and charitable organizations) at greater risk of receiving substandard dental services. A significant portion of the examinees do fail; test-takers must pass all nine parts and the failure rate per part is as high as 19 percent.<sup>7</sup>

Presumably temporary permit holders are willing to work for lower wages than fully licensed dentists and dental hygienists since, unlike their fully licensed counterparts, they do not have the option of private practice. By saving on salary the state agencies and charitable organizations may be able to provide more dental services than they otherwise could or may be able to use the saved funds productively elsewhere. It seems likely that many of the patients at clinics operated by the Department of Health, the Department of Mental Health, Mental Retardation and Substance Abuse Services or charitable organizations would not receive dental care, or receive it less frequently, without the services provided by the charitable sources and the state agencies. Thus, though the probability that patients may receive substandard dental care is likely greater, it is possible that the risk may be worth bearing if many of those patients would not have received any dental care, or significantly less dental care, without the availability of temporary permit holders to provide dental services.

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<sup>6</sup> The charitable organization must be granted tax-exempt status under § 501 (3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services: (i) as a federally qualified health center designated by the Centers for Medicare and Medicaid Services or (ii) at a reduced or sliding fee scale or without charge.

<sup>7</sup> According to the Department of Health Professions, the pass rates on the nine sections of the Virginia dental licensure examination are: 81.2%, 80.6%, 91.1%, 90.1%, 88.4%, 87.6%, 85.7%, 85.1%, and 96%. The Department of Health Professions did not have data on how many first-time exam takers pass all parts of the exam.

Information is not available pertaining to whether the quality of care provided by temporary permitted dentists and dental hygienists is significantly lower than that of fully licensed dentists and dental hygienists. In addition, it is not currently known by how much, if at all, dental services would be reduced if temporary permits were abolished. Thus, we cannot determine whether the benefits from potentially providing additional services outweigh the cost of potentially lower quality care.

### **Businesses and Entities Affected**

The proposed amendments will likely affect very few Virginians. Given the highly restrictive nature of the registration qualifications, very few out-of-state dentists and dental hygienists are expected to register to provide volunteer services for underserved Virginians.

### **Localities Particularly Affected**

The proposed regulations, if used at all, will mostly affect rural areas of the Commonwealth, particularly in southwestern Virginia.

### **Projected Impact on Employment**

The proposed amendments will not significantly affect employment levels.

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

The proposed amendments will not have a large impact on the use and value of private property.