

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



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: 4920/8072
December 21, 2017

Summary of the Proposed Amendments to Regulation

The Board of Dentistry (Board) proposes to prohibit advertising that “contains an unsubstantiated claim of professional superiority” in lieu of the current prohibition of advertising that contains a claim to be a specialist unless such a specialty is granted by the American Dental Association (ADA).

Result of Analysis

There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section. A different design would likely yield the same benefits at lower cost for at least one proposed change.

Estimated Economic Impact

The Board issues a license for general dentistry. There is no separate license issued for dental specialties. However, there are dentists who are trained in, possess experience, and practice in specialty areas. Current regulation allows advertising that contains a claim to be a specialist only if the dentist is entitled to such specialty designation by the ADA which recognizes only nine specialties.¹ In 2016, the Board received a petition for rulemaking

¹ These specialties are Dental Public Health, Endodontics, Oral and Maxillofacial Pathology, Oral and Maxillofacial Radiology, Oral and Maxillofacial Surgery, Orthodontics and Dentofacial Orthopedics, Pediatric Dentistry, Periodontics, and Prosthodontics.

requesting that the American Board of Dental Specialties be included in the advertising regulations along with ADA and that the Board immediately recognize specialists in implant dentistry certified by the American Board of Oral Implantology/Implant Dentistry. The petitioner noted a recent decision in federal court that the Texas State Board of Dental Examiners could not prohibit two dentists from advertising themselves as “specialists” in implant dentistry simply because implantology was not among the nine officially recognized specialties of ADA.²

The Board proposes to remove the current language in reference to recognition of specialties by the ADA and instead proposes to prohibit advertising that “contains an unsubstantiated claim of professional superiority.” The Department of Health Professions states that the Board does not wish to get in the business of endorsing specialties recognized by various organizations.

The proposed change is beneficial to the extent it may prevent litigation such as has occurred in Texas. On the other hand, a blanket permission of an advertisement of a specialty recognized by an organization listed in the regulation is more objective than having to make a determination on what would constitute an “unsubstantiated claim of professional superiority.” The less objective nature of the determination of whether an advertisement constitutes a violation under the proposed language would introduce uncertainty for dentists wishing to advertise their specialty. The Board states that it would look into special education and experience credentials of a dentist to determine if there is an unsubstantiated claim of professional superiority in those cases. Nonetheless, whether such a claim will be deemed unsubstantiated or not will not be known for sure until the Board makes its determination.

Businesses and Entities Affected

There are 7,171 licensed dentists in Virginia. There were 594 complaints in fiscal year 2016. The number of these complaints alleging false advertising is not known.

Localities Particularly Affected

The proposed regulation will not affect any particular locality more than others.

Projected Impact on Employment

The proposed changes should not have a significant impact on employment.

² Source: Department of Health Professions.

Effects on the Use and Value of Private Property

No significant effect on the use and value of private property is expected.

Real Estate Development Costs

No impact on real estate development costs is expected.

Small Businesses:**Definition**

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.”

Costs and Other Effects

The vast majority of the dentists are small businesses. The less objective nature of the determination of whether an advertisement constitutes a violation under the proposed language would introduce uncertainty for dentists wishing to advertise their specialty.

Alternative Method that Minimizes Adverse Impact

The proposed regulation would introduce uncertainty for dentists who are specialists and who want to advertise their specialty. The Board could reduce this uncertainty to a large extent by adding minimal language stating the factors or principles it would consider or follow in determining what constitutes an “unsubstantiated claim of professional superiority.”

Adverse Impacts:**Businesses:**

The vast majority of the dentists are small businesses. The less objective nature of the determination of whether an advertisement constitutes a violation under the proposed language would introduce uncertainty for dentists wishing to advertise their specialty.

Localities:

The proposed regulation will not adversely affect localities.

Other Entities:

The proposed regulation will not adversely affect other entities.

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 Number 17 (2014). 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(C): 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 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.