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Final Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC60-21-10 et seq. 18VAC60-25-10 et seq. 18VAC60-30-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Dentistry Regulations Governing the Practice of Dental Hygiene Regulations Governing the Practice of Dental Assistants
Action title	Change in renewal schedule from annual to birth month
Date this document prepared	December 13, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Amendments to regulations are necessary to change the renewal schedule from a set date of March 31st to renewal in one's birth month. The change was intended to occur in 2020 but was moved to 2021 in the final adoption. The intent is to distribute the workload associated with renewal across a calendar year and to make the renewal deadline easier for licensees to remember. The board will experience a modest reduction in revenue for that calendar year, but it had a balance of \$4,013,542 on June 30, 2017. Because of a substantial reduction in renewal fees for FY18, it ended the fiscal year with a balance of \$3,509,497. At the end of FY19, the Board's balance was \$4,294,051. It can easily absorb any reduction resulting from this action.

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.

N/A

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On December 13, 2019, the Board of Dentistry adopted final amendments to 18VAC60-21-10 et seq., Regulations Governing the Practice of Dentistry; 18VAC60-25-10 et seq., Regulations Governing the Practice of Dental Hygiene; and 18VAC60-30-10 et seq., Regulations Governing the Practice of Dental Assistants.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

The mandate to reduce fees is found in § 54.1-113 of the Code of Virginia; the impetus for changing the renewal schedule was an effort to distribute the workload relating to renewals throughout the year.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

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 levy fees sufficient to cover all expenses and to promulgate regulations to administer the regulatory system:

1. *To establish the qualifications for registration, certification, licensure, permit, or the issuance of a multistate licensure privilege 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, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.*
5. *To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions, and the health regulatory boards.*
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. ...*

In addition, the Board is obligated to reduce fees if projections indicate that it is continuing to collect fees in excess of expenditures.

§ 54.1-113. Regulatory boards to adjust fees; certain transfer of moneys collected on behalf of health regulatory boards prohibited.

- A. *Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or 54.1-2505 shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not excessive to cover expenses.*
- B. *Nongeneral funds generated by fees collected on behalf of the health regulatory boards and accounted for and deposited into a special fund by the Director of the Department of Health Professions shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners' Monitoring Program, and the Department and Board of Health Professions and shall not be transferred to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1 and 54.1-3011.2.*

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The regulatory action may make it easier for licensees to remember to renew if it coincides with their birth month and avoid late fees or practicing without a valid license. The birth month renewal schedule has been adopted by Medicine and Nursing for many years. It alleviates the compressed workload associated with renewals and allows staff to be more responsive to other concerns. Renewal of licensure is essential to protect public health and safety; as a non-general fund agency, the Board of Dentistry depends on a steady stream of revenue to offset expenditures associated with the regulation and discipline of these professions.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Sections in each chapter setting out the renewal of licensure for dentists, dental hygienists, and dental assistants II will be amended to become effective in 2021. The revised renewal schedule by birth month would take effect in 2022, so in March of 2021, all persons with active licenses or registrations will renew with a proportionally reduced fee depending on their birth month. For example, a dentist with a January birth month would renew in March of 2021, and his license would expire in January of 2022. Therefore, he would pay a prorated renewal fee for 10 months of licensure. A dentist with a September birth month would pay a prorated renewal fee for 18 months, etc. etc.

Issues

Please identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

- 1) There are no advantages or disadvantages to the public.
- 2) There is an advantage to the Board and the Department by spreading the workload associated with licensure renewal throughout the year rather than having all renewals on a single date. There are no disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 “*To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system...*” Therefore, the proposed amendments are a foreseeable result of the statute requiring the Board to protect the safety and health of patients in the Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
3 persons	Supported the change to renewal in birth month; will spread the workload and will be easier to remember	The Board concurs.
2 persons	Opposed renewal on birth month because of other personal expenses	The Board sends renewal notices approximately 45 days in advance, so a licensee can renew anytime prior to the renewal deadline in his/her birth month.
4 persons	Opposed to change	The Board appreciates that the change will require some adjustment
1 person	Expressed concern because he believed the change was immediate and he had not completed his CE hours	Licensees will be given ample notice of the effective date of the change.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

The proration of renewal fees was intended to begin in 2020 with the change in renewal dates to birth months beginning in 2021. Renewals for 2020 are due March 31st, and notices are generally sent 45 days in advance. In order to meet that schedule for notification, the regulation would have to be sent to the *Register* before January 1, 2020 with publication on January 20, 2020 and an effective date of February 19, 2020.

Given that executive branch review must be completed on this final action, the Board realized it was highly unlikely that approval for publication could come by the end of December, 2019. Therefore, the 2020 dates in the proposed regulation were revised to 2021 and the 2021 dates were revised to 2022.

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
Chapter 21, Section 40	Sets out required fees for dentists	Subsection H is amended to eliminate the fee reduction language applicable to renewal in 2018 and insert the proportional fees for renewal of an active license in 2021. <i>The current renewal fee for an active dental license is \$285 payable by March 31st each year, which equals \$23.75 for 12 months of licensure. The proposed fee would be \$15 per month for renewal by birth month for payment in March of 2021. For example, in 2021 a dentist with a January birth date would pay \$15 X 10 months of licensure or \$150; a dentist with a December birth date would pay \$15 X 21 months for 21 months of licensure or \$315. In 2022, the renewal fee would revert to the current amount of \$285 payable in one’s birth month. When a licensee renews in 2021, the expiration date on his license will be set at his birth month in 2022.</i>
Chapter 21, Section 240	Sets out the requirements for license renewal or reinstatement	Subsection B is amended to specify that the renewal of licenses and permits currently renewed on or before March 31 would be renewed in one’s birth month beginning in 2022.

		<i>The intent is to distribute the work load for board and department staff throughout the year rather than focused in a single month. Renewal by birth month has been the requirement for all licensees of the Boards of Medicine and Nursing and has worked well for staff and regulants.</i>
Chapter 25, Section 30	Sets out required fees for dental hygienists	Subsection G is amended to eliminate the fee reduction language applicable to renewal in 2018 and insert the proportional fees for renewal of an active license in 2021. <i>The current renewal fee for an active dental hygienist license is \$75 payable by March 31st each year, which equals \$6.25 for 12 months of licensure. The proposed fee would be \$4 per month for renewal by birth month for March of 2021. For example, a dental hygienist with a January birth date would pay \$4 X 10 months for 10 months of licensure or \$40; a dental hygienist with a December birth date would pay \$4 X 21 months for 21 months of licensure or \$84. In 2022, the renewal fee would revert to the current amount of \$75 payable in one’s birth month. When a licensee renews in 2021, the expiration date on his license will be set at his birth month in 2022.</i>
Chapter 25, Section 180	Sets out the requirements for license renewal or reinstatement for dental hygienists	Subsection A is amended to specify that the renewal of licenses currently renewed on or before March 31 would be renewed in one’s birth month beginning in 2022. <i>The intent is to distribute the work load for board and department staff throughout the year rather than focused in a single month. Renewal by birth month has been the requirement for all licensees of the Boards of Medicine and Nursing and has worked well for staff and regulants.</i>
Chapter 30, Section 30	Sets out required fees for dental assistants II	Subsection G is amended to eliminate the fee reduction language applicable to renewal in 2018 and insert the proportional fees for renewal of an active license in March 2021. <i>The current renewal fee for an active dental assistant II registration is \$50 payable by March 31st each year, which equals \$4.16 for 12 months of registration. The proposed fee would be \$3 per month for renewal by birth month for March of 2021. For example, in 2021 a dental assistant II with a January birth date would pay \$3 X 10 months for 10 months of registration or \$30; a dental assistants II with a December birth date would pay \$3 X 21 months for 21 months of registration or \$63. In 2022, the renewal fee would revert to the current amount of \$50 payable in one’s birth month. When a registrant renews in 2021, the expiration date on his registration will be set at his birth month in 2022.</i>

<p>Chapter 30, Section 150</p>	<p>Sets out the requirements for registration renewal or reinstatement for dental assistants II</p>	<p>Subsection A is amended to specify that the renewal of registration currently renewed on or before March 31 would be renewed in one's birth month beginning in 2022. <i>The intent is to distribute the work load for board and department staff throughout the year rather than focused in a single month. Renewal by birth month has been the requirement for all licensees of the Boards of Medicine and Nursing and has worked well for staff and regulants.</i></p>
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