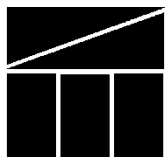


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes<sup>1</sup>  Not Needed

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

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**18 VAC 60-21 Regulations Governing the Practice of Dentistry**  
**Department of Health Professions**  
**Town Hall Action/Stage: 5198 / 8622**  
August 28, 2019 (additional data added on September 3, 2019)

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### Summary of the Proposed Amendments to Regulation

The Board of Dentistry (Board) proposes to: 1) reintroduce fees for temporary dental permit applications, temporary dental permit renewals, mobile clinic/portable operation renewals, and mobile clinic/portable operation late renewals, and 2) introduce new fees for moderate sedation permit reinstatements and deep sedation/general anesthesia permit reinstatements. The Board also proposes to reduce the fee for reactivating an inactive dental license.

### Background

Prior to December of 2015, all fees were in 18 VAC 60-20 Regulations Governing Dental Practice. Action 3252<sup>2</sup> repealed 18 VAC 60-20, and created four new regulations that covered the subject matter that had been addressed in that regulation: 1) 18 VAC 60-15 Regulations Governing the Disciplinary Process, 2) 18 VAC 60-21 Regulations Governing the Practice of Dentistry, 3) 18 VAC 60-25 Regulations Governing the Practice of Dental Hygiene, and 4) 18 VAC 60-30 Regulations Governing the Practice of Dental Assistants. The new 18 VAC 60-21 included standard application, renewal, late, and reinstatement fees for various dental licenses,

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<sup>1</sup> 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.

<sup>2</sup> See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3252>

registrations, certifications, and permits. This new regulation also included reduced renewal fees only for the year 2016. The four new regulations became effective, and the old regulation was officially repealed, on December 2, 2015. By regulation, the renewal fees were at the higher standard levels in 2017.<sup>3</sup> Action 4974,<sup>4</sup> which became effective on February 21, 2018, established reduced renewal fees only for the year 2018.

The following three fees were in 18 VAC 60-20, and thus far have not been in 18 VAC 60-21: 1) temporary dental permit application, 2) temporary dental permit renewal, and 3) mobile dental clinic/portable dental operation late fee. The Board proposes to insert these fees into 18 VAC 60-21 at their respective 2015 levels from 18 VAC 60-20. See Table 1.

Table 1

<b>FEE TYPE</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Proposed</b>
Temporary dental permit application	\$400	\$0	\$0	\$0	\$0	\$400
Temporary dental permit renewal	\$285	\$0	\$0	\$0	\$0	\$285
Mobile clinic/portable operation late fee	\$50	\$0	\$0	\$0	\$0	\$50
Mobile clinic/portable operation renewal	\$150	\$110	\$0	\$75	\$0	\$150
Moderate sedation permit reinstatement	\$0	\$0	\$0	\$0	\$0	\$150
Deep sedation/general anesthesia permit reinstatement	\$0	\$0	\$0	\$0	\$0	\$150
Reactivating an inactive dental license	\$145	\$285	\$285	\$285	\$285	\$140

The fee for mobile dental clinic/portable dental operation renewal was included in the only 2016 and only 2018 subsections, but not in the standard fee section. This produced no fee for 2017, 2019, and going forward. The Board also proposes to insert this fee into 18 VAC 60-21 at its 2015 level from 18 VAC 60-20.

<sup>3</sup> Renewal fees that were not included in 18 VAC 60-21 remained, of course, at \$0.

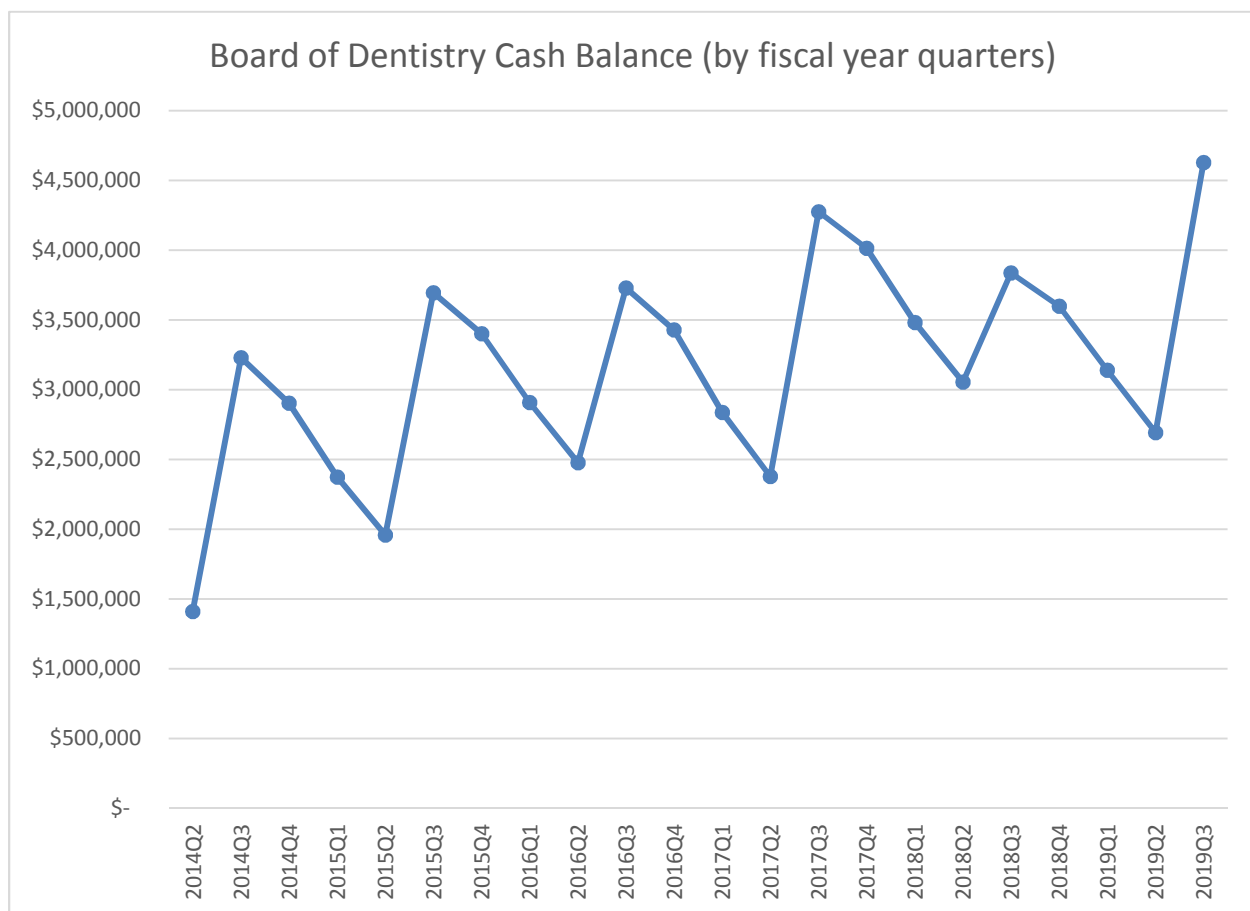
<sup>4</sup> See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=4974>

There currently exist reinstatement fees for lapsed dental licenses and lapsed oral maxillofacial surgeon registrations, but no such fees have been in effect for lapsed sedation permits. The Board proposes \$150 fees for reinstatement of lapsed moderate sedation permits and lapsed deep sedation/general anesthesia permits.

In the current regulation the reactivation fee for an inactive dental license is \$285. The Board proposes to instead charge “the difference between the current renewal fee for inactive licensure and the current renewal fee for active licensure,” i.e. \$140.

### Estimated Benefits and Costs

Department of Health Professions (DHP) operations are funded through fees charged to those regulated. As of the third quarter of fiscal year 2019, the Board’s cash balance was \$4,628,752.<sup>5</sup>



<sup>5</sup> See <https://www.dhp.virginia.gov/about/stats/2019Q3/07BoardCashBalancesQ3FY2019.pdf>

As described below, the proposed amendments in this action would not substantially affect that balance.

Pursuant to Code of Virginia § 54.1-2715, the Board may issue a temporary dental permit to individuals who: (1) have a D.D.S. or D.M.D. degree and are otherwise qualified, (ii) are not licensed to practice dentistry in Virginia, and (iii) have not failed an examination for a license to practice dentistry in the Commonwealth. Also, such temporary permits may be issued only to those who serve as clinicians in dental clinics operated by (a) the Virginia Department of Corrections, (b) the Virginia Department of Health, (c) the Virginia Department of Behavioral Health and Developmental Services, or (d) a Virginia charitable corporation granted tax-exempt status under § 501(c)(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. The proposed \$400 fee for temporary dental permit application is equal to the existing \$400 fee for dental license application. Likewise, the proposed \$285 temporary dental permit renewal fee is equal to the existing \$285 dental license renewal fee. There have been no temporary dental permits since 2014. Thus the proposed reintroduction of the temporary dental permit renewal fee would have no initial affect. Though it is possible that the reintroduction of the application fee for the temporary dental permit might discourage some applications, given the lack of activity over the years when there was no fee, this proposal would not likely have a substantial impact.

Mobile dental clinics are self-contained units in which dentistry is practiced that are not confined to a single building and can be transported from one location to another. Portable dental operations are non-facilities in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions. According to DHP, there are 28 registered mobile dental clinics/portable dental operations. Without the proposal to reintroduce the mobile clinic/portable operation renewal fee of \$150, these entities would not by regulation pay a renewal fee. If all 28 would choose to renew their registration with the proposed \$150 fee, that would increase Board revenue by \$4,200. It is not known how many of the 28 would be late in paying their renewal fee. Nevertheless, proposed reintroduction of the \$50 late fee would likely have negligible impact on revenue. Though it may increase the likelihood that regulants pay their renewal fee on time.

Section 240 of 18 VAC 60-21 states that “Any person whose license or permit has expired for more than one year or whose license or permit has been revoked or suspended and who wishes to reinstate such license or permit shall submit a reinstatement application and the reinstatement fee.” The current regulation does not include specified reinstatement fees for lapsed sedation permits. According to DHP, “It is unknown how many sedation/anesthesia permit holders would be affected; the Board has had requested from a couple of dentists to reinstate lapsed permits.” Thus the Board’s proposal to introduce a \$150 fee for both moderate sedation permit and deep sedation/general anesthesia permit would likely have minimal revenue impact. Given the earnings of dentists,<sup>6</sup> the proposed fee amount would not likely discourage reinstatement.

Any dentist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of a \$145 fee, be issued an inactive license. With the exception of practice with a current restricted volunteer license, the holder of an inactive license may not perform any act requiring a license to practice dentistry in Virginia. As mentioned above, the Board proposes to reduce the fee for reactivation of an inactive license from \$285 to \$140. Given the earnings of dentists,<sup>7</sup> the proposed fee reduction would not likely materially affect decisions on whether or not to reactivate inactive dental licenses. There are currently 299 inactive dental licenses.<sup>8</sup> Typically 7 or 8 licenses are reactivated each year.<sup>9</sup> If there are on average 7.5 reactivations annually, the \$145 reduction in fee revenue received per reactivation would reduce the Board’s cash balance by \$1,087.50 annually.

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

The proposed amendments affect mobile dental clinics/portable dental operations, and potentially some dental practices. There are 28 registered mobile dental clinics/portable dental operations<sup>10</sup> and 3,267 offices of dentists<sup>11</sup> in the Commonwealth. All of the mobile dental clinics/portable dental operations and dental practices with dentists who have lapsed moderate

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<sup>6</sup> The mean annual wage for dentists in Virginia is \$199,870. See [https://www.bls.gov/oes/current/oes\\_va.htm](https://www.bls.gov/oes/current/oes_va.htm)

<sup>7</sup> Ibid

<sup>8</sup> Data source: Department of Health Professions

<sup>9</sup> DHP reports that there were 7 reactivations in 2016, 7 reactivations in 2017, and 8 reactivations in 2018. Through August 30, there have been 4 reactivations thus far in 2019.

<sup>10</sup> Data source: Department of Health Professions

<sup>11</sup> Data source: Virginia Employment Commission

sedation permits or lapsed deep sedation/general anesthesia permits that they may wish to reinstate would be particularly affected.

Since temporary permits may be issued to those who serve as clinicians in dental clinics operated by (a) the Virginia Department of Corrections, (b) the Virginia Department of Health, (c) the Virginia Department of Behavioral Health and Developmental Services, or (d) a Virginia charitable corporation granted tax-exempt status under § 501(c)(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, these entities could be affected by the proposed reintroduction of the temporary dental permit application and temporary dental permit renewal fees. Given the lack of activity over the years concerning the temporary permit, there would not likely be a substantial impact.

### **Localities<sup>12</sup> Affected<sup>13</sup>**

The proposed amendments apply throughout the Commonwealth, and do not disproportionately affect particular localities. The proposed amendments do not introduce costs for local governments. Accordingly, no additional funds would be required.

### **Projected Impact on Employment**

The proposed amendments are unlikely to substantially affect total employment.

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

The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

### **Adverse Effect on Small Businesses<sup>14</sup>:**

#### Types and Estimated Number of Small Businesses Affected

The 28 registered mobile dental clinics/portable dental operations are likely small businesses or nonprofit organizations or part of such organizations. All 3,267 offices of dentists in the Commonwealth qualify as small businesses.<sup>15</sup>

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<sup>12</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>13</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

<sup>14</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>15</sup> Data source: Virginia Employment Commission

### Costs and Other Effects

The proposal to reintroduce the mobile clinic/portable operation renewal fee of \$150 increases costs for those entities that are or are part of small businesses by that amount annually. Dental practices with a dentist who has a lapsed moderate sedation permit or lapsed deep sedation/general anesthesia permit that he or she wishes to reinstate would have a one-time \$150 additional cost.

### Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

## **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 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.