



townhall.virginia.gov

Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC60-25
Regulation title(s)	Regulations Governing the Practice of Dental Hygiene
Action title	Remote supervision protocols
Date this document prepared	6/25/19

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 VAC 7-10), 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 the subject matter, intent, and goals 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 or changes. If applicable, generally describe the existing regulation.

The amended regulation adopts the protocol for dental hygienists employed by DBHDS practicing under remote supervision of a dentist, as prescribed by Chapter 86 of the 2019 Acts of the Assembly.

Amendments also correct a Code cite and update the protocol for remote supervision of dental hygienists employed by VDH.

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.

DBHDS = Department of Behavioral Health and Developmental Services

VDH = Virginia Department of Health

Mandate and Impetus (Necessity for Emergency)

Please explain why this rulemaking is an emergency situation in accordance with Virginia Code § 2.2-4011 A and B. In doing so, please either:

- a) *Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, please also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

Chapter 86 (HB1849) authorizes a dental hygienist employed by the Department of Behavioral Health and Developmental Services to practice under the remote supervision of a dentist employed by the Department or the Department of Health. The bill also adds mobile dentistry programs operated by the Department for adults with developmental disabilities to the list of locations where a dental hygienist may practice under the remote supervision of a licensed dentist. The second enactment on the bill requires the Board of Dentistry to adopt a regulation be effective in 280 days or less from its enactment.

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 promulgate regulations to administer the regulatory system:

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be: ...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that 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.)...§ 54.1-2722. License; application; qualifications; practice of dental hygiene; report.

The specific authority for remote supervision of dental hygienists is found in:

§ 54.1-2722. License; application; qualifications; practice of dental hygiene; report. (Effective July 1, 2019)

A. No person shall practice dental hygiene unless he possesses a current, active, and valid license from the Board of Dentistry. The licensee shall have the right to practice dental hygiene in the Commonwealth for the period of his license as set by the Board, under the direction of any licensed dentist.

B. An application for such license shall be made to the Board in writing and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character, (ii) is a graduate of a dental hygiene program accredited by the Commission on Dental Accreditation and offered by an accredited institution of higher education, (iii) has passed the dental hygiene examination given by the Joint Commission on Dental Examinations, and (iv) has successfully completed a clinical examination acceptable to the Board.

C. The Board may grant a license to practice dental hygiene to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B; (ii) holds a current, unrestricted license to practice dental hygiene in another jurisdiction in the United States; (iii) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (iv) meets other qualifications as determined in regulations promulgated by the Board.

D. A licensed dental hygienist may, under the direction or general supervision of a licensed dentist and subject to the regulations of the Board, perform services that are educational, diagnostic, therapeutic, or preventive. These services shall not include the establishment of a final diagnosis or treatment plan for a dental patient. Pursuant to subsection V of § 54.1-3408, a licensed dental hygienist may administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine.

A dentist may also authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia. In its regulations, the Board of Dentistry shall establish the education and training requirements for dental hygienists to administer such controlled substances under a dentist's direction.

For the purposes of this section, "general supervision" means that a dentist has evaluated the patient and prescribed authorized services to be provided by a dental hygienist; however, the dentist need not be present in the facility while the authorized services are being provided.

The Board shall provide for an inactive license for those dental hygienists who hold a current, unrestricted license to practice in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall promulgate such

regulations as may be necessary to carry out the provisions of this section, including requirements for remedial education to activate a license.

E. For the purposes of this subsection, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

Notwithstanding any provision of law, a dental hygienist employed by the Virginia Department of Health or the Department of Behavioral Health and Developmental Services who holds a license issued by the Board of Dentistry may provide educational and preventative dental care in the Commonwealth under the remote supervision of a dentist employed by the Department of Health or the Department of Behavioral Health and Developmental Services. A dental hygienist providing such services shall practice pursuant to protocols developed jointly by the Department of Health and the Department of Behavioral Health and Developmental Services for each agency, in consultation with the Virginia Dental Association and the Virginia Dental Hygienists' Association. Such protocols shall be adopted by the Board as regulations.

A report of services provided by dental hygienists employed by the Virginia Department of Health pursuant to such protocol, including their impact upon the oral health of the citizens of the Commonwealth, shall be prepared and submitted annually to the Secretary of Health and Human Resources by the Department of Health, and a report of services provided by dental hygienists employed by the Department of Behavioral Health and Developmental Services shall be prepared and submitted annually to the Secretary of Health and Human Resources by the Department of Behavioral Health and Developmental Services. Nothing in this section shall be construed to authorize or establish the independent practice of dental hygiene.

F. For the purposes of this subsection, "remote supervision" means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

Notwithstanding any other provision of law, a dental hygienist may practice dental hygiene under the remote supervision of a dentist who holds an active license by the Board and who has a dental practice physically located in the Commonwealth. No dental hygienist shall practice under remote supervision unless he has (i) completed a continuing education course designed to develop the competencies needed to provide care under remote supervision offered by an accredited dental education program or from a continuing education provider approved by the Board and (ii) at least two years of clinical experience, consisting of at least 2,500 hours of clinical experience. A dental hygienist practicing under remote supervision shall have professional liability insurance with policy limits acceptable to the supervising dentist. A dental hygienist shall only practice under remote supervision at a federally qualified health center; charitable safety net facility; free clinic; long-term care facility; elementary or secondary school; Head Start program; mobile dentistry program for adults with developmental disabilities

operated by the Department of Behavioral Health and Developmental Services' Office of Integrated Health; or women, infants, and children (WIC) program.

A dental hygienist practicing under remote supervision may (a) obtain a patient's treatment history and consent, (b) perform an oral assessment, (c) perform scaling and polishing, (d) perform all educational and preventative services, (e) take X-rays as ordered by the supervising dentist or consistent with a standing order, (f) maintain appropriate documentation in the patient's chart, (g) administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine pursuant to subsection V of § 54.1-3408, and (h) perform any other service ordered by the supervising dentist or required by statute or Board regulation. No dental hygienist practicing under remote supervision shall administer local anesthetic or nitrous oxide.

Prior to providing a patient dental hygiene services, a dental hygienist practicing under remote supervision shall obtain (1) the patient's or the patient's legal representative's signature on a statement disclosing that the delivery of dental hygiene services under remote supervision is not a substitute for the need for regular dental examinations by a dentist and (2) verbal confirmation from the patient that he does not have a dentist of record whom he is seeing regularly.

After conducting an initial oral assessment of a patient, a dental hygienist practicing under remote supervision may provide further dental hygiene services following a written practice protocol developed and provided by the supervising dentist. Such written practice protocol shall consider, at a minimum, the medical complexity of the patient and the presenting signs and symptoms of oral disease.

A dental hygienist practicing under remote supervision shall inform the supervising dentist of all findings for a patient. A dental hygienist practicing under remote supervision may continue to treat a patient for 90 days. After such 90-day period, the supervising dentist, absent emergent circumstances, shall either conduct an examination of the patient or refer the patient to another dentist to conduct an examination. The supervising dentist shall develop a diagnosis and treatment plan for the patient, and either the supervising dentist or the dental hygienist shall provide the treatment plan to the patient. The supervising dentist shall review a patient's records at least once every 10 months.

Nothing in this subsection shall prevent a dental hygienist from practicing dental hygiene under general supervision whether as an employee or as a volunteer.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of the regulatory action is to adopt the protocols of VDH and DBHDS for remote supervision of dental hygienists employed by those agencies. Greater utilization of dental

hygienists will allow dental services to be provided to underserved populations and will improve the health and welfare of those citizens.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
40	Subsection F sets out the adoption of a protocol for practice of dental hygienists under remote supervision with VDH.	The amendments will change the title and adoption date of the protocol adopted by VDH and correct a Code cite.
		Subsection G is added to include the protocol for DBHDS for the dental hygienists practicing in that agency under remote supervision of dentists. <i>The impact will be greater access to dental hygiene services in programs and facilities in which underserved persons are found.</i>

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) The primary advantage to the public is the inclusion of dental hygienists employed by DBHDS working under the protocol for remote supervision will increase access to dental care; there are no disadvantages.
- 2) There are no advantages or disadvantages to the agency.
- 3) Other pertinent matters of interest: The Code requires VDH and DBHDS to consult with the Virginia Dental Association and the Virginia Dental Hygienists' Association in the adoption of its protocols. The following summarizes the consultation that occurred:

Virginia Dental Hygienists' Association and Virginia Dental Association Comments and Concerns Regarding DBHDS and VDH Remote Supervision Protocols

Virginia Dental Hygienists' Association Comments and Concerns

VDH Protocol

Concern 1:	VDHA supports the inclusion of radiographs as part of the assessment of teeth. Understanding that the visual ‘initial examination’ for the sealant program is considered a ‘screening’, and is sufficient for the placement of sealants, we feel the addition of x-rays would allow for a more accurate assessment and reporting to the parent as to the child’s decay status.
VDH Position or Resolution:	VDH Position – VDH programs are designed to quickly and effectively evaluate the need for preventive oral health services through visual assessment, provide preventive services, and refer the child to a local dentist who can provide comprehensive care including complete diagnostic assessment using radiographs and restorative treatment. National guidelines for school-based sealant programs advise avoiding using X-rays solely for sealant placement and other preventive services.

Concern2:	VDHA supports complying with the newly (2019) legislated expansion for the administration of Schedule VI topical drugs, rather than application of topical fluorides only. (Board of Dentistry regulation: 18VAC60-25-100)
VDH Position or Resolution:	Resolution – Language changed to, “Administration of Schedule VI Topical Drugs”.

DBHDS Protocol

Concern 1:	VDHA supports allowing the dental assistant who holds radiation certification to place and expose radiographs under the delegation of the dental hygienist as set forth by the Board of Dentistry (18VAC60-30-80 and 18VAC60-25-80). This provides improved efficiency and allows the dental team to function to a fuller extent of their scope of practice.
DBHDS Position or Resolution:	Resolution – Language changed to, “The dental hygienist may use and supervise dental assistants under this protocol as set forth by the Virginia Board of Dentistry regulations” which includes delegation of radiographs by a dental hygienist to a dental assistant.

Concern 2:	VDHA supports allowing a broader time frame for the DBHDS staff dentist to examine the patient by changing ‘once every 10 months’ to ‘annually’.
DBHDS Position or Resolution:	Resolution – Language changed to, “The dental patient shall be examined by the DBHDS dentist annually unless the patient has been referred to a community provider at which

	time treatment and care of the individual will be transferred to the referral office or practice”.
--	--

Concern 3:	VDHA supports using the term ‘scaling and root planing’ of natural and restored teeth to specify a more comprehensive treatment for periodontal disease.
------------	--

DBHDS Position or Resolution:	Resolution – Language changed to, “Scaling and root planing of natural and restored teeth using hand instruments, and ultrasonic devices”.
-------------------------------	--

Concern 4:	VDHA supports using the term ‘administer Schedule VI topical drugs pursuant to Code (54.1-3408 and Board of Dentistry regulation (18VAC60-25-100).’
------------	---

DBHDS Position or Resolution:	Resolution – Language changed to, “Administer Schedule VI Topical Drugs”.
-------------------------------	---

Virginia Dental Association Comments and Concerns

VDH Protocol

Concern 1:	VDA is concerned that the number of hygienists is not limited through this program as it is in the Board of Dentistry regulations for private practice (limited to 4).
------------	--

VDH Position or Resolution:	VDH Position – No limit was placed on the number of hygienists that can be supervised under remote supervision in the original protocol developed with representation from the VDA. VDH has managed up to 15 hygienists historically under the unique VDH remote supervision protocol without difficulty, due to the very limited and unique scope of hygiene practice required for VDH preventive services-based initiatives. VDH remote supervision hygienists are not comparable to private practice hygienists in scope of services delivered. The VDH program is unique and has specific requirements for success, which have been proven effective over the past decade. Imposing a limit on the number of VDH hygienists who could be supervised under remote supervision would add considerable expense to the management of the existing VDH program and would render the program non-viable moving forward.
-----------------------------	---

DBHDS Protocol

Concern 1:	VDA is concerned that the number of hygienists is not limited through this program as it is in the Board of Dentistry regulations for private practice (limited to 4).
------------	--

<p>DBHDS Position or Resolution:</p>	<p>DBHDS Position – The DBHDS Office of Integrated Health has developed the Dental Team to implement various community dental programs to include services provided under remote supervision. Imposing a limit on the number of DBHDS hygienists who could be supervised under remote supervision would add considerable expense to the management of the DBHDS mobile dental program and significantly impact the ability to serve a large number of individuals with developmental disabilities who have been otherwise unable to obtain preventive services on their own/in the community. DBHDS will add hygiene teams to the program incrementally and evaluate the ability of the supervising dentist/dentists to effectively manage the teams in order to ensure adequate supervision for timely delivery of quality care to the greatest number of vulnerable clients.</p>
--------------------------------------	--

<p>Concern 2:</p>	<p>VDA would like clarification as to whether hygienists are allowed to direct assistants to take radiographs through the program.</p>
<p>DBHDS Position or Resolution:</p>	<p>DBHDS Position – Board of Dentistry Code (18VAC60-30-80 and 18VAC60-25-80) allows the dental assistant who holds radiation certification to place and expose radiographs under the delegation of the dental hygienist. It is DBHDS’ position that delegating this duty provides improved efficiency and allows the dental team to function to a fuller extent of their scope of practice.</p>

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no alternatives to the regulatory action as it is required by Chapter 86 of the 2019 Acts of the Assembly.

Public Participation

The Board of Dentistry is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also seeking information on impacts on small

businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.