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Final Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC60-21 18VAC60-30
VAC Chapter title(s)	Regulations Governing the Practice of Dentistry Regulations Governing the Practice of Dental Assistants
Action title	Training in infection control
Date this document prepared	June 10, 2022

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

The new regulation requires dental assistants to complete annual training in infection control standards as recommended by the Centers for Disease Control and Prevention ("CDC") through the Occupational Safety and Health Administration ("OSHA"). Newly employed assistants must receive training within 60 days of hire. Dentists are required to assure that such training takes place and to maintain documentation of the required training for three years.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CDC = Centers for Disease Control and Prevention
OSHA = Occupational Safety and Health Administration

Statement of Final Agency Action

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.

At its board meeting on June 10, 2022, the Board of Dentistry voted to adopt final regulations to amend the Regulations Governing the Practice of Dentistry and the Regulations Governing the Practice of Dental Assistants to require that dental assistants receive annual infection control training and that such training is documented.

Mandate and Impetus

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 Board initiated rulemaking to consider adoption of a requirement for training in infection control for dental assistants following receipt of a petition for rulemaking from the Virginia Dental Hygiene Program Directors' Consortium.

Legal Basis

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

Regulations of the Board of Dentistry are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be “[t]o 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.”

Regulations governing the practice of dental assistants are promulgated under the authority of Virginia Code § 54.1-2729.01.

Purpose

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 goal of the proposed action is to ensure that dental assistants are properly trained in practices that mitigate the chances of infections during dental procedures. This action is intended to address concerns about breaches in infection control techniques that endanger the health and safety of the public. In several other states, there have been egregious cases of infection with long-term consequences for patients who were exposed to pathogens during the course of dental treatment. The Board has reviewed several disciplinary cases over the course of the last five years in which dentists were disciplined for a lack of infection control in sterilization of instruments and other risky practices which endanger the health of patients. Although the dentist is accountable for infection control practice, it is often dental assistants who are responsible for infection control processes and procedures. The amendment will ensure consistency in training and competence which protects dental patients.

Substance

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.

New section 85 in Chapter 30 requires that a dental assistant complete annual training in infection control standards required by OSHA and as recommended by the CDC. A newly employed dental assistant must complete the training as soon as possible, or at least within the first 60 days of employment.

New section 175 in Chapter 21 requires a dentist to be responsible for ensuring that dental assistants complete annual training in infection control and that newly employed dental assistants complete the training as soon as possible, or at least within the first 60 days of employment. Dentists are required to maintain documentation of dental assistant infection control training for three years.

Issues

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 a standardized expectation of training in infection control for patient safety at all dental offices throughout the Commonwealth. There are no disadvantages to the public. Dentists are already expected to adhere to OSHA and CDC guidelines for infection control.
2. There are no advantages or 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 Director finds that any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth. The Board is authorized under § 54.1-2400 “[t]o 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 . . . 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.” The promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements. While dentists are regulated in some forms through the federal government, dental assistants are regulated by individual states only.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected – none

Localities Particularly Affected – none

Other Entities Particularly Affected – none

Public Comment

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

Commenter	Comment	Agency response
9 comments posted on Town Hall in support	In favor of the proposed action for the following reasons: 1) Dental assistants are the office personnel responsible for carrying out infection control procedures and should be properly educated on infection control so that they are aware of the importance of and effect of infection control. 2) Will ensure that all dental assistants are aware of airborne and bloodborne pathogens and the differences between sterilization and disinfection, and standard	The Board concurs that annual training in infection control is necessary for patient protection. The Board adopted the least burdensome alternative for infection control training, which is OSHA training as recommended by the CDC. That training can be received in-office and obtained online.

	<p>precautions in preventing cross-contamination</p> <ol style="list-style-type: none"> 3) Will standardize training of infection control 4) Will comply with the position of the American Dental Assistants Association that dental assistants educated in infection control will add to the protection of the public 5) OSHA is insufficient training for protecting patients because its training focuses on protecting employees rather than patients 6) Concern that COVID-19 and future viruses will place patients at additional risk unless infection control training is specifically required 	
<p>6 comments posted on Town Hall in opposition</p>	<p>Opposed to the an action as proposed by the petitioner for the following reasons:</p> <ol style="list-style-type: none"> 1) Does not add protection for the public; already required to complete OSHA or CDC training. 2) The Board should offer required training free of charge 3) Regulation should not be promulgated until evidence of widespread negligence is demonstrated 	<p>The Board adopted the least burdensome alternative for infection control training, which is OSHA training as recommended by the CDC. According to comments, there is an expectation that annual training is already required. Therefore, it should not create any additional costs for dental offices. Newly hired dental assistants will have 60 days to complete the training.</p> <p>Continuing education courses and education prior to licensure, which are both required by the Board for licensees, are not provided by the Board or free of charge. This training requirement is similar.</p> <p>The Board, as an agency tasked with protection of the public, cannot wait for widespread incidents that risk the safety of large numbers of patients to take action on an issue which has already been noted in disciplinary cases.</p>
<p>1 comment on Town Hall in support but with changes</p>	<p>Supports the requirement but wants the Board to provide free training and make decisions about proper infection control.</p>	<p>The Board does not have the resources or capacity to provide such training. OSHA already provides comprehensive training and was the least burdensome alternative.</p>
<p>Katherine Landsberg on behalf of the Dental Assisting National Board, via mail</p>	<p>Supports requirement but requests change from OSHA training to OSHA and CDC training, stating this would be more comprehensive and provide additional instruction required to prevent transmission of diseases to patients.</p>	<p>The Board appreciates the support and recommendation, but feels that additional required training for an unlicensed category of practitioner would be unduly burdensome.</p>

Kandie Semmelman, RDH, via email	Supports mandatory infection training courses for all dental assistants.	The Board appreciates the support.
Scott Berman on behalf of the Virginia Dental Association	Opposes action. Believes requirement is redundant and not needed because of a lack of infection control violations by dental assistants in Virginia.	<p>The Board has noted infection control issues in disciplinary cases. The Board began this regulatory action in response to a petition for rulemaking that noted deficiencies in infection control training of dental assistants, regardless of the existing expectation that dentists train staff on infection control procedures. Although it is expected that dentists provide this training to staff, it is not currently required.</p> <p>The Board adopted the least burdensome alternative for infection control training, which is OSHA training as recommended by the CDC. Newly hired dental assistants will have 60 days to complete the training.</p>
Misty Mesimer, comment via public hearing on February 18, 2022 and via email on February 21, 2022	Supports Board required training in infection control and was the author of the petition for rulemaking. Requests that the Board require training by new employees to be completed before beginning work rather than within 60 days.	The Board believes that requiring training to be completed as soon as possible but in no event later than 60 days of beginning employment is the least burdensome alternative which protects public safety.
Debra Vernon on behalf of the Virginia Dental Assistants Association, via public hearing on February 18, 2022	Supports the new requirement because most of the responsibility for infection control within a dental office lies with the dental assistant.	The Board appreciates the support.
Tracey Martin on behalf of the Virginia Dental Hygienists Association and on behalf of Amanda Hill, another dental hygienist, via public hearing on February 18, 2022	Supports the new requirement as a needed minimum standard for dental assistants.	The Board appreciates the support.

Detail of Changes Made Since the Previous Stage

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and

what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
	21-175	All new dental assistant employees must complete required training within 60 days of beginning employment	New dental assistant employees who have completed the required training within the previous 12 months and have evidence of that training do not need to complete training within 60 days of beginning employment.	This will allow dental assistants moving from one practice to another to rely on annual training received at a previous place of employment for the initial training if the dental assistant can produce evidence of that training. The intent is to avoid having a dental assistant required to receive training multiple times in one year.
	30-85	All new dental assistant employees must complete required training within 60 days of beginning employment	New dental assistant employees who have completed the required training within the previous 12 months and have evidence of that training do not need to complete training within 60 days of beginning employment.	This will allow dental assistants moving from one practice to another to rely on annual training received at a previous place of employment for the initial training if the dental assistant can produce evidence of that training. The intent is to avoid having a dental assistant required to receive training multiple times in one year.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section	Change, intent, rationale, and likely impact of updated requirements

	number, if applicable	
21-175	N/A	<p>Subsection A requires a dentist to be responsible for ensuring that dental assistants complete annual training in infection control standards required by OSHA as recommended by the CDC. Newly employed dental assistants must receive training as soon as possible, but no later than 60 days from employment.</p> <p>All dental offices are currently expected to do OSHA/CDC training on an annual basis. Since dental assistants are often the office personnel responsible for sterility and preparation of equipment, it is essential for them to understand the methods recommended by OSHA and the potential consequences to their patients and the staff for failing to adhere to OSHA/CDC standards. Newly hired assistants will not be delayed in their employment but will need to complete the training as soon as possible.</p> <p>Subsection B requires that dentists maintain documentation showing the dates of completion of initial and annual training, including the date of employment for new dental assistants. All documentation of training in infection control shall be maintained by the dentist for three years.</p> <p>This record-keeping requirement is necessary to ensure documentation in the event there is a complaint relating to infection control. Training records can be maintained along with other employment records for assistants.</p>
30-85	N/A	<p>Section 85 requires a dental assistant to complete annual training in infection control standards required by OSHA as recommended by the CDC. Newly employed dental assistants must receive training as soon as possible, but no later than 60 days from employment.</p>