



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 60-30 Regulations Governing the Practice of Dental Assistants
Department of Health Professions
Town Hall Action/Stage: 5728 / 9645
August 25, 2022

The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Board of Dentistry (Board) proposes to make clarifying changes to the regulation to indicate that only indirect pulp capping, but not direct pulp capping, can be delegated to Dental Assistants II (DAIIs).

Background

This regulation covers the training requirements for DAIIs. Currently, it includes pulp capping in the description of the training required without specifying whether it is direct or indirect. Direct pulp capping is an invasive procedure covering an exposed dental pulp (tooth nerve) with material to protect against external influences and to encourage healing. Indirect pulp capping on the other hand does not involve exposing dental pulp as some decay is left intact above the dental pulp over which covering is applied.

At the Board's Regulatory-Legislative Committee meeting on April 23, 2021, committee members reviewed standards from other states, and found that dental assistants were either

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

directly prohibited from pulp capping (Tennessee and North Carolina), implicitly prohibited (Kentucky) or implicitly allowed with additional training (Maryland). At that meeting, the Department of Health Professions (DHP) staff reported that there is a distinction between direct and indirect pulp capping, and that dental assistant training programs only cover indirect pulp capping, where there is no exposure of dental pulp. The staff stated that it has never been the intention of the Board to allow direct pulping as a delegable task to DAIIIs. Since the Committee meeting, the Board has already updated its guidance document on delegation to dental assistants to specify “indirect” next to pulp capping procedures.²

This regulation itself does not provide a list of delegable tasks. Instead it describes the training requirements, which include “pulp capping.” Dental assistants receive a registration card that must be displayed in their place of work that contains a list of procedures that are delegable to them. Because of the existing language in the training requirements the current card lists “pulp capping,” which is to be replaced with “indirect pulp capping.”

In short, the Board proposes to add the qualifier “indirect” before “pulp capping procedures” in training requirements to clarify that only indirect pulp capping is delegable. In addition, the Board seeks to add “after July 1, 2022”³ in parenthesis to indicate that the required educational requirement after that date be specifically restricted to indirect pulp capping.

Estimated Benefits and Costs

Changing the education requirements after a certain date in the text of the regulation and changing the registration cards issued subsequent to that date to list “indirect pulp capping” rather than “pulp capping” would clarify that DAIIIs can only be delegated “indirect pulp capping” if they register with the Board after the proposed changes become effective. Under the proposed language, it would be clear that only “indirect pulp capping” can be delegated to future dental assistants. Improved clarity would be beneficial for readers of the regulation.

DHP reports that specifying an effective date in the regulation would allow existing dental assistants to keep their current registration cards, and as a result any currently registered DAII who is performing direct pulp capping under supervision would be allowed to continue to

² Guidance Document 60-7, see “Duties that may only be delegated to Dental Assistants II under direct supervision of a dentist” (p. 2): <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=4386>.

³ This date is a placeholder for the time being and to be replaced with July 1 of the year following the finalization of the regulatory change.

do so. However, although currently 38 DAIs are permitted to perform direct pulp capping, the Board has no information regarding whether any of those individuals are delegated that task by their supervising dentist. Given the invasive nature of the procedure, the Board believes that very few, if any, DAIs are performing direct pulp capping. Additionally, DHP reports that dental assistant training programs (which are all accredited by the Commission on Dental Accreditation) do not currently teach direct pulp capping. Thus, the change in the text would not affect current students, or training programs in Virginia, or the education requirements for out-of-state candidates to obtain registration as a DAI in Virginia.

Businesses and Other Entities Affected

The proposed amendments apply to dental assistant training programs and dental assistants themselves. There are currently 38 registered DAIs in Virginia.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An 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. As noted above, current dental assistants would be allowed to practice direct pulp capping if they are delegated this task by the supervising dentist, which appears to be very unlikely according to the Board. Because current assistants would be essentially grandfathered, but future assistants would be prohibited from performing direct pulp capping, the latter group appears to be adversely affected in theory. In practice, however, the Board believes that very few, if any, DAIs would be delegated direct pulp capping by their supervisor due to the invasive nature of the procedure. Additionally, direct pulp capping is not within the scope of current training. Thus, it appears there would not be a discernible adverse impact on any entity in practice.

⁴ 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. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

Small Businesses⁵ Affected:⁶

The proposed amendments do not appear to adversely affect small businesses.

Localities⁷ Affected⁸

The proposed amendments do not introduce costs for local governments or disproportionately affect any particular locality.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

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

⁵ 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.”

⁶ 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.

⁷ “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.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.