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Proposed 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	4/3/19

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 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 is intended to occur in 2020. 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. 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

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

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 proposed 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 2020. The revised renewal schedule by birth month would take effect in 2021, so in March of 2020, 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 2020, and his license would expire in January of 2021. 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

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur no additional costs for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Since mailings to the PPG list are handled electronically, there is very little cost involved. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>No other agencies are affected</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There is a benefit to staff of the Board of Dentistry to distribute the workload across the calendar year rather than clustered on a single date.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>None</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>None</p>

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Licensed dentists, dental hygienists, and registered dental assistants II
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 7,463 dentists licensed in Virginia. It is likely the vast majority are small businesses. There are 6,010 dental hygienists and 26 dental assistants II who are employees of a dentist or health department.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs for compliance with the amended regulation.
Benefits the regulatory change is designed to produce.	All licensed dentists, dental hygienists, and dental assistants II will benefit from a reduced renewal fee in 2020.

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 proposal; this is the least burdensome alternative that meets the essential purpose. The Board considered a variety of regulatory schemes to accomplish the purpose of changing the renewal schedule from March 31st to renewal on one's birth month. It concluded that the most equitable method was a proportional fee applied to every licensee depending on the number of months before the next renewal in calendar year 2021 and a reduction in the renewal fee.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business.

Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The Board is authorized to promulgate regulations for establishment of fees and renewal schedules. To alter the fee structure and renewal requirements, it must adopt amendments to regulation. There are no alternative regulatory methods.

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
E. A. Bernhard, DMD	Current fixed date easier to remember; not in favor of change	The Board acknowledges that the change will require adjustment but believes birth month will be eventually be easier rather than an arbitrary date.
Robert Morrison, DMD	Favors distribution of workload even further by biennial renewal	Except for the largest boards (Nursing and Medicine), all DHP boards require annual renewal to avoid unfavorable fluctuations in cash balances. Additionally, a biennial renewal would double the current fee of \$285 and could be a hardship on some licensees.
Matthew Stephens, DDS	As a member of a group practice, a single date is easier for all licensees in the practice. If it goes into effect, expressed concern a license issued in March might expire before the birth month the following year.	Group practices in Medicine have a similar situation and are able to pay renewal fees throughout the year. When a licensee renews in 2020, the expiration date on his license will be set at his birth month in 2021, so no one will be disadvantaged by the change.
Karen Dunegan, DMD	Prefers the March date because she has be December birth month and that is a busy time of year.	The Board acknowledges the concern.
Bridgett Davis, RDH	March 31 is not hard to remember; will be more difficult for offices to keep track of who is registered.	The Board acknowledges that the change will require adjustment but believes birth month will be easier rather than an arbitrary date.
Eileen Tarulis, RDH	Opposes	The Board acknowledges the opposition.
Christine Rodgers, RDH	Questions about proration of the fee. Likes biennial renewal concept.	The Board has adopted a proration that will be equitable for all licensees and registrants.
Mariana Bruce, RDH	Prefers March 31; been done this way for a long time.	The Board acknowledges that the change will require adjustment but believes birth month will be easier rather than an arbitrary date.
H. Cheginia, DDS	Consider biennial renewal	Same response as Dr. Morrison above

April Snyder	Supports birth month biennial renewal	Same response as above.
Debra Dycus	Opposes	The Board acknowledges the opposition.
Noreen Leyden, RDH	Birth month renewal puts CE completion into busy part of year for her; opposes	The Board acknowledges the concern.
Becky C.	Opposes; some offices take CE courses together	CE courses will be counted for the renewal year for each licensee. If a person has renewed in April and takes a course in June, it would count for the following renewal.
Dr. Z	Licensed in a few states; renewing by birth month more confusing for CE courses	The Board acknowledges the concern.
Arlene G., USN	Concern about scheduling of CE courses	The Board anticipates that licensees will find it easier to complete CE courses throughout the year rather than concentrating hours right before a single deadline date.
Dr. T	Birth months not in sync with CE or other states	The Board acknowledges the concern.
Kim Mulvey	Opposes	The Board acknowledges the opposition
Jernice Giles, DDS	Opposes; managing staff with different renewal dates challenging.	Same response as Dr. Stephens above
M Nazareth	Supports; concerns about inequities in time periods between renewal.	The Board has adopted a renewal schedule for 2020 that prorates fees and is equitable for all
Richard Roadcap, DDS	Against; should operate on a calendar year with renewal on Jan. 1.	The Board acknowledges the concern; renewal by Jan. 1 would present a significant problem for board and agency staff.
Ursula Klostermyer	Supports a biennial renewal	Same response as Dr. Morrison above
Walter Saxon, Jr.	Against change; a single renewal date is easier for an office and for entities that check on currency of a license	Same response as Dr. Stephens above
Carmen Cote, DDS	Against; supports a biennial renewal	Same response as Dr. Morrison above

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, the Board of Dentistry is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or 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. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight 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 (<http://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.

Detail of 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 2020. <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 2020. For example, in 2020 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 2021, the renewal fee would revert to the current amount of \$285 payable in one’s birth month. When a licensee renews in 2020, the expiration date on his license will be set at his birth month in 2021.</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 2021. <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.

		<p><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 2020. 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 2021, the renewal fee would revert to the current amount of \$75 payable in one’s birth month. When a licensee renews in 2020, the expiration date on his license will be set at his birth month in 2021.</i></p>
Chapter 25, Section 180	Sets out the requirements for license renewal or reinstatement for dental hygienists	<p>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 2021. <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>
Chapter 30, Section 30	Sets out required fees for dental assistants II	<p>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 2020. <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 2020. For example, in 2020 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. After 2020, the renewal fee would revert to the current amount of \$50 payable in one’s birth month. When a registrant renews in 2020, the expiration date on his registration will be set at his birth month in 2021.</i></p>
Chapter 30, Section 150	Sets out the requirements for registration renewal or reinstatement for dental assistants II	<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 2021. <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>