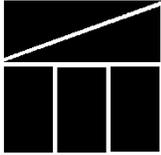


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes<sup>1</sup>  Not Needed

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: 5056 / 8502**  
April 11, 2019

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### **Summary of the Proposed Amendments to Regulation**

The Board of Dentistry (Board) proposes several amendments concerning administration of sedation or anesthesia in dental offices.

### **Result of Analysis**

The benefits likely exceed the costs for one or more proposed changes. For one other amendment, there is insufficient data to accurately compare the magnitude of the benefits versus the costs.

### **Estimated Economic Impact**

The Board proposes to make numerous changes to improve clarity. Amending language to improve clarity is beneficial in that there is reduced likelihood that those affected by the regulation and other interested members of the public misunderstand or are under-informed concerning requirements.

The Board has heard comments from dentists describing patients and situations in which there are physical or mental conditions that make it impossible to follow the standard process for administration of sedation or anesthesia. Such conditions and circumstances at times preclude the

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<sup>1</sup> Adverse impact is indicated if there is any increase in net cost for any entity, even if the benefits exceed the costs for all entities combined.

patient from receiving needed dental care. The Board proposes to allow in selected circumstances sedation or general anesthesia without establishing an intravenous line. These selected circumstances include very brief procedures or periods of time within a procedure, or the establishment of intravenous access after deep sedation or general anesthesia that has been induced because of poor patient cooperation. To the extent that safety is not significantly compromised during these selected circumstances, this proposal should produce a net benefit in that affected patients would newly be able to get needed dental care.

A pulse oximeter is currently required for monitoring oxygen saturation for minimal sedation, moderate sedation, and deep sedation. The Board proposes to also require that a pulse oximeter be used in sedation through inhalation analgesia (nitrous oxide only). A pulse oximeter costs approximately \$15. To the extent that oxygen saturation problems may occur in nitrous oxide only sedation, and that the use a pulse oximeter increases the likelihood that these problems are detected, this proposed amendment likely produces a net benefit.

For moderate sedation,<sup>2</sup> the current regulation requires that there be at least a two-person treatment team. The team must include the operating dentist and a second person to monitor the patient and to assist. The monitor may be a dental hygienist, dental assistant, or nurse who is under the operating dentist's direction, or another dentist, anesthesiologist, or certified registered nurse anesthetist.

The Board proposes to require that the treatment team consist of at least three people with moderate sedation. The Board does not believe that the dentist doing the dental procedure nor the person assisting the operating dentist can appropriately monitor the patient while doing other duties. Based upon public comment, there are dentists who believe that a two-person team is sufficient for patient safety.

Adding a third person to the team would add costs for dental practices that are not already using a three-person (or more) treatment team. Some practices may have to hire entirely new staff. Of the professions that would qualify to be the third person in the team, dental assistant

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<sup>2</sup> Moderate sedation is defined as “a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.”

would be the least costly to hire.<sup>3</sup> Dental assistants earn on average \$44,640 in wages annually in the Commonwealth.<sup>4</sup> This figure does not include benefits.

Other practices may be able to take existing staff away from their existing duties for part of the workday. This produces cost as well; these employees would not be producing the work associated with their existing duties during the time they are taken away to be the third member of the moderate sedation treatment team. The value (per hour) of this cost can be estimated to be the average hourly wage of these workers. Dental assistants earn on average \$21.46 per hour in Virginia.<sup>5</sup>

Adding a third person to the treatment team may or may not make a large difference in patient safety for moderate sedation. Without this information, an accurate comparison of the benefits to the costs cannot be made.

### **Businesses and Entities Affected**

The proposed amendments affect dental practices and other venues where dental services are provided. Most would qualify as small businesses. There are 7,463 dentists licensed in Virginia.

### **Localities Particularly Affected**

The proposed amendments do not disproportionately affect particular localities.

### **Projected Impact on Employment**

The proposal to require that at least three people be part of the treatment team for moderate sedation may result in some dental practices hiring additional staff.

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

The proposal to require that at least three people be part of the treatment team for moderate sedation would increase costs for dental practices that provide moderate sedation and do not already include at least three people as part of the treatment team. This may moderately reduce the net value of affected dental practices.

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<sup>3</sup> See U.S. Bureau of Labor Statistics State Occupational Employment and Wage Estimates: [https://www.bls.gov/oes/current/oes\\_va.htm](https://www.bls.gov/oes/current/oes_va.htm)

<sup>4</sup> Ibid

<sup>5</sup> Ibid

## **Real Estate Development Costs**

The proposed amendments do not affect real estate development costs.

## **Small Businesses:**

### **Definition**

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.”

### **Costs and Other Effects**

The proposal to require that at least three people be part of the treatment team for moderate sedation would increase costs for dental practices that utilize moderate sedation and do not already include at least three people as part of the treatment team.

### **Alternative Method that Minimizes Adverse Impact**

If adding a third person to moderate sedation treatment teams makes a large difference in patient safety, then there are no clear alternative methods that both reduce adverse impact and meet the intended policy goals. If adding a third person to moderate sedation treatment teams does not make a large difference in patient safety, then eliminating the proposed required third person would reduce adverse impact without significantly affecting the policy goal of patient safety.

## **Adverse Impacts:**

### **Businesses:**

The proposal to require that at least three people be part of the treatment team for moderate sedation would increase costs for dental practices that utilize moderate sedation and do not already include at least three people as part of the treatment team.

### **Localities:**

The proposed amendments are unlikely to adversely affect localities.

### **Other Entities:**

The proposed amendments are unlikely to adversely affect other entities.

## **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(C): 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.