



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60-20-10 et seq.
Regulation title	Regulations Governing the Practice of Dentistry and Dental Hygiene
Action title	Registration and practice of expanded practice dental assistants
Document preparation date	5/27/08

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Board intends to amend its regulations to specify requirements for the registration and the scope of practice of a dental assistant II in accordance with Chapters 84 and 264 of the 2008 Acts of the Assembly.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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 (§ 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. ...

The specific statutory authority for promulgation of regulations pertaining to dental assistants II is found in:

§ [54.1-2729.01](#). *Practice of dental assistants.*

A. A person who is employed to assist a licensed dentist or dental hygienist by performing duties not otherwise restricted to the practice of a dentist, dental hygienist, or dental assistant II, as prescribed in regulations promulgated by the Board may practice as a dental assistant I.

B. A person who (i) has met the educational and training requirements prescribed by the Board; (ii) holds a certification from a credentialing organization recognized by the American Dental Association; and (iii) has met any other qualifications for registration as prescribed in regulations promulgated by the Board may practice as a dental assistant II. A dental assistant II may perform duties not otherwise restricted to the practice of a dentist or dental hygienist under the direction of a licensed dentist that are reversible, intraoral procedures specified in regulations promulgated by the Board.

The Dental Practice Act (Chapter 27 of Title 54.1) permits the practice of dental assistants:

§ [54.1-2712](#). *Permissible practices.*

The following activities shall be permissible:

1. Dental assistants or dental hygienists aiding or assisting licensed dentists in accordance with regulations promulgated pursuant to § [54.1-2729.01](#); ...

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

In its proposed regulatory action, the Board intends to specify the qualifications for registration to practice as a dental assistant II as required by Chapters 84 and 264 of the 2008 Acts of the Assembly. Dental assistants will have expanded duties beyond chairside assisting and taking radiographs, which are the typical duties currently delegated to a dental assistant, to include some patient care duties currently performed by a dental hygienist or a dentist. In conformity with the legislative, a person will be required to hold certification from a national credentialing body, complete an educational program, receive training as prescribed by the Board and be

registered with the Board in order to qualify as a dental assistant II or expanded duty dental assistant.

Dentists have expressed interest in expanded duties for assistants as a means of providing care to a greater number of patients. In some areas of the state, there is a shortage of hygienists available for employment in dental offices, so certain aspects of patient care could be delegated to “expanded duty dental assistants,” which would enable the dentist to focus on care that necessitates a higher level of knowledge and skill.

To ensure the services can be safely provided by a dental assistant II, the Board will set in the regulation the evidence of minimal competency that a dental assistant must demonstrate in order to be registered and authorized to perform expanded duties. Credentials would likely include completion of an approved dental assisting educational program, specific training on performance of certain dental procedures, and certification by a national credentialing body such as the Dental Assisting National Board (DANB).

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

A Notice of Intended Regulatory Action was published on August 24, 2005 to consider amendments to regulation to expand the duties permissible for dental assistants to include such tasks as supragingival scaling and carving and packing amalgam. The inclusion of supragingival scaling as a delegable duty generated strong opposition, but there was general support for allowing expanded duties. Following publication of the NOIRA, the Board concluded that legislation was necessary to authorize a new category of practitioner – an expanded duty dental assistant. To that end, an Ad Hoc Committee on Dental Assistant Legislation was convened in April of 2006 to assist with development of statutory language for dental assistants. Persons from the Virginia Dental Association, the Virginia Dental Hygienists’ Association, the Virginia Dental Assisting Association, the Commonwealth Dental Hygiene Society, and the Dental Assisting Program at J. Sargeant Reynolds Community College joined three members of the Board on the Committee.

The recommendation of the committee was that legislation should provide for: 1) A dental assistant I is a person who is employed to assist a licensed dentist or dental hygienist by performing such duties as may be prescribed by the Board; and 2) A dental assistant II is a person who is registered with the Board, holds a certification from an ADA-recognized credentialing organization and has met such additional educational and training requirements as prescribed by regulations of the Board. A dental assistant II may perform such duties that are reversible intraoral procedures and under the direction of a licensed dentist as may be prescribed by regulations of the Board.

Subsequently, the Board voted to propose legislation that was inconsistent with the recommendation of the Committee in that it would not require registration of a DAII by the

Board and it would not specify that delegated duties must be reversible. When the draft legislation was circulated to interested parties, there was considerable opposition to the proposal as presented. Therefore, legislation for expanded duty dental assistants was not approved for introduction in the 2007 Session of the General Assembly.

In 2007, the Board reconsidered its position on expanded duty assistants and voted to request introduction of legislation that mirrored the recommendations of the Ad Hoc Committee. The legislation was approved and carried by Del. Bowling as HB1431 and by Sen. Lucas as SB151 in the 2008 General Assembly.

In its discussion of the issues surrounding expanded duty assistants, the Board has received and reviewed information on expanded duties for dental assistants in other states, the criteria for certification by DANB and the content and curriculum of the educational programs in dental assisting currently in existence in Virginia.

According to the State Fact Booklet produced by the Dental Assisting National Board, neighboring states provided the following information about dental assistant qualifications and practice:

Maryland	Requires registration to perform intra-oral duties or expose radiographs; requires certification to perform intra-oral duties	Prohibits oral prophylactic procedures, including scaling and polishing; condensing, carving or finishing any restoration (amalgam)
North Carolina	2 classes of dental assistants – DA I and DA II. DAII has to qualify by education or examination	List of permissible duties does not include scaling; DA allowed to place amalgam but not to carve
Kentucky	Certification required demonstrating education and experience	Prohibits supra- and subgingival scaling; allows placing, carving and polishing of amalgam
Tennessee	2 levels of dental assistants – practical and registered; requires registration by board based on education & examination	Coronal polishing allowed with additional certification; prohibits “cutting procedures on hard or soft tissues”; allowing registered DA to place amalgam for condensation by the dentist
West Virginia	Dental assistants not registered or certified	Does not permit “any intraoral procedure that contributes to or results in an irremediable alteration of the oral anatomy”

In the development of proposed regulations for expanded duties for dental assistants, the Board will look at models that exist in other states, as well as the credentials, educational opportunities, and assessments that will ensure minimal competency

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.