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Fast-Track Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC60-21
VAC Chapter title(s)	Regulations Governing the Practice of Dentistry
Action title	Corrections to fee and renewal sections
Date this document prepared	6/24/19

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 (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.

A renewal fee for a mobile clinic/portable dental operation was inadvertently omitted from subsection B of section 40 when Chapter 20 was divided into four separate chapters and Chapter 21, Regulations Governing the Practice of Dentistry was promulgated in 2015. The application fee for mobile clinic/portable dental operations was included in subsection A, and the renewal fee for those entities was included in subsection H, which set out a renewal fee reduction for 2016. Subsequently, those entities were also included in the renewal fee reduction for 2018. There has been no change in the renewal fee for those entities, but there is a need to correct the error by including them on the list found in subsection B for renewals and in subsection C for late renewal fees. The renewal date for mobile clinics/portable operations was also omitted from section 240.

Additionally, the application fee for temporary dental permits issued pursuant to § 54.1-2715 was omitted in the adoption of Chapter 21. Currently, there are no dentists who hold such a permit, but the fee needs to be included should the Board receive an application. The information added in parentheses behind certain fees provides further explanation and identification of those fees.

Finally, the fee reactivation of an inactive license is reduced from the cost of renewing an active license (\$285) to the difference between the renewal of an inactive license (\$145) and an active license. The end result is a dentist could reactivate an inactive license with a fee of \$140.

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.

N/A

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.

The Board of Dentistry approved a fast-track action for 18VAC60-21-10 et seq., Regulations Governing the Practice of Dentistry on June 21, 2019.

Mandate and Impetus

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, or board decision). 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."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The impetus for the changes was clarification of current fees and corrections to oversights in reorganization of Chapter 20.

The proposed amendments were adopted as a fast-track action because they are consistent with previously adopted fees or is less costly for reactivation of an inactive license. Therefore, it is not expected to be controversial and is appropriate for fast-track action. The action was originally adopted as an exempt action, but the Office of the Attorney General advised that it should be promulgated as a fast-track action.

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 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 levy fees and 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: ...

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 (§ 2.2-4000 et seq.) that 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.)...

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 purpose of this action is to make corrections in current regulations for consistency with Chapter 20 before it was divided into four separate chapters. The regulatory changes will ensure that mobile clinics and portable dental operations that often serve children in underserved school districts will be able to continue renewing their permits and continue offering dental services that protect health and welfare of the public.

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.

A renewal fee for a mobile clinic/portable dental operation was inadvertently omitted from subsection B of section 40 when Chapter 20 was divided into four separate chapters and Chapter 21, Regulations Governing the Practice of Dentistry was promulgated in 2015. The application fee for mobile clinic/portable dental operations was included in subsection A, and the renewal

fee for those entities was included in subsection H, which set out a renewal fee reduction for 2016. Subsequently, those entities were also included in the renewal fee reduction for 2018. There has been no change in the renewal fee for those entities, but there is a need to correct the error by including them on the list found in subsection B for renewals and in subsection C for late renewal fees. Additionally, the renewal date for mobile clinics/portable operations was omitted from section 240.

Additionally, the application fee for temporary dental permits issued pursuant to § 54.1-2715 was omitted in the adoption of Chapter 21. Currently, there are no dentists who hold such a permit, but the fee needs to be included should the Board receive an application. The information added in parentheses provides further explanation and identification of current fees.

Finally, the fee reactivation of an inactive license is reduced from the cost of renewing an active license (\$285) to the difference between the renewal of an inactive license (\$145) and an active license. The end result is a dentist could reactivate an inactive license with a fee of \$140.

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.

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- 1) The primary advantage to the public is the ability of mobile dental clinics or portable dental operations to be able to renew their permits. There are no disadvantages.
 - 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 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...*” The proposed amendments are a foreseeable result of the statute requiring the Board to protect the safety and health of patients in the Commonwealth. Any restraint on competition that results from this regulation is in accord with the General Assembly’s policy as articulated in § 54.1-100 and is necessary for the preservation of the health, safety, and welfare of the public.

Requirements More Restrictive than Federal

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

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, 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. 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. There are no on-going expenditures.</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>There are no costs to other agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The benefit is clarity in the Board's regulations.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no costs.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits.</p>

Impact on Other Entities

<p>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.</p>	<p>Dentists with a temporary dental permit pursuant to 54.1-2715.</p> <p>Mobile dental clinics and portable dental operations have paid renewal fees each year (included in the fee reduction listing for 2018).</p> <p>Dentists who want to reinstate a moderate sedation or deep sedation/general anesthesia permit that has lapsed for more than one year</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are no dentists with a temporary dental permit.</p> <p>There are 28 mobile dental clinics/portable dental operations.</p> <p>It is unknown how many sedation/anesthesia permit holders would be affected; the Board has had requested from a couple of dentists to reinstate lapsed permits.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p> <p>c) fees;</p> <p>d) purchases of equipment or services; and</p> <p>e) time required to comply with the requirements.</p>	<p>There are no costs to affected entities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit will be consistency in the fee section of regulation and a reduction in the fee for someone who decides to reactivate an inactive license.</p>

Alternatives to Regulation

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 correcting the oversight in regulation.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

Fees and renewal dates are fixed in regulation; there are no other methods.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Dentistry is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
40	Sets out the fees required for regulation of dental entities	<p>In subsection A, Code sections are added in parenthesis to clarify the various types of licenses and permits that the Board is authorizes to issue. The temporary dental permit is utilized for practice in certain settings by a dentist who is otherwise not qualified for full licensure. The application fee is not a new fee but was inadvertently omitted when the chapter was reorganized and re-promulgated. There are currently no dentists holding the temporary permit.</p> <p>In subsection B, the additional to the dental renewal fee is clarifying information to explain that the active renewal fee applies to all types of dental licenses.</p> <p>The renewal fee for mobile dental clinics/portable operations fee is not a new fee but was inadvertently omitted when the chapter was reorganized and re-promulgated. It is included in subsection H, which sets out a one-time fee reduction for 2018. Likewise, the late fee was omitted in subsection C and is added back in this action.</p> <p>In subsection D, fees are added for reinstatement of a moderate sedation permit or a deep sedation/general anesthesia permit. The fee principles established by the Department state that a reinstatement fee should include the cost of renewal, the late fee, and administrative time for establishing qualification for reinstatement. Therefore, a fee should be established to cover the cost of reinstatement of a permit that has been lapsed for more than one year.</p>
220	Sets out requirements for an inactive license and reactivation of such a license	The amendment to subsection B will allow a dentist who has taken inactive status to reactivate his license before the next renewal by paying the difference between the inactive and active renewal fees – rather than paying the full fee for renewal of an active license. The regulation is identical to regulations for reactivation in Medicine and Nursing.
240	Sets out the dates for renewal of licenses and permits	The renewal date for mobile dental clinics and portable operations was inadvertently omitted in the reorganization of the chapter.