

**Report From Agency**

**STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD**

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**IN THE MATTER OF RULEMAKING :  
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE  
DENTISTRY EXAMINING BOARD : CR 15-095**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS: n/a**

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

The objective of the proposed rule is to implement 2013 Act 244 by doing the following:

- Create a definition of “mobile dentistry program”;
- Define the activities that constitute the operation of a mobile dentistry program for purposes of the registration requirement;
- Requirements for obtaining a registration;
- Requirements for patient access to dental records; and
- Standards of conduct for the operation of a mobile dentistry program, the provision of dental services through a mobile dentistry program and the use of portable dental equipment.

**V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

**The Dentistry Examining Board held a public hearing on January 6, 2016. The following people either testified at the hearing, or submitted written comments:**

Mara Brooks representing Wisconsin Dental Association  
Ryan Braden, DDS representing Wisconsin Dental Association  
Linda Jorgenson representing Wisconsin Dental Hygienists’ Association  
Robyn Kibler representing Wisconsin Oral Health Coalition  
Chace Wolff, RDH, Walworth County Seal a Smile Program Manager  
Lisa Davidson representing Wisconsin Primary Health Care Association  
Nancy Rublee representing Price County Department of Health & Human Services

Debra DeNure representing Madison and Dane County Public Health  
Cindy Bodendein, RN, representing Sauk County Health Department  
Smriti Khare, President, Children's Medical Group for Children's Hospital of Wisconsin  
Matt Crespino representing Children's Health Alliance of Wisconsin  
Mark Moss DDS representing Department of Health Services  
Matthew Burr representing Special Olympics Wisconsin

**The Dentistry Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:**

The Wisconsin Dental Association is in favor of the proposed rules as currently drafted as they believe it is important for children who are identified by mobile programs as having the most urgent needs to receive a referral for restorative care. It is important implementation of this rule happen as soon as possible and without further delay.

The Wisconsin Dental Hygienists' Association supports the current exclusions from registration and the mobile dentistry program's registration requirements. They also support the requirements for access to dental records and the standard for recordkeeping to be no different than for any other dental practice. The Wisconsin Dental Hygienists' Association opposes a written protocol for follow-up care which includes a written agreement with at least one provider for emergency treatment. The opposition is based upon no requirement is made for other dental providers to have a referral network in place with written agreements to provide emergency care and the difficulty in obtaining such a written agreement.

Wisconsin Oral Health Coalition is concerned with a requirement to have a written memorandum of agreement without any ability to gain an exemption. They put forth a proposal to exempt programs receiving some funding from the Department of Health Services and to avoid an uneven playing field allow those that are privately funded to enter into an memorandum of understanding with Department of Health Services directly. Wisconsin Oral Health Coalition believe programs like Special Olympics screenings, state surveillance projects and other volunteer programs not charging patients or billing should be exempt.

Ms. Wolff is concerned with a requirement to have a written memorandum of agreement for referrals. The Walworth County Seal a Smile Program often obtains verbal agreements for emergency referrals.

Wisconsin Primary Health Care Association requests an online directory of registered mobile dentistry programs and a link to this resource on the Department of Health Services Oral Health Program webpage. WPHCA supports a memorandum of understanding between mobile programs and area dentists, however, if a mobile program makes attempts unsuccessfully to obtain a signed memorandum of understanding, the Board should provide an alternative way for this program to continue operating. WPHCA supports privately operating programs to enter into an agreement with the Department of Health Services similar to the partially publically funded programs.

Ms. Rublee would like to exempt local health departments with Seal a Smile programs and local health departments who work under physician orders. Ms. Rublee requests the mileage limitations be removed for referrals and the requirement of a written memorandum of understanding.

Ms. DeNure is concerned the proposed rules will create barriers for health care and medical providers, specifically nurses, that provide preventative fluoride varnish treatments.

Ms. Bodendein requested exemptions for dental or dental hygiene care which is provided for fewer than 5 days without payment and care provided by or under the direction of a medical provider. Ms. Bodendein opposes a requirement to obtain a memorandum of understanding with a dentist.

Children's Medical Group strongly encourages an exemption for non-dental providers, mainly physicians and nurses, from the mobile dentistry definition. They also encourage programs which have a protocol in place for referral and have attempted to obtain a written memorandum of understanding be exempt from the requirement.

Children's Health Alliance of Wisconsin would like add exemptions for dental or dental hygiene care provided for fewer than 5 days without payment and care provided by or under the direction of a physician. Children's Health Alliance of Wisconsin requests an exemption from a requirement to have a written memorandum of understanding with a dentist for the Seal a Smile programs because they already provide evidence of protocols to obtain funding. The suggestion is that privately funded programs unable to find a dentist willing to sign a memorandum of understanding be able to enter into an agreement with the Department of Health Services similar to the way those publically funded do. In addition, the requirement of a memorandum of understanding creates a restriction of trade issue by requiring direct supervision or authorization of a dentist which unfairly limits fair competition.

Dr. Moss provided information, but did not speak in favor or against the rule. Dr. Moss suggested language which more accurately reflected the Department of Health Services screening assessments. He suggested the protocol for follow-up care meet one of the following: a written agreement with at least one provider for emergency treatment within the 60 mile radius or have a memorandum of understanding from DHS indicating appropriate oversight. Dr. Moss indicated those completely funded from private sources would not be able to have a DHS memorandum of understanding. Upon questioning by the Board, Dr. Moss provided information regarding DHS does not require a referral be given to the patient and the oversight provided is removal of state funding.

Special Olympics Wisconsin believes there should be rules governing mobile dentistry programs, but believes the free screenings for individuals with intellectual disabilities, Special Smiles, should be exempt from rules which might limit their ability to provide free screenings.

**The Dentistry Examining Board explains modifications to its rule-making proposal prompted by public comments as follows:**

The Board clarified that health care practitioners practicing within the scope of a license not governed by ch. 447, Stats. are not providing dental hygiene care or dentistry and are excluded from the definition of a mobile dentistry program.

The Board clarified the language pursuant to the suggestion by the Department of Health Services to more accurately reflect that Department's screening assessments. Therefore, the new language in DE 10.02 (1) (b) 3. reads, "Department of health services screening assessments conducted as part of the Wisconsin Oral Health surveillance program."

The Board considered and weighed both the concerns regarding programs to provide referrals for follow-up care and the public health need for patients to receive follow-up care. The Board slightly modified the requirements. The first requirement is for there to be protocols in place for follow-up care in a facility within a 60 mile radius. The protocols for follow-up care do not require written memorandum of understandings and provides for the follow-up care to be a reasonable distance for patients to travel. The second requirement is for there to be an agreement with at least one provider for emergency treatment. This agreement does not require a written memorandum of understanding but does ensure that a referral will be given to patients who need emergency dental care.

The Board did not exempt the programs which receive some funding from the Department of Health Services. It is not in the public's interest to create an unlevel playing field based upon funding sources. All mobile dentistry programs are to meet the same standards. Furthermore, the Department of Health Services is unable to have a memorandum of understanding with programs which do not receive funding through the Department; does not require programs receiving their funding to provide referrals for emergency care; and the oversight arm of the Department of Health Services is to remove funding which is different than the jurisdiction given to the Dentistry Examining Board.

## **VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

**Comment 2c:** Should s. DE 10.02 require an applicant to include, in the application, proof that the applicant has established the protocol for follow-up care, as required under s. DE 10.04, and procedures for a patient to access his or her records, as required under s. 447.02 (2) (f), Stats.

**Response:** At the time of application the applicant may not know all the locations the mobile dentistry program will visit, therefore would be unable to submit proof of a written protocol as required in s. DE 10.04 due to the fact the requirements in s. DE 10.04 are contingent upon where the care is being provided. Section 447.02 (2) (f), Stats. requires the board to promulgate rules requiring a mobile dentistry program registrant establish procedures for a patient treated in the mobile dentistry program to access his or her patient records. These rules require a mobile dentistry program to provide access to patient records pursuant to s. DE 10.03 and failure to comply is considered unprofessional conduct pursuant to DE 10.05 (1) and subject to potential disciplinary action.

**Comment 2f:** The rule should specify which state agency is referred to by the term “Department” in s. DE 10.05 (1). In addition, “department” should not be capitalized.

**Response:** The term “department” is defined in s. DE 1.02 (5) as the department of safety and professional services. The definition applies to the rules of the dentistry examining board, therefore, s. DE 10.05 (1) is not required to specify the state agency.

**Comment 5c:** The rule should specify how a person’s registration may be reinstated following any disciplinary action that affects the person’s registration status.

**Response:** The process utilized by the Board would be similar to a dentist or dental hygienist who has been disciplined. The restoration of a registration to full, active status following any disciplinary action is dependent upon the facts and requirements in the disciplinary order and, therefore, there are no Board rules addressing the specifics for restoring a license to unencumbered status.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

## **VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:**

The Small Business Regulatory Review Board determined the rules will not have a significant economic impact on a substantial number of small businesses.