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| <h2 style="margin: 0;">Regulatory Analysis Form</h2> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0; font-size: small;">(All Comments submitted on this regulation will appear on IRRC's website)</p> | <p style="margin: 0;">INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p style="margin: 0; font-size: small;">2019 MAR 12 P 2:49</p> <p style="margin: 0; font-size: small; transform: rotate(90deg);">RECEIVED IRRC</p> |
| <p>(1) Agency: Department of State, Bureau of Professional and Occupational Affairs, State Board of Dentistry</p> | <p>IRRC Number: 3228</p> |
| <p>(2) Agency Number: 16A Identification Number: 16A-4633</p> | |
| <p>(3) PA Code Cite: 49 Pa. Code § 33.205b</p> | |
| <p>(4) Short Title: Public Health Dental Hygiene Practitioner Practice Sites</p> | |
| <p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Ariel E. O'Malley, Board Counsel, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 717-787-0251) kmaloney@pa.gov.</p> <p>Secondary Contact: Cynthia Montgomery, Deputy Chief Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 717-787-0251) cymontgome@pa.gov.</p> | |
| <p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> PROPOSED REGULATION</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p> | <p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p> |
| <p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The purpose of the proposed amendments is threefold: (1) to clarify, by way of example, some of the acceptable practice sites included within the definition of "health care facilities" under section 802.1 of the Health Care Facilities Act (35 P.S. § 448.802a); (2) to expand the locations at which a public health dental hygiene practitioner may practice beyond just "personal care homes" to include other "facilities" regulated by the Department of Human Services as defined in section 1001 of the Human Services Code (62 P.S. § 1001); and (3) to add "an office or clinic of a physician who is licensed by the State Board of Medicine or the State Board of Osteopathic Medicine" as an acceptable location for the practice of public health dental hygiene practitioners. These additional sites are meant to expand access to dental hygiene services, oral health education and referrals to dentists. The proposal does not change the scope of practice of public health dental hygiene practitioners and does not change the requirement that the practitioner refer each patient to a licensed dentist on an annual basis.</p> | |

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 3(o) of the Dental Law (act) (63 P.S. § 122(o)) authorizes the Board to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board to carry out the provisions of the act. Section 11.9(b)(10) of the act (63 P.S. § 130j(b)(10)) authorizes the Board to determine other locations at which public health dental hygiene practitioners may practice.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No. However, the General Assembly signaled a need for the Board to consider other locations (as opposed to institutions) where public health dental hygiene practitioners may practice when it amended section 11.9(b)(10) by way of the Act of November 4, 2015 (P.L. 225, No. 60).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The proposed regulation expands access to care and oral health education provided by public health dental hygiene practitioners by adding additional facilities regulated by the Department of Human Services, as well as by adding physician offices or clinics to the list of acceptable practice sites for public health dental hygiene practitioners. The proposed regulation also benefits the regulated community by providing clarity by way of examples of health care facilities as defined by the Health Care Facilities Act and Human Services Act. This expanded access to care would also result in expanded referrals to licensed dentists and assist patients, particularly pediatric patients, obtain "dental homes." The approximate number of people who will benefit is unknown.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No. There are no Federal standards regulating the practice of public health dental hygiene practitioners.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will not adversely affect Pennsylvania's ability to compete with other states. Not all states within the Northeast region regulate public health dental hygiene practitioners, but many allow dental hygienists to practice in public health settings.

In Connecticut, there are no separate licenses for public health dental hygiene practitioners, but licensed dental hygienists may practice in public health facilities under the general supervision of a licensed dentist, which means the dentist does not have to be on the premises when the procedures are performed. The definition of public health facility includes outpatient clinics which is defined as an organization operated by a municipality or corporation, other than a hospital, that provides ambulatory medical care, including preventive and health promotion services.

In Delaware, there are no separate licenses for public health dental hygiene practitioners, but licensed dental hygienists may practice in public schools or state institutions under the general supervision of a licensed dentist, which means the dentist does not have to be on the premises when the procedures are performed. However, general supervision requires the patient be given the option to have a dentist present, the dentist reviews the treatment records of each patient prior to and following the treatment, and the dentist must perform at least one clinical examination of the patient within a 12-month period.

In Maine, there are no separate licenses for public health dental hygiene practitioners, but a “public health dental hygienist” is defined as a person who holds a license as a dental hygienist and who is authorized to practice public health dental hygiene. The “additional authority” to practice as a public health dental hygienist requires a written agreement with the supervising dentist that includes the level of supervision and verification that the services will be offered in a public health setting. Public health settings include, but are not limited to, public and private schools, medical facilities, nursing homes, mobile units, and “any other setting where adequate parameters of care, infection control, and public health guidelines can and will be followed”.

In Maryland, there are no separate licenses for public health dental hygiene practitioners, but qualified dental hygienists may practice under the general supervision of dentists in assisted living and long-term care facilities, government owned or operated facilities, facilities in which a program licensed by the Department of Health is operating, and federally qualified health centers.

In Massachusetts, there are no separate licenses for public health dental hygiene practitioners, but qualified dental hygienists practicing as a public health dental hygiene practitioner may practice in a public health setting without the supervision or direction of a dentist. However, the public health dental hygiene practitioner must enter into a collaborative agreement with a local or state government agency or institution or with a dentist. Public health settings include residences of the homebound, schools, nursing homes, clinics, medical facilities, and other facilities or programs deemed appropriate by the Department of Public Health.

In New Hampshire, a qualified dental hygienist may be certified as a public health dental hygiene practitioner and may then practice under “public health supervision” of a dentist and may practice in a school, hospital, or other institution, or for a homebound person without the dentist being present, provided the dentist has reviewed the records once in a 12-month period.

In New Jersey, there are no separate licenses for public health dental hygiene practitioners, but a dental hygienist may practice in an institution under general supervision by a dentist. “Institution” means any nursing home, veterans’ home, hospital or prison, or county facility providing inpatient care, supervision and treatment for persons with developmental disabilities. “General supervision” means acts performed pursuant to a dentist’s written order, control and full responsibility, but does not require the dentist’s presence.

In New York, there are no separate licenses for public health dental hygiene practitioners, but dental hygienists may practice in a school or public institution under the supervision of a dentist or, if practicing in a hospital, pursuant to a collaborative agreement with a dentist. The level of supervision required depends on the services performed.

In Ohio, there are no separate licenses for public health dental hygiene practitioners, but dental hygienists may practice in a hospital, school, dispensary or an institution, residence or facility, including a nursing home, residential care facility, or home for the aging. Qualified dental hygienists may provide dental hygiene services when the supervising dentist is not present if, among other conditions, the supervising dentist examined the patient not more than 1 year prior to the provision of services by the dental hygienist, and if the dental hygiene services are provided in a health care facility, a physician or registered nurse are present in the facility when the services are provided. Under the Oral Health Access Supervision Permit, the sites include the above as well as a women, infants and children clinic and any other location specified by the board that is in an area designated as a dental health resource shortage and that provides health care services to individuals who are Medicaid recipients and to indigent and uninsured persons. Even under the Oral Health Access Supervision program, however, the dental hygienist may not provide services to the same patient on a subsequent occasion until the patient has received a clinical evaluation by a dentist.

In Rhode Island, a public health dental hygiene practitioner may practice in a public health setting pursuant to a written collaborative agreement with a dentist. Public health settings include, but are not limited to, residences of the homebound, schools, nursing home and long-term care facilities, clinics, hospitals, medical facilities, community health centers licensed or certified by the department of health, mobile and portable dental health programs licensed or certified by the department of health and operated by a local or state agency, head start programs and any other facilities or programs deemed appropriate by the department of health. The public health dental hygiene practitioner must refer patients without a dental provider to a dentist, and if there are conditions present which require evaluation for treatment, and the patient has not seen a dentist as referred, the public health dental hygiene practitioner will make every practical or reasonable effort to schedule the patient with a dentist or community health center.

In Vermont, there are no separate licenses for public health dental hygiene practitioners, but qualified dental hygienists may perform tasks under the general supervision of dentists in public or private schools or institutions.

In West Virginia, upon application, dental hygienists may engage in public health practice in public health settings under the general supervision of a dentist. "Public health setting" means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the West Virginia Department of Health and Human Resources, public health facilities, homebound settings, accredited dental hygiene education programs and any other place designated by the board by rule (the board has not designated additional settings).

Based on these regulations from other states, this regulation will not place Pennsylvania at a competitive disadvantage.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

On January 20, 2017, the Board's Legislative/Regulatory Review Committee met with stakeholders and interested parties and was responsible for developing the proposed rulemaking, which was presented to the full Board at a meeting on May 19, 2017, at which time the Board voted to release an exposure draft to solicit additional input. On June 7, 2017, the Board, through its Counsel, sent an exposure draft of the proposal to over 140 interested parties and stakeholders who had identified themselves as interested in the Board's regulatory agenda. The Board received input from organizations including the Pennsylvania Dental Association (PDA), the Pennsylvania Academy of General Dentistry (PAGD), the Pennsylvania Dental Hygienists' Association (PDHA), the Pennsylvania Partnerships for Children, Public Citizens for Children and Youth, the Pennsylvania Association of Community Health Centers, the Pennsylvania Health Law Project, the Pennsylvania Rural Health Association, and the Keystone Rural Health Consortia, Inc. The Board also received input from approximately 108 individual dentists and 42 dental hygienists, including practitioners and educators, and a medical doctor. Since that time, the Board has discussed the proposed rulemaking at regular public Board meetings, including the meetings on July 28, 2017 and September 15, 2017, at which time the Board voted to proceed with promulgating this proposed rulemaking. These meetings are routinely attended by representatives of the regulated community including the PDA, PAGD and the PDHA.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Public health dental hygiene practitioners will be affected by this regulation, as will the organizations through which they provide services. There are 846 public health dental hygiene practitioners with active licenses. According to the Pennsylvania Department of Labor & Industry's Center for Workforce Information and Analysis, the vast majority of dental hygienists (95%) work in offices of dentists. Public health dental hygiene practitioners are authorized to work in public and private elementary and secondary schools, correctional facilities, health care facilities, day care centers, personal care homes, assisted living residences, nursing homes and other facilities regulated by the Department of Human Services, federally-qualified health centers, free and reduced-fee nonprofit health clinics, etc.

Small businesses are defined in Section 3 of the Regulatory Review Act, (71 P.S. § 745.3) which provides that a small business is defined by the SBA's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where public health dental hygienists are authorized to work, a small business

for assisted living facilities for the elderly and other residential care facilities, and for elementary and secondary schools are those with \$11.0 million or less in average annual receipts, as are offices of physicians. For residential mental health and substance abuse facilities, residential intellectual and developmental disability facilities, home health care services, and outpatient mental health and substance abuse centers, the threshold for a small business is \$15.0 million or less in average annual receipts. For skill nursing facilities and continuing care retirement communities the threshold is \$27.5 million, while for hospitals (general medical and surgical hospitals, psychiatric and substance abuse hospitals and specialty hospitals), the threshold is \$38.5 million. The Board believes that the vast majority of public health dental hygiene practitioners in the Commonwealth would be considered small businesses if self-employed, and the facilities in which they work would qualify under the above thresholds. For this reason, the Board has assumed that approximately 846 small businesses may be impacted by this rulemaking.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

There are 846 public health dental hygiene practitioners with active licenses who will be required to comply with these regulations.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

As the proposed regulation simply expands the number of allowable practice sites for the public health dental hygiene practitioners, the financial impact may include increased practice and income for self-employed public health dental hygiene practitioners. The social impact is expected to include increased access to dental hygiene services and oral health education for individuals. This impact alone is expected to outweigh any operating costs associated with increased practice sites.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

A common theme in the opposition from dentists and related associations is that when an individual is seen by a public health dental hygiene practitioner for dental hygiene services and oral health education, the individual may believe he or she has received full dental care and consequently will not seek dental care from a licensed dentist after the visit. However, public health dental hygiene practitioners are required to refer the patient to a dentist for full dental care at least once a year. The expansion of practice sites for public health dental hygiene practitioners will not only increase the access to dental hygiene services, but will also increase access to oral health education as well as referrals to dentists for full dental care. In this way, it is hoped that more patients will find a "dental home."

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There is no way to estimate the costs and/or savings to the regulated community because there are no explicit costs and there is no basis to estimate the number of additional practice sites nor the number of additional patients who will be seen.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no anticipated costs or savings to local governments associated with compliance with this rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to state government associated with the implementation of this regulation. The Board will continue to process applications for certification of public health dental hygiene practitioners and will continue to enforce the regulations.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The Board does not expect any additional legal, accounting or consulting related costs or any additional reporting, recordkeeping or other paperwork associated with this rulemaking.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

| | Current FY FY 18-19 | FY +1 FY 19-20 | FY +2 FY 20-21 | FY +3 FY 21-22 | FY +4 FY 22-23 | FY +5 FY 23-24 |
|------------------------|------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| SAVINGS: | | | | | | |
| Regulated Community | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Local Government | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| State Government | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Total Savings | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| COSTS: | | | | | | |
| Regulated Community | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Local Government | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| State Government | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Total Costs | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| REVENUE LOSSES: | | | | | | |
| Regulated Community | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Local Government | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| State Government | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Total Revenue Losses | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |

(23a) Provide the past three year expenditure history for programs affected by the regulation.

| Program | FY -3 FY 15-16 (Actual) | FY -2 FY 16-17 (Actual) | FY -1 FY 17-18 (Projected) | Current FY FY 18-19 (Budgeted) |
|--------------------------|-------------------------------|-------------------------------|----------------------------------|--------------------------------------|
| State Board of Dentistry | \$2,004,069.35 | \$2,205,952.23 | \$2,175,000.00 | \$2,272,000.00 |

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

All licensed public health dental hygiene practitioners would be subject to this regulation. If each of these public health dental hygiene practitioners were considered to be a small business, as many as 846 small businesses would be impacted.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

There are no projected reporting, recordkeeping or other administrative costs required for compliance with the proposed regulation.

- (c) A statement of probable effect on impacted small businesses.

The probable effect on small businesses would be an increase in operational sites, with increased operational income and expenses.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The Board did not identify any less costly alternative that would be consistent with the public health and safety.

- (25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The provisions of the proposed regulations would serve to increase access to dental hygiene services, oral health education and referrals to dentists. The Board expects these provisions to meet the needs of those who otherwise might not make a separate appointment for dental hygiene care, as well as those in urban and rural communities that are considered to be underserved by the dental community.

- (26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Board considered eliminating the additional practice site of an office or clinic of a licensed physician, but ultimately voted to include these sites and believes this regulation represents the least burdensome acceptable alternative consistent with the public health and safety.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

a) & b): There are no compliance or reporting requirements or schedules or deadlines for compliance included in the proposed rulemaking that would need to be altered for small businesses.

c) There are no compliance or reporting requirements that could be consolidated or simplified.

d) The regulations do not contain design or operational standards that need to be altered for small businesses.

e) There are no small business requirements included in the regulations from which small businesses would need to be exempted.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data served as the basis for this regulation.

(29) Include a schedule for review of the regulation including:

A. The length of the public comment period: **30 days**

B. The date or dates on which public meetings or hearings were held at which this proposal was discussed: **March 18, 2016; October 28, 2016; January 20, 2017; May 19, 2017; July 28, 2017 and September 15, 2017. See below for a schedule of upcoming board meetings.**

C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Summer of 2019.**

D. The expected effective date of the final-form regulation: **Upon publication as final.**

E. The date by which compliance with the final-form regulation will be required: **Upon publication as final.**

F. The date by which required permits, licenses or other approvals must be obtained:
N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings. The Board will meet on the following remaining dates in 2019: May 18, July 20, September 14 and November 16, 2019. More information can be found on the Department's website at (www.dos.pa.gov).

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: *Craig M. Elliott*
(DEPUTY ATTORNEY GENERAL)

State Board of Dentistry
(AGENCY)

BY: *[Signature]*

FEB 27 2019

DOCUMENT/FISCAL NOTE NO. 16A-4633

FEB 04 2019

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: *[Signature]*
John F. Erhard, III D.D.S.

Deputy General Counsel,
Chief Counsel,
Independent Agency
(Strike inapplicable title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable
Copy not approved.
Objections attached.
- Check if applicable.
No Attorney General approval
or objection within 30 day
after submission.

PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF DENTISTRY

49 Pa. CODE § 33.205b

PUBLIC HEALTH DENTAL HYGIENE PRACTITIONER PRACTICE SITES

The State Board of Dentistry (Board) proposes to amend § 33.205b (relating to practice as a public health dental hygiene practitioner), to read as set forth in Annex A.

Effective date

The amendments will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory authority

Section 3(o) of the Dental Law (act) (63 P.S. § 122(o)) authorizes the Board to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board to carry out the provisions of the act. Section 11.9(b)(10) of the act (63 P.S. § 130j(b)(10)) authorizes the Board to determine other locations at which public health dental hygiene practitioners may practice.

Background and purpose

On January 4, 2016, the Act of November 4, 2015 (P.L. 225, No. 60) (Act 60 of 2015) became effective, amending the section 11.9 of the Dental Law to allow the Board to add other “locations” it deems appropriate for practice by public health dental hygiene practitioners in addition to those enumerated by the General Assembly. Prior to this amendment, subsection (b)(10) permitted the Board to add other “institutions” it deemed appropriate. After the amendment became effective, the Board undertook a review of the existing locations at which a public health dental hygiene practitioner may practice, and found them to be acceptable. The enumerated locations limited the practice of a public health dental hygiene practitioner to nine types of locations. The common thread between these locations is that they are all licensed, operated or otherwise regulated by state or Federal agencies. At that time, the Board did not believe the change from the term “institutions” to the term “locations” necessitated a revision to the regulations.

On March 3, 2016, the Pennsylvania Dental Hygienists’ Association (PDHA) petitioned the Board seeking amendments to the regulations to include additional practice sites for public health dental hygiene practitioners. Specifically, the PDHA asked the Board to consider adding the following locations: private settings of hospice and home-bound patients; primary care settings, especially pediatric settings; and childcare settings. PDHA pointed out that the intent of the change in language in the act was to provide an opportunity for those home-bound or in hospice care to be able to receive preventive dental hygiene care in their homes or hospice settings. PDHA also pointed out that as the Commonwealth moves to shift more care from institutional to community settings, the need for home-bound patients to receive services will significantly increase and that transportation for home-bound patients is difficult to arrange and expensive. They argue that allowing public health dental hygiene practitioners with portable equipment to serve home-bound patients will provide a more affordable option and help to improve their oral health outcomes. Finally, PDHA pointed out that inter-professional care is now becoming a standard. Pediatric medical offices and other primary care settings see populations that need the most preventive oral health care on a regular basis for well-child visits. PDHA argues that medical

offices are “a perfect setting to deliver safe and effective oral hygiene education and services,” and that day care centers that provide child care to low-income individuals are taking care of the neediest populations. PDHA believes the inclusion of these locations would improve access to oral health care in the Commonwealth and would improve the oral health of our citizens. For all of these reasons, PDHA requested the Board consider the expansion of locations at which public health dental hygiene practitioners may practice.

The Board discussed PDHA’s proposal at meetings throughout 2016, and ultimately assigned the issue to the Board’s Legislative/Regulatory Review Committee, which met on January 20, 2017 with PDHA and other interested parties. The Committee developed the proposed rulemaking which was presented to the Board at its meeting on May 19, 2017. At that meeting, the Board authorized the release of the proposal as an “exposure draft” to interested parties and stakeholders. The exposure draft was sent out to over 140 individuals and entities on June 7, 2017. The Board received numerous comments both in support and in opposition to the proposal, which were discussed at meetings on July 28, 2017 and September 15, 2017. Ultimately, at the September 15, 2017 meeting, the Board voted to proceed with promulgating this proposed rulemaking as drafted.

The purpose of the proposed amendments is threefold: (1) to clarify, by way of example, some of the acceptable practice sites included within the definition of “health care facilities” under section 802.1 of the Health Care Facilities Act (35 P.S. § 448.802a); (2) to expand the locations at which a public health dental hygiene practitioner may practice beyond just “personal care homes” to include other “facilities” regulated by the Department of Human Services as defined in section 1001 of the Human Services Code (62 P.S. § 1001); and (3) to add “an office or clinic of a physician who is licensed by the State Board of Medicine or the State Board of Osteopathic Medicine” as an acceptable location for the practice of public health dental hygiene practitioners. These additional sites are meant to expand access to dental hygiene services, oral health education and referrals to dentists.

Description of the proposed amendments

The Board proposes to amend § 33.205b(c)(3) to clarify, by way of example, those types of health care facilities that are regulated by the Department of Health under the Health Care Facilities Act. It appeared to the Board that there had been some confusion among the regulated community on this issue. Further, the Board proposes to add a provision which would allow public health dental hygiene practitioners employed by health care facilities to provide services to patients of the health care facility in their place of residence or other independent living environment. Permitting the provision of services in these locations is consistent with the language provided in the definitions of “home care agency,” “home health care agency” and “hospice” in section 802.1 of the Health Care Facilities Act (35 P.S. § 448.802a), which include services provided by these health care facilities to patients in their homes or other independent living environments.

The Board also proposes to amend § 33.205b(c)(4) by deleting the term “personal care homes” and replacing it with “a facility” as defined in section 1001 of the Human Services Code (62 P.S. § 1001). The Board intends this replacement to expand access to the services provided by public health dental hygiene practitioners to additional facilities that are regulated by the

Department of Human Services, not only personal care homes. The Board is adding, by way of example, adult day care centers; child day care centers; family child care homes; boarding homes for children; mental health establishments; assisted living residences; nursing homes; hospitals; maternity homes and any other facility licensed and regulated by the Department of Human Services or a successor agency.

The Board is also proposing an amendment to § 33.205b(c)(6) to correct the citation to section 2 of the Older Adults Daily Living Centers Licensing Act (62 P.S. § 1511.2).

Finally, the Board proposes to add a new paragraph (c)(11) to add an additional acceptable location for public health dental hygiene practitioners to provide dental hygiene services to include “an office or clinic of a physician licensed by the State Board of Medicine or the State Board of Osteopathic Medicine.” The Board believes that this additional site will expand access to oral health care and education by public health dental hygiene practitioners and will assist patients, particularly pediatric patients, find a “dental home” by way of the annual referral to a dentist as required by § 33.205b(b).

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any fiscal impact relating to these amendments. Because public health dental hygiene practitioners will not be required to submit any additional paperwork based on their practice locations, these amendments will not require any further paperwork

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 12, 2019, the Board submitted a copy of this proposed rulemaking and a copy of a regulatory analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly, and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed rulemaking to Regulatory Counsel, Department of State at P.O. Box 69523, Harrisburg, PA 17106-9523; or RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-4633 (Public Health Dental Hygiene Practitioner Practice Sites)

John F. Erhard, III, D.D.S.
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

§ 33.205b. Practice as a public health dental hygiene practitioner.

(a) *Scope of professional practice.* A public health dental hygiene practitioner may perform the dental hygiene services set forth in § 33.205(a)(2) – (6) (relating to practice as a dental hygienist) in the practice settings identified in subsection (c) without the authorization, assignment or examination by a dentist. A public health dental hygiene practitioner may perform the dental hygiene services set forth in § 33.205(a)(1) and (7) in accordance with § 33.205(d).

(b) *Requirement of referral.* A public health dental hygiene practitioner shall refer each patient to a licensed dentist on an annual basis. Documentation of the referral must be maintained in the patient's dental record. The failure of the patient to see a dentist as referred will not prevent the public health dental hygiene practitioner from continuing to provide dental hygiene services to the patient within the scope of professional practice set forth in subsection (a).

(c) *Practice settings.* A public health dental hygiene practitioner may perform dental hygiene services without the supervision of a dentist in the following practice settings:

- (1) Public and private educational institutions that provide elementary and secondary instruction to school aged children under the jurisdiction of the State Board of Education, and in accordance with all applicable provisions of the Public School Code of 1949 (24

P.S. §§ 1-101—27-2702), the regulations relating to the certification of professional personnel in 22 Pa. Code Chapter 49 (relating to certification of professional personnel), and the regulations of the Department of Health in 28 Pa. Code § 23.35 (relating to dental hygienists).

(2) Correctional facilities. For purposes of this section, correctional facilities include Federal prisons and other institutions under the jurisdiction of the United States Department of Justice, Bureau of Prisons which are located within this Commonwealth; institutions, motivational boot camps and community corrections centers operated or contracted by the Department of Corrections; and jails, prisons, detention facilities or correctional institutions operated or contracted by local, county or regional prison authorities within this Commonwealth.

(3) (i) Health care facilities, as defined in section 802.1 of the Health Care Facilities Act (35 P. S. § 448.802a).

(ii) By way of example, a health care facility includes, but is not limited to, a general, chronic disease or other type of hospital; a home health care agency; a home care agency; a hospice; a long-term care nursing facility; a cancer treatment center; an ambulatory surgical facility or any other facility licensed and regulated by the Department of Health or a successor agency.

(iii) For purposes of this section, services provided by a health care facility to patients in their places of residence or other independent living environment are included as acceptable practice locations for public health dental hygiene practitioners.

- (4) [Personal care homes] (i) A “facility”, as defined in section 1001 of the [Public Welfare] Human Services Code (62 P.S. § 1001).
- (ii) By way of example, a facility includes, but is not limited to, an adult day care center; child day care center; family child care home; boarding home for children; mental health establishment; personal care home; assisted living residence; nursing home, hospital or maternity home or any other facility licensed and regulated by the Department of Human Services or a successor agency.
- (5) Domiciliary care facilities, as defined in section 2202-A of The Administrative Code of 1929 (71 P. S. § 581-2).
- (6) Older adult daily living centers, as defined in section 2 of the Older Adult Daily Living Centers Licensing Act (62 P. S. [§ 10225.102] § 1511.2).
- (7) Continuing-care provider facilities, as defined in section 3 of the Continuing-Care Provider Registration and Disclosure Act (40 P. S. § 3203).
- (8) *Federally-qualified health centers*, as defined in section 1905(1)(2)(B) of the Social Security Act (42 U.S.C.A. § 1369(1)(2)(B)). For purposes of this section, the term includes Federally-qualified health center lookalikes that do not receive grant funds under section 330 of the Public Health Service Act (42 U.S.C.A. § 254b).
- (9) Public or private institutions under the jurisdiction of a Federal, State or local agency.
- (10) Free and reduced-fee nonprofit health clinics.
- (11) An office or clinic of a physician who is licensed by the State Board of Medicine or the State Board of Osteopathic Medicine.

(d) *Recordkeeping.* A public health dental hygiene practitioner shall maintain a dental record which accurately, legibly and completely reflects the dental hygiene services provided to the patient. The dental record must be retained for at least 5 years from the date of the last treatment entry. The dental record must include, at a minimum, the following:

- (1) The name and address of the patient and, if the patient is a minor, the name of the patient's parents or legal guardian.
- (2) The date dental hygiene services are provided.
- (3) A description of the treatment or services rendered at each visit.
- (4) The date and type of radiographs taken, if any, and documentation demonstrating the necessity or justification for taking radiographs, as well as the radiographs themselves.
- (5) Documentation of the annual referral to a dentist.



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF DENTISTRY**

**Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7162**

March 12, 2019

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Dentistry
16A-4633: Public Health Dental Hygiene Practitioner Practice Sites

Dear Chairman Bedwick:

Enclosed is a copy of a proposed rulemaking package of the State Board of Dentistry pertaining to Public Health Dental Hygiene Practitioner Practice Sites.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Erhard, III".

John F. Erhard, III, DDS, Chairperson
State Board of Dentistry

AEO:bmz
Enclosure

cc: K. Kalonji Johnson, Acting Commissioner of
Professional and Occupational Affairs
Cynthia K. Montgomery, Deputy Chief Counsel
Department of State
Ariel E. O'Malley, Counsel
State Board of Dentistry
State Board of Dentistry

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-4633
SUBJECT: Public Health Dental Hygiene Practitioner Practice Sites
AGENCY: DEPARTMENT OF STATE
 Bureau of Professional and Occupational Affairs
 State Board of Dentistry

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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2019 MAR 12 P 2:49

FILING OF REGULATION

| DATE | SIGNATURE | <u>DESIGNATION</u> |
|---------|------------------------|--|
| | | HOUSE COMMITTEE ON PROFESSIONAL LICENSURE |
| 3/12/19 | <i>Cathy O'Donnell</i> | MAJORITY CHAIR <u>Rep. David Hinkernell</u> |
| 3/12/19 | <i>Susan Furgu</i> | MINORITY CHAIR <u>Rep. Harry A. Readshaw</u> |
| | | SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE |
| 3/12/19 | <i>Tim Blacereh</i> | MAJORITY CHAIR <u>Sen. Robert M. Tomlinson</u> |
| 3/12/19 | <i>Jessie Booth</i> | MINORITY CHAIR <u>Sen. Lisa M. Boscola</u> |
| 3/12/19 | <i>K Cooper</i> | INDEPENDENT REGULATORY REVIEW COMMISSION |
| | | ATTORNEY GENERAL (for Final Omitted only) |
| 3/12/19 | <i>Beth Pappas</i> | LEGISLATIVE REFERENCE BUREAU (for Proposed only) |