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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 188**

127th General Assembly  
(As Introduced)

**Reps. Adams and Boyd, J. McGregor, Peterson, Flowers, Aslanides, Fessler, Otterman, Stebelton, Huffman, Raussen, Healy**

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### **BILL SUMMARY**

- Permits a dental hygienist to enter into a collaboration agreement with a dentist to provide certain services at specified facilities without the dentist being physically present and without prior examination by the dentist.
- Requires a dental hygienist to submit written evidence of meeting certain educational requirements to the dentist who is to be the collaborating dentist under the agreement and permits the dentist to personally observe the hygienist perform the services to be provided.
- Requires collaboration agreements to have certain characteristics, be maintained by both the dental hygienist and dentist, be possessed by each facility where a dental hygienist practices under an agreement, and be provided to the State Dental Board at the Board's request.
- Requires a dental hygienist, before performing services on a patient under a collaboration agreement, to provide the patient or the patient's representative with a consent to treatment form and to secure the patient's or representative's signature or mark on it.
- Requires a dental hygienist to refer the patient to the collaborating dentist following the provision of services under an agreement.
- Limits to three the number of agreements a dentist can be a party to at any one time, unless the State Dental Board determines that the dentist meets certain criteria established by the Board to enter into additional agreements.

- Requires the State Dental Board to adopt rules to implement certain requirements of the bill.

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## CONTENT AND OPERATION

### Overview

#### Current law

(R.C. 4715.22 and 4715.23)

Under current law, a dental hygienist must practice under the "supervision, order, control, and full responsibility" of a dentist licensed by the State Dental Board. A dental hygienist may practice in a dental office, public or private school, health care facility,<sup>1</sup> dispensary, or public institution. In general, a dental hygienist is limited to providing (1) prophylactic, preventative, and other procedures that licensed dentists are authorized by law and the State Dental Board to assign only to dental hygienists, and (2) intraoral tasks that do not require the professional competence or skill of a licensed dentist that are authorized by the Board.<sup>2</sup>

Subject to a couple exceptions, a dental hygienist is prohibited from providing dental hygiene services to a patient when the supervising dentist is not physically present at the location where the hygienist is practicing. The first exception to the prohibition on a hygienist practicing without a dentist being physically present is that the hygienist may provide, for not more than 15 consecutive business days, dental hygiene services to a patient when the supervising dentist is not physically present if several requirements regarding training, limits on services provided, written protocols, and patient notification are satisfied. Among these requirements is that the supervising dentist has completed and evaluated a medical and dental history of the patient not more than one year prior to the date the hygienist provides dental hygiene services to the patient and,

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<sup>1</sup> The term, "health care facility," includes hospitals registered with the Department of Health, nursing homes, and certain other long-term care facilities (R.C. 3701.07 and 3721.01).

<sup>2</sup> The State Dental Board must issue rules defining the procedures that may be performed by licensed dental hygienists engaged in school health activities or employed by public agencies (R.C. 4715.23).

except when the dental hygiene services are provided in a health care facility,<sup>3</sup> the supervising dentist determines that the patient is in a medically stable condition.

The second exception to the prohibition on a hygienist practicing without a dentist being physically present is that a hygienist may provide services without a dentist being physically present if the services are provided as part of a dental hygiene program that is approved by the State Dental Board and meets certain requirements regarding who operates the program and the performance of services after examination and diagnosis by the supervising dentist and in accordance with the dentist's treatment plan.

### **The bill**

The bill generally maintains current law governing the practice of dental hygienists but enacts new law to (1) permit a dental hygienist to enter into a collaboration agreement with a dentist to provide certain services without the dentist being physically present at the facility where the services are provided and without prior examination by the dentist, (2) govern the conditions under which a dental hygienist may practice under a collaboration agreement and the characteristics of a collaboration agreement, and (3) provide an exception from the conditions in current law governing the practice of a dental hygienist when the dental hygienist practices under a collaboration agreement.

This means that if the bill is enacted, there will be two sets of laws governing the practice of dental hygienists: one that governs the practice of a dental hygienist when the hygienist practices under a collaboration agreement and another (the existing law) that governs the practice of a dental hygienist when the hygienist is not practicing under a collaboration agreement.

### **Authority to enter into collaboration agreements**

(R.C. 4715.222)

The bill permits a dental hygienist who has provided certain evidence described in "**Eligibility to enter into a collaboration agreement**," below, to enter into a collaboration agreement with a dentist under which the dentist authorizes all of the following:

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<sup>3</sup> When dental hygiene services are provided in a health care facility, a doctor of medicine and surgery or doctor of osteopathic medicine and surgery who holds a current certificate from the State Medical Board or a registered nurse licensed by the Ohio Board of Nursing must be present in the facility when the services are provided (R.C. 4715.22(C)(9)).

(1) The dental hygienist to provide the services described in "**Services under a collaboration agreement**," below, to patients<sup>4</sup> at any facility<sup>5</sup> without the dentist being physically present at the facility where the services are provided.

(2) The dental hygienist to provide the specified services to patients without prior examination of the patients by the dentist or diagnosis or treatment plans approved by the dentist, unless otherwise specified in the collaboration agreement.

(3) The dental hygienist to work with certified dental assistants who may perform only the duties they are authorized to provide without the direct supervision of a dentist.

The bill requires that a collaboration agreement meet the requirements in "**Required characteristics of a collaboration agreement**," below.

**Eligibility to enter into collaboration agreement**

(R.C. 4715.223)

The bill requires a dental hygienist to submit written evidence of all of the following to the dentist who is to be the collaborating dentist under the agreement:

(1) The dental hygienist has at least two years and a minimum of 3,000 hours of experience in the practice of dental hygiene.

(2) The dental hygienist has successfully completed a course approved by the State Dental Board in the identification and prevention of potential medical emergencies and infection control.

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<sup>4</sup> The bill defines "patient" as an individual who seeks dental hygiene services at a facility, a student enrolled in the facility at which the services are provided, or a resident of a facility at which the services are provided (R.C. 4715.221(E)).

<sup>5</sup> The bill defines "facility" as a dental office, public or nonpublic school (as defined in R.C. 3701.93), health care facility (as defined in R.C. 4715.22), home health agency (as defined in R.C. 5101.61), dispensary, a state correctional institution (as defined in R.C. 2967.01), clinic or shelter financed with public or private funds, mobile dental unit, community health fair, child development program licensed as a child day-care center that receives funds under the federal Head Start Act, non-profit entity that serves Medicaid or Disability Medical Assistance recipients, a special needs program, a residential facility licensed by the Ohio Department of Mental Retardation and Developmental Disabilities, or any other location specified by the State Dental Board in rules (R.C. 4715.221(D)).

(3) The dental hygienist holds current certification to perform basic life-support procedures as required under current law (R.C. 4715.251).

(4) The dental hygienist holds professional liability insurance.

The bill also permits the dentist who is to be the collaborating dentist under the agreement to personally observe the dental hygienist provide to patients the services the dental hygienist is permitted to provide under a collaboration agreement.

### **Services under a collaboration agreement**

(R.C. 4715.224)

The bill permits a dental hygienist who has entered into a collaboration agreement to perform the following services:

(1) Oral health promotion and disease prevention education, including information gathering, screening, and assessment.

(2) Removal of calcareous deposits or accretions from the crowns and roots of teeth.

(3) Sulcular placement of prescribed materials.

(4) Polishing of the clinical crowns of teeth, including restorations.

(5) Standard diagnostic and radiological procedures for the purpose of contributing to the provision of dental services.

(6) Fluoride applications.

(7) Placement of sealants.

(8) Any other basic remediable intraoral dental task or procedure designated by the State Dental Board in rules it must adopt.

### **Required characteristics of a consent agreement**

(R.C. 4715.225)

The bill requires that a collaboration agreement be in writing; contain certain terms (see "**Required terms**," below); contain a blank "consent to treatment form" that the dental hygienist can use for purposes of complying with the requirement described in "**Consent to treatment form**," below; and be signed and dated by both the dentist and the dental hygienist.

**Required terms**

The bill requires that a collaboration agreement contain all of the following terms:

(1) A procedure the dental hygienist must follow in securing the dentist's review of the patient's record and medical history if the dental hygienist believes the patient's condition is medically compromised;

(2) A procedure the dental hygienist must follow if the dental hygienist believes the patient's condition presents an emergency dental condition;

(3) Practice protocols for the dental hygienist to follow in providing services to patients who are different ages and who require different procedures, including recommended intervals for the performance of dental hygiene services and a period of time in which an examination by a dentist should occur;

(4) Specific protocols for the placement of pit and fissure sealants and requirements for follow-up care to assure the efficacy of the sealants after application;

(5) A procedure for creating and maintaining dental records for patients that are treated by the dental hygienist (the procedure must specify where the records are to be located);

(6) Services described in "**Services under a collaborative agreement,**" above, if any, for which the dentist requires the patient to be examined by the dentist prior to the dental hygienist providing the services or the dentist to approve a patient-specific diagnosis or treatment plan;

(7) The number of patient visits for dental hygiene services, if any, that the dentist requires the dental hygienist to provide, on an annual basis, to special needs patients<sup>6</sup> for a charge determined according to the sliding fee scale established by the State Dental Board in rules;

(8) A statement that the dentist and dental hygienist agree that the dental hygienist's provision of services under a collaboration agreement is neither the practice of dental hygiene in a manner that is separate or otherwise independent

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<sup>6</sup> A special needs patient is an individual who is in a "special needs program." A "special needs program" is a program operated by any of the following: (1) a school district board of education or the governing board of an educational service center, (2) the board of health of a city or general health district or the authority having the duties of a board of health, or (3) a national, state, district, or local dental association (R.C. 4715.221(F)).

from the dental practice of a collaborating dentist, nor the establishment or maintenance of an office or practice that is primarily devoted to the provision of dental hygiene services.

**Maintenance of a collaboration agreement**

(R.C. 4715.226(A))

The bill requires that a copy of the collaboration agreement that a dental hygienist and dentist have entered into be maintained by both parties.

It also requires the dental hygienist to ensure that each facility where a dental hygienist provides services under a collaboration agreement has a copy of the agreement that the dental hygienist works under at that facility.

**Limits on number of agreements; filing with the State Dental Board**

(R.C. 4715.226(B) and (C))

The bill specifies that prior approval of a collaboration agreement by the State Dental Board is not required before a dental hygienist provides services under an agreement, but it prohibits a dentist from being a party to more than three agreements at one time unless the Board determines that the dentist meets certain criteria established by the Board in rules it must adopt (see "Rulemaking," below).

The bill also requires a dentist or dental hygienist who is a party to a collaboration agreement to provide the State Dental Board with a copy of any agreement on the Board's request.

**Consent to treatment form**

(R.C. 4715.227)

Under the bill, a dental hygienist is required, before performing services on a patient under a collaboration agreement, to provide the patient or patient's representative with a "consent to treatment form" and secure the patient's or representative's signature or mark on the form. The bill permits the signature or mark to be provided through reasonable accommodation, including the use of assistive technology or augmentative device.

The bill also requires the form to contain a statement advising the patient that the dental hygiene services provided are not a substitute for a dental examination by a dentist, that a dentist will not be present during the provision of dental hygiene services, and that the dental hygienist cannot diagnose the patient's dental health care status.

### **Required referrals to collaborating dentist**

(R.C. 4715.228)

The bill requires a dental hygienist who provided services under a collaboration agreement to refer the patient to the collaborating dentist under the agreement the dental hygienist is working under at the facility where the patient was treated and to give the patient a completed referral form containing (1) the collaborating dentist's name, office address, and office telephone, and (2) the date the dental hygienist provided services to the patient. The bill also requires the dental hygienist to give a copy of each completed referral form and the patient's record to the collaborating dentist.

### **Termination of a collaboration agreement**

(R.C. 4715.229)

The bill permits a collaboration agreement to be terminated by the dentist or dental hygienist who entered into the agreement by providing written notice to the opposite party. It also prohibits a dental hygienist from providing services under an agreement once notice of the termination has been given or sent to the dentist.

### **Rulemaking**

(R.C. 4715.2210)

Under the bill, the State Dental Board is required to adopt rules to do all of the following:

(1) Specify the locations other than the ones listed in the bill (see "**Authority to enter into collaboration agreements**," above) that are to be considered facilities at which a dental hygienist may provide services under a collaboration agreement.

(2) Designate the basic remediable intraoral dental tasks or procedures, in addition to the ones listed in the bill (see "**Services under a collaboration agreement**"), that a dental hygienist may provide under a collaboration agreement.

(3) Establish a sliding fee scale that determines the fee a patient in a special needs program is charged for dental hygiene services provided by a dental hygienist under a collaboration agreement.

(4) Establish criteria the Board must use in determining whether a dentist can be a party to more than three collaboration agreements at one time.



**Dental assistants and expanded function dental auxiliaries**

(R.C. 4715.39 and 4715.64)

The bill specifies that nothing in it can be construed to authorize dental assistants, other qualified personnel, or expanded function dental auxiliaries (EFDAs) to enter into collaboration agreements.

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**HISTORY**

ACTION	DATE
Introduced	04-25-07

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