



Ohio Legislative Service Commission

Bill Analysis

Lisa Musielewicz

Sub. H.B. 190

128th General Assembly
(As Passed by the House)

Reps. Fende, McGregor, S. Williams, Moran, Huffman, Yuko, Phillips, Oelslager, Garland, Jordan, Murray, Gerberry, Brown, Bolon, Slesnick, Okey, Pillich, Letson, Hagan, Luckie, Mecklenborg, Blessing, Harwood, B. Williams, Hackett, Lehner, Patten, Harris, J. Adams, R. Adams, Amstutz, Batchelder, Belcher, Blair, Boyd, Bubb, Carney, Chandler, Combs, Daniels, DeBose, Domenick, Driehaus, Dyer, Evans, Foley, Gardner, Garrison, Goyal, Grossman, Heard, Hottinger, Jones, Koziura, Lundy, Maag, Mallory, Mandel, Newcomb, Otterman, Pryor, Schneider, Sears, Snitchler, Stewart, Szollosi, Uecker, Wachtmann, Winburn, Zehringer

BILL SUMMARY

PUBLIC ORAL HEALTH SUPERVISION PROGRAM

- Creates the Public Oral Health Supervision Program, beginning six months after the bill's effective date, under which a dentist who qualifies for participation in the program may authorize a dental hygienist who qualifies for participation in the program to provide dental hygiene services in certain facilities, such as hospitals, schools, clinics, correctional institutions, and nursing homes, when no dentist is present, provided that certain conditions are met.
- Requires the payment of a \$20 application and biennial renewal fee for dentists and dental hygienists who seek to participate and remain in the program.
- Prohibits an authorizing dentist from having any more than three dental hygienists working under the dentist's authorization at any one time.
- Requires that a patient's medical and dental history, prior to the patient receiving services under the program, be reviewed and evaluated by an authorizing dentist who determines that the patient may safely receive services, and that no medically significant change has occurred to the history prior to the provision of services.
- Requires a dental hygienist, after providing services under the program, to (1) refer the patient to the authorizing dentist for a clinical evaluation and (2) schedule the

evaluation for the patient, making every effort to schedule the appointment within 90 days.

- Prohibits a dental hygienist from providing services under the program to the same patient on a subsequent occasion without the patient having had a clinical evaluation by the authorizing dentist in the interim, unless a procedure cannot be completed during the visit in which services are commenced, in which case the procedure must be completed within eight weeks.
- Requires a dental hygienist under the program to comply with written protocols and standing orders of the authorizing dentist.
- Prohibits a dental hygienist under the program from diagnosing a patient's oral health care status.
- Requires dentists and dental hygienists under the program to submit to the Board on request a list of locations where services are provided under the program.
- Permits the Board to suspend or revoke a permit issued under the program if the permit holder fails to comply with the laws governing the program.
- Requires the Board to publish on its web site a directory of dentists and dental hygienists who participate in the program.
- Requires the Board to adopt rules to administer the program.
- Requires the Board to submit an annual report to the Governor and General Assembly on the program, including the number of dentists, dental hygienists, and patients participating in the program, as well as the number and location of facilities where services are provided under the program.

LICENSING AND ADMINISTRATIVE PROVISIONS FOR DENTISTS AND DENTAL HYGIENISTS

- Permits the Board to take any of the following disciplinary actions when a dentist fails to renew registration: (1) censure the dentist's license or the dentist, (2) place the license on probationary status, or (3) suspend or revoke the dentist's license.
- Removes a provision of existing law that specifies that noncompliance with continuing education requirements for dentists constitutes failure to renew registration, which results in automatic license suspension under current law.

- Expressly requires dental hygienists whose licenses have been suspended for failure to renew registration to apply to the Board for licensure reinstatement, in addition to existing requirements for licensure reinstatement.
- Increases the biennial continuing dental hygiene education requirement from 12 hours to 24 hours.
- Increases the time period that hygienists are required to maintain records of completion of continuing education requirements from three years to four years.
- Requires the Board to apply toward the satisfaction of the continuing education requirements for a dental hygienist any of the following courses: (1) the basic life-support training course required for licensure, (2) any course required by statute or rule of the Board for registration or as a condition of performing a particular function, and (3) any other course that the Board determines acceptable.
- Permits a dental hygienist to temporarily retire from practice if the biennial registration fee for the registration period that includes the day before retirement is to begin has been paid, but not if the hygienist is the subject of a disciplinary action initiated by the Board.
- Permits a temporarily retired dental hygienist to apply for licensure reinstatement on completion of 24 hours of continuing education and payment of the biennial registration fee for the registration period that includes the day on which retirement is to cease.
- Permits dentists and dental hygienists to notify the Board Secretary electronically, in addition to in writing, of changes in employment or office address.
- Changes references to the Council on Dental Education of the American Dental Association to the American Dental Association Commission on Dental Accreditation.

TABLE OF CONTENTS

PUBLIC ORAL HEALTH SUPERVISION PROGRAM	4
Current restrictions on dental hygienists.....	4
General program structure.....	5
Where services may be provided under the program.....	7
Application to participate in the program.....	9
Renewal of permits under the program.....	10
Dentists.....	10
Dental hygienists.....	10
Restrictions under the program.....	11
Changes to a patient's medical or dental history.....	11

Services provided to the same patient on a subsequent occasion	11
Limitations on the scope of services that may be provided.....	11
Disclosure of locations	11
Board web site and rulemaking duties	12
Annual report	12

LICENSING AND ADMINISTRATIVE PROVISIONS FOR DENTISTS AND DENTAL HYGIENISTS	13
Dentists--suspension for failure to renew registration.....	13
Dentists--suspension for noncompliance with continuing education requirements.....	13
Dental hygienists--reinstatement	14
Dental hygienists--continuing education	14
Dental hygienists--temporary retirement.....	15
Notification of change of employment.....	15
American Dental Association Commission on Dental Accreditation	16

CONTENT AND OPERATION

PUBLIC ORAL HEALTH SUPERVISION PROGRAM

Current restrictions on dental hygienists

(R.C. 4715.22; R.C. 4715.23 (not in the bill))

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

Subject to limited exceptions, a dental hygienist may not provide dental hygiene services when a supervising dentist is not physically present. One exception is that the hygienist may provide dental hygiene services to a patient for not more than 15 consecutive business days without a dentist being physically present if several requirements are met. Among these is a requirement that the supervising dentist has completed a medical and dental history of the patient not more than one year before the

¹ The 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).

² 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).

hygienist provides services to the patient. The supervising dentist must also have determined that the patient is in a medically stable condition, except when the dental hygiene services are provided in a health care facility. In a health care facility, a physician or registered nurse must be present.

The second exception is that a dental hygienist may provide services without a dentist being physically present if the services are provided as part of a dental hygiene program that meets certain program and service requirements and is approved by the Board.

General program structure

(R.C. 4715.36, 4715.361, 4715.364, 4715.365, 4715.366, 4715.367, and 4715.374)

The bill creates the Public Oral Health Supervision Program, to begin six months after the bill's effective date. Under the program, a dentist who holds a current, valid "public oral health supervision permit" may authorize a dental hygienist who holds a current, valid "permit to practice under the public oral health supervision of a dentist" to perform dental hygiene services at certain facilities (see "**Where services may be provided under the program**") when no dentist is present. An authorizing dentist is prohibited from having more than three dental hygienists working under the dentist's authorization at any one time. Dental hygiene services are defined under the bill as the prophylactic, preventive, and other procedures that dentists are authorized by Ohio's laws governing dentists and dental hygienists (and rules of the Board) to assign to dental hygienists, except for procedures while the patient is anesthetized, definitive root planing, definitive subgingival curettage, the administration of local anesthesia, or other procedures identified in Board rules that have been adopted under existing law.

Immediately following the provision of dental hygiene services under the program, the bill requires a hygienist to direct the patient to the authorizing dentist for a clinical evaluation and schedule or cause to be scheduled an appointment for the patient with the dentist. The dental hygienist is to make every attempt to schedule the appointment not later than 90 days after the services are completed. The hygienist is to provide the patient with a written notice of the appointment that includes at least the authorizing dentist's name, address, and telephone number, the date and time of the appointment, and a statement of the dental hygiene services performed by the hygienist. The notice is to be given to the patient or the patient's representative and the authorizing dentist.

Services may be provided under the program only if all of the following conditions are met:

(1) The authorizing dentist has personally evaluated the hygienist's skills prior to the authorization;

(2) The dental hygienist is employed by, or under contract with, the authorizing dentist, another dentist who employs the authorizing dentist, a government entity employing the hygienist, or a dentist other than the authorizing dentist who is in one of certain types of business associations with the authorizing dentist (where both dentists have comparable positions in the association);³

(3) The authorization is in writing and includes at least the authorizing dentist's name and permit number, the hygienist's name and permit number, the patient's name, the name and address of the location where services are to be provided, and the date of the authorization;

(4) Prior to the authorization, the authorizing dentist reviews and evaluates the patient's medical and dental history and determines that the patient may safely receive dental hygiene services;

(5) Immediately prior to the provision of dental hygiene services, the patient or patient's representative verifies, by the signature or mark of the patient or representative (which may be provided through reasonable accommodation), that no medically significant changes to the patient's medical or dental history have occurred since the most recent review and evaluation by the authorizing dentist;

(6) If the patient previously received dental hygiene services under the program, there is written evidence that the patient received a clinical evaluation after the most recent provision of services;

(7) Prior to the provision of dental hygiene services, the patient and the operator of the facility are notified that no dentist will be present and that the dental hygienist is prohibited from diagnosing the patient's oral health care status, and prohibited from providing dental hygiene services to the same patient on a subsequent occasion until the authorizing dentist has given the patient a clinical evaluation, except if the patient requires multiple visits to complete a procedure that could not be completed during the visit in which services were commenced (see "**Services provided to the same patient on a subsequent occasion**").

³ The dentist employing or contracting with the dental hygienist may be (1) a shareholder in a professional association or corporation if the authorizing dentist is also a shareholder, (2) a member or manager of a limited liability company if the authorizing dentist is also a member or manager, or (3) a partner or employee of a partnership or limited liability company if the authorizing dentist is also a partner or employee.

Under the program, hygienists are required to comply with written protocols and standing orders established by the authorizing dentist, including those regarding emergencies, and protocols regarding what constitutes a medically significant change to a patient's medical or dental history.

The bill prohibits a dentist from authorizing a dental hygienist to provide dental hygiene services under the program unless the dentist holds a current, valid public oral health supervision permit. It also prohibits a dental hygienist from providing dental hygiene services under the program unless the hygienist holds a current, valid permit to practice under the public oral health supervision of a dentist.⁴

The bill permits the Board to suspend or revoke, in accordance with the Administrative Procedure Act (R.C. Chapter 119.), a permit issued under the program if the permit holder fails to comply with the laws governing the program.

Where services may be provided under the program

(R.C. 4715.36)

The bill specifies that services may be provided under the program at any of the following:

(1) A "health care facility," defined as either (a) a hospital, (b) an institution, residence, or facility that provides, for a period of more than 24 hours, whether for consideration or not, accommodations to three or more unrelated individuals who are dependent upon the services of others, including a nursing home, residential care facility, home for the aging, and a veterans' home operated by the Ohio Veterans' Home Agency, (c) a facility proposed for certification as a skilled nursing facility or nursing facility under the federal Medicare or Medicaid law, and for which a certificate of need, other than a certificate to recategorize hospital beds, has been granted after August 5, 1989, or (d) a county home or district home that is or has been licensed as a residential care facility;

(2) A state correctional institution;

(3) A comprehensive child development program that receives funds under the federal Head Start Act and is licensed as a child day-care center under Ohio law;

(4) A residential facility licensed under Ohio law;

⁴ Although the bill's prohibitions apply to any "person," the only persons who qualify for the specified permits are dentists and dental hygienists.

- (5) A public school located in an area designated as a dental health resource shortage area by the Director of Health;
- (6) A nonpublic school located in a dental health resource shortage area;
- (7) A federally qualified health center or federally qualified health center look-alike;
- (8) A shelter for victims of domestic violence;
- (9) A facility operated by the Department of Youth Services under Ohio law;
- (10) A shelter for runaways;
- (11) A foster home;
- (12) A nonprofit clinic;
- (13) The residence of one or more individuals receiving services provided by a home health agency;
- (14) A dispensary;
- (15) A health care facility, such as a clinic or hospital, of the United States Department of Veterans Affairs;
- (16) The residence of one or more individuals enrolled in a home and community-based services Medicaid waiver component;
- (17) A facility operated by the board of health of a city or general health district or the authority having the duties of a board of health under Ohio law;
- (18) A women, infants, and children clinic;
- (19) A mobile dental unit located at any facility where services may be provided under the program;
- (20) Any other location, as specified in rules to be adopted by the Board, as long as the facility is in a dental health resource shortage area and provides health care services to individuals who are Medicaid recipients and to "indigent and uninsured persons," defined generally in current law as persons without medical insurance whose incomes are less than 200% of the federal poverty line but who are not eligible to receive assistance under any governmental health care program.

Application to participate in the program

(R.C. 4715.362, 4715.363, and 4715.372)

A dentist and a dental hygienist desiring to participate in the program are each to submit an application, under oath, to the Board on a form prescribed by the Board and include an application fee of \$20. Dentists must also meet requirements specified in Board rules.

Dental hygienists must also provide evidence satisfactory to the Board of all of the following:

(1) Completion of two years and attainment of at least 3,000 hours of experience in the practice of dental hygiene;

(2) Completion of at least 24 hours of continuing dental hygiene education during the two years prior to submitting the application;

(3) Completion, during the two years prior to submitting the application, of a course pertaining to the identification and prevention of potential medical emergencies that is the same as the course required under existing law for a dental hygienist to provide, for not more than 15 consecutive business days, services to a patient when a supervising dentist is not physically present;

(4) Completion of a course, meeting Board standards, pertaining to the practice of dental hygiene under the public oral health supervision of a dentist. The bill requires that this course meet all of the following requirements:

(a) Be eight hours in length;

(b) Include, at a minimum, instruction in recordkeeping practices and the treatment of geriatric patients, medically compromised patients, developmentally disabled patients, and pediatric patients;

(c) Be developed and offered by an institution accredited by the American Dental Association Commission on Dental Accreditation or a program provided by a sponsor of continuing education approved by the Board;

(d) Include content that is separate and independent from the course content required for the completion of dental hygiene education from an accredited dental hygiene school.

The bill requires the Board to issue a public oral health supervision permit to a dentist who complies with the applicable requirements, and a permit to practice under

the public oral health supervision of a dentist to a dental hygienist who meets the applicable requirements.

Renewal of permits under the program

(R.C. 4715.369 and 4715.37)

Dentists

A public oral health supervision permit issued to a dentist is to expire on December 31 of the odd-numbered year that occurs after the permit's issuance. To renew the permit, a dentist must apply, under oath, to the Board on a form prescribed by the Board pay a renewal fee of \$20. The Board is to renew the permit for a two-year period if the dentist submitted a complete application, paid the renewal fee, is in good standing with the Board, and verified with the Board both of the following:

(1) The locations at which dental hygienists have, under the dentist's authorization, provided services during the prior two-year period;

(2) The number of patients treated during the prior two-year period by each dental hygienist under the dentist's authorization, along with the number of those patients whom the dentist clinically evaluated following the provision of dental hygiene services.

Dental hygienists

A permit to practice under the public oral health supervision of a dentist issued to a dental hygienist is to expire on the same day as a dentist's permit is to expire. To renew the permit, the hygienist must apply, under oath, to the Board on a form prescribed by the Board and pay a renewal fee of \$20. The Board is to renew the permit for a two-year period if the dental hygienist submitted a complete application, paid the renewal fee, is in good standing with the Board, and has verified both of the following:

(1) The locations at which the hygienist has provided dental hygiene services under the permit;

(2) The number of patients that the hygienist has treated under the permit during the prior two-year period.

Restrictions under the program

Changes to a patient's medical or dental history

(R.C. 4715.365(C))

If a patient indicates that a medically significant change has occurred in the medical or dental history since the authorizing dentist's most recent review and evaluation of the history, no dental hygiene services may be provided until the dentist completes another review and evaluation. The bill permits the subsequent review and evaluation to be completed by telephone or other means of electronic communication.

Services provided to the same patient on a subsequent occasion

(R.C. 4715.365(D))

The bill prohibits a dentist from authorizing the provision of services to and a dental hygienist from providing services to the same patient on a subsequent occasion until the patient has received a clinical evaluation by a dentist. But if the patient requires multiple visits to complete a procedure that could not be completed during the visit in which services were commenced, the procedure may be completed within eight weeks of the visit in which the services were commenced.

Limitations on the scope of services that may be provided

(R.C. 4715.365(E) and 4715.373)

The bill prohibits a dentist from authorizing and a dental hygienist from diagnosing a patient's oral health care status. The bill also specifies that nothing in the portions of the bill that pertain to the program authorizes any activity prohibited or explicitly not authorized by Ohio's law governing dentists and dental hygienists or any activity prohibited by a rule adopted under those laws by the Board.

Disclosure of locations

(R.C. 4715.368)

The bill requires an authorizing dentist and a dental hygienist who has been authorized to perform services under the program to give the Board, on request, a list of all locations where services have been provided under the program, the locations where the hygienist plans to provide services in the future, or both, as specified in the Board's request.

Board web site and rulemaking duties

(R.C. 4715.371 and 4715.372)

The Board is to develop and publish on its web site a directory containing the names and contact information of dentists and dental hygienists who hold current, valid permits to participate in the program.

The Board is also required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) as necessary to implement the program, including rules that do all of the following:

- (1) Designate additional facilities at which a service may be provided under the program;
- (2) Prescribe the application form and requirements for obtaining permits to participate in the program;
- (3) Establish standards for the course in the practice of dental hygiene under the public oral health supervision of a dentist;
- (4) Prescribe the form for renewal of permits to participate in the program.

Annual report

(R.C. 4715.375)

The bill requires the Board to annually report the status of the program to the Governor and the General Assembly. The report is to specify, for the year covered by the report, at least all of the following:

- (1) The number of dentists and dental hygienists who applied for and were issued permits;
- (2) The number of dentists and dental hygienists who applied for and were granted renewal of permits;
- (3) The number and geographic locations of facilities at which dental hygienists provided services under the program;
- (4) The number of patients who received dental hygiene services under the program;
- (5) The number of patients who received a clinical evaluation from a dentist following the provision of services under the program.

LICENSING AND ADMINISTRATIVE PROVISIONS FOR DENTISTS AND DENTAL HYGIENISTS

Dentists--suspension for failure to renew registration

(R.C. 4715.14)

Current law requires that each licensed dentist register with the Board by January 1 of each even-numbered year and pay a biennial registration fee of \$245. The registration is then in effect for two years. If a dentist fails to renew registration in accordance with this law, the dentist's license to practice dentistry is automatically suspended. Current law provides that any automatically suspended dentist's license for failure to renew registration may be reinstated by the payment of the biennial registration fee plus a fee of \$81.

The bill removes the current provision specifying that failure to renew registration results in an automatic license suspension. Instead, the bill permits the Board to take any of the following disciplinary actions in accordance with the Administrative Procedure Act (R.C. Chapter 119.) when a dentist fails to renew registration: (1) censure the dentist's license or the dentist, (2) place the license on probationary status, or (3) suspend or revoke the dentist's license.

Dentists--suspension for noncompliance with continuing education requirements

(R.C. 4715.14 and 4715.141)

Current law requires dentists to complete biennially 40 hours of continuing dental education. Each dentist is to submit to the Board at the time of biennial registration an affidavit attesting to completion of the 40 hours and describing the programs that the dentist attended to meet the requirement. Dentists are also required to retain records for three years of receipts and other documentation to demonstrate completion of the continuing education requirements. The Board is authorized to request this documentation at random and without cause.

Current law specifies that the failure to comply with the requirements summarized in the preceding paragraph constitutes failure to renew registration (which results in the automatic suspension of a license under current law). The bill eliminates this provision.

Dental hygienists--reinstatement

(R.C. 4715.24)

Current law requires each licensed dental hygienist to register with the Board by January 1 of each even-numbered year and pay a biennial registration fee of \$105. The registration is then in effect for two years. If a hygienist fails to renew registration in accordance with this law, the hygienist's license to practice as a dental hygienist is automatically suspended.

Current law provides that an automatically suspended hygienist's license may be reinstated on payment of the biennial registration fee plus \$31. The bill adds an additional condition for license reinstatement: that the hygienist apply to the Board on a form prescribed by the Board for licensure reinstatement.

Dental hygienists--continuing education

(R.C. 4715.25; Section 3)

Current law requires each licensed dental hygienist to certify to the Board at the time of applying for renewal of registration that in the preceding two years the hygienist completed at least 12 hours of continuing dental hygiene education. The bill specifies that the continuing education is to have been completed "in the two-year period preceding the registration period for which renewal is sought" and raises the minimum requirement from 12 hours to 24 hours. However, the bill specifies that a dental hygienist whose registration expires on December 31, 2009, remains subject to only the 12-hour requirement when applying for a renewal of registration for the 2010 to 2011 registration period.

The bill also requires the Board to apply toward the satisfaction of the continuing education requirement any of the following courses completed by a hygienist: (1) the basic life-support training course required for licensure, (2) any course required by statute or rule of the Board for registration or as a condition of performing a particular function, and (3) any other course that the Board determines acceptable.

The bill requires the Board to apply toward the satisfaction of the continuing education requirement of a hygienist whose license is reinstated after temporary retirement any course that the Board applied toward the continuing education requirement for reinstatement of the license, as long as the course was completed during the registration period preceding the registration period for which renewal is sought.

Current law requires dental hygienists to keep records documenting completion of continuing education requirements for at least three years. The bill increases this time period to four years.

Dental hygienists--temporary retirement

(R.C. 4715.24, 4715.241, and 4715.242)

The bill permits a dental hygienist to temporarily retire from the practice of dental hygiene. The bill requires a dental hygienist seeking temporary retirement to provide written notice of intent to the Board. The Board is required to grant temporary retirement if the hygienist has paid the biennial registration fee for the registration period that includes the day before the temporary retirement is to begin. The Board may deny temporary retirement if the hygienist is the subject of a disciplinary action initiated by the Board. The bill specifies that the license of a temporarily retired dental hygienist is to be inactive.

The bill also permits a temporarily retired dental hygienist to request license reinstatement at any time. The bill requires the Board to reinstate the hygienist's license if the hygienist (1) pays the biennial registration fee for the registration period that includes the day on which the retirement is to cease, and (2) completed 24 hours of continuing dental hygiene education during the two years preceding the date of the request for reinstatement.

The bill also requires the Board to register each dental hygienist whose license is reinstated, which registration is to expire at the end of the registration period during which the reinstatement occurs.

Notification of change of employment

(R.C. 4715.14 and 4715.24)

Current law requires each licensed dentist and licensed dental hygienist, whether or not the dentist or dental hygienist is a resident, to notify the Board Secretary in writing of any change in the dentist's or hygienist's employment or office address within ten days of the change. The bill permits the notifications to be made electronically, in addition to in writing.

American Dental Association Commission on Dental Accreditation

(R.C. 4715.21)

The bill changes references to the Council on Dental Education of the American Dental Association to the American Dental Association Commission on Dental Accreditation.

HISTORY

ACTION	DATE
Introduced	05-26-09
Reported, H. Healthcare Access & Affordability	06-18-09
Passed House (97-0)	06-24-09

h0190-ph-128.docx/kl

