

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
AMENDED NOTICE OF PUBLIC HEARING

JULY 8, 2019
10:00 A.M. Central Time
Nebraska State Office Building – Lower Level B
301 Centennial Mall South, Lincoln, Nebraska

The purpose of this hearing is to receive comments on the proposed changes of Title 172, Chapter 53 of the Nebraska Administrative Code (NAC) – *Unlicensed Dental Assistants and the Licensure of Dental Assistants*. The proposed regulations will govern the licensure of Dental Assistants, Expanded Function Dental Assistants and regulate the unlicensed Dental Assistants.

The proposed changes will include removal of statutory language from the regulations and will also remove any duplicate language that will be covered in 172 NAC 10 for credentials issued under the Uniform Credentialing Act. These regulations also include necessary changes due to amendments to the Uniform Credentialing Act and the Dentistry Practice Act.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

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|--|----------------------------|
| Agency: Department of Health and Human Services | |
| Title: 172 | Prepared by: Jesse Cushman |
| Chapter: 53 | Date prepared: 3/27/19 |
| Subject: Unlicensed Dental Assistants and the Licensure of dental Assistants | Telephone: 402-471-4915 |

Type of Fiscal Impact:

| | State Agency | Political Sub. | Regulated Public |
|-------------------|---|---|---|
| No Fiscal Impact | (<input type="checkbox"/>) | (<input checked="" type="checkbox"/>) | (<input type="checkbox"/>) |
| Increased Costs | (<input checked="" type="checkbox"/>) | (<input type="checkbox"/>) | (<input checked="" type="checkbox"/>) |
| Decreased Costs | (<input type="checkbox"/>) | (<input type="checkbox"/>) | (<input type="checkbox"/>) |
| Increased Revenue | (<input checked="" type="checkbox"/>) | (<input type="checkbox"/>) | (<input type="checkbox"/>) |
| Decreased Revenue | (<input type="checkbox"/>) | (<input type="checkbox"/>) | (<input type="checkbox"/>) |
| Indeterminable | (<input type="checkbox"/>) | (<input type="checkbox"/>) | (<input type="checkbox"/>) |

Provide an Estimated Cost & Description of Impact:

State Agency: The cost to the state would be the review and processing of an additional permit for expanded function dental assistant, estimating 60 permits per year.

Political Subdivision:

Regulated Public: The cost to the public will be the additional cost of 25 dollars for the expanded function permits.

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 53 UNLICENSED DENTAL ASSISTANTS AND THE LICENSURE OF
DENTAL ASSISTANTS

001. SCOPE AND AUTHORITY. These regulations govern the licensure of dental assistants and the practice of licensed and unlicensed dental assistants under Nebraska Revised Statutes (Neb. Rev. Stats.) §§ 38-1101 to 38-1152 of the Dentistry Practice Act, and the Uniform Credentialing Act (UCA).

002. DEFINITIONS. Definitions set out in the Dentistry Practice Act, the Uniform Credentialing Act, Title 172 Nebraska Administrative Code (NAC) 10, and the following apply to this chapter.

002.01 IMPRESSION. Techniques used to produce a three-dimensional record of an anatomic structure.

002.01(A) FINAL IMPRESSION. A type of oral impression from which a positive reproduction (cast or model) can be formed to enable fabrication of a fixed or removable dental prosthesis.

002.01(B) PRELIMINARY IMPRESSION. A type of oral impression from which a positive reproduction (cast or model) can be formed to fabricate stints, stents, splints, bleaching trays, mouth guards, custom trays, orthodontic appliances and devices and therapeutic appliances or for direct (intraoral) fabrication of a provisional fixed prostheses. A preliminary impression may not be used for indirect fabrication of a fixed or removable prosthesis.

002.02 ORTHODONTIC APPLIANCES. Braces, brackets, tubes, wires, ties, and similar material used in realigning teeth.

002.03 ORTHODONTIC DEVICES. Devices used to correct or maintain tooth position or occlusal relationship. Such devices include retainers, space maintainers, expanders, clear aligners, and similar functional devices.

002.04 PROSTHESIS. Artificial replacement of any part of the body related to teeth, jaws, or related structures.

002.04(A) DEFINITIVE REMOVABLE PROSTHESIS. Prosthesis which is used over an extended period of time.

002.04(B) DENTAL PROSTHESIS. Any device or appliance that replaces one or more missing teeth or associated structures. It includes crowns, inlays or onlays, bridges, dentures, obturators, or gingival prostheses.

002.04(C) FIXED PROSTHESIS. Non-removable dental prosthesis which is solidly attached to abutment teeth, roots, or implants.

002.04(D) FIXED REMOVABLE PROSTHESIS. Combined prosthesis, one or more parts of which are fixed, and the other(s) attached by devices which allow their detachment, removal, and reinsertion by the dentist only.

002.04(E) INTERIM PROSTHESIS. A prosthesis designed for use over a limited period of time.

002.04(F) REMOVABLE PROSTHESIS. Complete or partial prosthesis which can be removed and reinserted by the consumer.

002.05 RESTORATION.

002.05(A) SIMPLE RESTORATION FOR ONE SURFACE. A restoration that involves single surfaces of a tooth as in Class I, Class V, and Class VI restorations.

002.05(A)(i) CLASS I RESTORATION. Restoration of a lesion or cavity that occurs in pits and fissures on the facial, lingual, and occlusal surfaces of molars and premolars and lingual surfaces of maxillary anterior teeth.

002.05(A)(ii) CLASS V RESTORATION. Restoration of a lesion or cavity that occurs in smooth facial and lingual surfaces in the gingival third of a tooth.

002.05(A)(iii) CLASS VI RESTORATION. Restoration of a lesion or cavity that occurs on the incisal edges of anterior teeth or cusp tips of posterior teeth.

002.05(B) COMPLEX RESTORATION FOR MULTIPLE SURFACES. Restoration of a tooth that involves multiple surfaces of the tooth, as in Class II, Class III, and Class IV restorations.

002.05(B)(i) CLASS II RESTORATION. Restoration of a lesion or cavity that occurs in the proximal surfaces of the posterior teeth (molars and premolars).

002.05(B)(ii) CLASS III RESTORATION. Restoration of a lesion or cavity that occurs in the proximal surfaces of anterior teeth and do not involve an incisal angle.

002.05(B)(iii) CLASS IV RESTORATION. Restoration of a lesion or cavity that occurs in the proximal surfaces of the anterior teeth that involves an incisal angle.

002.06 THERAPEUTIC DENTAL APPLIANCE. An appliance designed to treat a dental condition or used as a surgical stent or radiographic guide.

003. LICENSE REQUIREMENTS. To obtain a license, an individual must submit a complete application provided by the Department, provide documentation demonstrating that the applicant meets the licensing requirements set out in Neb. Rev. Stats. §§ 38-1118.02 to 38-1118.03, 172 NAC 10, and this chapter.

003.01 EXPERIENCE. Submit employment records or a letter from a licensed dentist showing that the applicant has met the required one thousand five hundred hours of experience assisting a dentist; or

003.02 EDUCATION. Submit an official transcript, sent directly from the issuing institution, verifying graduation from an accredited dental assisting program.

003.03 EXAMINATION. All applicants must:

- (A) Demonstrate passage of the examination to become a certified dental assistant administered by the Dental Assisting National Board with a score of 75 or above; and
- (B) Pass the jurisprudence examination with an average score of 75 or above.

004. RENEWAL, WAIVER OF CONTINUING EDUCATION, AND INACTIVE STATUS. The applicant must meet the requirements set out in 172 NAC 10. All licenses and permits expire on March 1 of each odd-numbered year.

005. CONTINUING EDUCATION. On or before March 1 of each odd-numbered year, each licensed dental assistant must complete at least 30 hours of acceptable continuing education hours during the preceding 24-month period. Each licensee is responsible for maintaining certificates or records of continuing education.

005.01 ACCEPTABLE CONTINUING EDUCATION TOPICS AND ACTIVITIES. The following are acceptable continuing education topics and activities:

- (A) State and national meetings of the local, state, or American Dental Association; local, state, or American Dental Assistants Association; local, state, or American Dental Hygiene Association; or educational programs sponsored by the recognized specialty groups of the American Dental Association;
- (B) Nebraska Dental Assistant Association state, local, and study club meetings;
- (C) Formal education courses which relate directly to the practice of dentistry, dental assisting or expanded function dental assisting as applicable to the license or permit;
- (D) College or University-sponsored courses in continuing education in dental assisting;
- (E) Licensee acting as table clinician or lecturer to licensed dental assistants or licensee attending table clinics;
- (F) Home study with a testing mechanism. If there is no testing mechanism or certificate of completion, the licensee must submit an abstract or summary of the material covered to the Board of Dentistry. The abstract or summary must be written by only the licensee and will be reviewed. Interactive webinars which include the ability of the participant to interact with the presenter are not considered home study;
- (G) Direct clinical observation;
- (H) Initial cardiopulmonary resuscitation (CPR) certification or cardiopulmonary resuscitation recertification;
- (I) Faculty overseeing student dental assistant or expanded function dental assisting clinics;

- (J) Dental public health continuing education;
- (K) Well-being or substance abuse continuing education;
- (L) Infection control continuing education;
- (M) Practice management continuing education;
- (N) Presentation or development of a continuing education program for dental assistants by a licensee;
- (O) Expanded functions for which a permit is held by the licensee; or
- (P) Participating in a volunteer activity such as Mission of Mercy or equivalent.

005.02 NO PRE-APPROVAL. The Board of Dentistry does not pre-approve continuing education programs or activities.

005.03 CONTINUING EDUCATION WORKSHOP, ACTIVITY, OR PROGRAM CRITERIA. To be considered acceptable for continuing education, a workshop, activity, or program must meet the following criteria:

- (A) Be at least 50 minutes in duration;
- (B) Objectives must relate to the practice of dentistry, dental assisting, or expanded function dental assisting as applicable to the license;
- (C) Presenters of programs must be qualified by education, experience, or training;
- (D) Must be open to all dental assistants licensed by Nebraska who meet the prerequisites for the program; and
- (E) The provider must have a process for verifying attendance and issue a certificate of attendance. Each certificate must include the following:
 - (i) Program name;
 - (ii) Name of the participant and license number;
 - (iii) Provider's name;
 - (iv) Date the program began and ended; and
 - (v) Number of hours received by the licensee.

005.04 CRITERIA FOR A HOME STUDY PROGRAM. To be considered acceptable, a home study program must meet the following criteria:

- (A) Objectives must relate to the practice of dentistry, dental assisting, or expanded function dental assisting as applicable to the license;
- (B) Must have a post-test or other method of assessment which verifies that the licensee completed the program; and
- (C) Author(s) of home study programs must meet the following qualifications:
 - (i) Have experience in the content and subject matter;
 - (ii) Have expertise in teaching and instructional methods suitable to subject presented; and
 - (iii) Have suitable academic qualifications, certification credentials, or experience for subject presented.

005.05 CREDIT HOUR CALCULATIONS. Subject to the credit number limitations and requirements set out in this regulation a licensed dental assistant may receive credit for acceptable continuing education activities. Credits earned in excess of 30 hours in a 24-month renewal period do not carry over into the following period.

- (A) A maximum of 10 hours each in the renewal period, may be obtained
 - (i) Through home study; or

- (ii) Initial cardiopulmonary resuscitation (CPR) certification.
- (B) A maximum of 2 hours each in the renewal period, may be obtained
 - (i) As a table clinician;
 - (ii) A lecturer; or
 - (iii) For direct clinical observation.
- (C) A maximum of 4 hours each in the renewal period, may be obtained
 - (i) For cardiopulmonary resuscitation (CPR) re-certification; or
 - (ii) For practice management continuing education.
- (D) A maximum of 5 hours each in the renewal period may be obtained
 - (i) For faculty overseeing student dental assistant or expanded function dental assisting clinics;
 - (ii) For dental public health continuing education;
 - (iii) For well-being or substance abuse continuing education;
 - (iv) For ethics and professionalism continuing education; or
 - (v) For participating in a volunteer activity such as Mission of Mercy or equivalent.
- (E) Credit may be claimed only for actual time in attendance and only for the time which meets the criteria for a continuing education activity.
- (F) A licensee who is a presenter of a continuing education program may receive a maximum of 2 hours for the creation of a presentation, and a maximum of 2 hours for the initial presentation of the program during a renewal period. Credit will not be given to the licensee for subsequent presentations of the same program.
- (G) A minimum of 2 hours in the renewal period must be obtained in infection control continuing education.
- (H) A minimum of 2 hours in the renewal period must be obtained in each area for which a licensee holds an expanded function permit.

006. UNPROFESSIONAL CONDUCT. Unprofessional conduct is set out in Neb. Rev. Stat. § 38-179 and includes the following:

- (A) Exercising influence on the consumer in such a manner as to exploit the patient or client for the financial gain of the applicant, credential holder or permit holder, or of a third party, which includes, but is not limited to, the promotion or sale of services, goods, appliances, or drugs;
- (B) Refusing to provide professional service to a consumer because of such consumer's race, creed, color, sex, national origin, disability, or familial status;
- (C) Providing dental assisting or expanded function dental assisting services contrary to the current statutes and regulations;
- (D) Any departure from or failure to conform to the ethics of the "AMERICAN DENTAL ASSISTANT ASSOCIATION (ADAA) PRINCIPLES OF ETHICS AND CODE OF CONDUCT" as published in 2013;
- (E) Misrepresentation of material facts in applying for or procuring a renewal of a credential or permit;
- (F) Misrepresenting the material facts of one's credentials in an application submitted to a healthcare facility, insurance company, or prospective employer; or
- (G) Disruptive behavior as manifested by the credential holder's aberrant behavior which interferes with consumer care or could reasonably be expected to interfere with consumer care, including, but not limited to, the following:
 - (i) Outbursts of rage or violent behavior;
 - (ii) Throwing of instruments, records, or objects;

- (iii) Insulting comments to a consumer, consumer's family, dental staff, or other healthcare professionals;
- (iv) Striking or assaulting a consumer, consumer's family member, dental staff, or other healthcare professionals; or
- (v) Poor hygiene.

007. EXPANDED COURSE APPROVAL CRITERIA. The following criteria must be met to obtain approval for all courses except coronal polishing:

- (A) Be part of an accredited dental assisting training program or offered as a separate course by a program accredited by the American Dental Association Commission on Dental Accreditation or a substantially equivalent accrediting organization;
- (B) Be led by an instructor of the course who is qualified by education and experience; and
- (C) Provide the attendee with written verification of demonstrated competency upon completion of the course.

007.01 DENTAL X-RAY. To obtain approval as a dental x-ray course the course must include a minimum of 16 hours of classroom instruction on dental x-ray.

007.02 FIXED PROSTHODONTICS. To obtain approval as a fixed prosthodontics course the course must include both written and practical examinations to determine whether the student has demonstrated the necessary knowledge and proficiency to complete final impressions and records for fixed prostheses.

007.03 FINAL DENTAL IMPRESSIONS AND MINOR ADJUSTMENTS FOR REMOVABLE PROSTHESES. To obtain approval as a final dental impressions and minor adjustments course the course must include both written and practical examinations to determine whether the student has demonstrated the necessary knowledge and proficiency to complete final impressions and records for and to make minor adjustments to definitive prostheses.

007.04 CEMENTING PREFABRICATED FIXED PROSTHESES ON PRIMARY TEETH. To obtain approval as a cementing prefabricated fixed prostheses on primary teeth course the course must include both written and practical examinations to determine whether the student has demonstrated the necessary knowledge and proficiency to fit and cement primary crowns.

007.05 MONITORING AND ADMINISTERING NITROUS OXIDE ANALGESIA. To obtain approval as a monitoring and administering nitrous oxide analgesia course the course must include both written and practical examinations to determine whether the student has demonstrated the necessary knowledge and proficiency to monitor and administer nitrous oxide.

007.06 SIMPLE RESTORATION FOR ONE SURFACE. To obtain approval as a simple restoration for one surface course the course must include both written and practical examinations to determine whether the student has acquired the necessary knowledge and proficiency to place simple restorations for one surface.

007.07 COMPLEX RESTORATIONS FOR MULTIPLE SURFACES. To obtain approval as a complex restorations for multiple surfaces course the course must include both written and

practical examinations to determine whether the student has acquired the necessary knowledge and proficiency to place complex restorations for multiple surfaces.

007.08 CORONAL POLISHING. To obtain approval as a coronal polishing course, the course must.

- (A) Be offered at an accredited college or institution;
- (B) Be led by an instructor of the course who is qualified by education and experience; and
- (C) Contain a minimum of 14 contact hours of coronal polishing instruction which include at least 10 hours of didactic instruction and 4 hours of clinical participation.

007.09 COURSE CHANGES. All entities with approved courses shall keep the Board of Dentistry informed of any changes in course objectives and content at the time such change occurs.

007.10 CONDITIONS OF APPROVAL. Courses that fail to meet or continue to meet criteria for approval of a course may be denied or rescinded upon recommendation by the Board of Dentistry.

008. EXPANDED FUNCTION PERMIT. To obtain a permit to practice an expanded function, an individual must submit a completed application provided by the Department and meet the requirements of Neb. Rev. Stat. § 38-1118.03, Neb. Rev. Stat. § 38-1135, and the following:

008.01 EDUCATION. Provide to the Department:

- (A) Employment or staffing records or other reports from an employer(s) demonstrating 1,500 hours of experience as a licensed dental assistant;
- (B) Documentation of successful completion of an approved course for the expanded function permit that has been requested; and
- (C) Score reports sent directly to the Department from the issuing institution showing successful completion of one or both examinations for simple restoration for one surface or complex restoration for multiple surfaces with a score of 75 or above to demonstrate meeting the requirements of this chapter.

008.02 EXAMINATION.

- (A) An applicant for a permit to perform simple restoration for one surface must pass the practical examination on simple restoration for one surface administered by the Central Regional Dental Testing Service or any other comparable regional or state practical examination approved by the Board of Dentistry with a score of 75 or above;
- (B) An applicant for a permit to perform complex restoration on multiple surfaces must pass the practical examination on complex restoration for multiple surfaces administered by the Central Regional Dental Testing Service or another comparable regional or state practical examination approved by the Board of Dentistry with a score of 75 or above; and
- (C) Pass the jurisprudence exam specific to expanded functions with a score of 75 or above.

009. CORONAL POLISHING. Dental assistants may under indirect supervision of a licensed dentist, polish all exposed tooth surface with a rubber cup or brush driven by a conventional slow-speed hand piece, after meeting the requirements of Dentistry Practice Act and the following;

009.01 REQUIREMENTS.

- (A) EDUCATION. Have graduated from a dental assisting training program which is accredited and includes a coronal polishing course; or
- (B) EXPERIENCE. Have 1 year (a minimum of 1,500 hours) of clinical work experience as a dental assistant and have successfully completed a course in polishing procedures which is approved by the Board and the Department.

010. ADDITIONAL PROCEDURES. Additional allowed dental procedures are set out in Neb. Rev. Stat. § 38-1135 and this chapter.

010.01 MONITORING NITROUS OXIDE. To monitor nitrous oxide a dental assistant must hold current certification in healthcare cardiopulmonary resuscitation (CPR) from a course accredited by the American Heart Association, American Red Cross, or an equivalent certification approved by the Board of Dentistry.

010.02 ADDITIONAL DUTIES AS ASSIGNED. A dental assistant under the supervision of a licensed dentist may perform the following:

- (A) Provide infection control practices which meet the national standards for dental facilities as outlined by the Centers for Disease Control Summary of Infection Prevention Practices In Dental Settings as published October of 2016; and
- (B) Complete any task or procedure that does not require the professional skill or judgment of a licensed dentist or licensed hygienist except the following:
 - (i) Cutting of hard and soft tissue;
 - (ii) Irreversible procedures;
 - (iii) Restorative dentistry;
 - (iv) Making a dental diagnosis; or
 - (v) Fabricating a treatment plan.

011. REINSTATEMENT. For reinstatement, the applicant must meet the requirements set out in 172 NAC 10.

012. LICENSE FEES. The initial and renewal fees for dental assistant licenses are \$95 each.

012.01 EXPANDED FUNCTION PERMIT. The initial and renewal fees for expanded function permits are \$25 each.

012.03 ADDITIONAL PROCEDURES. Fees to add additional procedures to a license that require proof of education and examination are \$10 per application.