

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
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 57 of the Nebraska Administrative Code (NAC) – *Licensure of Dental Hygienists*. The proposed regulations will govern the licensure of Dental Hygienists and Expanded Function Dental Hygienists. Revisions are based on recent statutory changes in the Uniform Credentialing Act and the Dentistry Practice Act.

The proposed changes will eliminate duplication from statutes and removes duplicate language from the Uniform Credentialing Act and the associated regulations 172 NAC 10. These regulations also promulgate rules and regulations pursuant to the passage of LB 18 from the 2017 legislative session.

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](mailto: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

Agency: <b>Department of Health and Human Services</b>	
Title:172	Prepared by:Jesse Cushman
Chapter:57	Date prepared:3/27/19
Subject:Dental Hygienists	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 80 percent of all Dental Hygiene licensees will apply for the new permits. Expecting 1200 permits each type, restorative 1 and restorative 2.

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 57        LICENSURE OF DENTAL HYGIENISTS

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

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. Stat. §§ 38-1118 to §§ 38-1118.01, 172 NAC 10, and this chapter.

003.01 EXAMINATION. The applicant must be able to demonstrate completion of all of the following:

- (A) Pass the licensure examination given by the Joint Commission on National Board Dental Hygiene Examinations (JCNBDHE) with a score of 75 or above;
- (B) Pass the practical examination administered by the Central Regional Dental Testing Services (CRDTS) with a score of 75 or above or any other regional or state practical examination that the Board of Dentistry determines is substantially equivalent to such practical examination. Scores from any of the licensure practical examinations approved by the Board are accepted for up to 5 years from the date the examination was passed; and
- (C) Pass the jurisprudence examination with a score of 75 or above.

004. REMEDIAL COURSE. To receive approval of a remedial course an applicant must submit a complete application and the following:

- (A) Description of the subject matter of the remedial course. The subject matter for the remedial course must cover the content of the section(s) of the regional or state practical examination that the applicant failed;
- (B) Name, title, and qualifications (vitae or resume) of faculty member providing the remedial instruction;
- (C) Number of hours of didactic instruction, number of hours of clinical instruction, number of hours under direct supervision, and total number of hours in the remedial course. A remedial course must include a minimum of 15 hours of didactic and clinical instruction, of which at least 10 hours must be under the direct supervision of the faculty member providing the remedial instruction;
- (D) A written plan of evaluation for the course, indicating the method of evaluation;
- (E) A statement bearing the school seal from the institution providing the remedial course indicating that the course meets the criteria for approval; and
- (F) The signature of the faculty member providing course and the date signed.

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

006. CONTINUING EDUCATION. On or before March 1 of each odd-numbered year, each dental hygienist holding an active license 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.

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

- (A) Attendance at meetings of the local, state, or national American Dental Association or local, state, or national American Dental Hygiene Association; local, state, or national

- American Dental Assistants Association; or educational programs sponsored by the recognized specialty groups in dentistry of the American Dental Association;
- (B) Attendance at district meetings and study clubs;
  - (C) Formal education courses which relate directly to the practice of dentistry or dental hygiene;
  - (D) College or University-sponsored courses in continuing education in dentistry or dental hygiene;
  - (E) Licensee acting as table clinician or lecturer to licensed dentists, licensed dental hygienists, licensed or unlicensed dental assistants or licensee attending table clinics;
  - (F) Home study with a testing mechanism. If there is not a 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 dental clinic education of students;
  - (J) Dental public health continuing education;
  - (K) Ethics and professionalism continuing education;
  - (L) Well-being or substance abuse continuing education;
  - (M) Infection control continuing education;
  - (N) Practice management continuing education;
  - (O) Presentation or development of a continuing education program for dental hygienists by a licensee;
  - (P) Expanded functions for which the licensee holds a permit; or
  - (Q) Participating in a volunteer activity such as Mission of Mercy or equivalent.

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

006.03 CONTINUING EDUCATION CRITERIA. To be considered acceptable for continuing education, the activity must meet the following criteria:

- (A) Be at least 50 minutes in duration;
- (B) Objectives must relate to the practice of dental hygiene;
- (C) Presenters must be qualified by education, experience, or training;
- (D) Must be open to all licensed dental hygienists who meet the pre-requisites for the activity; and
- (E) The provider must have a process for verifying attendance and issue a certificate of attendance for each participant. Each certificate must include the following:
  - (i) Program name;
  - (ii) Name of the participant and the participant's license number;
  - (iii) Provider's name;
  - (iv) Dates the activity began and ended; and
  - (v) Number of hours attended by the licensee.

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

- (A) Objectives must relate to the practice of dental hygiene;
- (B) Must have a post-test or other method of assessment which verifies that the licensee completed the program; and
- (C) The authors(s) or developer(s) of the program must meet the following qualifications:
  - (i) Experience in the content and subject matter of the program;
  - (ii) Expertise in teaching and instructional methods suitable to the subject presented; and
  - (iii) Suitable academic qualifications, certification credentials, or experience for or in the subject of the program.

006.05 CREDIT HOUR CALCULATIONS. Credits earned in excess of thirty hours in a 24-month renewal period do not carry over into the following period. A dental hygienist may receive credit for acceptable continuing education activities, subject to the credit number limitations and requirements set out below:

- (A) A maximum of 10 hours each in a renewal period may be obtained through home study or for initial cardiopulmonary resuscitation (CPR) certification;
- (B) A maximum of 2 hours each in a renewal period may be obtained as a table clinician or lecturer or for direct clinical observation;
- (C) A maximum of 4 hours each in a renewal period may be obtained for cardiopulmonary resuscitation (CPR) re-certification or practice management continuing education;
- (D) A maximum of 5 hours each in a renewal period may be obtained for faculty overseeing student dental hygiene or expanded function dental hygiene clinics, dental public health continuing education activities, well-being or substance abuse continuing education activities or ethics and professionalism continuing education;
- (E) A minimum of 2 hours in a renewal period must be obtained in infection control continuing education;
- (F) A minimum of 2 hours in a renewal period must be obtained in each area for which a licensee holds an expanded function permit;
- (G) 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; or
- (H) A maximum of 5 hours in a renewal period for participating in a volunteer activity such as Mission of Mercy or equivalent.

007. 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 consumer 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) Prescribing, selling, administering, or distributing any drug legally classified as a prescription drug other than for accepted dental therapeutic purposes;
- (D) Giving fraudulent prescriptions;

- (E) Failure to furnish the Board or Department, their inspectors or representatives, information legally requested by the Board or the Department;
- (F) Any departure from or failure to conform to the CODE OF ETHICS FOR DENTAL HYGIENISTS of the "AMERICAN DENTAL HYGIENIST ASSOCIATION (ADHA) BYLAWS & CODE OF ETHICS" as published on June 25, 2018;
- (G) Misrepresentation of a material fact(s) in applying for or procuring a renewal of a credential or permit;
- (H) Misrepresenting the material facts of one's credential(s) in an application submitted to a healthcare facility, insurance company, or prospective employer;
- (I) Disruptive behavior such as:
  - (i) Outbursts of rage or violent behavior;
  - (ii) Throwing of instruments, records, or objects;
  - (iii) Striking, assaulting, or using insulting comments to a consumer, consumer's family member, dental staff, or other healthcare professionals; or
  - (iv) Poor hygiene; or
- (J) Refusal to cooperate or failure to furnish requested information during any investigation by the Department.

008. COURSE APPROVAL CRITERIA. The following criteria must be met to obtain approval for all courses:

- (A) Be part of an accredited dental hygiene training program or be provided 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 taught by an instructor who is qualified by education and experience; and
- (C) Provide the attendee with written verification of demonstrated competency upon completion of the course.

008.01 INTERIM THERAPEUTIC RESTORATION TECHNIQUE. To obtain approval as a course on interim therapeutic restoration technique the course must include both written and practical examinations to determine whether a student has demonstrated the necessary knowledge and proficiency to perform interim therapeutic restoration technique.

008.02 WRITING PRESCRIPTIONS FOR MOUTH RINSES AND FLUORIDE PRODUCTS. To obtain approval as a course on writing prescriptions for mouth rinses and fluoride products the course must include written examinations to determine whether the student has demonstrated the necessary knowledge and proficiency to write prescriptions for mouth rinses and fluoride products.

008.03 ADMINISTERING AND TITRATING NITROUS OXIDE ANALGESIA. To obtain approval as a course on administering and titrating nitrous oxide analgesia the course must include both written and practical examinations to determine whether a student has acquired the necessary knowledge and proficiency to administer and titrate nitrous oxide analgesia.

008.04 MINOR DENTURE ADJUSTMENTS. To obtain approval as a course on minor denture adjustments the course must include both written and practical examinations to determine whether a student has acquired the necessary knowledge and proficiency to perform minor denture adjustments.

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

008.06 COMPLEX RESTORATION FOR MULTIPLE SURFACES. To obtain approval as a course on complex restoration for multiple surfaces the course must include both written and practical examinations to determine whether a student has acquired the necessary knowledge and proficiency to perform complex restorations for multiple surfaces.

008.07 ADMINISTERING LOCAL ANESTHESIA. To obtain approval as a course on administering local anesthesia the course must:

- (A) Be offered by a program accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education; and
- (B) Meet the requirements set out in Neb. Rev. Stat. § 38-1132(2).

008.08 COURSE CHANGES. All entities with approved courses must inform the Board of any changes in course objectives and content at the time such change occurs.

008.09 CONDITIONS OF APPROVAL. Courses that fail to meet the criteria for approval may be denied approval or have the approval rescinded by the Board or Department, as applicable.

009. EXPANDED FUNCTION PERMITS. To receive approval to administer local anesthesia or a permit to practice an expanded function an individual must submit a completed application and meet the requirements set forth in Neb. Rev. Stats. §§ 38-1118.01, 38-1130, 38-1132, and 38-1152, as applicable, and these regulations.

009.01 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 hygienist in Nebraska or any United States jurisdiction with substantially similar standards or a combination of such experience as allowed by law;
- (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.

009.02 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.

010. LOCAL ANESTHESIA PERMIT. To obtain a local anesthesia permit an individual must submit a completed application provided by the Department and meet the requirements set forth in Neb. Rev. Stat. § 38-1132(2).

011. PUBLIC HEALTH AUTHORIZATION. To obtain a public health authorization an individual must submit a completed application provided by the Department and meet the requirements set forth in Neb. Rev. Stat. § 38-1130.

012. ADDITIONAL PROCEDURES. In addition to those permitted by Neb. Rev. Stat. § 38-1133, and Neb. Rev. Stat. § 38-1136(5) a licensed dental hygienist under the supervision of a licensed dentist may perform the following:

- (A) Complete any task or procedure that does not require the professional skill or judgment of a licensed dentist 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.
- (B) 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
- (C) Perform duties for which training has occurred in Commission on Dental Accreditation (CODA) certified programs and as directed by a licensed dentist.

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

014. FEES. Fees are set out in 172 NAC 2 and this chapter.

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

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