



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 184

132nd General Assembly
(As Introduced)

Reps. Gavarone and DeVitis

BILL SUMMARY

Services of a dental assistant, hygienist, or expanded function dental auxiliary

- Authorizes a dental hygienist or expanded function dental auxiliary (EFDA) to perform additional services for an unlimited period of time when a supervising dentist is not physically present.
- Reduces to one year and 1,500 hours the experience required before a dental assistant or EFDA is authorized to provide certain services when the supervising dentist is not physically present.

Teledentistry

- Authorizes provision of dental services through teledentistry, defined as the delivery of dental services through the use of synchronous, real-time communication and the delivery of services by a dental hygienist or EFDA pursuant to a dentist's authorization.
- Requires a dentist performing and authorizing teledentistry services to obtain a permit from the Board.
- Specifies requirements a dentist must meet before providing or authorizing teledentistry services, including what must be included in the dentist's written authorization and what information must be provided to the patient to obtain informed consent.

- Specifies experience, education, and other requirements that must be met before a dental hygienist or EFDA may perform teledentistry services as authorized by an authorizing dentist.
- Prohibits certain insurers from denying coverage for services provided to an insured through teledentistry if the services would be covered if delivered other than through teledentistry.
- Requires the Department of Medicaid to establish standards for Medicaid payments that provide coverage for teledentistry services that is comparable to coverage for services provided without the use of teledentistry.

Other dental law changes

- Makes other changes to the Dental Law regarding general anesthesia permits, dental licensing exams, and fees.

Scholarships

- Requires the development of a proposal to award scholarships to dental students under the existing Choose Ohio First scholarship program.

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CONTENT AND OPERATION

Services of a dental assistant, hygienist, or expanded function dental auxiliary

The bill modifies existing law governing the authority of a dental assistant, dental hygienist, or expanded function dental auxiliary (EFDA) to provide services, particularly when the services may be provided without a supervising dentist being physically present. Generally, current law requires supervision by a licensed dentist, but, subject to certain requirements, permits specified services to be provided for a limited or unlimited period of time when a supervising dentist is not present. The bill modifies some of the time periods. It also establishes a new avenue, to be known as teledentistry, for the provision of services when a dentist is not physically present but is available through synchronous, real-time communication.

Dental assistant services

Regarding services that may be provided by a certified dental assistant when the supervising dentist is not physically present, the bill modifies as follows two of the conditions a dental assistant must meet to be authorized to provide services in those circumstances:

--Reduces the practice experience required to one year and 1,500 hours, from two years and 3,000 hours;

--Eliminates the requirement that the supervising dentist have examined the patient not more than one year before the services are provided.¹

The bill also removes an existing requirement that must be met for the provision of pit and fissure sealants by a certified dental assistant prior to a dentist examining and diagnosing the patient and when a supervising dentist is not physically present. Under the bill, a supervising dentist is not required to have completed and evaluated a medical and dental history of the patient within one year of the date services are provided and to have determined that the patient is in a medically stable condition. All other existing conditions applicable to the provision of pit and fissure sealants by certified dental assistants in those circumstances are maintained by the bill.²

¹ R.C. 4715.39(D)(2)(a) and (d).

² R.C. 4715.39(E).



Dental hygienist services

The bill expands the services a dental hygienist is authorized to provide for an unlimited period of time when the supervising dentist is not physically present. Under current law, a dental hygienist who is employed by a supervising dentist, another dentist or entity associated with the supervising dentist, or certain government entities may apply fluoride varnish and desensitizing agents and discuss general nonmedical nutrition information when a supervising dentist is not physically present. The bill maintains this authority and adds (1) applying disclosing solutions, (2) applying pit and fissure sealants, (3) recementing temporary crowns or recementing crowns with temporary cement, (4) conducting caries susceptibility testing, and (5) providing instruction on oral hygiene home care, including the use of toothbrushes and dental floss.³

Regarding all other dental hygiene services, current law maintained by the bill limits the provision of those services when a supervising dentist is not physically present to not more than 15 consecutive business days and requires that certain requirements be met.⁴

Current law maintained by the bill also permits the provision of dental hygiene services when a supervising dentist is not physically present if the services are provided as part of a Board-approved dental hygiene program. Generally, examination and diagnosis is required before most services may be performed. Under current law, examination is not required for the placement of pit and fissure sealants. The bill adds that examination is not required for the application of fluoride varnish.⁵

The supervision requirements discussed above do not apply when a dental hygienist is practicing in accordance with the bill's teledentistry provisions (see "**Teledentistry**," below).⁶

EFDA services

Like the dental hygienist provision discussed above, the bill permits an EFDA to perform certain services when the supervising dentist is not physically present for an unlimited period of time. Under current law, an EFDA can perform the majority of authorized services for not more than 15 consecutive business days and only if certain

³ R.C. 4715.22(E).

⁴ R.C. 4715.22(C).

⁵ R.C. 4715.22(D)(3)(b).

⁶ R.C. 4715.22(A)(1).

requirements are met. Under the bill, the only requirement is that the EFDA be employed by the supervising dentist, another dentist or entity associated with the supervising dentist, or certain government entities. The authorized services are:

(1) Recementation of temporary crowns or recementation of crowns with temporary cement;

(2) Application of topical fluoride;

(3) Application of fluoride varnish;

(4) Application of disclosing solutions;

(5) Application of desensitizing agents;

(6) Caries susceptibility testing;

(7) Instruction on oral hygiene home care, including the use of toothbrushes and dental floss.⁷

The bill generally maintains current law concerning the application of pit and fissure sealants for not more than 15 consecutive business days when a supervising dentist is not physically present, except as follows:

--It reduces the amount of experience required to one year and 1,500 hours, from two years and 3,000 hours. The experience may come from practicing as an EFDA or dental assistant.

--It removes a requirement that the supervising dentist must have examined the patient not more than one year prior to the date the EFDA is providing the services.⁸

For the application of pit and fissure sealants as part of certain school, board of health, or dental association programs, the bill removes a requirement that the supervising dentist must have examined the patient not more than one year prior to the date the service is provided. All other current requirements applicable to pit and fissure sealants in those circumstances are maintained by the bill.⁹

⁷ R.C. 4715.64(E).

⁸ R.C. 4715.64(C).

⁹ R.C. 4715.64(D).

The bill provides that the supervision requirements in current law apply only when an EFDA is not practicing in accordance with the bill's teledentistry provisions, which are discussed below.¹⁰

Teledentistry

The bill authorizes the provision of dental services through teledentistry. "Teledentistry" is defined as the delivery of dental services through the use of synchronous, real-time communication and the delivery of services of a dental hygienist or EFDA pursuant to a dentist's authorization. "Synchronous, real-time communication" is a live, two-way interaction between a patient and dentist conducted through audiovisual technology.¹¹

Dental services provided by a dentist

A dentist who holds a current, valid teledentistry permit is an "authorizing dentist" under the bill (see "**Teledentistry permit**," below).¹² The bill permits an authorizing dentist who meets the conditions discussed below to do either of the following under a teledentistry permit without examining a patient in person:

--Authorize a dental hygienist or EFDA to perform certain services at a location where no dentist is physically present;

--Prescribe a drug that is not a controlled substance for a patient who is at a location where no dentist is physically present.¹³

The following conditions must be met to practice teledentistry:

(1) The authorizing dentist must prepare a written authorization that includes at least information related to the dentist, the dental hygienist or EFDA performing services, the patient, the location where services are to be provided, the date, and a statement signed by the dental hygienist or EFDA agreeing to comply with written protocols and orders established by the authorizing dentist;

(2) The patient must be informed of certain information regarding teledentistry, the patient must consent to the provision of services through teledentistry, and the consent must be documented in the patient's record;

¹⁰ R.C. 4715.64(A) and (B).

¹¹ R.C. 4715.43(A).

¹² R.C. 4715.43(A)(1).

¹³ R.C. 4715.431(A).



(3) The authorizing dentist must establish the patient's identity and physical location through synchronous, real-time communication;

(4) The authorizing dentist must provide dental services through teledentistry only as are appropriate for the patient and in accordance with appropriate standards of care;

(5) The authorizing dentist must establish a diagnosis and treatment plan and document it in the patient's record;

(6) The authorizing dentist must specify the services the dental hygienist or EFDA is authorized to provide;

(7) The dental hygienist or EFDA must be employed by or under contract with the authorizing dentist, the authorizing dentist's employer, or certain business entities associated with the authorizing dentist.¹⁴

The bill specifies that the authorizing dentist retains responsibility for ensuring safety and quality of services provided to patients through teledentistry. The services must be consistent with in-person services, and persons involved with providing services through teledentistry must abide by laws addressing the privacy and security of patient information.¹⁵

An authorizing dentist cannot have more than a total of three dental hygienists or EFDAs working under the dentist's authorization at any one time.¹⁶

Services provided by a dental hygienist or EFDA

If authorized by an authorizing dentist, the bill permits a dental hygienist or EFDA to perform certain services at a location where no dentist is physically present if the requirements discussed below are met. The services an EFDA may perform are:

(1) Application of pit and fissure sealants;

(2) Recementation of temporary crowns or recementation of crowns with temporary cement;

(3) Application of topical fluoride;

¹⁴ R.C. 4715.431(B).

¹⁵ R.C. 4715.431(C).

¹⁶ R.C. 4715.431(D).



- (4) Application of fluoride varnish;
- (5) Application of disclosing solutions;
- (6) Application of desensitizing agents;
- (7) Caries susceptibility testing;
- (8) Instruction on oral hygiene home care, including the use of toothbrushes and dental floss;
- (9) Additional procedures authorized by the Board in rules.¹⁷

A dental hygienist is generally authorized to perform "dental hygiene services," which are defined as the prophylactic, preventive, and other procedures that dentists are authorized under existing law to assign to dental hygienists, except that the following are specifically excluded: procedures while the patient is anesthetized, definitive root planing, definitive subgingival curettage, the administration of local anesthesia, and any other procedures identified by the Board in rules.¹⁸

If authorized to do so by an authorizing dentist, both dental hygienists and EFDAs also may place interim therapeutic restorations and apply silver diamine fluoride if the requirements discussed below are met and the hygienist or EFDA completes a Board-approved course in the proper placement of the restorations or the fluoride, as applicable.¹⁹ An "interim therapeutic restoration" is a direct provisional restoration placed to stabilize a tooth until further treatment by a licensed dentist. It includes the removal of debris, other than carious or noncarious tooth structure, from the carious lesion using air or water irrigation.²⁰

To be authorized to perform the services discussed above, a dental hygienist or EFDA must meet some of the same requirements of existing law that apply when a hygienist or EFDA is performing services when a supervising dentist is not physically present. The requirements are the following:

- (1) At least one year and a minimum of 1,500 hours of practice experience as a dental hygienist or EFDA, as applicable;

¹⁷ R.C. 4715.431(F)(1) and 4715.64(A).

¹⁸ R.C. 4715.43(A)(2) and 4715.431(E)(1).

¹⁹ R.C. 4715.431(E)(2) and (3) and (F)(2) and (3).

²⁰ R.C. 4715.43(A)(3).

(2) Completion of a course on the identification and prevention of potential medical emergencies;

(3) A skills evaluation by the authorizing dentist;

(4) Compliance with written protocols or standing orders established by the authorizing dentist, including those established for emergencies.²¹

List of locations

The bill requires an authorizing dentist, and a dental hygienist or EFDA who has been authorized to perform services in accordance with the bill's teledentistry provisions, if requested by the Board, to provide a list of all locations where a hygienist or EFDA has provided services through teledentistry, the locations where such services are expected to be provided in the future, or both.²²

Prohibitions

The bill establishes the following prohibitions, effective six months after the bill's general effective date:²³

--No person shall provide services under the bill's teledentistry provisions unless the person is an authorizing dentist or is a dental hygienist or EFDA who is providing services in accordance with the bill.²⁴

--No person shall authorize a dental hygienist or EFDA to provide services under the bill's teledentistry provisions unless the person is an authorizing dentist and the services will be provided in accordance with the bill.²⁵

--No authorizing dentist shall authorize a dental hygienist or EFDA to diagnose a patient's oral health care status and no hygienist or EFDA shall diagnose a patient's oral health care status as part of the services provided under the bill's teledentistry provisions.²⁶

²¹ R.C. 4715.431(E)(1) and (F)(1).

²² R.C. 4715.434.

²³ Section 3.

²⁴ R.C. 4715.435(A).

²⁵ R.C. 4715.435(B).

²⁶ R.C. 4715.435(C).

The bill further provides that its teledentistry provisions do not authorize any activity prohibited under current law governing the practice of dental hygiene or any activity otherwise prohibited by the Dental Law or rules adopted by the Board.²⁷

Teledentistry permit

Issuance

Under the bill, a dentist who desires to provide dental services through teledentistry must apply to the Board for a permit. The application fee is \$20.

Requirements for the permit are to be established by the Board in rules. The Board must issue a teledentistry permit to a dentist who is in good standing with the Board and satisfies all of the requirements set by the Board.²⁸

Renewal

A teledentistry permit expires on December 31 in the first odd-numbered year after the permit is issued. The permit must be renewed if the dentist submits a complete application to the Board, pays a \$20 renewal fee, and verifies the locations where teledentistry services were provided since the permit was most recently issued or renewed.²⁹

Suspension and revocation

In accordance with the Administrative Procedure Act (R.C. Chapter 119.), the Board may suspend or revoke a teledentistry permit if the permit holder fails to comply with the bill's provisions or any rules adopted by the Board.³⁰

Insurance and Medicaid coverage

Generally, the bill prohibits an insurer from denying coverage for the costs of any services provided to an insured through teledentistry if the services would be covered if delivered other than through teledentistry. The coverage that may not be excluded is subject to all terms, conditions, restrictions, exclusions, and limitations that apply to other coverage for services performed by participating and nonparticipating providers. The prohibition applies to the following:

²⁷ R.C. 4715.437.

²⁸ R.C. 4715.43(B).

²⁹ R.C. 4715.432.

³⁰ R.C. 4715.433.



(1) A multiple employer welfare arrangement that is created under existing law and operates a group self-insurance program;³¹

(2) An individual or group health insuring corporation policy or agreement;³²

(3) An individual or group policy of sickness and accident insurance or public employee benefit plan.³³

The bill does not attempt to apply its insurance provisions to health insurance coverage by self-insured employers because the federal Employee Retirement Income Security Act of 1974³⁴ generally provides that self-insured companies cannot be required to comply with state laws regarding employee benefit plans.

The bill requires the Department of Medicaid to establish standards for Medicaid payments for services provided through teledentistry. The standards must provide coverage for services to the same extent that the services would be covered by Medicaid if provided without the use of teledentistry.³⁵

Rules

The bill authorizes the Board to adopt rules in accordance with the Administrative Procedure Act as the Board considers necessary to implement the bill. The rules must include (1) requirements for issuance of a teledentistry permit and (2) approval of courses in the placement of interim therapeutic restorations and application of silver diamine fluoride. The rules may specify procedures a dental hygienist is not permitted to perform under the bill's teledentistry provisions.³⁶

³¹ R.C. 1739.05.

³² R.C. 1751.90.

³³ R.C. 3923.90.

³⁴ 29 U.S.C. 1000, *et seq.*

³⁵ R.C. 5164.951.

³⁶ R.C. 4715.436.



Other changes to the Dental Law

Conscious sedation and general anesthesia permits

The bill changes restrictions on the use of conscious intravenous sedation to restrictions on conscious sedation and changes the permit a dentist must have to a conscious sedation permit.³⁷ This reflects the terminology used in the Board's rules.³⁸

Current law establishes a fee for a general anesthesia permit but has no other reference to the permit. The bill prohibits a dentist from employing or using general anesthesia unless the dentist possesses a valid general anesthesia permit issued by the Board.³⁹ It requires the Board to adopt rules in accordance with the Administrative Procedure Act establishing eligibility criteria, application and permit renewal procedures, and safety standards for dentists applying for the permit.⁴⁰

Dental license exam

The bill authorizes two additional regional testing agencies to administer the dental license exam: the Commission on Dental Competency Assessments and the Council of Interstate Testing Agencies, Inc. It specifies that applicants who take an examination administered by a regional testing agency must receive a passing score on the exam as a whole, as determined by the administering agency. This is in place of a provision requiring a passing score on each component of the exam.⁴¹

Biennial registration fee

The bill increases the biennial registration fee for dentists to \$265 (from \$245). It also increases the portion of that fee paid to the Dentist Loan Repayment Program Fund, to \$40 (from \$20).⁴²

Ohio First Scholarship Program

The bill requires a proposal to be developed to create a primary care dental student component for the existing Choose Ohio First scholarship program.⁴³ If created,

³⁷ R.C. 2925.01, 4715.03, 4715.09, and 4715.13.

³⁸ Ohio Administrative Code 4715-3-01 and 4715-5-07.

³⁹ R.C. 4715.09(F).

⁴⁰ R.C. 4715.03(G).

⁴¹ R.C. 4715.10(D) and 4715.11(A).

⁴² R.C. 4715.14(A)(1) and (E).



the component will annually award scholarships to dental students who meet both of the following requirements:

--Commit to practice dentistry for at least four years in an area designated under current law as a dental health resource shortage area;

--Accept Medicaid recipients as patients.⁴⁴

The deans of the Ohio State University College of Dentistry and Case Western Reserve University School of Dental Medicine are required to jointly develop the proposal. They must consider including in it provisions to (1) establish a scholarship fund sufficient to annually award up to eight dental students scholarships and (2) specify a scholarship may be provided to a dental student for up to four years.⁴⁵

The proposal must be submitted to the Chancellor of Higher Education by January 1, 2018. The Chancellor must decide whether to implement the component.⁴⁶

HISTORY

ACTION	DATE
Introduced	04-12-17

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⁴³ R.C. 3333.61, not in the bill.

⁴⁴ R.C. 3333.614(D).

⁴⁵ R.C. 3333.614(A) and (B).

⁴⁶ R.C. 3333.614(C).

