



North Dakota State Board of Dental Examiners

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March 18, 2024

Liz Fordahl
Assistant Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Dear Ms. Fordahl:

The Notice of Intent to Amend Administrative Rules, a copy of the proposed rules, and regulatory analysis are enclosed as required by N.D.C.C. § 28-32-10(1).

Sincerely,

A handwritten signature in black ink, appearing to read "David Schaibley".

David Schaibley
Executive Director
North Dakota State Board of Dental Examiners

Encl.

cc: Ali Fallgatter, DDS—NDSBDE Legislation Portfolio
Marcus Tanabe, DDS—NDSBDE President

**FULL NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES RELATING TO
N.D. ADMIN. CODE CHAPTER 20
THE PRACTICE OF DENTISTRY**

TAKE NOTICE that the North Dakota State Board of Dental Examiners will hold a public hearing to address proposed amendments to N.D. Admin. Code 20 at 9:00 a.m. on Monday, April 22, 2024, at the North Dakota State Capitol Building; 600 E. Boulevard Avenue, Bismarck, North Dakota; 58505—Fort Union Room. The purpose of the proposed amendments to N.D. Admin. Code chapter 20 implement changes to the practice of dentistry, including: qualifications for licensing, registering, and permitting of dentists, dental hygienists, and dental assistants; modifications to the supervision levels and duties that may be performed by hygienists and assistants; the clarification of ambiguities and updating of outdated language; and to adjust fees.

The proposed rules are expected to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in this rulemaking action.

The proposed rules and regulatory analysis may be reviewed at the office of the North Dakota State Board of Dental Examiners at 2900 E. Broadway Avenue, Bismarck, ND, 58501. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the above address or to PO Box 7246, Bismarck, North Dakota, 50507, e-mailing info@nddentalboard.org, or calling 701-258-8600. Written or oral comments on the proposed rules sent to the above addresses or telephone number and received by May 2, 2024, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the North Dakota State Board of Dental Examiners at the above telephone number or address at least twenty (20) days prior to the public hearing.

Dated this 18th day of March, 2024.

David Schaibley
Executive Director
North Dakota State Board of Dental Examiners

Regulatory Analysis
Proposed Amendments to N.D. Admin. Code chapter 20

Purpose.

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed amendments to North Dakota Administrative Code Chapter 20 related to the practice of dentistry. These amendments are anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Aspects of the proposed amendments to N.D. Admin. Code chapter 20 that have beneficial and cost impacts set forth in this regulatory analysis are provisions that (1) expand the roles of dental assistants, (2) modify criteria for licensing, registering and permitting, (3) add a new dental assistant registration category in order to increase the types of staff that may perform radiographs or x-rays; (4) modify fees, and (5) create a contingent fee dependent on future statutory changes to the Physicians Health Program outlined in N.D. Century Code ch. 43-17.3.

1. The proposed rules expand the roles of dental assistants and duties they perform. The classes of persons impacted include licensees of the Board (e.g., dentists, hygienists, and assistants) and consumers.
 - a. Individuals who are employed as dental assistants will be able to provide more treatment to more patients. This expansion will increase the value of dental assistants in the workplace and their earning capacity. The quantity of this change is difficult to assess and unlimited.
 - b. Dentists who employ dental assistants will be able to use dental assistants for more patients and in more treatment plans. Increased use of dental assistants will free up the dentist and other staff and increase their capacity. These efficiencies are expected to increase the number of patients that can be treated by a dental office and decrease operational costs. The quantity and value of this change is difficult to assess and unlimited.
 - c. Consumers are anticipated to experience increased access to care because more efficient dental offices can treat more patients in a shorter time. Consumers will also benefit when potential savings in dental office operational costs are passed on to consumers. The quantity and value of increased access is difficult to assess and unlimited.
2. The proposed rules modify the criteria for registration of out-of-state dental assistants seeking to register in North Dakota. The classes of persons impacted by these changes include assistants registered in other states seeking registration in North Dakota, other licensees of the Board (e.g., dentists, hygienists, and assistants), and consumers.
 - a. The existing rules provide several paths by which dental assistants registered in other states may readily be registered in North Dakota. Occasionally, current

applicants may fall slightly short of criteria, yet be able to demonstrate other qualifications (e.g., extensive education, training, and experience) that outweigh potential short coming. The proposed rule allows the Board to assess those applicants, thereby allowing the Board to register assistants who may not otherwise have qualified.

- b. More out-of-state individuals will meet the criteria for registration as dental assistants in North Dakota. They will be able to obtain gainful employment and provide dental treatment to consumers. This expansion will increase the value of dental assistants in the workplace and their earning capacity. The quantity of this change is difficult to assess and unlimited.
 - c. Dentists will have access to an increased number of potential employees that are registered as dental assistants. This will increase the efficiency of dental offices. The efficiencies will in turn increase the number of patients that can be treated and may decrease operational costs. The quantity and value of this change is difficult to assess and unlimited.
 - d. Consumers are anticipated to have increased access to care because more efficient dental offices can treat more patients in a shorter time. Consumers will also benefit when potential savings in dental office operational costs are passed on to consumers. The quantity and value of this increased access is difficult to assess and unlimited.
3. At present, Qualified Dental Assistants may take patient x-rays. There is a need for more qualified employees to take x-rays. The proposed rules create the new role of Qualified Dental Assistant-Limited Radiology Registrant. By creating this new role, the Board of Dental Examiners seeks to expand the quantity of dental assistants that may safely take patient x-rays.
- a. Unregistered dental assistant will be able to readily obtain the training and education necessary to safely take radiographs without also having to take the additional training necessary to be a Qualified Dental Assistant. These individuals will be able to obtain gainful employment and provide additional dental treatment to consumers. This expansion will increase the value of dental assistants in the workplace and their earning capacity. The quantity of this change is difficult to assess and unlimited.
 - b. Dentists will have an opportunity to hire more individuals that can readily be registered to safely take patient x-rays. This will increase the efficiency of that dental office. Those efficiencies will in turn increase the number of patients that can be treated and may decrease operational costs. The quantity and value of this change is difficult to assess and unlimited.
 - c. Consumers are anticipated to have increased access to care because more efficient dental offices can treat more patients in a shorter time. Consumers will also benefit when potential savings in dental office operational costs are

passed on to consumers. The quantity and value of this increased access is difficult to assess and unlimited.

4. The proposed rules increase select fees paid by licensees and registrants. The classes of persons impacted by these changes include dentists, hygienists, and assistants, and the Board of Dental Examiners.
 - a. Dental professionals will bear an increase of approximately 10% for some of the fees they pay per biennium. The estimated amount is \$44,190 per biennium.
 - b. The Board of Dental Examiners anticipates incurring costs of at least \$5,000 in implementing the proposed rules.
 - c. The Board of Dental Examiners anticipates an estimated increase in revenues of approximately \$44,190 per biennium—estimation based on the present quantity of licensees per fee category.
 - d. The increased funds will be used to offset portions of increases in costs related to software licensing, employment and administrative support, website and database maintenance, a substantial increase in the cost of biennial audits, and other services.
5. N.D. Century Code ch. 43-17.3 creates access to mental health, physical health, and substantive use programs designed to assist participants that have such conditions. This access will allow dental professionals to get the help they need and allow them to more readily maintain a safe and beneficial practice. At present, dental professionals are not permitted to participate in this statute's programming. We anticipate seeking a statutory change during the 2025 legislative session that would allow dentists and hygienists to participate in those programs. If that occurs, by adopting this contingent fee now—the contingent fee could be assessed commencing with the renewal period occurring in December 2025. All funds would be used to offset the costs associated with dental professionals' participation in such programs.
 - a. The proposed fee for participation in the physician's health program is \$50.00/biennium for dentists and \$35.00/biennium for hygienists—or a total of approximately \$50,100. The value of this program is impossible to assess and includes potential life-altering benefits.
6. What were the alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency/board and why was each method rejected in favor of the proposed rule?
 - a. The Board of Dental Examiners fully assessed each existing rule to ensure its regulatory reach was no more impactful or expansive than necessary while still ensuring public safety. It made the changes it felt confident could be safely implemented.