HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1313 Dental Hygienists
SPONSOR(S): Health & Human Services Quality Subcommittee; Corcoran
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Holt	Calamas
2) Health Care Appropriations Subcommittee	14 Y, 0 N	Clark	Pridgeon
3) Health & Human Services Committee	17 Y, 0 N	Holt	Gormley

SUMMARY ANALYSIS

A dental hygienist practices under the supervision of a licensed dentist and may be delegated various remediable tasks – intraoral treatment tasks which are reversible and do not cause an increased risk to the patient. Dental hygienists may not perform any irremediable tasks – intraoral treatment tasks which are irreversible or cause an increased risk to the patient. The administration of anesthetics other than topical anesthetics is considered to be an irremediable task. A dentist may not delegate irremediable tasks unless granted specific authority in law.

The bill grants dental hygienists the specific authority to administer local anesthesia to a nonsedated patient who is at least 18 years old under the direct supervision of a dentist. Local anesthesia includes intraoral block and soft tissue infiltration anesthesia. A dental hygienist who wishes to administer anesthesia must complete an approved 60-hour course in the administration of local anesthesia and maintain a certification in basic or advanced CPR.

DOH is directed to issue a certificate to a dental hygienist who meets all criteria for a certificate. The certificate is not subject to the licensure renewal process and is considered part of the dental hygienist's permanent record. The certificate must be prominently displayed at the location where the dental hygienist is administering local anesthesia. The bill requires DOH to establish a one-time application fee not to exceed $35 and requires the board to adopt rules necessary to implement the provisions of the bill.

The bill has a positive fiscal impact to the Medical Quality Assurance Trust Fund within the Department of Health.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Medical Quality Assurance

The Department of Health (DOH), Division of Medical Quality Assurance (MQA), regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils.

Boards

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.[1] Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

Dental Hygienists

Dental hygienists are governed by chapter 466, F.S., the Dentistry, Dental Hygiene, and Dental Laboratories practice act (Dental Practice Act). Dental hygiene is defined as the rendering of educational, preventative, and therapeutic dental services and any related extra-oral procedures within the scope and practice area of a dental hygienist.[2] Currently, there are 10,593 individuals who hold an active in-state license to practice as a dental hygienist in Florida.[3]

Dental hygienists practice under the supervision of dentists and may be delegated various remediable and irremediable tasks. The administration of anesthetics other than topical anesthetics is considered to be an irremediable task.[4] Dentists are responsible for any delegated procedures or tasks.[5]

Delegated Tasks

There are two types of tasks within the practice of dentistry that specify delegation parameters for dentists: irremediable and remediable tasks.[6]

"Irremediable tasks" are those intraoral treatment tasks which, when performed, are irreversible and create unalterable changes within the oral cavity or the contiguous structures or which cause an increased risk to the patient. The administration of anesthetics other than topical anesthesia and the use of a laser or laser device of any type are considered to be "irremediable tasks".[7] A dentist may not delegate irremediable tasks unless granted specific authority in law.[8]

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[1] Section 456.001, F.S.
[2] Section 466.003(4), F.S.
[3] Florida Department of Health, Division of Medical Quality Assurance, 2010-2011 MQA Annual Report, *available at*: http://doh.state.fl.us/mqa/reports.htm (last viewed January 26, 2012).
[4] Section 466.003, F.S.
[5] Section 466.024(9), F.S.
[6] Dental hygienists are regulated by ss. 466.023, 466.0235, and 466.024, F.S.
[7] S. 466.003(11), F.S. and 64B5-16.001, F.A.C.
[8] Section 466.024(1), F.S.

"Remediable tasks" are those intraoral treatment tasks which are reversible and do not create unalterable changes within the oral cavity or the contiguous structures and which do not cause an increased risk to the patient.[9] A dentist may delegate remediable tasks to a dental hygienist when the tasks pose no risk to the patient. The board is granted the authority to designate tasks that are remediable and delegable, except for the following tasks that are designated in law:[10]

- Taking impressions for study casts but not for the purpose of fabricating any intraoral restorations or orthodontic appliance;
- Placing periodontal dressings;
- Removing periodontal or surgical dressings;
- Removing sutures;
- Placing or removing rubber dams;
- Placing or removing matrices;
- Placing or removing temporary restorations;
- Applying cavity liners, varnishes, or bases;
- Polishing amalgam restorations;
- Polishing clinical crowns of the teeth for the purpose of removing stains but not changing the existing contour of the tooth; and
- Obtaining bacteriological cytological specimens not involving cutting of the tissue.

A dentist may only delegate remediable tasks to a dental assistant or a dental hygienist when the tasks pose no risk to the patient. Section 466.024(8), F.S., prohibits dentists from delegating the writing of a prescription drug order and determining a diagnosis for treatment or a treatment plan.

Supervision

There are three levels of supervision within the practice of dentistry: direct, indirect, and general. Under "direct supervision", a dentist diagnoses the condition to be treated, a dentist authorizes the procedure to be performed, a dentist remains on the premises while the procedures are performed, and a dentist approves the work performed before dismissal of the patient.[11] Under "indirect supervision", a dentist examines a patient, diagnoses a condition to be treated, authorizes the procedure, and a dentist is on the premises while the procedures are performed.[12]

Under "general supervision[13]", a dentist authorizes the procedure being carried out but is not required to be present when the authorized procedure is being performed.[14] The authorized procedure may be performed at a place other than the dentist's usual place of practice. Furthermore, general supervision requires that a dentist examine the patient, diagnose the condition to be treated, and then authorize a procedure to be performed.[15] Any authorization for remediable tasks to be performed under general supervision is valid for a maximum of 13 months; after which, no further treatment under general supervision can be performed without another clinical exam by a licensed dentist.[16]

All levels of supervision require that a dental hygienist or dental assistant receive the appropriate formal training or on-the job training to be qualified to perform delegated tasks.[17]

[9] S. 466.003(12), F.S.
[10] Section 466.024(1), F.S.
[11] S. 466.003(8), F.S.
[12] S. 466.003(9), F.S. and 64B5-16.001(5), F.A.C.
[13] The issuance of a written work authorization to a commercial dental laboratory by a dentist does not constitute general supervision.
[14] S. 466.003(10), F.S.
[15] 64B5-16.001(6), F.A.C.
[16] 64B5-16.001(7), F.A.C.
[17] 64B5-16.005 and 64B5-16.006, F.A.C.

Anesthesia in Dentistry

Currently, only licensed dentists may administer general or local anesthetics within the practice of dentistry.[18] The anesthesia modalities authorized for use in dentistry are:[19]

- Local anesthesia, which leads to diminished pain sensation in a specific area of the body without loss of consciousness, usually achieved with a topically-applied or superficially-injected numbing agent.
- General anesthesia, which is a controlled state of pharmacologically-induced unconsciousness accompanied by a partial or complete loss of protective reflexes.
- Conscious sedation, which is a depressed level of consciousness produced by a pharmacologic substance in which the patient's ability to independently maintain an airway and respond appropriately to physical and verbal stimulation is retained.
- Nitrous-oxide inhalation anesthesia, which is produced by the inhalation of a combination of nitrous-oxide and oxygen and causes an altered level of consciousness while retaining the patient's ability to independently maintain an airway and respond appropriately to physical stimulation or verbal commands.

Moreover, dentists who administer anesthesia are required to maintain certification in cardiopulmonary resuscitation (CPR) and either Advanced Cardiac Life Support (ACLS) or Advanced Trauma Life Support.[20]

Oral medications may not be used for sedation unless the dentist holds a conscious sedation permit, and the administration of propofol, methohexital, thiopental, or etomidate is prohibited without a general anesthesia permit.[21] A dentist who performs conscious sedation in a dental office may only induce one patient at a time.[22] A second patient may not be induced until the first patient is awake, alert, conscious, spontaneously breathing, has stable vital signs, is ambulatory with assistance, is under the care of a responsible adult, and the portion of the procedure requiring the participation of the dentist is complete.[23]

The only agents authorized for inhalation analgesia is nitrous-oxide.[24] To perform nitrous-oxide inhalation anesthesia, a dentist must complete a 2-day training course described in the American Dental Association's "Guidelines for Teaching and Comprehensive Control of Pain and Anxiety in Dentistry" or an equivalent program and have adequate equipment with fail-safe features.[25] Alternatively, a dentist who holds any type of anesthesia permit is also authorized to perform nitrous-oxide inhalation anesthesia.[26]

Dental Hygienists and Anesthesia

The presence of at least one assistant is required for all general anesthesia, conscious sedation, and pediatric conscious sedation procedures. Dental hygienists may assist with such procedures under the direct supervision of a permitted dentist if they possess a valid basic CPR certificate.[27] Dental hygienists may monitor nitrous-oxide inhalation analgesia under the direct supervision of a permitted dentist if they complete a 2-day training course as described in the American Dental Association's "Guidelines for Teaching and Comprehensive Control of Pain and Anxiety in Dentistry" or an equivalent program.[28]

[18] Section 466.017(1), F.S.
[19] Rule 64B5-14.001, F.A.C.
[20] Section 466.017(4), F.S.
[21] Rule 64B5-14.002, F.A.C.
[22] 64B5-14.004, F.A.C.
[23] *Id.*
[24] 64B5-14.002, F.A.C.
[25] 64B5-14.003, F.A.C.
[26] *Id.*
[27] Rule 64B5-14.003, F.A.C.
[28] Rule 64B5-14.004(2), F.A.C.

Effect of Proposed Changes

Currently, the administration of anesthetics other than topical anesthetics is an irremediable task and dental hygienists are not authorized to perform irremediable tasks unless granted specific authority in law.

The bill grants dental hygienists the specific authority to administer local anesthesia by making the administration a remedial and delegable task. Moreover, the bill also adds the authority to administer local anestheia to the dental hygienists scope of practice provisions. The bill provides that local anethesia includes intraoral block and soft tissue infiltration anesthesia. Local anesthesia must be provided under the direct supervision of a dentist, which requires the dentist to remain on the premises while the local anestheia is performed.

The bill provides that a dental hygienist may administer local anesthesia to a nonsedated patient who is 18 years of age or older, if they:

- Present evidence of a current certification in basic or advanced cardiac life support;
- Possess a valid certificate authorizing administration of local anesthesia; and
- Successfully complete a 60-hour course in the administration of local anesthesia offered by a dental or dental hygiene program approved by the board or a program accredited by the Commission on Dental Accreditation of the American Dental Association. The course must be comprised of 30-hours of didactic instruction and 30-hours of clinical experience. The didactic instruction must include the following areas of instruction:
    - Anatomy;
    - Infection control;
    - Local anesthesia medical emergencies;
    - Neurophysiology;
    - Pharmacology of local anesthetics and vasoconstrictors;
    - Psychological aspects of pain control;
    - Selection of pain control modalities;
    - Systemic complications;
    - Techniques of mandibular and maxillary anesthesia; and
    - Theory of pain control.

The bill also requires a dental hygienist to renew his or her certification in basic or advanced cardiac life support every 2 years. The certificate is not subject to the licensure renewal process and is considered part of the dental hygienist's permanent record. The certificate must be prominently displayed where the dental hygienist is administering local anesthesia.

The bill directs the board to certify, and the DOH is required to issue, a certificate to a dental hygienist who meets the eligibility criteria. The board is directed to establish a one-time application fee not to exceed $35 and the board is required to adopt rules necessary to implement the provisions of the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 466.017, F.S., relating to prescription of drugs and anesthesia.
Section 2. Amends s. 466.023, F.S., relating to dental hygienists scope of practice.
Section 3. Amends s. 466.024, F.S., relating to delegation of duties and expanded functions.
Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

As of June 30, 2011, 10,593 individuals hold an active in-state license to practice as a dental hygienist in Florida.[29] Between July 1, 2010 and June 30, 2011, the DOH issued 315 new licenses to dental hygienists.[30] The bill authorizes DOH to charge a one-time application not to exceed $35.

For the purpose of this analysis, if all 10,593 dental hygienists seek certification to administer local anesthesia and remit a fee of $35 the DOH could collect $370,755 (10,593 X $35) in non-recurring revenue for the first year and potentially $11,025 (315 X $35) non-recurring revenue in the second year if the DOH issues the same number of new licenses. It is highly unlikely that all licensed dental hygienists will seek certification and the actual impact could be significantly less. So, if 25 percent of licensed dental hygienists seek certification to administer local anesthesia, then the DOH may only collect $92,715 non-recurring revenue.

Percentage of potential Dental Hygienists who may seek Certification	Potential Revenue
100% (10,593 licensees @ $35)	$ 370,755
50% (5,297 licensees @ $35)	$ 185,395
25% (2,649 licensees @ $35)	$ 92,715

2. Expenditures:

DOH will incur non-recurring workload to update the Customer Oriented Medical Practitioner Administration System (COMPAS) licensure system to implement the provisions of this bill. This work can be performed with current resources.

DOH may experience a recurring increase in workload associated with additional complaints and investigations due to non-compliance for any dental hygienist who administers local anesthesia without direct supervision of a dentist and fails to display this certificate at his/her place of employment. It is anticipated that current resources are adequate to absorb the additional workload.

DOH will incur non-recurring costs for rulemaking which current budget authority is adequate to absorb.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None identified.

2. Expenditures:

None identified.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

Section 216.0236, F.S., provides that regulatory services or programs are to be borne solely by those who receive the service or who are subject to regulation. A regulatory program should be totally self-

[29] Florida Department of Health, Division of Medical Quality Assurance, 2010-2011 MQA Annual Report, *available at*: http://doh.state.fl.us/mqa/reports.htm (last viewed January 26, 2012).
[30] *Id.*

sufficient or is required to demonstrate that the service or program provides substantial benefits to the public in order to justify a partial subsidy from other state funds. As of June 30, 2011, the regulation of dental hygienist is self-sufficient. The MQA Trust Fund reflects $1M cash balance for the dental hygienist profession.[31]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Health & Human Services Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- Removed the notwithstanding clause and made the administration of local anesthesia a remedial and delegable task;
- Added the administration of local anesthesia to the dental hygienist's scope of practice provisions;
- Requires dental hygienists to renew their basic or advanced CPR certification every 2 years;
- Defines the term local anesthesia;
- Adds the authority for DOH to assess a one-time application not to exceed $35 to cover the cost of issuing a certificate; and
- Provides rule-making authority to the board.

This analysis is drafted to the committee substitute.

[31] Email correspondence with DOH staff, dated January 25, 2012, on file with the Health & Human Services Quality Subcommittee staff.