

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1313 (SB 1040)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Health & Human Services Quality Subcommittee; Corcoran and others (Bogdanoff and others)	115 Y's	0 N's
COMPANION BILLS:	SB 1040	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 1313 passed the House on March 5, 2012 as SB 1040. The bill amends regulation of dentists and dental hygienists.

The bill revises the eligibility requirements for a dental hygienist license and authorizes, effective July 1, 2012, the use of the Dental Hygiene Examination produced by the American Board of Dental Examiners, Inc., instead of administering a state-developed examination.

The bill grants dental hygienists authority to administer local anesthesia under the direct supervision of a dentist to a nonsedated patient who is at least 18 years old. A dental hygienist who seeks a certificate 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.

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 for the local anesthesia certificate, and requires the Board of Dentistry to adopt rules necessary to implement the provisions of the bill.

The bill amends initial licensure requirements for dentists who have graduated from a dental college or school not accredited by the American Dental Association Commission on Dental Accreditation to require an applicant to possess a Doctor of Dental Surgery or a Doctor of Dental Medicine degree. Currently, a diploma, degree, or certificate is sufficient for licensure.

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

The bill was approved by the Governor on March 23, 2012, ch. 2012-14, Laws of Florida. The effective date of this bill is upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

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. Dentists and dental hygienists are governed by chapter 466, F.S., the Dentistry, Dental Hygiene, and Dental Laboratories practice act (Dental Practice Act) and by the Board of Dentistry.

Dental Hygienists

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 irreparable tasks. The administration of anesthetics other than topical anesthetics is considered to be an irreparable task.⁴ Dentists are responsible for any delegated procedures or tasks.⁵

An applicant for licensure as a dental hygienist is required to submit a form, a fee, proof of graduation or expected graduation from a dental hygiene school, photographs of the applicant, proof of CPR certification, disclosure of personal history and proof of completion of the National Board of Dental Hygiene written examination.⁶ An applicant is able to take the written examination three times. If the applicant fails three times he or she must complete additional educational requirements.⁷

National Examination

The American Board of Dental Examiners (ADEX) is a test development board that develops initial licensure exams for dentists and dental hygienists. ADEX serves 28 state dental boards and two testing agencies that currently administer examinations.⁸ In 2011⁹, the Legislature amended the

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 Section 466.007, F.S. and Rule 64B5-2.0135, F.A.C.

⁷ Section 466.007(4)(b), F.S.

⁸ American Board of Dental Examiners, Inc., About, *available at*: <http://www.adex.org/Home.aspx> (last viewed March 14, 2012).

examination requirements for dentists providing that Florida will use the American Dental Licensure Examination (ADEX) instead of a clinical and practical examination developed by the state.

Section 456.017(1)(c), F.S., provides that the board or the DOH may not administer a state-developed written examination if a national examination has been certified. Furthermore, it is the intent of the Legislature to reduce the costs associated with state examinations and to encourage the use of national examinations whenever possible.¹⁰

Delegated Tasks

There are two types of tasks within the practice of dentistry that specify delegation parameters for dentists: irremediable and remediable tasks.¹¹

“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”.¹² A dentist may not delegate irremediable tasks unless granted specific authority in law.¹³

“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.¹⁴ 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:¹⁵

- 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

⁹ Chapter 2011-95, L.O.F.

¹⁰ Section 456.017(1)(c)4., F.S.

¹¹ Dental hygienists are regulated by ss. 466.023, 466.0235, and 466.024, F.S.

¹² S. 466.003(11), F.S. and 64B5-16.001, F.A.C.

¹³ Section 466.024(1), F.S.

¹⁴ S. 466.003(12), F.S.

¹⁵ Section 466.024(1), F.S.

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.¹⁶ 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.¹⁷

Under “general supervision¹⁸”, a dentist authorizes the procedure being carried out but is not required to be present when the authorized procedure is being performed.¹⁹ 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.²⁰ 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.²¹

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.²²

Anesthesia in Dentistry

Currently, only licensed dentists may administer general or local anesthetics within the practice of dentistry.²³ The anesthesia modalities authorized for use in dentistry are:²⁴

- 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.²⁵

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.²⁶ A dentist who performs conscious sedation in a dental office may only induce one patient at a time.²⁷ 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

¹⁶ S. 466.003(8), F.S.

¹⁷ S. 466.003(9), F.S. and 64B5-16.001(5), F.A.C.

¹⁸ The issuance of a written work authorization to a commercial dental laboratory by a dentist does not constitute general supervision.

¹⁹ S. 466.003(10), F.S.

²⁰ 64B5-16.001(6), F.A.C.

²¹ 64B5-16.001(7), F.A.C.

²² 64B5-16.005 and 64B5-16.006, F.A.C.

²³ Section 466.017(1), F.S.

²⁴ Rule 64B5-14.001, F.A.C.

²⁵ Section 466.017(4), F.S.

²⁶ Rule 64B5-14.002, F.A.C.

²⁷ 64B5-14.004, F.A.C.

care of a responsible adult, and the portion of the procedure requiring the participation of the dentist is complete.²⁸

The only agent authorized for inhalation analgesia is nitrous-oxide.²⁹ 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.³⁰ Alternatively, a dentist who holds any type of anesthesia permit is also authorized to perform nitrous-oxide inhalation anesthesia.³¹

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.³² 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.³³

Effect of Proposed Changes

The bill amends s. 466.006(3)(b), F.S., relating to the eligibility requirements for dentists to take the national examination. Currently, applicants who have graduated from a dental college or school not accredited by the American Dental Association Commission on Dental Accreditation (i.e., foreign trained dentists) are required to take a 2-year supplemental dental education program at an accredited dental school and must receive a diploma, degree, or certificate as evidence of completion. The bill updates this provision to require a degree. According to the Florida Dental Association, diplomas and certificates are no longer offered by Florida's accredited dental schools.³⁴

The bill amends s. 466.007, F.S., regarding the examination requirements for dental hygienists to mirror the changes made to the dentist examination adopted in 2011. The bill provides that, effective July 1, 2012, Florida will use the ADEX Dental Hygiene Examination instead of administering a state-developed examination. In addition, current law requires a dental hygienist to apply for licensure within 10 years of passing the examination; the bill removes this cap and allows dental hygienist to apply any time.

The bill provides that the Board of Dentistry must approve the ADEX dental hygiene examination if the board attains and maintains representation on certain ADEX dental hygiene committees as the board deems appropriate through rule making to ensure that the established standards are maintained. Moreover, the bill provides that the ADEX dental hygiene examination must be graded by dentists and dental hygienists licensed in Florida who are employed by DOH.

The bill amends the eligibility requirements for a dental hygienist by prohibiting an applicant from attaining licensure who has:

- Been disciplined by a board, except for minor violations; or

²⁸ *Id.*

²⁹ 64B5-14.002, F.A.C.

³⁰ 64B5-14.003, F.A.C.

³¹ *Id.*

³² Rule 64B5-14.003, F.A.C.

³³ Rule 64B5-14.004(2), F.A.C.

³⁴ Per telephone conversation with Florida Dental Association staff on March 6, 2012.

- Been convicted of, or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession.

The bill grants dental hygienist specific authority to administer local anesthesia by making the administration a remedial and delegable task. The bill also adds the authority to administer local anesthesia to the dental hygienists scope of practice provisions. The bill provides that local anesthesia 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 anesthesia is performed. Administration of local anesthesia by a dental hygienist is limited to nonsedated patients who are 18 years of age or older. The dental hygienist must:

- 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, and 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 hygienists 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 to adopt rules necessary to implement the provisions of the bill.

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.³⁵ Between July 1, 2010 and June 30, 2011, DOH issued 315 new licenses to dental hygienists.³⁶ The bill authorizes DOH to charge a one-time application not to exceed \$35.

³⁵ 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).

³⁶ *Id.*

If all 10,593 dental hygienists seek certification to administer local anesthesia and remit a fee of \$35 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. The table below provides estimated impacts at 100%, 50%, and 25% rates of certification.

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-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.³⁷

³⁷ Email correspondence with DOH staff, dated January 25, 2012, on file with the Health & Human Services Quality Subcommittee staff.