

ARKANSAS REGISTER



Proposed Rule Cover Sheet

Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department Department of Health

Agency or Division Name Division of Health Related Boards and Commissions/Arkansas State Board of Dental Examiners

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person Meredith Rogers, Executive Director

Contact E-mail Meredith.Rogers@arkansas.gov

Contact Phone 501-682-2085

Name of Rule Article XI - Dental Hygienists Function

Newspaper Name Daily Record

Date of Publishing Unknown at this time

Final Date for Public Comment Unknown at this time

Location and Time of Public Meeting 101 East Capitol Avenue, Suite 111, Little Rock, AR 72201

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Health
DIVISION Division of Health Related Board and Commissions/Arkansas State Board of Dental Examiners
DIVISION DIRECTOR Matt Gilmore, ADH Boards and Commissions
CONTACT PERSON Meredith Rogers, Executive Director
ADDRESS 101 East Capitol Avenue, Suite 111, Little Rock, AR 72201
PHONE NO. 501-682-2085 **FAX NO.** 501-682-3543 **E-MAIL** Meredith.Rogers@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Kevin M. O'Dwyer
PRESENTER E-MAIL kodwyer@htolaw.com

INSTRUCTIONS

- A. Please make copies of this form for future use.**
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.**
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.**
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:**

**Jessica Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

1. What is the short title of this rule? Article XI – Dental Hygienists Function

2. What is the subject of the proposed rule? To clarify how long a dental hygienist can see patients without a dentist in the office.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

5. Is this a new rule? Yes ___ No X

If yes, please provide a brief summary explaining the regulation. To add new regulation regarding physician assistants.

Does this repeal an existing rule? Yes No X

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule?

Yes X No ___

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. ACA §17-82-103(b) and ACA 17-82-102

7. What is the purpose of this proposed rule? Why is it necessary? To clarify dental hygienist functions.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.dentalboard.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes X No

If yes, please complete the following:

Date: May 8, 2020

Time: 8:30 a.m.

Place: 1401 W. Capitol Ave. Suite 340,
Little Rock AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

May 8, 2020

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

Unknown at this time

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Proof of publication will be provided as soon as it is received.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). Will provide after approval by Governor.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Arkansas State Dental Association.

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Article XI: DENTAL HYGIENISTS FUNCTIONS

Definitions pertaining to Dental Hygiene Functions:

INDIRECT SUPERVISION: The dentist authorizes the procedures and remains in the treatment facility while the procedures are being performed.

OPERATIVE SUPERVISION: The dentist authorizes the procedures, remains in the operatory while the procedures are being performed, and evaluates the results prior to leaving the operatory.

GENERAL SUPERVISION: The dentist authorizes the procedures but is not required to be present in the treatment facility while the procedures are being performed by the dental hygienist.

- A. **EXCLUSIVE FUNCTIONS TO BE PERFORMED BY A DENTAL HYGIENIST WHEN DELEGATED BY A DENTIST**
1. Effective and safe delivery of certain services to the public is dependent upon making judgments and utilizing skills that require synthesis and application of knowledge acquired in accredited dental hygiene education programs and cannot be delegated to any dental staff member other than a licensed, registered dental hygienist.
 2. The following functions may only be delegated to a licensed dental hygienist:
 - a. Oral examination. Elements of these examinations include charting of carious lesions and other abnormalities, periodontal charting and assessment of periodontal conditions, treatment planning for dental hygiene services and oral cancer screening. The dental hygienist may dictate the examination findings to a dental assistant who may then record the data on the patient's dental record.
 - b. Oral prophylaxis, scaling, root planning and curettage. If a laser instrument is used, the dental hygienist and their supervising dentist must submit to the Board proof of successful completion of an approved educational course on the use of that type of laser prior to its usage for any patient treatment.
 - c. Using air driven, electric, sonic, ultrasonic, or otherwise powered scalers or polishers (except dental assistants possessing an expanded duties permit for polishing).
 - d. Placing medicaments as prescribed by the supervising dentist into the sulcus or periodontal pockets, for periodontal diseases.
 - e. Place Silver Diamine Fluoride (SDF) under general supervision. If SDF is used, the dental hygienist and their supervising dentist must submit to the Board proof of successful completion of an approved educational course on SDF prior to its usage for and patient treatment.
- B. **PROHIBITED ACTIVITY.** The following functions and procedures may NOT be delegated to dental hygienists. The functions include:
1. Diagnosis and treatment planning
 2. Surgical or cutting procedures on hard or soft tissue
 3. Prescription, injection, inhalation, and parenteral administration of drugs (except where permitted by the Board)
 4. Placement, seating or removal of any final or permanent restorations
 5. Final placement of orthodontic brackets
 6. Any procedure that contributes to or results in irreversible alteration of the oral anatomy
 7. Performance of any of the following expanded duties without a permit:

- a. Administration of local anesthesia
 - b. Administration of nitrous oxide/oxygen analgesia
- C. SUPERVISION LEVELS FOR AUTHORIZED FUNCTIONS OF A DENTAL HYGIENIST
- 1. Under INDIRECT SUPERVISION a hygienist may perform any dental task or procedure assigned by the supervising dentist to the hygienist that does not require the professional skills of a licensed dentist except for those functions prohibited in Section B of this Article or those tasks that require operative supervision.
 - 2. Under OPERATIVE SUPERVISION, a hygienist may perform the following procedures:
 - a. Any procedure allowed under Indirect Supervision.
 - b. Administer certain local anesthesia injections as provided in Article XVI of these Rules and Regulations.
 - 3. Under GENERAL SUPERVISION, the following restrictions apply:
 - a. A hygienist may render services only with the expressed consent of the supervising dentist and only for brief intervals when the supervising dentist cannot be in the treatment facility not to exceed two (2) consecutive days. **A hygienist may render services for up to five (5) consecutive days in a five day work week. A work week being defined as Monday thru Friday. The hygienist must have the expressed consent of the supervising dentist, when the dentist cannot be present in the treatment facility during the work week. This arrangement cannot exceed two (2) weeks without the dentist returning to work in the treatment facility.**
 - b. The supervising dentist maintains full control as to whether general supervision will be utilized in his/her office or practice setting.
 - c. General supervision is allowed only in dental clinics, community health centers or government sponsored dental facilities.
 - d. Hygienists must comply with written protocols for emergencies as established by the supervising dentist.
 - e. Hygienists must practice under the supervision of a licensed dentist and may not practice independently or establish an office devoted primarily to dental hygiene services.
 - f. Hygienists must have one (1) full year of full-time service before being able to function under general supervision of a dentist.
 - g. Patients must be notified in advance that the doctor may not be in the treatment facility.
 - h. The supervising dentist must have examined the patient(s) not more than twelve (12) months prior.
 - i. Hygienists may perform any procedure allowed under Indirect Supervision with the exception of root planing, subgingival curettage, local anesthesia, and administration of nitrous oxide.
 - j. The hygienist may place sealants if it has not been more than thirty days since the teeth to be sealed were examined by the dentist.
 - k. A registered dental hygienist may not delegate functions to a registered dental assistant when the treating dentist is not in the facility.

Amended 1/12/01, 4/9/04, 1/20/2012, and 11/16/2018.

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ARTICLE XI

Summary

Proposed Amendment to Article XI will clarify how long a hygienist can see patients without the dentist in the office and to remove the requirement for “good moral character” pursuant to Act 990 of 2019.

This rule was amended to clarify how many days for a given period of time, a hygienist could work in the office without the Dentist being present. This rule was amended as a result of complaints the Board had received that the rule was being abused and hygienist were working unsupervised for long periods of time. The intent of the rule was to ensure that a hygienist may only work two days without a dentist being present. The change clarifies that and closes a loop hole. The need for the rule is to ensure patient safety by having a dentist available for any issues that arise and to protect hygienist from being used in a way that exceeds their scope of practice.

Ena Goodbar

From: Legal Notices <legals@dailydata.com>
Sent: Friday, March 20, 2020 7:36 AM
To: Ena Goodbar
Subject: Re: Article XI - Dental Hygienists Function

Received. This notice will run 3/31, 4/7 & 4/14/20.

Thank you,

Melissa Miller
Accounts Manager
The Daily Record, Inc.
501-374-5103
legals@dailydata.com

On Mar 19, 2020, at 10:47 AM, Ena Goodbar <egoodbar@htolaw.com> wrote:

Melissa, attached is a Notice of Public Hearing with regard to the above matter. Please publish this on April 1, 2020, April 8, 2020 and April 15, 2020. If you have any questions, please give me a call. Thanks.

ENA GOODBAR
Legal Assistant and Paralegal
To Kevin M. O'Dwyer
Hope, Trice, O'Dwyer & Wilson, P.A.
211 Spring Street
Little Rock, AR 72201
Office: 501-372-4144
Fax: 501-372-7480

<Notice of Public Hearing.pdf>

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For more information please visit <http://www.symanteccloud.com>

To be published three times on April 1, 2020, April 8, 2020 and April 15, 2020 in the Daily Record:

Bill to:

Meredith Rogers, Executive Director
Arkansas State Board of Dental Examiners
101 East Capitol Avenue, Suite 111
Little Rock, AR 72201-3821
501-682-2085

Send proof of publication to:

Kevin M. O'Dwyer
Attorney for the Arkansas State Medical Board
211 Spring Street
Little Rock, AR 72201
Telephone (501) 372-4144

NOTICE OF PUBLIC HEARING

In compliance with ACA §25-15-204, the Arkansas State Board of Dental Examiners gives notice that it will conduct a public hearing at 8:40 a.m. on the 8th day of May, 2020, at the offices of the Arkansas State Board of Dental Examiners, 101 East Capitol Avenue, Suite 111, Little Rock, AR 72201. The public hearing will involve the adoption of Article XI-Dental Hygienists Function.

All individuals desiring to attend said hearing may do so. All individuals desiring to address the Board should contact Meredith Rogers, the Executive Director of the Arkansas State Board of Dental Examiners, (501) 682-2085. Individuals desiring a copy of the Article XI, as referred to herein, may contact Meredith Rogers, the Executive Director, at the above number.