



**TO:** The Professional Practice Committee  
**FROM:** Douglas E. Lentivech  
  
**SUBJECT:** Proposed Amendment to Section 61.9 of the Regulations of the Commissioner of Education Relating to the Practice of Dental Hygiene Pursuant to Collaborative Arrangements

**DATE:** December 11, 2014

**AUTHORIZATION(S):**



### SUMMARY

#### **Issue for Decision**

Should the Board of Regents amend section 61.9 of the Regulations of the Commissioner of Education relating to the practice of dental hygiene pursuant to collaborative arrangements?

#### **Reason(s) for Consideration**

Required by State statute (Chapter 239 of the Laws of 2013) and review of policy.

#### **Proposed Handling**

The proposed rule will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as a permanent rule at the December 2014 meeting of the Board of Regents. A copy of the proposed rule is attached. Supporting materials for the proposed rule are available upon request from the Secretary of the Board of Regents.

#### **Procedural History**

The proposed rule was discussed by the Professional Practice Committee at the September 2014 Board of Regents meeting. A Notice of Proposed Rule Making was

published in the State Register on September 10, 2014 for a 45-day public comment period. An Assessment of Public Comment is attached.

### **Background Information**

The current disparities in access to quality oral health care have become a public health concern in New York State, especially among traditionally underserved populations. Chapter 239 of the Laws of 2013, which will become effective January 1, 2015, amended the Education Law to provide greater access for New Yorkers to receive important dental health care services, such as, but not limited to, teeth cleaning, fluoride applications, varnishes, sealants, x-rays and patient education, by allowing dental hygienists working for hospitals, as defined by Article 28 of the Public Health Law (Article 28 hospital), pursuant to a collaborative arrangement with a licensed and registered dentist, who has a formal relationship with the same hospital, to provide dental services that are currently provided under the general supervision of a dentist, without requiring the physical presence of the collaborating dentist during the provision of such services.

An Article 28 hospital includes hospitals, hospital-based dental clinics, local health department dental clinics, and nursing homes overseen by the New York State Department of Health (DOH).

Chapter 239 further requires the Commissioner, in consultation with the Commissioner of DOH, to promulgate regulations to establish requirements for collaborative arrangements. The proposed amendment to section 61.9 of the Regulations of the Commissioner of Education, which was developed in consultation with DOH, implements the collaborative arrangement requirements of Chapter 239.

The proposed rule establishes requirements for collaborative arrangements, which include authorizing a registered dental hygienist providing services, pursuant to such an arrangement, to only provide those services that may be provided under the general supervision of a dentist as defined in subdivision (b) of section 61.9 of the Regulations of the Commissioner of Education, without requiring the physical presence of the collaborating dentist during the provision of such services.

In addition, the proposed rule requires dental hygienists to instruct individuals to visit a licensed dentist for comprehensive examination or treatment.

The proposed rule further establishes that a dental hygienist performing services pursuant to a collaborative arrangement is not permitted to provide dental services or dental supportive services that the licensed dental hygienist knows or has reason to know that he or she is not competent to perform, and a licensed dentist is not permitted to delegate to a licensed dental hygienist dental services or dental supportive services that the licensed dentist knows or has reason to know that the licensed dental hygienist is not qualified by training, experience or by licensure to perform.

Additionally, the proposed rule requires dental hygienists, providing services pursuant to a collaborative arrangement, to possess and maintain certification in cardiopulmonary resuscitation (CPR) and to attest, at the time of his or her registration

renewal, that he or she meets the CPR certification requirement or the requirements for an exemption to it. The proposed rule establishes the following requirements for the CPR certification requirement exemption: (a) the dental hygienist must be physically incapable of complying with the CPR certification requirement and have a written statement by a licensed physician describing his or her physical incapacity; and (b) he or she must submit an application for exemption to the Department that verifies that another individual will maintain CPR certification and be physically present in the location where the dental hygienist provides dental services, pursuant to a collaborative arrangement, while the dental hygienist is treating patients.

The proposed rule also requires each dental hygienist to maintain, for review by the Department, records of compliance with the CPR certification requirement, including his or her CPR certification card.

Moreover, the proposed rule provides that a dental hygienist can only provide collaborative services pursuant to a written agreement that is maintained in the practice setting of the dental hygienist and the collaborating dentist. This required written agreement must include provisions for referral and consultation; coverage for emergency absences of either the dental hygienist or collaborating dentist; resolution of disagreements between the dental hygienist and collaborating dentist regarding matters of treatment; and the periodic review of patient records by the collaborating dentist. The proposed rule further requires the written agreement to include protocols, which may be updated periodically, that identify the services to be performed by the dental hygienist in collaboration with the dentist and reflect accepted standards of dental hygiene. These protocols must include provisions for case management and care coordination, including treatment; and appropriate recordkeeping by the dental hygienist. The proposed rule also provides that the written agreement may include any other provisions, including provisions relating to protocols, that the dental hygienist and collaborating dentist determine to be appropriate.

The proposed rule further modifies certain regulatory provisions relating to supervision of dental hygienists by dentists, as these provisions required clarification.

Finally, since the publication of the proposed rule in the State Register, a non-substantial revision was made as follows:

In section 61.9(b)(15)(ii), the term “improving oral outcomes” was replaced with the term “improving oral health outcomes” in order to clarify the text of the proposed regulation and to correct the inadvertent omission of the word “health” from this term.

## **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That the introductory paragraph of section 61.9 of the Regulations of the Commissioner of Education is amended, subdivision (b) of section 61.9 is amended, subdivision (c) of section 61.9 is amended, subdivision (e) of section 61.9 is amended, and subdivision (f) of section 61.9 is added, as submitted, effective January 1, 2015.

### **Timetable for Implementation**

If adopted at the December 2014 Regents meeting, the proposed rule will take effect on January 1, 2015, which is the effective date of Chapter 239 of the Laws of 2013.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6606, 6608, and 6611 of the Education Law and Chapter 239 of the Laws of 2013

1. The introductory paragraph of section 61.9 of the Regulations of the Commissioner of Education is amended, effective January 1, 2015, to read as follows:

The practice of dental hygiene, in accordance with section 6606 of the Education Law, shall be performed either under the supervision of a licensed dentist or pursuant to a collaborative arrangement as defined in subdivision (f) of this section.

2. Subdivision (b) of section 61.9 of the Regulations of the Commissioner of Education is amended, effective January 1, 2015, to read as follows:

(b) The following services may be performed under the general supervision of a licensed dentist:

(1) . . .

(2) . . .

(3) . . .

(4) providing patient education and counseling relating to the improvement of oral health;

(5) [placing and exposing X-ray films] taking and exposing dental radiographs;

(6) . . .

(7) . . .

(8) taking and assessing medical history including the measuring and recording of vital signs as an aid to diagnosis by the dentist and to assist the dental hygienist in providing dental hygiene services;

(9) [charting caries and] performing dental and/or periodontal [conditions] assessments as an aid to diagnosis by the dentist and to assist the dental hygienist in providing dental hygiene services;

(10) applying pit and fissure sealants; [and]

(11) applying desensitizing agents to the teeth[.];

(12) placing and removing temporary restorations;

(13) making assessments of the oral and maxillofacial area as an aid to diagnosis by the dentist;

(14) taking impressions for study casts. Study casts shall mean only such casts as will be used for purposes of diagnosis and treatment planning by the dentist and for the purposes of patient education; and

(15) providing dental health care case management and care coordination services, which shall include, but not be limited to:

(i) community outreach;

(ii) improving oral health outcomes;

(iii) improving access to dental care by assisting people in establishing an ongoing relationship with a dentist, in order to promote the comprehensive, continuous and coordinated delivery of all aspects of oral health care; and

(iv) assisting people to obtain dental health care.

3. Subdivision (c) of section 61.9 of the Regulations of the Commissioner of Education is amended, effective January 1, 2015, to read as follows:

(c) The following services may be performed only under the personal supervision of a licensed dentist:

(1) . . .

(2) . . .

[(3) taking impressions for study casts. *Study casts* shall mean only such casts as will be used for purposes of diagnosis and treatment planning by the dentist and for the purposes of patient education;]

[(4)] (3) placing or removing matrix bands;

[(5)] (4) applying a topical medication not related to a complete dental prophylaxis;

[(6)] (5) placing and removing periodontal dressings;

[(7)] (6) selecting and prefitting provisional crowns;

[(8)] (7) selecting and prefitting orthodontic bands;

[(9)] (8) removing orthodontic arch wires and ligature ties;

[(10)] (9) taking impressions for space maintainers, orthodontic appliances, and occlusal guards;

[(11)] (10) placing and removing temporary separating devices; and

[(12)] (11) placing orthodontic ligatures.

4. Subdivision (e) of section 61.9 of the Regulations of the Commissioner of Education is amended, effective January 1, 2015, to read as follows:

(e) In accordance with section 29.1(b)(9) and (10) of this Title, a licensed dental hygienist performing services under the supervision of a licensed dentist or pursuant to a collaborative arrangement as defined in subdivision (f) of this section is not permitted to provide dental services or dental supportive services that the licensed dental hygienist knows or has reason to know that he or she is not competent to perform, and a licensed dentist is not permitted to delegate to a licensed dental hygienist dental services or dental supportive services that the licensed dentist knows or has reason to know that the licensed dental hygienist is not qualified by training, experience or by licensure to perform.

5. Subdivision (f) of section 61.9 of the Regulations of the Commissioner of Education is added, effective January 1, 2015, to read as follows:

(f) Collaborative arrangement.

(1) Definitions. As used in this subdivision:

(i) Collaborative arrangement shall mean an agreement between a registered dental hygienist working for a hospital and a licensed and registered dentist who has a formal relationship with the same hospital.

(ii) Hospital shall mean a hospital as defined by Public Health Law section 2801(1).

(2) Requirements. A registered dental hygienist providing services pursuant to a collaborative arrangement shall:

(i) only provide those services that may be provided under general supervision as specified in subdivision (b) of this section, provided that the physical presence of the collaborating dentist is not required for the provision of such services;

(ii) instruct individuals to visit a licensed dentist for comprehensive examination or treatment;

(iii) possess and maintain certification in cardiopulmonary resuscitation in accordance with the requirements for dentists set forth in section 61.19 of this Part and the following:

(a) At the time of his or her registration renewal, the dental hygienist shall attest to having met the cardiopulmonary resuscitation requirement or attest to meeting the requirements for exemption as defined in clause (b) of this subparagraph.

(b) A dental hygienist may be granted an exemption to the cardiopulmonary resuscitation requirement if he or she is physically incapable of complying with the requirements of this subparagraph. Documentation of such incapacity shall include a

written statement by a licensed physician describing the dental hygienist's physical incapacity. The dental hygienist shall also submit an application to the department for exemption which verifies that another individual will maintain certification and be present at the location where the dental hygienist provides dental hygiene services, pursuant to a collaborative arrangement, while the dental hygienist is treating patients.

(c) Each dental hygienist shall maintain for review by the department records of compliance with the cardiopulmonary resuscitation certification requirement, including the dental hygienist's cardiopulmonary resuscitation certification card; and

(iv) provide collaborative services only pursuant to a written agreement that is maintained in the practice setting of the dental hygienist and collaborating dentist. Such written agreement shall include:

(a) provisions for:

(1) referral and consultation;

(2) coverage for emergency absences of either the dental hygienist or collaborating dentist;

(3) resolution of disagreements between the dental hygienist and collaborating dentist regarding matters of treatment, provided that, to the extent a disagreement cannot be resolved, the collaborating dentist's treatment shall prevail;

(4) the periodic review of patient records by the collaborating dentist; and

(5) such other provisions as may be determined by the dental hygienist and collaborating dentist to be appropriate; and

(b) protocols, which may be updated periodically, identifying the services to be performed by the dental hygienist in collaboration with the dentist and reflecting accepted standards of dental hygiene. Protocols shall include provisions for:

(1) case management and care coordination, including treatment;

(2) appropriate recordkeeping by the dental hygienist; and

(3) such other provisions as may be determined by the dental hygienist and collaborating dentist to be appropriate.

(3) Collaborative arrangements shall not supersede any law or regulation which requires identified services to be performed under the personal supervision of a dentist.

## 8 NYCRR §61.9

### ASSESSMENT OF PUBLIC COMMENT

Since the publication of a Notice of Proposed Rule Making in the September 10, 2014 State Register, the State Education Department received the following comments:

1. COMMENT:

One commenter submitted comments in support of the proposed rule on behalf of the nearly 10,000 registered dental hygienists in New York State and the public they serve.

The commenter further stated that “[r]ecognizing the situation of need in New York State concerning limited access to preventive dental hygiene services; the ongoing growth of the profession of dental hygiene over the last century; and the inter-professional collaborative environment ... which the statutory changes bring about, we commend the Board of Regents, through the actions of the State Board for Dentistry and the Committee on Collaborative Practice for the State Board for its commitment to the welfare of NYS residents as evidenced by the regulatory proposal before you.”

The commenter also expressed gratitude for the rights and responsibilities bestowed upon dental hygienists in New York State to practice their profession unencumbered by outdated regulations. The commenter reaffirmed its belief that dental hygiene is an autonomous profession with strong inter-personal capabilities and an over 100 year commitment to improved oral health for all New Yorkers.

DEPARTMENT RESPONSE:

The Department appreciates the support as it works to both protect the public and provide greater access to dental care for New Yorkers.

2. COMMENT:

One commenter submitted several comments in support of the proposed rule and summarized some of the ways in which collaborative arrangements can augment services in Article 28 facilities and increase New Yorkers' access to dental care.

The commenter also stated that the statute and the proposed rule will allow the hospital dental center, where she serves as the clinical manager, to deploy highly qualified and skilled dental hygienists to community sites to provide essential preventive care and education to a population that has difficulty accessing dental care because they are either uninsured, underinsured or have public assistance programs that many dental offices in the area will not accept. The commenter further stated that the proposed rule will permit these dental hygienists to follow up with dental procedures either at the community site or at one of her hospital's dental center's two primary sites, and result in improved access to care and a healthier population.

DEPARTMENT RESPONSE:

The Department appreciates the support as it works to both protect the public and provide greater access to dental care for New Yorkers.

3. COMMENT:

One commenter submitted several comments in support of the proposed rule.

The commenter also discussed the educational competencies of the graduate dental hygienist, "in order to rationalize and support" the proposed rule's modification of certain regulatory provisions relating to the supervision of dental hygienists by dentists. The commenter stated that these modifications were necessary in order to better reflect the present educational methodologies, standards and competencies in dental hygiene education, which are required by the American Dental Association's Commission on Dental Accreditation (CODA). The commenter further stated that today's dental

hygienists are equipped with the knowledge and skills to provide dental services under collaborative arrangements. The commenter then summarizes some of the educational standard competencies that graduates from CODA accredited dental hygiene programs must meet.

**DEPARTMENT RESPONSE:**

The Department appreciates the support as it works to both protect the public and provide greater access to dental care for New Yorkers.