



DENTAL HYGIENISTS IN SCHOOLS

The question before the Economic Affairs Interim Committee regarding dental hygienists in the schools arose because there was a thought that the Board of Dentistry might propose guidelines by which certain schools would qualify as public health facilities, one of the places where dental hygienists with a limited

access permit can provide certain services without supervision by a dentist. The goal outlined by the board's counsel was to find criteria that could be used to make case by case decisions more standardized.

One option to look at, the counsel said, could be percentage of school enrollment that qualifies for school lunches.

CONCERNS
<ul style="list-style-type: none"> • What entity bears liability when a dental hygienist with a limited access permit works in a school or public health facility? <i>ARM 24.138.509 requires the hygienist to provide proof of insurance.</i>
<ul style="list-style-type: none"> • Is the 10-member Board of Dentistry with 5 dentists, 2 dental hygienists, 2 public members and 1 denturist in need of active supervision by the Commissioner of Labor and Industry to avoid restraint of trade concerns?
<ul style="list-style-type: none"> • Did removal of the word "schools" in the amendments to SB 190 (2003) indicate a legislative intent not to allow schools or was this seen as a way to let the Board of Dentistry decide on a case-by-case basis by rule?
<ul style="list-style-type: none"> • Does declaring a school a public health facility have repercussions for schools or federal law?

The Board of Dentistry at its June 5, 2020, meeting decided to delay action pending the Economic Affairs Interim Committee meeting on June 30. This briefing paper is intended to provide some history and background information related to the limited access permit for dental hygienists. The Montana Dental Association has questioned whether the Board of Dentistry has the authority to determine by rule that schools may be considered public health facilities if more than 50% of their students qualify for free or reduced-cost lunches. Nothing has been formally proposed, and it is not clear whether the cart is before the horse here.

Among the factors involved are those listed in the box above, including whether restraint of trade could be a result if the Board of Dentistry routinely denies new sites for dental hygienists to operate under a limited access permit.

HISTORY

Dental hygienists gained the privilege of licensed practice under Montana law in 1935. That privilege required practice under either the direct supervision of a dentist in the dentist's office or the general supervision (which did not require the dentist's onsite presence) at a public or private institution under a Board of Health or a health clinic approved by the Board of Dentistry. But a 2003 change allowed dental hygienists to practice with "public health supervision," which by the time Senate Bill 190 had passed both the Senate and the House no longer required supervision by a medical authority, just provision under a broadly defined public health supervision.

The Montana Dental Association has questioned whether the removal of the word "schools" from a list of public health facilities in the initial SB 190 bill draft indicated that there was legislative intent not to allow schools to be considered a public health facility. However, the record is not clear as to why the word "schools" was removed other than to indicate that the Board of Dentistry could decide on a case by case basis by rule whether to include certain facilities.

The record is not clear as to why the word "schools" was removed.

The Montana Dental Association lobbyist at the time, when asked about removal of the "schools" term in a House hearing on SB 190, said dental hygienists already could provide instructive services in schools, but she did not address the additional preventive services intended under the limited access permit nor mention the practice by the LAP dental hygienist without direct supervision. The [minutes](#) also indicated that the Board of Dentistry could identify [by rule] public health facilities and programs at which dental hygienists could provide services.

Those who worked to remove the word "schools" from the definition of public health facilities did so between the time the Senate Public Health, Welfare, and Safety Committee heard and passed SB 190 and the time the bill was amended (by the sponsor) on the floor of the Senate to exclude schools and the specific provision that a public health facility be under the supervision of medical personnel. There is no record to show reasons for the change.

Further muddying the issue of legislative intent is that in 2011 [SB 2](#) failed to pass; the bill would have allowed dental hygienists with a limited access permit to offer school-based sealant programs.

In 2018 dental hygienists with a limited access permit proposed adding schools in Lincoln County, particularly Libby. The Board of Dentistry denied expanding the case by case inclusion of those schools. A bruising turf battle in 2010 ended with the inclusion of the Paris Gibson Education Center as a LAP-allowed facility, despite the center being in an area where many dentists practice. The decision at the time included a recognition that not all dentists have openings to accept Medicaid patients, which included some of the students at the Paris Gibson Education Center. The board cited in [responses](#) to public comments that financial constraints, rather than distance from a dentist, served as a rationale for adoption.

CURRENT SITUATION

Schools already do bring in dental hygienists with a limited access permit. See table. As noted by the Office of Public Instruction, schools can agree on an individual basis as to whether to work with dental hygienists with limited access permits or both dental hygienists and dentists.

The governing language from 37-4-405, MCA, is a combination of subsection (1)(b), the definition of public health facility and public health supervision, and the limited practices allowed under subsection (4) plus subsection (6) granting the Board the ability to adopt certain facilities:

- (1) A licensed dental hygienist may: ...
- (b) provide dental hygiene preventative services in a public health facility under the general supervision of a licensed dentist or, subject to the provisions of subsection (4), under public health supervision.

3 (c) "public health facility" means:

- (i) federally qualified health centers; federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b; nursing homes; extended care facilities; home health agencies; group homes for the elderly, disabled, and youth; head start programs; migrant worker facilities; local public health clinics and facilities; public institutions under the department of public health and human services; and mobile public health clinics; and

Schools that have partnered with Federally Qualified Health Centers (FQHCs)	
A school partnered with a FQHC can offer the services of a dental hygienist with a limited access permit because the FQHC is among the facilities listed as a public health facility in 37-4-405, MCA.	
Federally Qualified Health Center	School(s)
Riverstone, Billings	Medicine Crow Middle School Orchard School-Based Health Center
Partnership, Missoula	Lowell School Health Center Willard Alternative High School
Northwest Community Health Center, Libby	Libby Middle-High School
Pureview, Helena	East Helena School-Based Clinic
Bighorn, Bighorn County	St. Labre Indian School, Ashland
Alluvion, Great Falls	Belt Public Schools Cascade County Health Department Paris Gibson Education Center CMR High School East Middle School Giant Springs Great Falls High School Longfellow Elementary School Meadowlark Elementary School North Middle School
Flathead Community Health Center	Bigfork School East Evergreen Elementary Elrod Elementary Evergreen Junior High Linderman Education Center Rankin Elementary School
Information provided by the Department of Public Health and Human Services by email 6/2020	

(ii) other public health facilities and programs identified by the board under subsection (6); and

(d) "public health supervision" means the provision of limited dental hygiene preventative services without the prior authorization or presence of a licensed dentist in a public health facility.

Subsection (6) states:

The board may identify, by rule, other public health facilities and programs, in addition to those listed in subsection (3)(c), at which services under a limited access permit may be provided.

Schools that have partnered with federally qualified health centers already can offer services by dental hygienists with limited access permits. The partnerships are listed in the table above. Other schools have been named in rule. See sidebar.

- Dodson School
- Great Falls Rescue Mission
- Harlem Elementary School and Harlem Junior and Senior High School
- Paris Gibson Education Center.

OTHER QUESTIONS RAISED: FUNDING AND LIABILITY

Completely separate from the authority to provide services within the scope of authority granted by a limited access permit is the question of how dental hygienists are reimbursed and who provides liability insurance for them. Tracy Moseman at the Office of Public Instruction, who is involved with helping schools navigate these health issues, says a school site wanting Medicaid reimbursement for dental hygienists first must meet eligibility criteria to participate with a federally qualified health center (FQHC) or rural health clinic (RHC). They then apply to the Health Resources Services Administration [Health Centers HRSA](#) for approval as a satellite clinic. Upon receiving a letter of approval from the Centers for Medicaid/Medicare Services (CMS), the letter is then submitted to Montana's Health Care Programs, which outsource the Medicaid approval process. The process is completed when the satellite clinic gets a provider number and can then bill Medicaid for services. The Department of Public Health and Human Services in 2019 provided a [notice](#) regarding reimbursement for dental hygienists working under a dentist's supervision and LAP dental hygienists as eligible for Medicaid reimbursement.

If Medicaid is not an issue, the above process is shortened to discussions between dental hygienists and schools over services.

Rules for getting a limited access permit require proof of liability insurance for the dental hygienist applicant. (See [ARM 24.138.509](#)(1)(c).

When some of the limited access permit dental hygienists first began service they worked with a program called Smiles Across Montana. However, within three months, according to one of the dental hygienists associated with that program, the dental hygienists were working under the supervision of a pediatric dentist

and then added more dentists to the program. That meant they no longer fit the unsupervised situation associated with the limited access permit and operated as regular dental hygienists.

The director at Paris Gibson Education Center said that no dental hygienist has been serving the Young Parents Education Center there using a limited access permit in at least the last 2 years. He also noted that there was no funding request or affiliation with a federally qualified health center to provide Medicaid reimbursement in past years. This may indicate that,

Selected States that Allow Dental Hygienists To Operate Independently (Direct Access)			
Montana 37-4-405, MCA, and 24.138.509 - Must have actively practiced either 2,400 clinical hours over the past 3 years or a career total of 3,000 hours with at least 350 hours in each of the last 2 years Must have 12 additional continuing education hours to that required for regular dental hygienist license.			
Alaska §08.32.115 Requires 4000 hours of clinical experience in prior 5 years. Collaborative Agreement	Arkansas §17-82-7 2 levels. Basic must have 1,200 hrs of clinical practice or taught in 2 of prior 3 yrs. Must have malpractice insur.	Connecticut §20-126l May practice unsupervised in schools, public health facilities with 2 years experience	Georgia §T43,c11, article 3 Does not require direct supervision in settings like schools, clinics, FQHCs, etc. 2 yrs experience
Arizona §32-1281 &1289 Specified settings outside private dental office under affiliated practice agreement. Must have practiced for 5 years and worked 500 hrs. in prior 2 years.	California §1922-1931 - Registered Dental Hygienist in Alternative Practice. Can practice in schools, residential facilities, hospitals or dental HPSAs. May be unsupervised Needs 2000 hrs/prior 3 yrs	Florida §466.033/024 Limits patient types but allows in health access settings like school-based prevention programs. Must have liability insurance.	Idaho §225 ILCS 25/18.1 with 2 yrs or 4000 hrs of clinical experience. Needs written public health supervision agreement. Pt limit

even if a school is authorized to use LAP dental hygienists, that service may not continue or occur.

AUTHORIZATIONS UNDER LIMITED ACCESS PERMIT

24.138.425 LIMITED ACCESS PERMIT TREATMENT GUIDELINES-PRACTICING UNDER PUBLIC HEALTH SUPERVISION

(1) Pursuant to 37-4-405, MCA, the LAP dental hygienist practicing under public health supervision, including providing prescriptive services, shall adhere to the following medical health guidelines:

- (a) The LAP dental hygienist shall gather and review the patient's current medical history, including but not limited to:
 - (i) diagnosed chronic diseases;
 - (ii) surgical procedures;
 - (iii) medications;
 - (iv) drug allergies and/or adverse reactions;
 - (v) blood pressure and pulse rate; and
 - (vi) previous difficulty associated with dental procedures.

(b) The LAP dental hygienist may provide dental hygiene preventative services to a patient without prior physician, dentist, nurse practitioner, or physician assistant authorization, unless the patient has:

- (i) a medical condition requiring premedication;
- (ii) uncontrolled hypertension; or



(iii) uncontrolled diabetes.

(c) If a patient has one or more severe systemic diseases, the LAP dental hygienist shall consult with a physician, dentist, nurse practitioner, or physician assistant responsible for the patient's care regarding the appropriateness of treatment and the conditions under which to provide dental hygiene preventative services.

(2) Pursuant to [37-4-405](#), MCA, the LAP dental hygienist practicing under public health supervision shall adhere to the following dental health guidelines:

(a) The LAP dental hygienist shall provide to the public health facility a disclaimer indicating that the dental hygiene preventative services provided do not preclude the need for a comprehensive examination by a licensed dentist.

(b) The LAP dental hygienist shall recommend patient referral to a licensed Montana dentist once each calendar year, or as the patient's dental health status indicates. The patient's records shall be made available for continued comprehensive dental care.

(c) The LAP dental hygienist shall document the patient dental history and conduct a screening appraisal prior to providing dental hygiene preventative services.

(d) If a LAP dental hygienist exposes radiographs, a licensed Montana dentist shall evaluate the radiographs within 30 days of exposure.

(e) The LAP dental hygienist shall maintain a dental record including, but not limited to:

(i) adverse medical history;

(ii) dental history and charting;

(iii) results of dental screening;

(iv) summary of discussions and consultations with a physician(s) and/or dentist(s);

(v) dental hygiene preventative services provided;

(vi) any agent prescribed, administered, or dispensed including dose amount and refill, date of the action, and rationale for prescribing; and

(vii) any radiographs exposed.

(f) Patient dental records shall be the responsibility of the public health facility where the dental hygiene preventative services are provided.