

To: Montana Board of Dentistry

From: Brad Jones, Board Counsel

Re: Standard for Approving/Denying Requests for Adding Schools to ARM 24.138.509 as Public Health Facilities for the Purpose of Permitting LAP Hygienist Practice

Dear Board Members:

The purpose of this memo is to propose a standard by which the Board of Dentistry could judge requests for identifying certain schools as public health facilities and programs in which limited access permit (LAP) hygienists may work. Under Administrative Rule of Montana (ARM) 24.138.509 and Montana Code Annotated (MCA) 37-4-405, the Board has the authority, through rulemaking, to add schools as a public health facility or program such that LAP hygienists can practice their trade by providing care to the students in those schools outside the authorization or presence of a dentist. Each time the Board votes to add a school or schools as a public health facility or program, that rule change would be subject to normal rulemaking procedure outlined in the Montana Administrative Procedure Act, including allowing for public comment. The sideboards provided to selection of a new facility or program are that the patients provided care are unable to receive regular dental care due to age, infirmity, disability, or financial constraints. There are no other defined terms or parameters specifically listed in statute governing adding schools as public health facilities. So long as a licensed dental hygienist with an LAP acts within the scope provided in 37-4-405, MCA, including providing no more than the services allowed under 37-4-405(4), the hygienist can work in any of the schools specifically listed in ARM 24.138.509.

The most recent Board vote regarding adding a school was the Board meeting on September 14, 2018 where an organization of LAP hygienists called Smiles Across Montana proposed adding 4 Lincoln County schools as public health facilities. The Board voted on a motion to add these schools as public health facilities, but the vote was tied among Board members present, thus defeating the motion. Previously, the Board has approved 4 schools, 3 near Harlem and one school in Great Falls, though it has been several years since the Board approved a new school.

To help ensure more consistency in the process of deciding what schools to add under ARM 24.138.509, the Department of Labor proposes that the Board consider whether 50% or more of a school's students qualify for free or reduced lunches when declaring those schools as public health facilities. Under guidelines as governed by federal standards and as implemented by the Montana Office of Public Instruction (OPI), free lunches are available to children in households based on a formula with incomes at or below 130 percent of poverty. Reduced-price lunches are available to children in households with incomes between 130 and 185 percent of poverty. At the request of Department of Labor, the Department's economist looked for school specific metrics that could be applied as a more objective criteria. The Department has not identified any other school by school (as opposed to county or municipal) data that could be consistently applied other than percentage of students at a school on free or reduced lunches.

The Department is proposing a standard of more than 50% of students being on free or reduced lunches because "financial constraints" as a criteria under 37-4-405, MCA can be

determined by federal and state poverty data, which is, in turn applied as a percentage to households of students at a given school as free lunches. In other words, financial constraints could be interpreted to be correlated with the relative poverty of households earning 130-185% of the poverty level. The Department is proposing 50% as a standard because it would be a simple majority of relatively-impoveryed students and would still limit the percentage of Montana schools as a whole that could qualify. OPI data changes along with federal population data and federal poverty guidelines, and is reported year-to-year, but, based on a rough accounting of data from the last couple of years, the Department believes approximately 1/3 of Montana schools could currently qualify to be added, if proposed. The 4 schools already listed would remain as public health facilities.

If the Board chose to proceed with this standard, it could proceed with a policy of approving requests to add schools meeting the 50% threshold based on a showing by the proponent of the rulemaking of sufficient recent OPI data, and, where helpful to explain the proposal, to add a school, any other relevant state and federal data related to that school's poverty level and/or participation in free/reduced lunches. The Department suggests setting guidelines for reviewing these requests as way to avoid unduly constraining the practice of dental hygiene services by LAP hygienists, to standardize consideration of such requests generally, and to help provide access of care to Montanans. If the Board chooses not to proceed with a percentage of free and reduced lunches as a standard, the Department advises that the Board discuss how LAP practice in schools could be effectively and safely implemented, and how Montana kids could be better provided access to affordable dental care while still protecting their health and safety. One aspect of this consideration could be looking at the 4 schools where LAP hygienists currently practice, and, if there has been a deficiency identified or concerns raised, attempt to fix the issue and apply that improved standard to future requests to add schools. The goal should be a standard that can be neutrally applied, is as consistent as possible, and best serves to encourage access to care, while protecting public health and safety.

**Relevant Statute and Rule (bold emphasis added)**

**37-4-405. Dental hygienist to practice under supervision of licensed dentist -- exceptions -- definitions. (1) A licensed dental hygienist may:**

(a) with the permission of the supervising dentist, practice in the office of a licensed and actively practicing dentist under the general supervision of a licensed dentist; or

**(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.**

(2) A dental hygienist may give instruction in oral hygiene without the direct supervision or general supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic.

(3) For the purposes of this section, the following definitions apply:

(a) "direct supervision" means treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

(b) "general supervision" means treatment by a licensed dental hygienist provided with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

**(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**

**(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.**

**(4) (a) A licensed dental hygienist practicing under public health supervision may provide dental hygiene preventative services that include removal of deposits and stains from the surfaces of teeth, the application of topical fluoride, polishing restorations, root planing, placing of sealants, oral cancer screening, exposing radiographs, charting of services provided, and prescriptive authority as allowed under 37-4-401(1)(c).**

(b) A licensed dental hygienist practicing under public health supervision may not provide dental hygiene preventative services that include local anesthesia, denture soft lines, temporary restorations, or any other service prohibited under **37-4-401**.

(c) A licensed dental hygienist practicing under public health supervision shall provide:

(i) for the referral to a licensed dentist of any patient needing treatment outside the scope of practice authorized for a licensed dental hygienist under this subsection (4); and

(ii) treatment based upon medical and dental health guidelines adopted by rule by the board.

(5) (a) A dental hygienist practicing under public health supervision shall obtain a limited access permit from the board.

(b) The board shall adopt rules:

(i) defining the qualifications necessary to obtain a limited access permit; and

(ii) providing a process for obtaining a limited access permit.

**(c) The provision of services under a limited access permit is limited to patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care.**

**(6) 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**

#### **24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT**

(1) The board shall issue a limited access permit (LAP) to a Montana licensed dental hygienist who:

(a) possesses an active, unrestricted Montana dental hygiene license;

(b) certifies that the dental hygienist has actively practiced either:

(i) 2400 clinical hours over the last three years; or

(ii) a career total of 3000 hours, with a minimum of 350 hours in each of the last two years;

(c) provides the name of the applicant's current liability insurance carrier, policy number, and expiration date;

(d) acknowledges on the application that the applicant understands which public health facilities are eligible to provide services under a limited access permit pursuant to 37-4-405, MCA;

(e) provides certificates of attendance of completion of 12 additional continuing education credits for the three-year cycle immediately preceding LAP application pursuant to ARM 24.138.2105(2); and

(f) submits a completed application and pays all appropriate fees.

(2) Application material remains valid for six months from receipt in the board office. If the application is not completed within six months a new application and fees must be submitted.

(3) A LAP dental hygienist shall maintain 48 hours of continuing education credits for each three-year cycle following initial issuance of a LAP. The 48 hours includes the 36 hours required for a dental hygiene license and an additional 12 hours required for the LAP.

(4) LAPs must be renewed annually.

(5) Pursuant to 37-4-405, MCA, the board identifies the following additional public health facilities and programs at which services under a LAP may be provided:

- (a) Dodson School;
- (b) Great Falls Rescue Mission;
- (c) Harlem Elementary School;
- (d) Harlem Junior/Senior High School; and
- (e) Paris Gibson Education Center.