STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE DENTISTRY EXAMINING BOARD	:	ORDER OF THE DENTISTRY EXAMINING BOARD ADOPTING RULES (CLEARINGHOUSE RULE 15-095)

ORDER

An order of the Dentistry Examining Board to create DE 10 relating to mobile dentistry.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 447.058 and 447.07, Stats.

Statutory authority: ss. 15.08 (5) (b) and 447.02 (2) (f), (g) and (h), Stats.

Explanation of agency authority:

Each examining board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular profession. s. 15.08(5)(b)

The examining board shall promulgate rules specifying: a requirement that a mobile dentistry program registrant establish procedures for a patient treated in the mobile dentistry program to access his or her patient records; standards of conduct for the operation of a mobile dentistry program in this state, the provision of dental services through a mobile dentistry program and the use of portable dental equipment; and a definition of "mobile dentistry program: and the activities that constitute the operation of a mobile dentistry program for purposes of the registration requirement under s. 447.058. ss. 447.02(2)(f), (g) and (h), Stats.

Related statute or rule: n/a

Plain language analysis:

This rule implements 2013 Act 244 by creating DE 10.

DE 10.01 defines mobile dentistry program as a program which uses portable equipment or supplies in a location that is not a dental or hospital facility or is a self-contained facility that moves.

DE 10.02 creates the registration requirements. A program is excluded from registration if it meets one of the following: dental or dental hygiene care provided within a 30 mile radius of a main or satellite facility provided the care is billed by that facility and necessary follow-up care is being provided by the dentist or dental hygienist; the care is being provided to no more than 2 per day to a new or established patient of record of a main or satellite dental facility; and the Department of Health conducting screenings as part of the Centers for Disease Control and Prevention surveys. The first two exceptions allow for a dentist or dental hygienist to make "house calls" and the last recognizes the unique nature of the survey screenings.
An applicant would be required to fill out an application, pay a fee, and provide a list of all employees or contractors who are providing dental or dental hygiene care and their Wisconsin dentist or dental hygienist license number. A renewal requires a renewal form and fee and a current list of their employees or contractors. If a person owns or operates more than one mobile dentistry program, a registration is required for each program.

DE 10.03 requires access to patient records. Each patient is to be provided with the name and contact information of the program and the registration number. At the time of providing services, the program is required to provide the patient with a written description of the services provided, the provider's name and license number and the findings and recommendations. Mobile dentistry records are subject to the same rules governing a dentist or dental hygienist working in a dental facility. A mobile dentistry program is required to provide access to patient records.

DE 10.04 requires a mobile dentistry program to have a written protocol for follow-up care in a dental facility that is permanently established within a 60 mile radius of where the mobile dentistry services were provided. The protocol must include a written agreement with at least one provider for emergency treatment.

DE 10.045 requires a mobile dentistry program registrant to fail to update the department within 30 days of new employees, contractors, or volunteers providing dental or dental hygienist services in Wisconsin.

DE 10.05 lists unprofessional conduct as a violation of the standards of conduct all licensed dentists and dental hygienists are required to maintain or the specific mobile dentistry access to patient records, written protocols or notification of new employees, contractors or volunteers.

Summary of, and comparison with, existing or proposed federal regulation: None

Comparison with rules in adjacent states:

Illinois: Illinois defines mobile dental vans and portable dental units as any self-contained or portable dental unit in which dentistry is practiced that can be moved, towed, or transported from one location to another in order to establish a location where dental services can be provided. A dentist providing services through a mobile dental van or portable dental unit is to provide to the patient or the patient's parent or guardian, in writing, the dentist's name, license number, address, and information on how the patient or the patient's parent or guardian may obtain the patient's dental records.

Iowa: Iowa does not require the registration of mobile dentistry programs.

Michigan: Michigan defines mobile dentistry as a self-contained, intact facility in which dentistry or dental hygiene is practiced that may be transported from one location to another or a site used on a temporary basis to provide dental services using portable equipment. An application shall include: a list of each dentist, dental hygienist and dental assistant who will provide care including each individual's name, address, telephone number and license number; a written plan and procedure for providing emergency follow-up care to each patient; a signed memorandum of agreement between the operator and at least one dentist who can arrange for or provide follow-up services at a site within a reasonable distance for the patient; if provides only preventative services, a signed memorandum of agreement for referral for comprehensive dental services between the operator and at least 1 dentist; and proof of general liability insurance covering the mobile dental facility. If an operator has a memorandum of agreement due to its status as a state of Michigan designated or funded oral health prevention program with oversight from the department of community health, the operator is exempt from any requirement concerning a memorandum of agreement. The patient shall be provided a copy of a written treatment plan which shall address comprehensive services to be provided either at the mobile dental facility or through a dentist under a memorandum of agreement with the operator of the mobile dental facility. If the operator is unable to make arrangements for continued treatment, he or she shall place written documentation of the attempts in the patient record and make the documentation available to the department upon request. The operator shall provide access to records upon request.

Minnesota: Minnesota does not require the registration of mobile dentistry programs.

Summary of factual data and analytical methodologies:

The Board formed a committee which looked at the proposals from stakeholders as well as reviewing other states' laws. The committee and Board spent considerable time discussing issues relating to the definition of mobile dentistry programs and protocols for follow-up care balancing the accessibility of the programs to operate in the state with the safety of the public.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rules were posted for economic comments for 14 days. One comment was received requesting an exemption from the rule for mobile dentistry programs receiving partial funding from the state. The Board invited Matt Crespin of Children's Health Alliance of Wisconsin to a meeting to discuss his economic concerns. Mr. Crespin focused on exempting his programs and not on the economic impact on mobile dentistry programs in general. The Board decided not to make changes to the rule to mitigate the economic impact to programs receiving state funds.

Throughout the rule promulgation process, the Board solicited comments from stakeholders. A main concern of all stakeholders is for patients treated by a mobile dentistry program to obtain follow-up care. The Board considered many alternatives to reach this objective with a goal for

the rule to not be a burden on small businesses. Requiring a mobile dentistry program to have protocols for follow-up care, including a written agreement for emergency care meets the objective of protecting public health but not burdening businesses.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules may have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. and were submitted to the Small Business Regulatory Review Board for a determination on whether the rules will have a significant economic impact on a substantial number of small businesses. The Department's Regulatory Review Coordinator may be contacted by email at Jeffrey.Weigand@wisonsin.gov, or by calling (608) 267-2435

The Small Business Regulatory Review Board determined the rules will not have a significant economic impact on a substantial number of small businesses.

Agency contact person:

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TEXT OF RULE

SECTION 1. Chapter DE 10 is created to read:

CHAPTER DE 10
MOBILE DENTISTRY

DE 10.01 Definitions. In this chapter:
(1) "Mobile dentistry program" means a program providing dental hygiene as defined by s. 447.01 (3), Stats. or dentistry as defined by s. 447.01 (8), Stats., excluding a health practitioner practicing within the scope of a license not governed by ch. 447, Stats., in one of the following:

1. Using portable equipment or supplies that are transported to any location that is not an intact dental or hospital facility.
2. In a self-contained, intact facility that can be moved.

(2) "Mobile dentistry program registrant" means a person registered under s. 447.058, Stats.

DE 10.02 Mobile dentistry program registration. (1) REGISTRATION REQUIRED. (a) No person may own or operate a mobile dentistry program in this state unless the person is registered under this section. A person that wishes to own or operate more than one mobile

dentistry program in this state shall apply for a separate registration under this section for each mobile dentistry program the person owns or operates.

(b) A program providing dental or dental hygiene care is not required to register if one of the following requirements is satisfied:

1. The dental or dental hygiene care is provided within a 50 mile radius of their main or satellite facility and all of the following:

a. The care is billed by the main or satellite dental facility.

b. The dentist or dental hygienist provides any necessary follow-up care to the patient.

2. The dental or dental hygiene care is being provided to a new or established patient of record of the main or satellite dental facility and no more than 2 patients per day are being treated using portable equipment or a self-contained, intact facility that can be moved.

3. Department of health services screening assessments conducted as part of the Wisconsin Oral Health surveillance program.

(2) REGISTRATION. An applicant for registration to own or operate a mobile dentistry program shall submit all of the following:

(a) An application for registration on a form provided by the department. The application shall include the person's name and tax identification number, the person's business address and telephone and any other information the department or the examining board requires.

(b) The fee specified in s. 440.05 (1), Stats.

(c) A list of all employees, contractors, or volunteers who are providing dental or dental hygiene care in Wisconsin. The list shall include the Wisconsin license number for each person providing dental or dental hygiene care.

(3) RENEWAL. A mobile dentistry program registrant renewing a registration shall submit all of the following:

(a) A renewal form provided by the department.

(b) The renewal fee as determined by the department under s. 440.03 (9) (a), Stats.

(c) A list of all employees, contractors or volunteers who are providing dental or dental hygiene care in Wisconsin. The list shall include the Wisconsin license number for each person providing dental care.

DE 10.03 Access to patient records. The mobile dentistry program registrant shall do all of the following:

(1) Provide each patient with the name and contact information of the mobile dentistry program and mobile dentistry program's registration number providing services.

(2) At the time of providing services, give each patient a written description of the dental services provided for that patient, any provider's name and license number, and the findings and recommendations.

(3) Maintain patient dental records in accordance with ch. DE 8.

(4) Provide access to dental records in accordance with s. 146.83, Stats.

DE 10.04 Protocol for follow-up care. (1) There shall be a written protocol for follow-up care, for patients treated in the mobile dental program, in a dental facility that is permanently established within 60 mile radius of where services were provided.

(2) There shall be an agreement with at least one provider for emergency treatment.

DE 10.045 Notification to department. The mobile dentistry program shall notify the department within 30 days of new employees, contractors or volunteers providing dental or dental hygiene services in Wisconsin.

DE 10.05 Standards of conduct. Unprofessional conduct by a mobile dentistry program registrant includes any of the following:
(1) Violating any provision under ss. DE 10.03, 10.04 or 10.045.
(2) Engaging in unprofessional conduct under s. DE 5.02.

SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the third month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated 7/6/16 Agency _____

Board Member
Dentistry Examining Board