

**STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
DENTISTRY EXAMINING BOARD : CR 22-086**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS: N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The objective of the proposed rule was to update and add details to the requirements listed in DE 11.035. Therefore, the Board amended DE 11.035 (1) (q) and (2) (s) to add additional requirements for sedation permit education cases. The Board also updated DE 11.025 (3) to align it with the expectations of the Board that courses are certified by the American Heart Association. By providing these additional requirements, the Board will be able to issue sedation permits in an efficient and safe manner.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Dentistry Examining Board held a public hearing on January 4, 2023. The following people either testified at the hearing, or submitted written comments:

- Attorney Kathleen Marcus, DOCS Education
- Michael Silverman, DMD, DOCS Education
- David Blanchard, DDS
- Brad Camp, DDS
- William Caputo, DDS
- Eric Carlson, DDS
- Nathan Knutsen, DDS
- Andrew Scott, DDS
- Jacob Sladky, DDS

The Dentistry Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:

- Attorney Marcus and Dr. Silverman provided comments on behalf DOCS Education. Included in those comments were the following main points:
 - DOCS education trains the vast majority of sedation dentists in Wisconsin

- “This new requirement would effectively eliminate the enteral sedation permit in Wisconsin.”
- 20 patient cases would be approximately 60 hours of treatment time that dentists would need to attend
- DOCS has a live patient experience conducted via livestream that is available for Board members to review
- Interactive livestream meets requirements for the one live patient experience for the enteral permit in California
- There are no courses available that meet the 20 case enteral sedation requirements, which would essentially cause dentists to either forgo offering sedation or obtain IV sedation training instead
- The requirement for enteral sedation as written is twice the clinical hours required for the parenteral or IV permits
- Dr. Silverman also commented that Colorado, Kansas, Texas, Nebraska, Mississippi, Atlanta, Georgia, South Carolina, Tennessee, Massachusetts, Utah, Arizona, Oregon, Washington, and Idaho all do not have 20 live in person patient cases for enteral sedation permit education,
- Dr. David Blanchard expressed concerns about patients who need oral sedation and how essential the ability to provide this service for his patients is.
- Dr. Brad Camp also expressed concerns about patients who need oral sedation not being able to receive the care that they need, as well as the fact that essential care may be delayed due to fear of IV sedation or patient inability to access an oral surgeon near them.
- Dr. William Caputo stated that oral conscious sedation is very safe and patients are less likely to have an emergency situation under this type of sedation, than if they were not sedated.
- Dr. Eric Carlson opposed the rule, stating that it would result in patients going without necessary preventative care which would lead to more emergency room visits and tax an already overwhelmed medical system.
- Dr. Nathan Knutsen opposed the rule, expressing concerns about patients needing oral sedation, as well as that there is not a course offered that provides 20 in person cases.
- Dr. Andrew Scott opposed the rule, stating that it would likely take away necessary dental care for a large part of Wisconsin. They also recommended reverting the requirements back to previous years, such as 2018.
- Dr. Jacob Sladky opposed the rule, stating it would limit the ability of dentists to treat anxious patients.

The Dentistry Examining Board explains modifications to its rule-making proposal prompted by public comments as follows:

- The Board asked and received additional information from DOCS education about the other states that Dr. Silverman mentioned in his comment about enteral sedation permits. The Department also provided the Board with additional information on other states not included in the adjacent state analysis or the list from DOCS education. Based on public comment and this additional information, the Board made the following changes:
 - DE 11.035 (1) (q) 1. to 5. was changed to 1. to 6.

- DE 11. 035 (1) (q) 1. to 6. was updated to read:
“DE 11.035 (1) (q) 1. At least 3 cases must occur in person as live clinical dental experiences. These cases may occur at any time or location permitted by the education program. The remaining cases may include simulations or video presentations.
2. One case with experience in returning a patient from deep to moderate sedation, which may be done by simulation or video presentation.
3. Include full review of patient medical history, including pertinent lab values.
4. Applicant shall be present and participate for the duration of live clinical dental experience cases up through recovery and discharge of the patient and shall participate in any remaining cases via simulation or video presentation to completion.
5. Applicant shall observe the administration of medicines.
6. Patient and any anesthesia monitors shall be in full view of the applicant.”

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS: N/A

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 22-086)

PROPOSED ORDER

An order of the Dentistry Examining Board to amend DE 11.025 (3) (e); create DE 11.035 (1) (q) 1. to 6. and 11.035 (2) (s) 1. to 6.; and renumber and amend DE 11.035 (1) (q) as (1) (q) (intro.) and 11.035 (2) (s) as 11.035 (2) (s) (intro.), relating to precertification sedation education requirements.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 447.02 (2) (b), Stats.

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

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 447.02 (2) (b), Stats, provides that the examining board shall promulgate rules specifying “the standards, conditions and any educational requirements that are in addition to the requirements specified in s. 447.04 (1) that must be met by a dentist to be permitted to induce general anesthesia or conscious sedation in connection with the practice of dentistry.”

Related statute or rule: s. 447.04 (1), Stats.

Plain language analysis:

The objective of the proposed rule was to update and add details to the requirements listed in DE 11.035. Therefore, the Board amended DE 11.035 (1) (q) and (2) (s) to add additional requirements for sedation permit education cases. The Board also updated DE 11.025 (3) to align it with the expectations of the Board that courses are certified by the American Heart Association.

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

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: No comments were received.

Comparison with rules in adjacent states:

Illinois: The Illinois Department of Financial and Professional Regulation is responsible for the licensure and regulation of Dentists in Illinois, with input from the Illinois Board of Dentistry. The Illinois Board is also responsible for the promulgation of rules to implement certain sections of the Illinois Dental Practice Act. This Act contains requirements for dental practice, including dentistry done under anesthesia or sedation [225 Illinois Compiled Statutes ch. 25]. The rules in the Illinois Administrative Code require a Dentist applying for a moderate sedation permit to complete 75 hours of didactic and clinical study and supervised experience in providing moderate sedation to 20 or more patients [Illinois Administrative Code s. 1220.510].

Iowa: The Iowa Dentistry Board is responsible for the licensure and regulation of Dentists in Iowa. Listed in the Iowa Administrative Code are the requirements for dental practice, including dentistry done under anesthesia or sedation. Iowa requires a Dentist applying for a moderate sedation permit to complete a training program that includes a minimum of 60 hours of instruction and management of at least 20 patients or an accredited residency program that includes clinical experience in moderate sedation [650 Iowa Administrative Code ch. 29].

Michigan: The Michigan Board of Dentistry is responsible for the licensure and regulation of Dentists in Michigan. Act 368 Article 15 of the Michigan Compiled Laws includes the regulations for dentistry in Michigan, among several other occupations. [Michigan Compiled Laws s. 333.166] The Michigan Department of Licensing and Regulatory Affairs has administrative rules that include requirements for anesthesia and sedation dentistry. These rules require a Dentist who administers intravenous conscious sedation to have completed at least 60 hours of training in intravenous conscious sedation including a minimum of 40 hours of supervised clinical instruction where they have sedated not less than 20 cases [Michigan Administrative Rules R 338.11602].

Minnesota: The Minnesota Board of Dentistry is responsible for the licensure and regulation of Dentists in Minnesota. Part 3100 of the Minnesota Administrative Code includes the regulations for dentistry in Minnesota, including the requirements for anesthesia and sedation dentistry. Minnesota requires a Dentist applying for initial certification for moderate sedation to have completed at least 60 hours of didactic education in enteral and parenteral sedation including at least 10 individual supervised cases of parenteral moderate sedation. No more than 5 of those cases may be performed on a patient simulation manikin. [Minnesota Administrative Rules part 3100.3600]

Summary of factual data and analytical methodologies:

The Board reviewed Wisconsin Administrative Code DE 11 to determine which case requirements are necessary for safe training of Dentists for anesthesia permits.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis: The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-26-7139; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing on January 4, 2023, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. DE 11.025 (3) (e) is amended to read:

DE 11.025 (3) (e). Evidence of certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support through a course that ~~follows~~ is certified by the American Heart Association ~~guidelines~~. Pediatric Advanced Life Support is required if treating pediatric patients.

SECTION 2. DE 11.035 (1) (q) is renumbered as DE 11.035 (1) (q) (intro.) and amended to read:

DE 11.035 (1) (q) (intro.) 20 cases, which may include group observation cases, that each meet all of the following requirements:

SECTION 3. DE 11.035 (1) (q) 1. to 6. is created to read:

- DE 11.035 (1) (q) 1. At least 3 cases must occur in person as live clinical dental experiences. These cases may occur at any time or location permitted by the education program. The remaining cases may include simulations or video presentations.
2. One case with experience in returning a patient from deep to moderate sedation, which may be done by simulation or video presentation.
 3. Include full review of patient medical history, including pertinent lab values.
 4. Applicant shall be present and participate for the duration of live clinical dental experience cases up through recovery and discharge of the patient and shall participate in any remaining cases via simulation or video presentation to completion.
 5. Applicant shall observe the administration of medicines.
 6. Patient and any anesthesia monitors shall be in full view of the applicant.

SECTION 4. DE 11.035 (2) (s) is renumbered as DE 11.035 (2) (s) (intro.) and amended to read:

DE 11.035 (2) (s) (intro.) 20 individually managed cases, that each meet the all of following requirements:

SECTION 5. DE 11.035 (2) (s) 1. to 6. is created to read:

- DE 11.035 (2) (s) 1. Must occur in person;
2. Include full review of patient medical history, including pertinent lab values;
 3. Applicant shall be in the room for the duration of the case;
 4. Applicant shall supervise recovery and discharge of the patient;
 5. Applicant shall have full view of the patient and access to the patient's airway;
 6. Anesthesia monitors shall be in full view of the applicant.

SECTION 6. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

 (END OF TEXT OF RULE)

This Proposed Order of the Dentistry Examining Board is approved for submission to the Governor and Legislature.

Dated 3/27/2023 Agency _____



Chairperson
 Dentistry Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date December 6, 2022</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DE 11 - Permanent Rule</p>	
<p>4. Subject Pre-Certification Sedation Education</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected s. 20.165 (1) (g)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The objective of the proposed rule is to update and add details to the requirements listed in DE 11.035. The Board will also review and update DE 11.025 (3) to align it with the expectations of the Board for courses certified by the American Heart Association.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The rule will be posted for 14 days on the Department of Safety and Professional Services' website to solicit comments on the potential economic impact.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole. The Department estimates a total of \$1,000 in annual ongoing costs and \$2,650 in one-time administrative costs, which may be absorbed in the agency budget.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing this rule are clear criteria for conscious sedation pre-certification education dentistry permits.</p>	
<p>16. Long Range Implications of Implementing the Rule The long range implications of implementing this rule are improved oversight and streamlined approval for conscious sedation pre-certification education in Wisconsin. .</p>	
<p>17. Compare With Approaches Being Used by Federal Government None</p>	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: The Illinois Department of Financial and Professional Regulation is responsible for the licensure and regulation of Dentists in Illinois, with input from the Illinois Board of Dentistry. The Illinois Board is also responsible for the promulgation of rules to implement certain sections of the Illinois Dental Practice Act. This Act contains requirements for dental practice, including dentistry done under anesthesia or sedation [225 Illinois Compiled Statutes ch. 25]. The rules in the Illinois Administrative Code require a Dentist applying for a moderate sedation permit to complete 75 hours of didactic and clinical study and supervised experience in providing moderate sedation to 20 or more patients [Illinois Administrative Code s. 1220.510].

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19. Contact Name	20. Contact Phone Number
Nilajah Hardin, Administrative Rules Coordinator	608-267-7139

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-