

STATEMENT OF SCOPE

DENTISTRY EXAMINING BOARD

Rule No.: DE 1, 5, 8, 10, and 18

Relating to: Dental Practice Record Management and Dental Franchising

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to consider updating and clarifying regulations on dental practice record management and dental franchising, which may include revisions to chs. DE 1, 5, 8, and 10. The board may also consider creating a new ch. DE 18 on dental franchising.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Wis. Admin. Code ch. DE 8 governs patient dental record retention. The chapter requires patient records to be preserved for at least 10 years from the date of last entry. Section 447.02 (1) (c), Stats., allows the board to promulgate rules governing dental franchising, although currently there are no rules promulgated under this authority on this topic. The board has identified a need to consider updating and clarifying regulations on dental practice record management and dental franchising to protect patient health, safety, and access to records. The board has identified gaps in the current regulations that allow for situations where patients have difficulty getting access to their dental records, or where patients have difficulty getting recourse after adverse situations in dental franchise clinics. The board would like to update and clarify regulations on patient dental record retention in ch. DE 8, and this could also include updates to ch. DE 5, Unprofessional Conduct. The board may also consider creating a new ch. DE 18 on dental franchising, and this could also include updates to ch. DE 5, Unprofessional Conduct.

An alternative would be not to revise the code, which the board believes would continue gaps in the current regulations that affect patient health, safety, and access to records.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

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 227.11 (2) (a), Stats., provides that “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 447.02 (1), Stats.: “The examining board may promulgate rules: (c) Subject to ch. 553 and s. 447.06 (1), governing dental franchising.”

Section 447.02 (2), Stats.: “The examining board shall promulgate rules specifying all of the following: (f) 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.”

Section 447.02 (4), Stats.: “In the course of investigating a violation of this subchapter, the examining board may require, by order or subpoena, that a person who manages or controls a business that offers dental or dental hygiene services, including management or control of a business through which the person allows another person to offer dental or dental hygiene services, produce patient health care records, as defined in s. 146.81 (4).”

Section 447.063, Stats.: “Preservation and transfer of patient health care records. (1) A person who manages or controls a business that offers dental, dental therapy, or dental hygiene services, including management or control of a business through which the person allows another person to offer dental, dental therapy, or dental hygiene services, shall preserve patient health care records, as defined in s. 146.81 (4), for an amount of time determined by the examining board by rule.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 100 hours.

6. List with description of all entities that may be affected by the proposed rule:

Licensed dentists, dental therapists, dental hygienists, dental clinics, dental franchise clinics, and their patients.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will have minimal to no economic impact on small businesses and the state’s economy as a whole.

Contact Person: Jake Pelegrin, Administrative Rule Coordinator, DSPSAdminRules@wisconsin.gov, (608) 267-0989.

Approved for publication:

Approved for implementation:

Authorized Signature

Authorized Signature

Date Submitted

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