

DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH

SUBJECT: Rules Pertaining to Dental Hygienists Serving Underserved Areas

DESCRIPTION:

Purpose

The Arkansas Department of Health (Department) is seeking review and approval of proposed amendments to the Rules Pertaining to Dental Hygienists Serving Underserved Areas. These proposed amendments remove barriers to using Dental Hygiene Collaborative Care permits in public settings, specifically public schools, and allow the use of a broad range of oral and public health data to assess a community's need priority in relation to the provider's service area. Proposed rule changes also protect and preserve any existing provider/patient relationships by eliminating a rule that required yearly patient assessment by the DHCC provider.

Background

The Department of Health is tasked with prioritizing the communities in which a dental hygienist may practice under a Dental Hygiene Collaborative Care permit. Existing rules specify the Arkansas Department of Health, Office of Oral Health shall develop and maintain a list of communities and/or rural areas prioritized as to need for dental services and will endeavor to direct collaborative services to these communities and rural areas. Schools shall be prioritized utilizing the following criteria: (1) Low full-time dentist-to-population ratio; and (2) Percentage of students participating in free and reduced lunches of the school or school district. Schools are currently stratified across six (6) tiers categorized by percentage of the student population participating in Free and Reduced Meals (FARM). The school tier stratification has created an unforeseen barrier to providing care in public school communities that may not meet school or district level FARM criteria but still have high need for dental care. Basic Screening Survey data indicates key oral health indicators, such as decay experience and untreated decay, are consistent across tier levels. This finding suggests that a wider range of oral and public health data should be assessed when determining a community's need for oral health services.

Proposed Rules

The proposed rule removes the school tier system and the provision for annual referral to the collaborative dentist. The proposed rule incorporates prioritization of communities based on provider availability and service area, relevant oral health surveillance data, and other applicable public health datasets deemed appropriate by the Office of Oral Health.

The proposed rule establishes prioritization, pursuant to Ark. Code Ann. § 17-82-706.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on June 30, 2024. The agency received no public comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions:

1. The definition of “public settings” in the rule does not appear to mirror the definition as set out in Ark. Code Ann. 17-82-701(5). Specifically, the word “patients” appears to be omitted on Section III(D)(2) of the markup. **RESPONSE:** This was not new language. This appears to be a typo from when the Rule was promulgated in 2014. Apparently, it was never caught until now.

2. In addition, Section III(D)(5) does not mirror Ark. Code Ann. 17-82-701(5)(D). Could you please look over these and explain why the language in the rule does not mirror the language used in the statute? **RESPONSE:** After further review this was the original language in the statute and the Rules in 2014. It appears this section was updated by Act 1035 of 2019 which updated the language concerning individuals with developmental disabilities throughout the Arkansas Code. Unfortunately, this slipped passed us in the current proposed amendments.

3. The rule provides that the agency “shall determine prioritization of communities in which collaborative services are permitted based upon provider availability, relevant oral surveillance data, and *other applicable public health datasets deemed appropriate* by the Department of Health.” (Emphasis added.) What other datasets does the agency anticipate utilizing in determining prioritization? **RESPONSE:** While no specific datasets have been identified at this time, the revision is to allow the program to utilize various datasets that may be useful in prioritization; for example: smoking rates; chronic disease rates [e.g. diabetes prevalence], free and reduced meal (FARM)/Community Eligibility Provision; and/or average household income.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rules do not have a financial impact.

LEGAL AUTHORIZATION: The Department of Health shall develop a system of prioritization of services permitted under Title 17, Chapter 82, Subchapter 7 of the Arkansas Code, concerning the Dental Hygienist Collaborative Care Program, to communities in the state, including rural areas, based on the relative population of people at need for services permitted under the subchapter and endeavor to direct services permitted under the subchapter to such communities, including rural areas. *See* Ark. Code Ann. § 17-82-705(b). Pursuant to Ark. Code Ann. § 17-82-706(b), the State Board of Health shall adopt rules to implement § 17-82-705.



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Sarah Huckabee Sanders

Renee Mallory, RN, BSN, Secretary of Health

Jennifer Dillaha, MD, Director

PROPOSED RULES FOR DENTAL HYGIENISTS SERVING UNDERSERVED AREAS

PURPOSE

The Arkansas Department of Health (Department) is seeking review and approval of proposed amendments to the Rules Pertaining to Dental Hygienists Serving Underserved Areas. These proposed amendments remove barriers to using Dental Hygiene Collaborative Care permits in public settings, specifically public schools, and allow the use of a broad range of oral and public health data to assess a community's need priority in relation to the provider's service area. Proposed rule changes also protect and preserve any existing provider/patient relationships by eliminating a rule that required yearly patient assessment by the DHCC provider.

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PROPOSED RULES

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The proposed rule establishes prioritization, pursuant to Ark. Code Ann. §17-82-706.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ EMAIL _____
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

NOTICE OF PUBLIC COMMENT PERIOD

The Arkansas Department of Health (ADH) is accepting public comments on the Rules Pertaining to Dental Hygienists Serving Underserved Areas from June 1, 2024, to June 30, 2024. The comment period is provided to allow interested parties and the public to provide any comments. The proposed rule revision with a summary of changes can be viewed online at <https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules> or you may request a copy from our office at 501-280-4111.

Comments on the proposed changes can also be mailed to Arkansas Department of Health, Comments/Slot 18, 4815 West Markham, Little Rock Arkansas, 72205, or emailed to adh.ooh@arkansas.gov.

ARKANSAS STATE BOARD OF HEALTH

CENTER FOR HEALTH ADVANCEMENT

RULES ~~AND REGULATIONS~~
PERTAINING TO
DENTAL HYGIENISTS SERVING UNDERSERVED AREAS

Promulgated Under the Authority of
Arkansas Code Annotated § 17-82-706

Effective ~~June 1, 2014~~

Arkansas Department of Health
Renee Mallory, RN, BSN,
Secretary of Health

Jennifer Dillaha, MD
Director and State Health Officer

~~By the Arkansas State Board of Health~~
~~Arkansas Department of Health~~
~~Little Rock, Arkansas~~

RULES ~~AND REGULATIONS~~ PERTAINING TO DENTAL HYGIENISTS SERVING UNDERSERVED AREAS

SECTION I. AUTHORITY

The following Rules ~~and Regulations~~ Pertaining to Dental Hygienists Serving Underserved Areas are duly adopted and promulgated by the Arkansas Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas, including Ark. Code Ann. § 17-82-706.

SECTION II. PURPOSE

To protect the health of the citizens of Arkansas by promulgating rules providing limited governance of the services provided by a dental hygienist working under a collaborative care permit program with a licensed dentist.

SECTION III. DEFINITIONS

For the purposes of these Rules, the following words and phrases when used herein shall be construed as follows:

- (A) "Collaborative agreement" means a written agreement between a dentist licensed by the Arkansas State Board of Dental Examiners and a dental hygienist licensed by the Arkansas State Board of Dental Examiners providing that the dental hygienist may provide prophylaxis, fluoride treatments, sealants, dental hygiene instruction, assessment of a patient's need for further treatment by a dentist and if delegated by the consulting dentist other services provided by law to children, senior citizens and persons with developmental disabilities in a public setting without the supervision and presence of the dentist and without a prior examination of the persons by the dentist.
- (B) "Collaborative dental hygienist" means a dental hygienist who holds a Collaborative Care Permit I, a Collaborative Care Permit II, or both from the Arkansas State Board of Dental Examiners and who has entered into a collaborative agreement with no more than one (1) consulting dentist regarding provision of services under this subchapter.
- (C) "Consulting dentist" means a dentist who holds a Collaborative Dental Care Permit from the Arkansas State Board of Dental Examiners and:
 - (1) If engaged in the private practice of dentistry, has entered into a collaborative agreement with no more than three (3) collaborative dental hygienists regarding the provision of services under this subchapter; or
 - (2) Is employed by the Arkansas Department of Health.
- (D) "Public settings" means:
 - (1) Adult long-term care facilities;

- (2) Charitable health clinics that provide free or reduced-fee services to low-income patients;
- ~~(3)~~ (3) Community health centers; ~~and~~
- ~~(3)~~ (4) County incarceration facilities;
- (5) Facilities that primarily serve developmentally disabled persons;
- ~~(4)~~ (6) Head Start programs;
- (7) Homes of Homebound patients who qualify for in-home medical assistance;
- ~~(5)~~ (8) Hospital long-term care units;
- (9) Local health units;
- ~~(6)~~ (10) Schools; or in rural counties
- ~~(7)~~ (11) State correctional institutions.

SECTION IV. SPECIFIC REQUIREMENTS

The Arkansas Department of Health Office of Oral Health shall determine prioritization of communities in which collaborative services are permitted based upon provider availability, relevant oral health surveillance data, and other applicable public health datasets deemed appropriate by the Department of Health.

(A) Services will be limited to public settings, including but not limited to:-

~~The Office of Oral Health, Arkansas Department of Health, shall develop and maintain a list of communities and/or rural areas prioritized as to need for dental services and will endeavor to direct collaborative services to these communities and rural areas. Prioritization will be based upon a patient's ability to access care and limited to public settings. These include:~~

- (1) Adult Long-Term Care Facilities;
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- (3) Community Health Centers;
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(8) Hospital long-term care units;

(9) Local Health Units;

(10) State Correctional Institutions; or

(11) Schools. ~~shall be prioritized utilizing the following criteria:~~

~~(B) Low full-time dentist to population ratio; and~~

~~(C) Percentage of students participating in free and reduced lunches of the school or school district.~~

~~(D) No school in a tier may be eligible for services until all schools in higher tiers have received services, declined services, or otherwise are unavailable or unwilling to participate in services.~~

~~(E) A school that fails to respond to a reasonable effort to contact it regarding the availability of services may be deemed to be unwilling to participate in services.~~

~~(F) Tiers:~~

~~(G) Tier I shall consist of those schools where 90% or more of its students receive free and reduced lunches;~~

~~(H) Tier II shall consist of those schools where 75% or more of its students receive free and reduced lunches;~~

~~(I) Tier III shall consist of those schools where 70% or more of its students receive free and reduced lunches;~~

~~(J) Tier IV shall consist of those schools where 60% or more of its students receive free and reduced lunches;~~

~~(K) Tier V shall consist of those schools where 50% or more of its students receive free and reduced lunches; and~~

~~(L) Tier VI shall consist of those schools where less than 50% of its students receive free and reduced lunches.~~

~~(M) ——— To further the intent of these rules and after good cause shown, the Director of the Department of Health may waive the requirements of this subsection.~~

~~(N) Provision shall be made for assessment by the hygienist and referral to the collaborative dentist for recall examinations on a yearly basis or more frequently as needed.~~

~~(O)~~ (B) Patients will be encouraged to establish a dental home.

~~(P)~~(C) ___ A consulting dentist in a collaborative care program with a dental hygienist must consult the Office of Oral Health, Arkansas Department of Health, for permission to practice collaborative care in prioritized areas. Permission must be confirmed annually.

(D) The Office of Oral Health will keep appropriate records.

~~(P)~~(E) ___ The Office of Oral Health shall publish to the Department of Health website a directory of datasets and reports that will be utilized when assessing a community's oral health indicators to determine priority areas, based on available provider's service area.

SECTION V. SEVERABILITY

If any provision of these Rules or the application thereof to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications of these Rules ~~and Regulations~~ which can give effect without the invalid provisions or applications, and to this end, the provisions hereto are declared severable.

SECTION VI. REPEAL

All ~~regulations~~ rules and parts of ~~regulations~~ rules in conflict herewith are hereby repealed.
~~(Specify if repealing a specific existing rule or part thereof)~~

CERTIFICATION

This will certify that the foregoing Rules ~~and Regulations~~ Pertaining to Dental Hygienists Serving Underserved Areas were adopted by the Arkansas Board of Health at a regular session of the Board held in Little Rock, Arkansas, on the ~~24th~~ ___ day of ~~April~~ ___, ~~2014~~ 2023.

Jennifer Dillaha, MD
Secretary of Arkansas State Board of Health
Director of the Arkansas Department of Health

ARKANSAS STATE BOARD OF HEALTH

CENTER FOR HEALTH ADVANCEMENT

RULES PERTAINING TO
DENTAL HYGIENISTS SERVING UNDERSERVED AREAS

Promulgated Under the Authority of
Arkansas Code Annotated § 17-82-706

Effective

**Arkansas Department of Health
Renee Mallory, RN, BSN,
Secretary of Health**

**Jennifer Dillaha, MD
Director and State Health Officer**

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- (9) Local Health Units;
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(B) Patients will be encouraged to establish a dental home.

(C) A consulting dentist in a collaborative care program with a dental hygienist must consult the Office of Oral Health, Arkansas Department of Health, for permission to practice collaborative care in prioritized areas. Permission must be confirmed annually.

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All rules and parts of rules in conflict herewith are hereby repealed.

CERTIFICATION

This will certify that the foregoing Rules Pertaining to Dental Hygienists Serving Underserved Areas were adopted by the Arkansas Board of Health at a regular session of the Board held in Little Rock, Arkansas, on the ____ day of _____, 2023.

Jennifer Dillaha, MD
Secretary of Arkansas State Board of Health
Director of the Arkansas Department of Health