Pathways to Improved Access to Dental Health Services

Even after the adoption of the Affordable Care Act, the existing oral health delivery system leaves enormous levels of unmet need. While multiple strategies will be required to improve oral health, states can and should consider whether legal barriers unnecessarily hamper licensed dentists and allied dental providers from delivering more services to more patients. The Network for Public Health Law has performed a legal analysis of how each state’s laws define — and in many cases limit — the roles of these dental health service providers.

This Fact Sheet describes the state laws governing the respective services provided by members of the dental workforce. The companion Access to Oral Health Care Science and Law Brief more fully explores policy options that public health professionals and community members might consider to expand access to care through allied dental providers. Together the Network intends for these documents to serve as a starting point for developing policies to improve oral health.

There are of course other important means of expanding access to dental health services. For children, programs to encourage oral health screenings by pediatricians and providing wider access to school–based sealant services can provide important benefits. And for many underserved populations, changes in Medicaid reimbursement policies coupled with innovative service delivery models are critical means of delivering needed services. The Network has explored in depth the issue of scope of practice for allied dental providers, as evidenced by this Fact Sheet, and we are prepared to investigate other policy options to improve oral health. If expanding scope of practice is not the focus of your efforts in this area, you are still encouraged to contact your Network Region for legal technical assistance on any oral health issue. There is no cost for this assistance. The Network will monitor requests for assistance in this area and prepare more extensive materials on issues that surface frequently, present promising outcomes or are particularly challenging from a legal perspective.

Oral Health and Scope of Practice of Allied Dental Providers in Montana

Poor oral health has severe negative repercussions on overall health, productivity and quality of life. Untreated oral health problems in children can result in attention deficits, trouble in school, and problems sleeping and eating.¹ Employed adults lose more than 164 million hours of work each year due to dental disease and dental visits, and in 2009 over 830,000 emergency room visits were the result of preventable dental conditions.² Poor oral health is also associated with a number of other diseases, including diabetes, stroke and respiratory disease.³ In older adults, poor oral health is significantly associated with disability and reduction in mobility.⁴

The following table highlights indicators of oral and dental health, and shows how Montana compares with the nation on these indicators.
Montana Compared with the National Average on Oral Health Indicators

<table>
<thead>
<tr>
<th>Adults</th>
<th>U.S.</th>
<th>MT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults aged 18+ who have visited a dentist or dental clinic in the past year (2008) (^5)</td>
<td>68.5%</td>
<td>64.8%</td>
</tr>
<tr>
<td>Adults aged 18+ who have had their teeth cleaned in the past year (among adults with natural teeth who have ever visited a dentist or dental clinic) (2008) (^6)</td>
<td>69%</td>
<td>62.2%</td>
</tr>
<tr>
<td>Adults aged 65+ who have lost six or more teeth due to tooth decay or gum disease (2008) (^7)</td>
<td>43%</td>
<td>41.3%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Children</th>
<th>U.S.</th>
<th>MT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children with a preventive dental visit in the past year (2011-2012) (^8)</td>
<td>77.2%</td>
<td>76.2%</td>
</tr>
<tr>
<td>Children with oral health problems in the past 12 months (2011) (^9)</td>
<td>18.7%</td>
<td>19.7%</td>
</tr>
<tr>
<td>Children with two or more oral health problems in the past six months (2007) (^10)</td>
<td>8.4%</td>
<td>9.9%</td>
</tr>
<tr>
<td>3rd Grade students with untreated tooth decay (2006-2007) (^11)</td>
<td>25%</td>
<td>28.9%</td>
</tr>
<tr>
<td>3rd Grade students with dental sealants (protective of decay) on at least one permanent molar tooth (2006-2007) (^12)</td>
<td>40.8%</td>
<td>46.2%</td>
</tr>
<tr>
<td>Children with decayed teeth or cavities within the past six months (2007) (^13)</td>
<td>19.4%</td>
<td>20.9%</td>
</tr>
<tr>
<td>Special needs children with unmet preventive dental care needs (2009-2010) (^14)</td>
<td>8.9%</td>
<td>12.7%</td>
</tr>
</tbody>
</table>

The burden of oral disease is unequally distributed, with minorities and low-income people significantly more likely to report oral health problems. \(^15\) Many of these disparities are exacerbated by lack of access to dental providers, including non-dentist medical professionals. \(^16\) Allied dental providers, such as dental hygienists and dental therapists, are educated and trained to teach patients proper oral hygiene practices and provide a host of preventive dental services and assessments, typically at lower cost. \(^17\) Lack of access to allied dental providers is a key predictor of poor dental health. These dental professionals play a critical role in improving access to dental services, particularly for underserved or vulnerable populations. \(^18\) There is reason to believe that increased utilization of allied dental providers can help improve access to care, particularly among underserved populations. \(^19\) Regulation of allied dental providers varies across states. \(^20\) Although some states permit hygienists or therapists to practice only in the same physical location as dentists, many have taken steps to improve access to care for low-income people by relaxing this restrictive rule. \(^21\)

**Allied Dental Provider in Montana**

**What does the practice of dental hygiene include?** \(^22\)

**Performance of Educational, Therapeutic, Prophylactic, and Preventive Services Including:** \(^23\)

- Making radiographic exposures, as prescribed by the supervising dentist;
- Taking impressions for study or working casts;
- Removing sutures and dressings;
- Applying topical anesthetic agents;
- Providing oral health instruction;
- Applying topical fluoride agents;
- Removing excess cement from coronal surfaces;
- Placing and removing rubber dams;
- Placing and removing matrices;
- Collection of patient data;
- Polishing amalgam restorations;
- Placing pit and fissure sealants;
- Coronal polishing;
- Administering or dispensing drugs with prior authorization and direct supervision of dentist.²⁴

**Administering Anesthetics:**
- Administering local anesthesia, after obtaining a permit and under the direct supervision of a dentist²⁵
- When functioning as a dental auxiliary under direct supervision, initiating, adjusting, and monitoring nitrous oxide flow for a patient who has been prescribed and administered nitrous oxide by a licensed dentist.²⁶

<table>
<thead>
<tr>
<th>Level of Required Dentist Supervision</th>
<th>Hygienist Activities Within a Dental Office</th>
<th>Public Health Facility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct</td>
<td>Full Scope of Practice</td>
<td>Full Scope of Practice</td>
</tr>
<tr>
<td></td>
<td>✓ May administer local anesthesia</td>
<td>✓ May administer local anesthesia</td>
</tr>
<tr>
<td></td>
<td>✓ May be authorized to monitor nitrous oxide if acting as a dental auxiliary</td>
<td>✓ May be authorized to monitor nitrous oxide if acting as a dental auxiliary</td>
</tr>
<tr>
<td>General</td>
<td>Limited Scope of Practice</td>
<td>Limited Scope of Practice</td>
</tr>
<tr>
<td></td>
<td>✓ May not administer local anesthesia</td>
<td>✓ May not administer local anesthesia</td>
</tr>
<tr>
<td></td>
<td>✓ May not administer or monitor nitrous oxide</td>
<td>✓ May not administer or monitor nitrous oxide</td>
</tr>
<tr>
<td>Public Health</td>
<td>n/a</td>
<td>Limited Scope of Practice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ May not administer local anesthesia</td>
</tr>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

**What services may a dental hygienist not perform?**

A licensed dental hygienist may not perform the following functions:²⁷

- Diagnosis and treatment planning
- Cutting hard or soft tissues (except root planing and soft tissue curettage) or extracting teeth;
- Prescribing any drug
- Administering or dispensing any drugs, without the prior authorization and direct supervision of the supervising dentist, not including topical agents or sulcular medicaments;
- Placing, carving or condensing any permanent restorations;
- Taking final impressions of the involved arch for crowns, bridges, implant prosthesis, partial or complete dentures;
- Bonding or cementing orthodontic brackets, or orthodontic appliances that would provide activation upon cementation;
- Bonding or cementing any fixed prosthesis, including veneers, except for provisionals.

**What are the supervision requirements for the practice of dental hygiene?**

Dental hygienists typically practice under the general supervision of a licensed dentist,²⁸ except that a dental hygienist may give instruction in oral hygiene without supervision in certain locations,²⁹ or may practice under a limited access
permit at designated public health facilities. A licensed dental hygienist may practice either at the office of a licensed and actively practicing dentist, or at a public health facility.

**General Supervision:** means treatment, except the administration of local anesthesia, by a licensed dental hygienist provided with the intent and knowledge of a dentist licensed and residing in Montana. The supervising dentist need not be on the premises.

**Direct Supervision:** means treatment by a dental auxiliary or dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

**Public Health Supervision:** means the provision of limited dental hygiene preventive services without the prior authorization or presence of a licensed dentist in a public health facility.

- **Public Health Facilities are:** federally qualified health centers, federally funded community health centers; migrant health care centers; programs for health services for the homeless under federal law; 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; mobile public health clinics, and Dodson School, Great Falls Rescue Mission, Harlem Elementary School, Harlem Junior/Senior High School, and Paris Gibson Education Center.

- **Procedures allowed under public health supervision include:**
  - Removal of deposits and stains from the surfaces of teeth;
  - Application of topical fluoride;
  - Polishing restorations;
  - Root planing;
  - Placing of sealants;
  - Oral cancer screening;
  - Exposing radiographs;
  - Charting services provided.

- **Procedures NOT allowed under public health supervision:**
  - Local anesthesia
  - Denture soft lines;
  - Temporary restorations;
  - Services for patients who have severe systemic diseases.

In 2014, Montana adopted a regulation which authorizes a dental hygienist practicing under public health supervision to consult a dentist, physician, nurse practitioner or a physician assistant regarding provision of dental hygiene preventive services and treatment to a patient with one or more severe systemic diseases.

**What body is responsible for professional oversight of licensed dental hygienists?**
The Montana department of labor and industry is responsible for licensing dental hygienists. The board of dentistry, however, has authority to adopt, amend, or repeal rules. In 2014, the board of dentistry created a new dental hygienist committee to review issues pertaining to dental hygienists and make recommendations to the full board.

**SUPPORTERS**

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This document was developed by Neil Pederson, law student at William Mitchell College of Law and reviewed by Jill Krueger, Senior Attorney, at the Network for Public Law—Northern Region, at the Public Health Law Center at William Mitchell College of Law. The Network for Public
Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.


2 HHS, Oral Health in America, supra note 1, at 3; PEW CENTER ON THE STATES, A COSTLY DESTINATION: HOSPITAL CARE MEANS STATES PAY DEARLY 1 (2012).


4 IOM, Improving Access, supra note 3, at 52.

5 Centers for Disease Control, National Center for Chronic Disease Prevention and Health Promotion, National Oral Health Surveillance System: Adults Aged 18+ Who Have Visited a Dentist or Dental Clinic in the Past Year, available at http://apps.nccd.cdc.gov/nohss/ListV.asp?qkey=5&DataSet=2. (last visited October 7, 2014).


7 Centers for Disease Control, National Center for Chronic Disease Prevention and Health Promotion, National Oral Health Surveillance System: Adults Aged 65+ Who Have Lost 6 or More Teeth Due to Tooth Decay or Gum Disease, available at http://apps.nccd.cdc.gov/nohss/ListV.asp?qkey=7&DataSet=2. (last visited October 7, 2014).


17 See generally David Nash, Adding Dental Therapists to the Health Care Team to Improve Access to Oral Health Care for Children, 9 ACAD. PEDIATRICS 446 (2009).


21 See Id., IOM, Improving access at 3-29.

22 M.C.A. § 37-4-401 (2013) (establishing the scope of practice of licensed dental hygienists, and granting authority to the board of dentistry to further define). See also, MONT. ADMIN. R. § 24.138.407(2) (2013) (providing that the list is “not limited” to what is listed).


24 Id. § 24.138.407(3)(d).

25 Id. § 24.138.508(1); see also id. §§ 24.138.508(2)-(5) (licensure requirements).

26 Id. § 24.138.406(2)(b). The law is not entirely clear. It defines the term “dental auxiliary,” as a person other than a licensed dental hygienist employed by a licensed dentist. M.C.A § 37-4-408. Yet it also states that dental hygienists will be allowed to perform certain dental auxiliary functions, including but not limited to the list provided. MONT. ADMIN. R. § 24.138.407(2). Initiating, adjusting, and monitoring nitrous oxide flow is listed in another section as a procedure which may be performed by dental auxiliaries under direct supervision, but is not specifically included in the list of functions which may be performed by dental hygienists under general supervision. Compare MONT. ADMIN. R. § 24.138.406(2) and MONT. ADMIN. R. § 24.138.407(2). However, the functions which may be performed by dental hygienists are expressly not limited to those contained on the list in section 24.138.407, and so it appears that in at least some cases, dental hygienists may monitor nitrous oxide flow under direct supervision. One other potentially relevant law is M.C.A. § 37-4-401, which states that the practice of dental hygiene includes administration of local anesthetic agents under direct supervision, but which does not mention nitrous oxide.

27 M.C.A. § 37-4-401; see also MONT. ADMIN. R. § 24.138.407 (3) and (4).

28 M.C.A § 37-4-401.

29 Id. § 37-4-405(2) (“A dental hygienist may give instruction in oral hygiene without 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.”).

30 Id. § 37-4-405(5). The requirements are set forth at MONT. ADMIN. R. § 24.138.509.

31 Id. § 37-4-405(1)(a)-(b).

32 See Id. § 37-4-405(3)(b)

33 Id. § 37-4-405(3)(a).

34 § 37-4-405(3)(d).

35 Id. § 37-4-405(3)(c)(i).

36 MONT. ADMIN. R. § 24.138.509(5).

37 A dental hygienist practicing under public health supervision must obtain a “limited access permit” from the board of dentistry. M.C.A. § 37-4-405(5)(a). The requirements are set forth at MONT. ADMIN. R. § 24.138.509.

38 Id. § 37-4-405(4)(a). A dental hygienist is subject to additional restrictions based on, among other things, the patient’s health. See MONT. ADMIN. R. § 24.138.425(1)-(2).

39 See id. § 37-4-405(4)(b).


42 Id. § 37-4-402(1); id. § 37-4-101(c) (definition of “department”).

43 Id. § 37-4-205.