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 South Dakota

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 South Dakota compares with the nation on these indicators.
## South Dakota Compared with the National Average on Oral Health Indicators

<table>
<thead>
<tr>
<th></th>
<th>U.S.</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults aged 18+ who have visited a dentist or dental clinic in the past year (2008)</td>
<td>68.5%</td>
<td>72.1%</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)</td>
<td>69%</td>
<td>70.8%</td>
</tr>
<tr>
<td>Adults aged 65+ who have lost six or more teeth due to tooth decay or gum disease (2008)</td>
<td>43%</td>
<td>44%</td>
</tr>
<tr>
<td>Children with a preventive dental visit in the past year (2011-2012)</td>
<td>77.2%</td>
<td>77.7%</td>
</tr>
<tr>
<td>Children with oral health problems in the past 12 months (2011)</td>
<td>18.7%</td>
<td>17.3%</td>
</tr>
<tr>
<td>Children with two or more oral health problems in the past six months (2007)</td>
<td>8.4%</td>
<td>6.3%</td>
</tr>
<tr>
<td>3rd Grade students with untreated tooth decay (2006-2007)</td>
<td>25%</td>
<td>29.1%</td>
</tr>
<tr>
<td>3rd Grade students with dental sealants (protective of decay) on at least one permanent molar tooth (2006-2007)</td>
<td>40.8%</td>
<td>58.4%</td>
</tr>
<tr>
<td>Children with decayed teeth or cavities within the past six months (2007)</td>
<td>19.4%</td>
<td>19%</td>
</tr>
<tr>
<td>Special needs children with unmet preventive dental care needs (2009-2010)</td>
<td>8.9%</td>
<td>8.3%</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. Many of these disparities are exacerbated by lack of access to dental providers, including non-dentist medical professionals. 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. 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. There is reason to believe that increased utilization of allied dental providers can help improve access to care, particularly among underserved populations. Regulation of allied dental providers varies across states. 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.

### Allied Dental Providers in South Dakota

**What does the practice of dental hygiene include?**

**Performance of Educational, Preventive, and Therapeutic Services Including:**
- Preliminary examination of the oral cavity and surrounding structures, including periodontal screenings;
- Complete prophylaxis;
- Placement of sealants;
- Polishing of restorations;
- Related extra-oral procedures;
- Take dental x-rays after registration as a dental radiographer.
- Under direct supervision, all services permitted other advanced dental assistants and dental assistants.

**Administering Anesthetics:**
- Upon issuance of a permit, administer local anesthesia to dental patients on an outpatient basis under direct supervision of a dentist.
Upon issuance of a permit, use nitrous oxide inhalation analgesia for dental patients on an outpatient basis under the direct supervision of a 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>n/a</td>
</tr>
<tr>
<td></td>
<td>✓ Local Anesthesia</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ Nitrous oxide</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ All practices allowed under general supervision</td>
<td></td>
</tr>
<tr>
<td>General</td>
<td>Limited Scope of Practice</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>✓ Cannot administer local anesthesia</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ Cannot administer nitrous oxide</td>
<td></td>
</tr>
<tr>
<td>Under Collaborative Agreement</td>
<td>n/a</td>
<td>Limited Scope of Practice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Cannot administer local anesthesia</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Cannot administer nitrous oxide</td>
</tr>
</tbody>
</table>

What services may a dental hygienist not perform?
A licensed dental hygienist may not establish a final diagnosis or treatment plan for a patient.27

What are the supervision requirements for the practice of dental hygiene?
A dental hygienist employed at a public institution or school authority may provide educational services without the supervision of a dentist.28 For all other preventive or therapeutic services, supervision by a dentist is required.

**General Supervision:** the supervision of a dental hygienist requiring that a dentist authorize the procedures to be carried out, and that the patient to be treated is a patient of record of the supervising dentist and has had a complete evaluation within the previous thirteen months of the delegation of procedures.29

**Direct Supervision:** the supervision of a dental hygienist requiring that a dentist diagnose the condition to be treated, a dentist authorize the procedure to be performed, a dentist remain in the dental office while the procedures are performed, and before dismissal of the patient a dentist has approved the work performed.30 Direct supervision is required for administration of nitrous oxide or local anesthesia.

**Indirect Supervision:** the supervision of a dental hygienist requiring that a dentist authorize the procedure to be performed, and a dentist be in the dental office while the procedures are performed.31

**Collaborative Supervision:** the supervision of a dental hygienist requiring a collaborative agreement between a supervising dentist and dental hygienist.32

- **Collaborative Agreement:** a written agreement between a supervising dentist and a dental hygienist authorizing the preventive and therapeutic services that may be performed by the dental hygienist under collaborative supervision.33
- **Settings in which a Dental Hygienist may practice under Collaborative Agreement:**34
  - ✓ In a school;
  - ✓ In a nursing facility;
  - ✓ Under the auspices of a Head Start Program or Early Head Start Program;
  - ✓ Under the auspices of a mobile or portable dental unit operated by any nonprofit organization affiliated with a nonprofit dental service corporation;
Under the auspices of a community based primary health care delivery organization, which is operating as a community health center or migrant health center and receiving funding assistance under the U.S. Public Health Service Act;

Through a program administered by the South Dakota Department of Health, Department of Social Services, Department of Human Services, or Department of Corrections.

Circumstances under which a Dental Hygienist may practice under Collaborative Agreement:  

The person has had a complete evaluation by a dentist within the previous thirteen months.  

The dental hygienist is employed by Delta Dental Plan of South Dakota, providing services through written agreement with the Indian Health Service or a federally recognized tribe in South Dakota.

What body is responsible for professional oversight of licensed dental hygienists?  
The Board of Dentistry is responsible for overseeing the licensure of dental hygienists, as well as the promulgation of rules governing the practice of dental hygiene.

SUPPORTERS

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.

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).


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).


Id. 20:43:03:29.


Id. 20:43:07:03 (outlining training requirements for registry as a dental radiographer).

Id. 20:43:04:06.

Id. 20:43:09:06.01.

Id. 20:43:09:06.

S.D. CODIFIED LAWS § 36-6A-40.

Id.

Id. § 36-6A-26(15).

Id. § 36-6A-26(14).

Id. § 36-6A-26(16).

Id. § 36-6A-26(1B).

Id. § 36-6A-26(1A).

This exemption expires on June 30, 2016.