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 Wisconsin

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 Wisconsin compares with the nation on these indicators.
Wisconsin Compared with the National Average on Oral Health Indicators

<table>
<thead>
<tr>
<th>Adults</th>
<th>U.S.</th>
<th>WI</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>72.4%</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>72.2%</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>40%</td>
</tr>
<tr>
<td>Children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children with a preventive dental visit in the past year (2011-2012)</td>
<td>77.2%</td>
<td>79.1%</td>
</tr>
<tr>
<td>Children with oral health problems in the past 12 months (2011)</td>
<td>18.7%</td>
<td>15.3%</td>
</tr>
<tr>
<td>Children with two or more oral health problems in the past six months (2007)</td>
<td>8.4%</td>
<td>7.4%</td>
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<tr>
<td>3rd Grade students with untreated tooth decay (2006-2007)</td>
<td>25%</td>
<td>20.9%</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>50.8%</td>
</tr>
<tr>
<td>Children with decayed teeth or cavities within the past six months (2007)</td>
<td>19.4%</td>
<td>16.4%</td>
</tr>
<tr>
<td>Special needs children with unmet preventive dental care needs (2009-2010)</td>
<td>8.9%</td>
<td>11.5%</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 Wisconsin

What does the practice of dental hygiene include?

Performance of educational, preventive, and therapeutic services:

**Dental Hygiene Defined:**
Wisconsin statute defines the following as “dental hygiene.”

- Removing supragingival or subgingival calcareous deposits, subgingival cement or extrinsic stains from a natural or restored surface of or a fixed replacement for a human tooth;
- Deep scaling or root planing a human tooth;
- Conditioning a human tooth surface in preparation for the placement of a sealant and placing a sealant;
- Conducting a substantive medical or dental history interview or preliminary examination of a dental patient’s oral activity or surrounding structures, including the preparation of a case history or recording of clinical findings;
- Conducting an oral screening without the written prescription of a dentist.
Participating in the development of a dental patient’s dental hygiene treatment plan; Any other practice specified in the rules promulgated under section 447.02(1)(d).

Practice of Dental Hygiene Defined:
The Wisconsin Dental Examination Board, under authority from statute, further provides that the following regarding the scope of practice for dental hygienists, distinguishing between practices allowed while a dentist is present, and practices allowed whether or not a dentist is present.

When a Dentist is Present in the Dental Facility:
- Performing complete prophylaxis which may include:
  - Removing calcareous deposits, accretion and stains from the surface of teeth;
  - Performing deep periodontal scaling, including root planning;
  - Polishing natural and restored tooth surfaces;
- Placing temporary restorations in teeth in emergency situations;
- Placing in oral cavity:
  - Rubber dams and Periodontal surgical dressings;
- Removing from an oral cavity:
  - Rubber dams, Periodontal surgical dressings, and Sutures;
- Removing excess cement from teeth, inlays, crowns, bridges and fixed orthodontic appliances.

Whether or Not a Dentist is Present in the Dental Facility:
- Preparing specimens for dietary or salivary analysis;
- Taking Impressions for and fabricating study casts and opposing casts;
- Making and processing dental radiograph exposures;
- Conducting a preliminary examination of the oral cavity and surrounding structures which may include preparing case histories and recording clinical findings for the dentist to review;
- Providing prevention measures, including application of fluorides and other topical agents approved by the American dental association for the prevention or oral disease;
- Finally, a dental hygienist must report clinical findings made in the practice of dental hygiene to the supervising dentist.

Delegation of Procedures:
Wisconsin statute also allows dentists to delegate to dental hygienists the following procedures, but the dentist must remain in the presence of the dental hygienist.
- Administer remediable procedures, upon delegation by dentist.
- Administer Oral systemic premedications upon delegation by dentist.
- Administer subgingival chemotherapeutic agents upon delegation by dentist.

Administering Anesthetics:
- Administer local anesthesia, upon delegation by dentist and after certification.
- Administer nitrous oxide, upon delegation by dentist.

What services may a dental hygienist not perform?

A DENTAL HYGIENIST MAY NOT:
- Administer or prescribe, either narcotic or analgesics or systematic-affecting nonnarcotic drugs, or anesthetics;
- Place or adjust dental appliances;
- Diagnose any condition of the hard or soft tissues of the oral cavity or prescribe treatment to modify normal or pathological conditions of the tissues;
- Place and carve restorations [except in emergency situations];
- Diagnose a dental disease or ailment, determine any treatment or any regimen of any treatment outside of the scope of dental hygiene, prescribe or order medication or perform any procedure that involves the intentional cutting of soft or hard tissue of the mouth by any means.

What are the supervision requirements for the practice of dental hygiene?
A dental hygienist must practice under the supervision of a dentist.\textsuperscript{57} What constitutes supervision, however, depends on the type of facility where the dental hygienist is practicing. There are two categories of facility where a dental hygienist may practice.\textsuperscript{58}

**Facility Type 1:**
- **Dental offices,**\textsuperscript{59} **Nursing Homes,**\textsuperscript{60} **Hospitals,**\textsuperscript{61} **Correctional Facilities,**\textsuperscript{62} **Facilities designed to care for terminally ill patients,**\textsuperscript{63} **Public and Religious Charitable Institutions,**\textsuperscript{64} **Nonprofit Home Health Care Agencies,**\textsuperscript{65} and **Nonprofit Dental Care Programs that serve primarily indigent, economically disadvantaged or migrant workers.**\textsuperscript{66}

  - **When a Dentist is Present:** A dental hygienist may practice dental hygiene and additional delegated procedures if the dentist is present, as specified above in the scope of practice section.\textsuperscript{67}
  - **When a Dentist is Not Present:** A dental hygienist may practice dental hygiene and delegated remedial procedures as specified above in the scope of practice section, even if the dentist is not present, if:
    - Performed with the consent of the patient, under a detailed written or oral prescription, only if the dentist has examined the patient within that year. If the practice is in a dental office, as opposed to another facility, the patient must also have been a patient for at least six months.\textsuperscript{68}

**Facility Type 2:**
- **Public School Boards,**\textsuperscript{69} **Private and Tribal Schools,**\textsuperscript{70} **Dental and Dental Hygienist Schools,**\textsuperscript{71} and **Local Health Departments.**\textsuperscript{72} Wisconsin statute does not specify any supervision requirements for dental hygienists, beyond that dental hygienists must be an employee or an independent contractor.\textsuperscript{73} Rules promulgated by the Dental Examining Board, however, create some ambiguity as to whether a dentist must supervise dental hygienists in these facilities.\textsuperscript{74}

**What body is responsible for professional oversight of licensed dental hygienists?**
The Dental Examining Board is responsible for licensure and oversight of dental hygienists.\textsuperscript{75}

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**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.

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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.


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


23. Id. § 447.01(3)(a).

24. Id. § 447.01(3)(b).

25. Id. § 447.01(3)(c).

26. Id. § 447.01(3)(d).

27. Id. § 447.01(3)(e).

28. Id. § 447.01(3)(f).
“Remedial procedures” are defined as “…patient procedures that create changes within the oral cavity or surrounding structures that are reversible and do not involve any increased health risks to the patient.” Wis. Stat. § 447.01(12).

What constitutes oral premedications are specified by rule. Wis. Stat. § 447.06(2)(e) (statutory authority); see also Wis. Admin. Code § DE 3.04(1) (“Oral systemic premedications’ means antibiotics that are administered orally to patients prior to providing dental or dental hygiene services in order to mitigate against the risk of patients developing a bacterial infection.”). The scope of delegation is also limited by rule. See id. § DE 3.04(3). “A dentist may delegate…only if all the following conditions are met: …[t]he administration is performed pursuant to a treatment plan for the patient approved by a dentist …[a]nd [a] dentist remains on the premises in which the administration is performed and is available to the patient throughout the completion of the appointment.”

What constitutes subgingival sustained release chemotherapeutic agents are specified by rule. Wis. Stat. § 447.06(2)(e) (statutory authority); see also Wis. Admin. Code § DE 3.02(1)(b) (“Subgingival sustained release chemotherapeutic agents’ means medications that are applied under the gum tissue in periodontal pockets to treat periodontal or gum disease.”). The scope of delegation is also limited by rule. See id. § DE 3.04(3). “A dentist may delegate…only if all the following conditions are met: …[t]he administration is performed pursuant to a treatment plan for the patient approved by a dentist …[a]nd [a] dentist remains on the premises in which the administration is performed and is available to the patient throughout the completion of the appointment.”

See supra note 47.

Wis. Stat. §§ 447.04(2)((c)(1), 447.06(2)(e)(2); see also Wis. Admin. Code §§ DE 7.01 - 06 (specifying dental examining board requirements for certification).

Wis. Stat. § 446.065(2) (2014) (taking effect, November 1, 2014); see also id. § 446.06(2)(e).

§ DE 3.03.

Id. § 3.03(1).

Id. § 3.03(2).

Id. § 3.03(3).

Id. §§ DE 3.03(4), 3.02(1)(b).

Wis. Stat. § 447.06(d).

Wis. Admin. Code § DE 3.01.

Id. § 447.06(2)(a)(1)-(8)

Id. § 447.06(2)(a)(1).

Section 447.06(2)(a)(4) refers to a “facility,” as defined in section section 50.33(2), which states: “[f]acility means a nursing home or community-based residential facility.”

§ 447.06(2)(a)(4).
“...state or federal prison, county jail or other federal, state, county or municipal correctional or detention facility....” Id.

Id.

Id. § 447.06(2)(a)(6).

Id. § 447.06(2)(a)(7).

Id. § 447.06(2)(a)(8).

Id. § 447.06(2)(b).

Id. § 447.06(2)(c)(1)-(4).

Id. § 447.06(2)(a)(2).

Id. § 447.06(2)(a)(3) (“For a school for the education of dentists or dental hygienists.”).

Id. § 447.06(2)(a)(8) (as defined in section 250.01(4)).

See id. § 447.06(2)(a), (b), (c).

See Wis. ADMIN. CODE § DE 3.01-.02. Board rules distinguish between dental facilities and facilities. Dental hygienists at dental facilities must practice under supervision of a dentist, under section 3.02; while it is unclear whether dental hygienists at facilities require supervision of a dentist, under section 3.01. Neither statute nor Board rules define dental facility or facility.

See id. § 447.04(2) (licensure requirements); id. § 447.02 (authority to promulgate rules); see also id. § 15.08 (examining board general powers); Wis. ADMIN. CODE chs. 1-13.