

HOUSE BILL No. 2631

AN ACT concerning dental care; amending K.S.A. 2011 Supp. 65-1424, 65-1456 and 75-6102 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2011 Supp. 65-1424 is hereby amended to read as follows: 65-1424. (a) As used in this act:

(1) "Proprietor" means any person who employs dentists or dental hygienists in the operation of a dental office.

(2) "Dental franchisor" means any person or entity, pursuant to a written agreement, who provides a licensed dentist any dental practice management consulting services, which may include marketing or advertising services, signage or branding consulting, or places in possession of a licensed dentist such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation. A person or entity is not a dental franchisor if the agreement with the dentist:

(A) Permits the person or entity to interfere with the professional judgment of the dentist; or

(B) contains terms that would constitute a violation of the dental practices act, rules and regulations adopted by the board, any orders and directives issued by the board or any other applicable law.

(3) "Unlicensed proprietor" means any person or entity not authorized to own or operate a dental practice that enters into an agreement with a dentist or dental hygienist related to the practice of dentistry or dental hygiene which:

(A) Permits the person or entity to interfere with the professional judgment of the dentist; or

(B) contains terms that would constitute a violation of the dental practices act, rules and regulations adopted by the board, any orders and directives issued by the board or any other applicable law.

A licensee of dentistry who enters into any arrangement with an unlicensed proprietor may have such license limited, suspended or revoked by the board.

(b) The estate or agent for a deceased or substantially disabled dentist may employ dentists, for a period of not more than ~~one year~~ *18 months following the date of death or substantial disability of the dentist*, to provide service to patients until the practice can be sold or closed. *Upon application showing good cause, including, but not limited to, evidence of a good faith effort to sell or close the dental practice, the Kansas dental board may extend the time in six-month increments for a period of not more than one additional year for which the practice can be sold or closed. The Kansas dental board may adopt rules and regulations as necessary to carry out the provisions of this section.*

Sec. 2. On and after July 1, 2012, K.S.A. 2011 Supp. 65-1456 is hereby amended to read as follows: 65-1456. (a) The board may suspend or revoke the license of any dentist who shall permit any dental hygienist operating under such dentist's supervision to perform any operation other than that permitted under the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated, ~~or acts amendatory thereof and amendments thereto~~, and may suspend or revoke the license of any hygienist found guilty of performing any operation other than those permitted under article 14 of chapter 65 of the Kansas Statutes Annotated, ~~or acts amendatory thereof and amendments thereto~~. No license of any dentist or dental hygienist shall be suspended or revoked in any administrative proceedings without first complying with the notice and hearing requirements of the Kansas administrative procedure act.

(b) The practice of dental hygiene shall include those educational, preventive, and therapeutic procedures which result in the removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the *gingival sulci*. Included among those educational, preventive and therapeutic procedures are the instruction of the patient as to daily personal care, protecting the teeth from dental caries, the scaling and polishing of the crown surfaces and the planing of the root surfaces, in addition to the curettage of those soft tissues lining the free *gingiva* to the depth of the *gingival sulcus* and such additional educational, preventive and therapeutic procedures as the board may establish by rules and regulations.

(c) Subject to such prohibitions, limitations and conditions as the

board may prescribe by rules and regulations, any licensed dental hygienist may practice dental hygiene and may also perform such dental service as may be performed by a dental assistant under the provisions of K.S.A. 65-1423, and amendments thereto.

(d) Except as otherwise provided in this section, the practice of dental hygiene shall be performed under the direct or general supervision of a licensed dentist at the office of such licensed dentist. The board shall designate by rules and regulations the procedures which may be performed by a dental hygienist under direct supervision and the procedures which may be performed under general supervision of a licensed dentist. As used in this section: (1) “Direct supervision” means that the dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure and before dismissal of the patient evaluates the performance; and (2) “general supervision” means a Kansas licensed dentist may delegate verbally or by written authorization the performance of a service, task or procedure to a licensed dental hygienist under the supervision and responsibility of the dentist, if the dental hygienist is licensed to perform the function, and the supervising dentist examines the patient at the time the dental hygiene procedure is performed, or during the 12 calendar months preceding the performance of the procedure, except that the licensed hygienist shall not be permitted to diagnose a dental disease or ailment, prescribe any treatment or a regimen thereof, prescribe, order or dispense medication or perform any procedure which is irreversible or which involves the intentional cutting of the soft or hard tissue by any means. A dentist is not required to be on the premises at the time a hygienist performs a function delegated under part (2) of this subsection.

(e) The practice of dental hygiene may be performed at an adult care home, hospital long-term care unit, state institution, local health department or indigent health care clinic on a resident of a facility, client or patient thereof so long as:

(1) A licensed dentist has delegated the performance of the service, task or procedure;

(2) the dental hygienist is under the supervision and responsibility of the dentist;

(3) either the supervising dentist is personally present or the services, tasks and procedures are limited to the cleaning of teeth, education and preventive care; *and*

(4) the supervising dentist examines the patient at the time the dental hygiene procedure is performed or has examined the patient during the 12 calendar months preceding performance of the procedure; ~~and~~

(f) The practice of dental hygiene may be performed with consent of the parent or legal guardian, on children participating in residential and nonresidential centers for therapeutic services, on all children in families which are receiving family preservation services, on all children in the custody of the secretary of social and rehabilitation services or the commissioner of juvenile justice authority and in an out-of-home placement residing in foster care homes, on children being served by runaway youth programs and homeless shelters; and on children birth to five and children in public and nonpublic schools kindergarten through grade 12 regardless of the time of year and children participating in youth organizations, so long as such children ~~birth to five, in public or nonpublic schools or participating in youth organizations also meet the requirements of medicaid, healthwave, or free or reduced lunch programs or Indian health services who are dentally underserved are targeted;~~ at any state correctional institution, local health department or indigent health care clinic, as defined in K.S.A. 65-1466, and amendments thereto, and at any federally qualified health center, federally qualified health center look-alike or a community health center that receives funding from section 330 of the health center consolidation act, on a person, inmate, client or patient thereof and on other persons as may be defined by the board; so long as:

(1) The dental hygienist has received an “extended care permit I” from the Kansas dental board specifying that the dental hygienist has performed 1,200 hours of dental hygiene care within the past three years or has been an instructor at an accredited dental hygiene program for two academic years within the past three years;

(2) the dental hygienist shows proof of professional liability insurance;

(3) the dental hygienist is sponsored by a dentist licensed in the state

of Kansas, including a signed agreement stating that the dentist shall monitor the dental hygienist's activities, except such dentist shall not monitor more than five dental hygienists with an extended care permit;

(4) the tasks and procedures are limited to: (A) removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the *gingival sulci*; (B) the application of topical anesthetic if the dental hygienist has completed the required course of instruction approved by the dental board; (C) the application of fluoride; (D) dental hygiene instruction; (E) assessment of the patient's apparent need for further evaluation by a dentist to diagnose the presence of dental caries and other abnormalities; and (F) other duties as may be delegated verbally or in writing by the sponsoring dentists consistent with this act;

(5) the dental hygienist advises the patient and legal guardian that the services are preventive in nature and do not constitute a comprehensive dental diagnosis and care;

(6) the dental hygienist provides a copy of the findings and the report of treatment to the sponsoring dentist and any other dental or medical supervisor at a participating organization found in this subsection; and

(7) any payment to the dental hygienist for dental hygiene services is received from the sponsoring dentist or the participating organization found in this subsection.

(g) The practice of dental hygiene may be performed on persons with developmental disabilities and on persons who are 65 years and older who live in a residential center, an adult care home, subsidized housing, hospital long-term care unit, state institution or are served in a community senior service center, elderly nutrition program or at the home of a homebound person who qualifies for the federal home and community based service (HCBS) waiver on a resident of a facility, client or patient thereof so long as:

(1) The dental hygienist has received an "extended care permit II" from the Kansas dental board specifying that the dental hygienist has: (A) performed ~~1,800-1,600~~ 1,600 hours of dental hygiene care or has been an instructor at an accredited dental hygiene program for two academic years within the past three years; and (B) completed six hours of training on the care of special needs patients or other training as may be accepted by the board;

(2) the dental hygienist shows proof of professional liability insurance;

(3) the dental hygienist is sponsored by a dentist licensed in the state of Kansas, including a signed agreement stating that the dentist shall monitor the dental hygienist's activities, except such dentist shall not monitor more than five dental hygienists with an extended care permit II;

(4) the tasks and procedures are limited to: (A) Removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the *gingival sulci*; (B) the application of topical anesthetic if the dental hygienist has completed the required course of instruction approved by the dental board; (C) the application of fluoride; (D) dental hygiene instruction; (E) assessment of the patient's apparent need for further evaluation by a dentist to diagnose the presence of dental caries and other abnormalities; and (F) other duties as may be delegated verbally or in writing by the sponsoring dentist consistent with this act;

(5) the dental hygienist advises the patient and legal guardian that the services are preventive in nature and do not constitute comprehensive dental diagnosis and care;

(6) the dental hygienist provides a copy of the findings and the report of treatment to the sponsoring dentist and any other dental or medical supervisor at a participating organization found in this subsection;

(7) any payment to the dental hygienist for dental hygiene services is received from the sponsoring dentist or the participating organization found in this subsection; and

(8) the dental hygienist completes a minimum of ~~six~~ three hours of education in the area of special needs care within the board's continuing dental education requirements for relicensure.

(h) *The expanded practice of dental hygiene may be performed with consent of the parent or legal guardian, on children participating in residential and nonresidential centers for therapeutic services, on all children in families which are receiving family preservation services, on all chil-*

dren in the custody of the secretary of social and rehabilitation services or the commissioner of juvenile justice authority and in an out-of-home placement residing in foster care homes, on children being served by runaway youth programs and homeless shelters; and on children birth to five and children in public and nonpublic schools kindergarten through grade 12 regardless of the time of year and children participating in youth organizations, so long as such children who are dentally underserved are targeted; at any state correctional institution, local health department or indigent health care clinic, as defined in K.S.A. 65-1466, and amendments thereto, and at any federally qualified health center, federally qualified health center look-alike or a community health center that receives funding from section 330 of the health center consolidation act, on a person, inmate, client or patient; on persons with developmental disabilities and on persons who are 65 years and older who live in a residential center, an adult care home, subsidized housing, hospital long-term care unit, state institution or are served in a community senior service center, elderly nutrition program or at the home of a homebound person who qualifies for the federal home and community based service (HCBS) waiver on a resident of a facility, client or patient thereof so long as:

(1) The dental hygienist has received an “extended care permit III” from the Kansas dental board specifying that the dental hygienist has: (A) Performed 2,000 hours of dental hygiene care or has been an instructor at an accredited dental hygiene program for three academic years within the past four years; and (B) completed a course of study of 18 seat hours approved by the board which includes, but is not limited to, emergency dental care techniques, the preparation and placement of temporary restorations, the adjustment of dental prostheses and appropriate pharmacology;

(2) the dental hygienist shows proof of professional liability insurance;

(3) the dental hygienist is sponsored by a dentist licensed in the state of Kansas, including a signed agreement stating that the dentist shall monitor the dental hygienist’s activities, except such dentist shall not monitor more than five dental hygienists with an extended care permit III;

(4) the tasks and procedures are limited to: (A) Removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the gingival sulci; (B) the application of topical anesthetic if the dental hygienist has completed the required course of instruction approved by the dental board; (C) the application of fluoride; (D) dental hygiene instruction; (E) assessment of the patient’s apparent need for further evaluation by a dentist to diagnose the presence of dental caries and other abnormalities; (F) identification and removal of decay using hand instrumentation and placing a temporary filling, including glass ionomer and other palliative materials; (G) adjustment of dentures, placing soft relines in dentures, checking partial dentures for sore spots and placing permanent identification labeling in dentures; (H) smoothing of a sharp tooth with a slow speed dental handpiece; (I) use of local anesthetic, including topical, infiltration and block anesthesia, when appropriate to assist with procedures where medical services are available in a nursing home, health clinic or any other settings if the dental hygienist has completed a course on local anesthesia and nitrous oxide as required in this act; (J) extraction of deciduous teeth that are partially exfoliated with class 4 mobility; and (K) other duties as may be delegated verbally or in writing by the sponsoring dentist consistent with this act;

(5) the dental hygienist advises the patient and legal guardian that the services are palliative or preventive in nature and do not constitute comprehensive dental diagnosis and care;

(6) the dental hygienist provides a copy of the findings and the report of treatment to the sponsoring dentist and any other dental or medical supervisor at a participating organization found in this subsection;

(7) the dental hygienist notifies the patient or the patient’s parent or legal guardian of such patient’s need for treatment by a dentist, when the dental hygienist finds an apparent need for evaluation to diagnose the presence of dental caries and other abnormalities;

(8) any payment to the dental hygienist for dental hygiene services is received from the sponsoring dentist or the participating organization found in this subsection; and

(9) the dental hygienist completes a minimum of three hours of edu-

cation related to the expanded scope of dental hygiene practice in subsection (h)(4) of this act within the board's continuing dental education requirements for relicensure.

~~(h)(i)~~ In addition to the duties specifically mentioned in subsection (b) of K.S.A. 65-1456, and amendments thereto, any duly licensed dental hygienist may:

(1) Give fluoride treatments as a prophylactic measure, as defined by the United States public health service and as recommended for use in dentistry;

(2) remove overhanging restoration margins and periodontal surgery materials by hand scaling instruments; and

(3) administer local block and infiltration anaesthesia and nitrous oxide. (A) The administration of local anaesthesia shall be performed under the direct supervision of a licensed dentist except that topically applied local anaesthesia, as defined by the board, may be administered under the general supervision of a licensed dentist. (B) Each dental hygienist who administers local anaesthesia regardless of the type shall have completed courses of instruction in local anaesthesia and nitrous oxide which have been approved by the board.

~~(i)(j)~~ (1) The courses of instruction required in subsection ~~(h)(3)(B)~~ (i)(3)(B) shall provide a minimum of 12 hours of instruction at a teaching institution accredited by the American dental association.

(2) The courses of instruction shall include courses which provide both didactic and clinical instruction in: (A) Theory of pain control; (B) anatomy; (C) medical history; (D) pharmacology; and (E) emergencies and complications.

(3) Certification in cardiac pulmonary resuscitation shall be required in all cases.

~~(j)(k)~~ The board is authorized to issue to a qualified dental hygienist an extended care permit I or extended care permit II, or *extended care permit III* as provided in subsections (f) and (g) and (h) of this section.

~~(k)(l)~~ Nothing in this section shall be construed to prevent a dental hygienist from providing dental hygiene instruction or visual oral health care screenings or fluoride applications in a school or community based setting regardless of the age of the patient.

(m) *As used in this section, "dentally underserved" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.*

New Sec. 3. On and after July 1, 2012, the state board of regents shall endeavor to add additional seats at the university of Missouri-Kansas City school of dentistry or other locations with the requirement that such students provide services in underserved areas of Kansas for a minimum of four years after graduation.

New Sec. 4. (a) There is established a special volunteer dental license for dentists who are retired from active practice and wish to donate their expertise for the dental care and treatment of indigent and underserved persons of the state. The special volunteer dental license shall be:

(1) Issued by the Kansas dental board to eligible dentists;

(2) issued without the payment of an application fee, license fee or renewal fee;

(3) issued or renewed without any continuing education requirements;

(4) issued for a fiscal year or part thereof; and

(5) renewable annually upon approval of the board.

(b) A dentist shall meet the following requirements to be eligible for a special volunteer dental license:

(1) Completion of a special volunteer dental license application, including documentation of the dentist's dental school graduation and practice history;

(2) documentation that the dentist has been previously issued a full and unrestricted license to practice dentistry in Kansas or in another state of the United States and that the dentist has never been the subject of any disciplinary action in any jurisdiction;

(3) acknowledgment and documentation that the dentist's practice under the special volunteer dental license will be exclusively and totally

devoted to providing dental care to underserved and indigent persons in Kansas; and

(4) acknowledgment and documentation that the dentist will not receive or have the expectation to receive any payment or compensation, either direct or indirect, for any dental services rendered under the special volunteer dental license.

(c) The provisions of this section shall become effective on and after July 1, 2012.

Sec. 5. On and after July 1, 2012, K.S.A. 2011 Supp. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) “State” means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) “Municipality” means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) “Governmental entity” means state or municipality.

(d) (1) “Employee” means: (A) Any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider;

(B) any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor;

(C) employees of the United States marshal’s service engaged in the transportation of inmates on behalf of the secretary of corrections;

(D) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor;

(E) a person who is an employee or volunteer of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program;

(F) a person who contracts with the Kansas guardianship program to provide services as a court-appointed guardian or conservator;

(G) an employee of an indigent health care clinic;

(H) former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity;

(I) any member of a regional medical emergency response team, created under the provisions of K.S.A. 48-928, and amendments thereto, in connection with authorized training or upon activation for an emergency response; and

(J) medical students enrolled at the university of Kansas medical center who are in clinical training, on or after July 1, 2008, at the university of Kansas medical center or at another health care institution.

(2) “Employee” does not include: (A) An individual or entity for actions within the scope of K.S.A. 60-3614, and amendments thereto; or

(B) any independent contractor under contract with a governmental entity except those contractors specifically listed in paragraph (1) of this subsection.

(e) “Charitable health care provider” means a person licensed by the state board of healing arts as an exempt licensee or a federally active

licensee, a person issued a limited permit by the state board of healing arts, a physician assistant licensed by the state board of healing arts, a mental health practitioner licensed by the behavioral sciences regulatory board, an ultrasound technologist currently registered in any area of sonography credentialed through the American registry of radiology technologists, the American registry for diagnostic medical sonography or cardiovascular credentialing international and working under the supervision of a person licensed to practice medicine and surgery, or a health care provider as the term “health care provider” is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the Kansas health policy authority, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children’s immunization programs administered by the secretary;

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the Kansas health policy authority gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3); or

(4) the secretary of health and environment to provide dentistry services defined by K.S.A. 65-1422 *et seq.*, and amendments thereto, or dental hygienist services defined by K.S.A. 65-1456, and amendments thereto, that are targeted, but are not limited to medically indigent persons, and are provided on a gratuitous basis: (A) At a location sponsored by a not-for-profit organization that is not the dentist or dental hygienist office location; or (B) *at the office location of a dentist or dental hygienist provided the care be delivered as part of a program organized by a not-for-profit organization and approved by the secretary of health and environment; or (C) as part of a charitable program organized by the dentist that has been approved by the secretary of health and environment upon a showing that the dentist seeks to treat medically indigent patients on a gratuitous basis;* except that such dentistry services and dental hygienist services shall not include “oral and maxillofacial surgery” as defined by ~~Kansas administrative regulation 71-2-2-rules and regulations adopted by the Kansas dental board,~~ or use sedation or general anesthesia that result in “deep sedation” or “general anesthesia” as defined by ~~Kansas administrative regulation 71-5-1-rules and regulations adopted by the Kansas dental board.~~

(f) “Medically indigent person” means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(g) “Indigent health care clinic” means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(h) “Local health department” shall have the meaning ascribed to such term under K.S.A. 65-241, and amendments thereto.

(i) “Fire control, fire rescue or emergency medical services equipment” means any vehicle, firefighting tool, protective clothing, breathing apparatus and any other supplies, tools or equipment used in firefighting or fire rescue or in the provision of emergency medical services.

Sec. 6. K.S.A. 2011 Supp. 65-1424 is hereby repealed.

Sec. 7. On and after July 1, 2012, K.S.A. 2011 Supp. 65-1456 and 75-6102 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.