



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2024 Sunrise Review

Oral Preventative Dental
Assistants



June 28, 2024



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

June 28, 2024

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Pursuant to section 24-34-104.1, Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year by June 30 and December 31.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed its evaluation of the sunrise application for the regulation of oral preventative dental assistants and is pleased to submit this written report.

The report discusses the question of whether there is a need for regulation in order to protect the public from harm, whether regulation would serve to mitigate the harm and whether the public can be adequately protected by other means in a more cost-effective manner.

To learn more about the sunrise review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

A handwritten signature in cursive script that reads 'Patty Salazar'.

Patty Salazar
Executive Director



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Background

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review.

The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA's Colorado Office of Policy, Research and Regulatory Reform (COPRRR) must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public;

(I.5) Whether the practitioners of the profession or occupation exercise independent judgment, and whether the public can reasonably be expected to benefit from the direct regulation of the profession or occupation if a practitioner's judgment or practice is limited or subject to the judgment or supervision of others;

(II) Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence;

(III) Whether the public can be adequately protected by other means in a more cost-effective manner; and

(IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must include a description of the proposed regulation and justification for such regulation.

¹ § 24-34-104.1(4)(b), C.R.S.

Methodology

During the sunrise review, staff from the Colorado Office of Policy, Research and Regulatory Reform performed a literature search, interviewed the sunrise applicant, contacted regulators in Colorado and other states, reviewed laws in other states and interviewed stakeholders. To determine the number and types of complaints filed against dentists for improper or inadequate supervision of dental assistants who are qualified to remove tartar above the gumline, COPRRR staff contacted regulatory agencies in other states. No states currently authorize dental assistants to probe periodontal pockets or remove tartar below the gumline.

Profile of the Profession

Dental assistants provide support to dentists and other dental practitioners, and they may also provide limited dental care to patients under the supervision of licensed dentists.

Dental assistants often perform tasks such as:²

- Setting up the treatment area,
- Preparing patients for treatment,
- Sterilizing equipment and instruments,
- Handing instruments to dentists,
- Suctioning patients' mouths,
- Teaching patients about oral hygiene,
- Maintaining patient records,
- Scheduling appointments, and
- Managing billing and processing payments.

Dental assistants may also take X-rays and impressions of patients' teeth.³

The job duties of dental assistants vary depending on the practices of the dental offices where they work and state laws. For example, some states allow dental assistants to polish teeth and apply sealants, fluoride and topical anesthetic.⁴

The qualifications required of dental assistants also vary from state to state. Some states require dental assistants to complete education through an accredited program and pass an examination; other states allow on-the-job training.⁵ Colorado has not established any qualifications for entry-level dental assistants. However, an employer may require applicants to complete on-the-job training or an educational program. Private professional certification is also available for dental assistants.

Educational programs for dental assistants are offered at community colleges, vocational programs and technical schools. Typically, they may be completed in about one year.⁶

² U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Assistants*. Retrieved November 9, 2023, www.bls.gov/ooh/healthcare/dental-assistants.htm#tab-2

³ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Assistants*. Retrieved November 9, 2023, www.bls.gov/ooh/healthcare/dental-assistants.htm#tab-2

⁴ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Assistants*. Retrieved November 9, 2023, www.bls.gov/ooh/healthcare/dental-assistants.htm#tab-2

⁵ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Assistants*. Retrieved November 9, 2023, www.bls.gov/ooh/healthcare/dental-assistants.htm#tab-4

⁶ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Assistants*. Retrieved November 9, 2023, from www.bls.gov/ooh/healthcare/dental-assistants.htm#tab-4

Dental assisting programs cover topics related to teeth, gums, jaws and dental instruments, and they include both classroom education and supervised practical experience.⁷

Regulation of dental assistants varies from state to state, but most states do not require a license to practice as an entry-level dental assistant.⁸ At this time, Colorado does not require dental assistants to be licensed, whether at the entry-level or for those with expanded duties, such as applying sealants, taking impressions, polishing teeth and applying topical fluoride.

The Colorado Dental Association (Applicant) proposes that Colorado establish a new type of dental provider, referred to as an “oral preventative dental assistant,” who would be allowed to perform the tasks of a dental assistant as described above and the following procedures, which dental assistants are currently prohibited from performing:

- Periodontal probing,
- Tartar removal above the gumline, and
- Tartar removal below the gumline.

Periodontal probing is a dental procedure performed by a dental practitioner to measure the depth of gum pockets, which form when gum disease causes the gums to recede and pull away from the teeth. Gum pockets are measured using a dental instrument to probe between the tooth and the gum. These measurements help the dental practitioner to assess the health of the gums and determine any necessary steps to control gum disease.⁹

Tartar, also referred to as calculus, is hardened plaque that forms on the teeth when plaque is not removed through regular brushing and flossing.¹⁰ During a dental cleaning, a dental practitioner may remove tartar by scaling the teeth with a sharp instrument above and below the gumline. An ultrasonic instrument with a high-powered oscillating tip may also be used to remove tartar.¹¹

Removing tartar from the teeth is necessary to help prevent and control gum disease. When gum disease progresses beyond gingivitis, the earliest stage of gum disease, it cannot be reversed. If gum disease is allowed to progress, it can infect the bone and lead to the loss of teeth. Gum disease can also increase the risk of diabetes, heart attack or stroke.¹²

⁷ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Assistants*. Retrieved November 9, 2023, from www.bls.gov/ooh/healthcare/dental-assistants.htm#tab-4

⁸ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Assistants*. Retrieved November 9, 2023, from www.bls.gov/ooh/healthcare/dental-assistants.htm#tab-4

⁹ Verywell Health. *4 Signs You Have Gum Disease and What to Do About It*. Retrieved November 9, 2023, from www.verywellhealth.com/signs-of-gum-disease-4129574

¹⁰ Verywell Health. *Plaque Removal and Preventing Tartar Buildup on Teeth*. Retrieved April 26, 2024, from www.verywellhealth.com/plaque-vs-tartar-5195721

¹¹ Colgate. *Can You Dissolve Tartar?* Retrieved April 26, 2024, from www.colgate.com/en-us/oral-health/plaque-and-tartar/can-you-dissolve-tartar--what-would-your-dental-hygienist-think.

¹² Verywell Health. *4 Signs You Have Gum Disease and What to Do About It*. Retrieved November 9, 2023, from www.verywellhealth.com/signs-of-gum-disease-4129574

In Colorado, only dental hygienists, dental therapists and dentists are allowed to measure periodontal pocket depths and remove tartar.

If Colorado authorizes oral preventative dental assistants, the Applicant proposes that they be required to work under the supervision of a licensed dentist who would establish a diagnosis and treatment plan for each patient. After a treatment plan is established by a dentist, an oral preventative dental assistant would then be allowed to remove tartar.

While two other states allow dental assistants to remove tartar above the gumline, no other state has established a scope of practice that is proposed for oral preventative dental assistants. Similarly, the Indian Health Service allows periodontal expanded function dental assistants to remove visible tartar using an ultrasonic instrument, but it does not allow them to perform periodontal probing or remove tartar by scaling teeth.

As oral preventative dental assistants are not authorized in this or any other state, no accreditation standards, educational programs, examinations or private professional certifications exist at this time, and no oral preventative dental assistants are working in Colorado or any other state.

Proposal for Regulation

The Colorado Dental Association (Applicant) submitted a sunrise application to the Colorado Office of Policy, Research and Regulatory Reform in the Department of Regulatory Agencies for review consistent with section 24-34-104.1, Colorado Revised Statutes (C.R.S.).

The Applicant proposes creating a new type of dental provider, referred to as an “oral preventative dental assistant,” who would be authorized to perform the tasks of a dental assistant as described in the previous section and the following dental hygiene procedures:

- Periodontal probing,
- Removing tartar above the gumline, and
- Removing tartar below the gumline.

The Applicant is seeking to expand the scope of practice of dental assistants to include these procedures due to an apparent shortage of practicing dental hygienists in Colorado.

According to the Applicant and other stakeholders, the University of Colorado closed a dental hygiene program about 15 years ago and expanded its dentistry program. This created an imbalance in the number of dental hygienists and dentists in Colorado since, following the closure, more dentists and fewer dental hygienists were graduating and entering the workforce. However, the shortage of dental hygienists is not limited to Colorado.

Recently, the American Dental Association reported that the shortage of dental hygienists is a nationwide problem, which may be attributed to a large number of licensed dental hygienists who retired following the COVID-19 pandemic.¹³

The application identifies state certification by the Colorado Dental Board (Dental Board) as the appropriate level of regulation. The application further proposes that direct supervision by a Colorado licensed dentist be required.

As this type of dental practitioner is not authorized in this or any other state, no accreditation standards, educational programs, examinations or private professional certifications exist at this time.

However, the Applicant proposes that an oral preventative dental assistant be required to complete formal didactic education and clinical training through an academic institution in order to qualify for state certification.

¹³ American Dental Association. *Nationwide dental hygienist shortage impacting patients*. Retrieved March 19, 2024, from adanews.ada.org/huddles/nationwide-dental-hygienist-shortage-impacting-patients/

The Applicant did not provide information about the program curriculum that would be required. The Applicant is contemplating requiring 30 to 90 instructional hours for certification, but nothing related to any coursework or clinical training requirements is certain at this time.

Additionally, a candidate for certification would also be required to complete 1,000 hours of experience as a dental assistant and either graduate from an accredited dental assistant training program or be certified as a dental assistant through a private professional organization.

The Applicant also proposes that oral preventative dental assistants be required to complete 30 hours of continuing education every two years. As it is statutorily required, the Applicant submitted the Mandatory Continuing Education application pursuant to section 24-34-901, C.R.S.

In addition to these requirements, the Applicant proposes that oral preventative dental assistants be subject to the same disqualifications for certification based on criminal history that dental hygienists, dental therapists and dentists are for licensure under the Dental Practice Act.

Summary of Current Regulation

Federal Laws and Regulations

At this time, no federal laws or regulations address the practice of oral preventative dental assistants.

The Colorado Regulatory Environment

The Dental Practice Act, which is located in Article 220 of Title 12, Colorado Revised Statutes, governs the practice of dental assisting, dental hygiene, dental therapy and dentistry. The Dental Practice Act requires dental assistants to be supervised by licensed dentists,¹⁴ but it does not require them to be licensed by the Colorado Dental Board (Dental Board).¹⁵

Dental hygienists, on the other hand, are required to be licensed by the Dental Board in order to practice dental hygiene.¹⁶

A dental assistant is defined as:¹⁷

any person, other than a dentist, dental therapist, or dental hygienist, licensed in Colorado, who may be assigned or delegated to perform dental tasks or procedures as authorized by [the Dental Practice Act] or by rules of the [Dental Board].

Under the Dental Practice Act, a dental assistant is authorized to perform certain tasks under the indirect supervision of a dentist, such as:¹⁸

- Smoothing and polishing teeth,
- Applying topical fluoride and other agents to prevent disease,
- Gathering information,
- Administering topical anesthetic,
- Repairing and relining dentures according to a work order signed by a dentist, and
- Other tasks that do not require the professional skill of a dentist.

A dental assistant may also administer and monitor the use of nitrous oxide as long as it is under the direct supervision of a dentist.¹⁹

¹⁴ §§ 12-220-501(3)(b), (c) and (d), C.R.S.

¹⁵ § 12-220-301(1)(b), C.R.S.

¹⁶ § 12-220-301(1)(a), C.R.S.

¹⁷ § 12-220-104(3), C.R.S.

¹⁸ § 12-220-501(3)(b), C.R.S.

¹⁹ § 12-220-501(3)(c), C.R.S.

Additionally, a dental assistant may perform certain tasks related to fabricating dentures. However, these tasks may only be performed under the direct supervision of a dentist, and the patient must be examined by the dentist prior to any work being performed by the dental assistant.²⁰

On the other hand, a dental assistant is prohibited from diagnosing, planning treatment or prescribing therapeutic measures. A dental assistant is also not allowed to perform any procedure that may permanently alter the oral anatomy. Specifically, a dental assistant is prohibited from administering local anesthesia, root planning, soft tissue curettage and performing the following specific procedures:²¹

- Periodontal probing, and
- Scaling tartar.

The Act does not require a dental assistant to complete any formal education or clinical training.

Currently, probing periodontal pockets and removing tartar above and below the gumline fall within the scope of practice of dental hygienists, dental therapists and dentists. The Act specifically prohibits dental assistants from performing these procedures.²² Typically, dental hygienists are responsible for providing these services.

Under the Dental Practice Act, dental hygiene is defined as:²³

the delivery of preventive, educational, and clinical services supporting total health for the control of oral disease and the promotion of oral health provided by a dental hygienist within the scope of the dental hygienist's education, training, and experience and in accordance with applicable law.

To be licensed as a dental hygienist, an applicant must have graduated from an accredited two-year dental hygiene program.²⁴ An applicant must also pass a national written examination and a clinical examination to demonstrate competence.²⁵

²⁰ § 12-220-501(3)(d), C.R.S.

²¹ § 12-220-501(3)(a), C.R.S.

²² § 12-220-501(3)(a), C.R.S.

²³ § 12-220-104(4), C.R.S.

²⁴ § 12-220-405(1)(b), C.R.S.

²⁵ §§ 12-220-406(1)(a) and (b), C.R.S.

Regulation in Other States

Two states, Illinois and Kansas, allow dental assistants to scale tartar above the gumline, but no state allows dental assistants to probe periodontal pockets or scale tartar below the gumline.

Illinois and Kansas do not require entry-level dental assistants to be licensed, and they have not established any minimum educational or training requirements for entry-level practice. However, both states require dental assistants to be supervised by a licensed dentist.²⁶

Also, Illinois and Kansas do not require dental assistants to be licensed, certified or registered to scale tartar above the gumline. In both states, for a dental assistant to have the authority to scale tartar above the gumline, a licensed dentist must supervise the dental assistant and verify that the dental assistant meets the experience, education and training requirements established in each respective state.²⁷

In Illinois, to qualify to scale tartar above the gumline, a dental assistant must successfully complete:²⁸

- 2,000 hours of clinical experience;
- A board-approved coronal scaling course, which must include 32 hours of didactic education, practical experience and an examination that tests clinical competence; and
- Six scaling procedures observed and approved by a licensed dentist.

The coronal scaling course may be provided by any of the following:²⁹

- A dental school,
- A dental hygiene school,
- A dental assistant school,
- An approved continuing education provider, or
- An approved statewide dental or dental hygiene association.

Once a student successfully completes the educational requirements, the student is issued a certificate of completion.³⁰

²⁶ *Illinois: Allowable and Prohibited Duties for Dental Assistants*, Dental Assisting National Board (2023), p. 53.

Kansas: Allowable and Prohibited Duties for Dental Assistants, Dental Assisting National Board (2023), p. 64.

²⁷ *Illinois: Allowable and Prohibited Duties for Dental Assistants*, Dental Assisting National Board (2023), p. 54.

Kansas: Allowable and Prohibited Duties for Dental Assistants, Dental Assisting National Board (2023), p. 64.

²⁸ *Illinois: Allowable and Prohibited Duties for Dental Assistants*, Dental Assisting National Board (2023), p. 54.

²⁹ *Illinois: Allowable and Prohibited Duties for Dental Assistants*, Dental Assisting National Board (2023), p. 54.

³⁰ *Illinois: Allowable and Prohibited Duties for Dental Assistants*, Dental Assisting National Board (2023), p. 54.

It should be noted that Illinois limits qualified dental assistants to perform coronal scaling above the gumline using hand instruments on the clinical crown of the tooth and only under specific conditions:³¹

- Patients must be under the age of 18;
- Patients may not have gum disease, be medically compromised or be individuals with special needs;
- Patients must be uninsured or eligible for Medicaid; and
- Patients' household income must be 300 percent of the federal poverty level or below.

Further, Illinois requires the supervising dentist to be present in the dental office during the procedure and to grant permission for the procedure to be performed. Also, before the patient is dismissed, the supervising dentist must check that the work was done correctly. However, the supervising dentist is not required to remain in the treatment room while the procedure is being performed.³²

In Kansas, to qualify to scale tartar above the gumline, a dental assistant must take a course on coronal scaling approved by the Kansas Dental Board.³³ The supervising dentist is required to verify the dental assistant has completed the required course. Within 30 days of allowing a dental assistant to perform the first procedure, the supervising dentist must report the name of the dental assistant and the address of the dental office where the dental assistant is practicing to the Kansas Dental Board.³⁴

Staff of the Illinois Board of Dentistry did not respond to requests for information.

Staff of the Kansas Dental Board were unable to provide the number of complaints or disciplinary actions against dentists for improper or inadequate supervision of dental assistants who are qualified to scale tartar above the gumline.

In addition to the programs in Illinois and Kansas, the Missouri Dental Board has authorized a pilot program for "oral preventive assistants" which will allow dental assistants, under direct supervision, to scale tartar above the gumline on patients with healthy gums or the first stage of gum disease only. They will also be allowed to document periodontal probe readings and bleed spots. The pilot program will require participants to complete specific education modules, complete clinical training and pass examinations to demonstrate clinical competence.³⁵

However, as of this writing, the Missouri legislature has not passed a bill to authorize oral preventive assistants to practice outside the pilot program.³⁶

³¹ *Illinois: Allowable and Prohibited Duties for Dental Assistants*, Dental Assisting National Board (2023), p. 54.

³² *Illinois: Allowable and Prohibited Duties for Dental Assistants*, Dental Assisting National Board (2023), p. 54.

³³ *Kansas: Allowable and Prohibited Duties for Dental Assistants*, Dental Assisting National Board (2023), p. 64.

³⁴ *Kansas: Allowable and Prohibited Duties for Dental Assistants*, Dental Assisting National Board (2023), p. 64.

³⁵ Missouri Dental Association. *Oral Preventive*. Retrieved March 19, 2024, from www.moefda.org/course-information/oral-preventive

³⁶ Missouri Dental Association. *Oral Preventive*. Retrieved March 19, 2024, from www.moefda.org/course-information/oral-preventive

Analysis and Recommendations

Public Harm

Sunrise criterion I asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public.

In addition to the current scope of practice authorized for dental assistants, the Colorado Dental Association (Applicant) proposes that oral preventative dental assistants be permitted to perform the following procedures:

- Probe periodontal pockets,
- Remove tartar above the gumline, and
- Remove tartar below the gumline.

These procedures are central to the practice of dental hygiene. At this time, in Colorado, only licensed dental hygienists, dental therapists and dentists may practice dental hygiene. While these procedures fall within the scope of practice of a dentist, dentists often hire dental hygienists to provide dental hygiene services. No dental therapists are currently practicing in Colorado.

According to stakeholders, correct probing of gum pocket depths is necessary to obtain an accurate periodontal diagnosis. If done incorrectly, a patient may be misdiagnosed and subsequently receive inadequate treatment for gum disease, which could be harmful to the patient's oral and overall health. A patient who is incorrectly diagnosed with advanced gum disease may also receive treatment that is costly and unnecessary.

According to stakeholders, tartar removal requires knowledge, skill and clinical experience. If tartar is not properly removed, it can contribute to cavities and gum disease, and if gum disease is allowed to advance beyond the early stage, it is irreversible. Further, if done improperly, removing tartar above or below the gumline could damage the teeth and the gums of a patient, and this damage may also be irreversible.

In order to determine whether the regulation of oral preventative dental assistants is necessary to protect the public health, safety and welfare, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff requested that the Applicant and other stakeholders provide specific cases of harm.

As oral preventative dental assistants are not currently authorized to practice in Colorado, no cases of harm are available for these practitioners. To address this, COPRRR proposed that the Applicant provide cases of harm related to the practice of dental hygienists when probing periodontal pockets or removing tartar above or below the gumline. COPRRR also reached out to the Colorado Dental Hygiene Association and other stakeholders to request cases of harm related to these procedures.

In a sunrise review, the burden of proof rests with the Applicant. Prior to the submission of the application and during the sunrise review, COPRRR held several meetings with the Applicant to stress the importance of providing cases of harm in order to demonstrate the need for state regulation. COPRRR also stressed the importance of cases of harm with other stakeholders.

The Applicant failed to provide any cases of harm to COPRRR.

COPRRR staff also reached out to staff of the Colorado Dental Board (Dental Board) and individual stakeholders for cases of harm, whether caused by licensed or unlicensed practitioners, such as students during clinical training or dental assistants practicing beyond their scope of practice.

Some stakeholders declined to provide cases of harm caused by dental hygienists because they maintained that any evidence of harm would expose flaws in the education, training and examinations required of dental hygienists.

However, qualifications required for licensure ensure that practitioners have the necessary skills and knowledge for safe practice at the entry-level; they do not ensure that licensees will practice safely. This is demonstrated on a regular basis in occupational and professional regulatory programs throughout the state. A qualified practitioner may harm a patient through carelessness, poor judgement and conditions that impair their ability to practice safely. A qualified practitioner may also harm a patient by committing fraud and other misconduct.

Nevertheless, some stakeholders declined to provide any cases of harm for the reason stated above.

In conclusion, no cases of harm associated with probing periodontal pockets or removing tartar above or below the gumline were provided to COPRRR during the course of the sunrise review.

Independent Judgment

Sunrise criterion I.5 asks:

Whether the practitioners of the profession or occupation exercise independent judgment, and whether the public can reasonably be expected to benefit from the direct regulation of the profession or occupation if a practitioner's judgment or practice is limited or subject to the judgment or supervision of others.

The Applicant proposes that oral preventative dental assistants be required to work under the direction and direct supervision of licensed dentists. As such, a supervising dentist would be required to be present in the dental office for an oral preventative

dental assistant to practice, and a treatment plan would be established by the supervising dentist before an oral preventative dental assistant would be allowed to remove tartar from a patient's teeth. As a supervisor, the dentist would be responsible for the services provided by an oral preventative dental assistant.

Therefore, the oral preventative dental assistant would not be required to exercise independent judgment.

Regardless, without evidence of harm, COPRRR cannot conduct the analysis necessary to determine whether the public would, in fact, benefit from direct regulation of oral preventative dental assistants.

Need for Regulation

Sunrise criterion II asks:

Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence.

Colorado currently does not require a dental assistant to complete any formal education or clinical training. However, the Applicant proposes that, in order to practice, an oral preventative dental assistant be required to:

- Complete 1,000 hours of experience working as a dental assistant,
- Graduate from a dental assistant training program accredited by the Commission on Dental Accreditation or obtain private professional certification as a dental assistant, and
- Graduate from a formal didactic educational and clinical training program related to practice as an oral preventative dental assistant through an academic institution.

At this time, only dental hygienists, dental therapists and dentists may probe periodontal pockets or remove tartar. While these procedures fall within the scope of practice of a dentist, dentists typically hire dental hygienists to provide them.

While the scope of practice of a dental hygienist depends on the states where they work,³⁷ probing periodontal pockets and removing tartar above and below the gumline is central to the practice of dental hygiene, and a significant portion of dental hygiene education is dedicated to these procedures.

³⁷ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Hygienists*. Retrieved November 9, 2023, from www.bls.gov/ooh/healthcare/dental-hygienists.htm#tab-2

Dental hygienists typically complete an associate degree in dental hygiene.³⁸ Dental hygienists must study subjects such as anatomy, medical ethics and periodontics and complete classroom, laboratory and clinical training in order to graduate.³⁹ Dental hygienists are also required to pass written and clinical examinations to demonstrate clinical competence in these procedures.

As dental hygienists are required to complete education and training and pass written and clinical examinations, an argument could be made that oral preventative dental assistants should be required to do the same. However, dental hygienists have a broader scope of practice than is proposed for oral preventative dental assistants.

No evidence of harm related to probing periodontal pockets or scaling tartar were provided to COPRRR during the sunrise review. Without clear evidence of harm, COPRRR cannot conduct the analysis necessary to establish whether the public needs an assurance of professional competence.

The Applicant also proposes that oral preventative dental assistants be required to complete 30 hours of continuing education every two years. As it is statutorily required, the Applicant submitted the Mandatory Continuing Education application pursuant to section 24-34-901, C.R.S.

However, without evidence of harm from the proposed procedures, COPRRR cannot determine whether continuing education is necessary.

Alternatives to Regulation

Sunrise criterion III asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

The Applicant is seeking to require oral preventative dental assistants to obtain state certification, which is a restrictive form of regulation. However, some alternatives to direct regulation by the state could be established.

Without legislation authorizing dental assistants to probe periodontal pockets and remove tartar above and below the gumline, dental assistants will not be able to perform these procedures.

³⁸ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Hygienists*. Retrieved November 9, 2023, from www.bls.gov/ooh/healthcare/dental-hygienists.htm#tab-4

³⁹ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Dental Hygienists*. Retrieved November 9, 2023, from www.bls.gov/ooh/healthcare/dental-hygienists.htm#tab-4

If the General Assembly passes a bill to create a new type of dental practitioner, it could do so without establishing any qualifications or it could require oral preventative dental assistants to obtain certain qualifications without requiring state licensure, certification or registration.

Dental assistants are already required to be supervised by licensed dentists, and, if qualifications are required, a supervising dentist could be required to verify that an applicant has met the educational and experience requirements during the hiring process.

Recall, Kansas and Illinois currently require dental assistants who perform coronal scaling to acquire specific qualifications and be supervised by licensed dentists, and the supervising dentists are responsible for verifying the qualifications of the dental assistants.

While no educational programs for oral preventative dental assistants currently exist, if the General Assembly adopts a bill to authorize these practitioners and establishes specific educational requirements, it is possible that some academic institutions may develop and offer educational programs for these practitioners.

As no national standards related to these practitioners exist, the Dental Board would need to establish standards for the education of these practitioners and approve the educational programs.

It should be noted that no other states authorize dental assistants to probe periodontal pockets or scale tartar below the gumline, so graduates of these programs would not be able to practice at this level in other states. However, graduates of these programs who complete coursework through accredited dental hygiene programs may be able to transfer and apply some of the credits toward a degree in dental hygiene.

If educational providers establish such programs in Colorado, completion of an educational program would offer employers some assurance of professional competence, and employers would have the ability to verify the professional competence of oral preventative dental assistants before hiring them. They could check an applicant's academic qualifications, including any clinical training and previous experience. An employer could also rely on the expertise of a licensed supervising dentist to observe and verify the skills of an oral preventative dental assistant. Additionally, employers could also check references and conduct a background check of an applicant.

Often professional certification is available through private organizations. Typically, private professional certification represents a high level of professional competence, beyond what is necessary for public protection. While no private organization offers certification for oral preventative dental assistants, an employer could require an oral preventative dental assistant to obtain private professional certification that is available for dental assistants.

Additionally, dental assistants are not independent practitioners; they are already required to work under the supervision of a licensed dentist. If an oral preventative dental assistant is not competent to perform these procedures, the supervising dentist would have an incentive to identify this and take steps to address any concerns since the oral preventative dental assistant would be working under the license of the dentist, and the Dental Board could investigate any complaints related to a dentist's supervision of unlicensed individuals.

While no evidence of harm from the practice of oral preventative dental assistants was provided during the sunrise review, if they are authorized to practice in Colorado, there are some alternatives to direct regulation by the state that could provide the public with an assurance of professional competence.

Collateral Consequences

Sunrise criterion IV asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

The Applicant proposes that oral preventative dental assistants be subject to the same disqualifications for certification based on criminal history that dental hygienists, dental therapists and dentists have for licensure.

A dental hygienist, dental therapist or dentist may be disqualified for licensure if they, among other things:⁴⁰

- Have a felony conviction or have been convicted of any crime that is a violation of the Dental Practice Act,
- Have been convicted of a violation of a law regulating controlled substances,
- Have habitually abused or excessively used alcohol or a habit-forming drug or controlled substance,
- Have misused a drug or controlled substance,
- Have engaged in a sexual act with a patient during the course of patient care or during the six-month period immediately following the termination of the professional relationship, or
- Have engaged in false billing or committed a fraudulent insurance act.

As oral preventative dental assistants are not authorized to practice in Colorado or any other state, no evidence of harm related to criminal history is available for these practitioners. However, as these practitioners' scope of practice would overlap with that of dental hygienists, it is reasonable to consider cases of harm related to dental hygienists.

⁴⁰ § 12-220-201(1), C.R.S.

Considering this, COPRRR staff reviewed records relating to Dental Board actions against dental hygiene applicants and licensees and found four cases based on criminal convictions.

- In 2018, a dental hygiene license was granted and placed on probation following two arrests related to drugs and alcohol in other states and a history of drug and alcohol abuse, and the Dental Board later placed the licensee on probation for five years and required treatment and monitoring related to drug and alcohol use.
- In 2019, a dental hygiene license was denied based on a criminal conviction of driving under the influence and for possession of controlled substances.
- In 2019, a dental hygiene license was revoked for using a dentist's credentials to forge prescriptions for controlled substances on multiple occasions and for being convicted of unlawfully possessing and fraudulently obtaining controlled substances.
- In 2022, a dental hygiene license was revoked after testing positive for an illegal drug following an arrest.

All of these cases took place in Colorado over a five-year period.

In each of these cases, the Dental Board conducted a thorough investigation of the individuals to determine whether they were safe to practice. In three of these cases, the Dental Board determined that the individuals were not safe to practice dental hygiene. In one case, the Dental Board determined the individual was not safe to practice dental hygiene without treatment and monitoring for drug and alcohol use. All of these cases concerned individuals who had a history of drug and alcohol abuse.

At least one of these cases would justify disqualifications based on criminal history for oral preventative dental assistants. In this case, the licensee forged prescriptions for controlled substances on multiple occasions using a dentist's credentials. Clearly, drug diversion is harmful to the public.

While each of these cases are concerning, no patient harm was uncovered in any of these cases; therefore, it is questionable whether these four cases are sufficient to necessitate disqualifications based on criminal history, especially since COPRRR was not provided any evidence of patient harm during the sunrise review.

Conclusion

The Applicant proposes creating a new type of dental provider, referred to as an “oral preventative dental assistant,” who would be authorized to perform the tasks of a dental assistant and the following dental hygiene procedures:

- Periodontal probing,
- Removing tartar above the gumline, and
- Removing tartar below the gumline.

The sunrise application identifies certification by the Dental Board as the appropriate level of regulation. The sunrise application further proposes that direct supervision by a Colorado licensed dentist be required.

The Applicant is seeking to expand the scope of practice of dental assistants to perform these procedures due to an apparent shortage of practicing dental hygienists in Colorado. While no evidence of a shortage of dental hygienists was provided to COPRRR, most stakeholders agree that one exists.

To address this shortage, several new dental hygiene programs are being launched, and existing dental hygiene programs have expanded their programs to increase the number of dental hygiene graduates. Considering this, several stakeholders cautioned that, in a few years, Colorado may have a surplus of dental hygienists and, therefore, they questioned the need to create a new type of dental practitioner to provide dental hygiene services.

It should be noted, however, that the sunrise process is not geared toward evaluating workforce issues or whether a particular type of provider is needed or should be authorized. The purpose of a sunrise review is to determine whether regulation is necessary to protect the public.

Probing periodontal pockets and removing tartar above and below the gumline is central to the practice of dental hygiene. Currently, only dental hygienists, dental therapists and dentists may practice dental hygiene, and Colorado requires a license to practice dental hygiene. Considering this, an argument could be made that oral preventative dental assistants, who would be providing these services should, therefore, also be required to be licensed.

However, as each of these license types have a broader scope of practice than is proposed for oral preventative dental assistants, it is necessary to evaluate the specific procedures that oral preventative dental assistants would be authorized to perform in order to conclude that the practice clearly harms or endangers the public.

According to stakeholders, if probing is not done accurately, a patient may be misdiagnosed and subsequently receive inadequate treatment for periodontal disease, which could be harmful to the patient's oral and overall health. A patient may also receive treatment that is unnecessary and costly. Additionally, inadequate tartar removal can contribute to cavities and gum disease, which may be irreversible, and improper removal of tartar can cause damage to teeth and gums, and this damage may also be irreversible.

During a sunrise review, COPRRR must find that "an occupation or profession clearly harms or endangers the health, safety or welfare of the public." In order to demonstrate the need for regulation, COPRRR requires actual cases of consumer or patient harm to be provided.

However, no cases of harm related to these procedures were submitted to COPRRR during the course of the sunrise review.

The Applicant is seeking certification of oral preventative dental assistants, which is a restrictive form of regulation. Without any evidence of harm related to the proposed scope of practice, an intrusive and costly regulatory program is unjustified.

Recommendation – Do not regulate oral preventative dental assistants.