

BEFORE THE BOARD OF DENTISTRY  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.138.509 pertaining to dental ) PROPOSED AMENDMENT  
hygiene limited access permit )

TO: All Concerned Persons

1. On January 16, 2024, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/86210321602>  
Meeting ID: 862 1032 1602, Passcode: 563569  
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 862 1032 1602, Passcode: 563569

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on January 9, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail [laborlegal@mt.gov](mailto:laborlegal@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) remains the same.

~~(2) Application material remains valid for six months from receipt in the board office. If the application is not completed within six months a new application and fees must be submitted.~~

~~(3) A LAP dental hygienist shall maintain 48 hours of continuing education credits for each three-year cycle following initial issuance of a LAP. The 48 hours includes the 36 hours required for a dental hygiene license and an additional 12 hours required for the LAP. If the LAP dental hygienist qualifies for limited prescriptive authority pursuant to 37-4-405, MCA, and ARM 24.138.419, the dental hygienist shall maintain an additional three continuing education credits for each three-year cycle.~~

~~(4) LAPs must be renewed annually.~~

(5) (2) Pursuant to 37-4-405, MCA, the board identifies In addition to the authorized public health facilities already defined under 37-4-405, MCA, the board

identifies the following additional public health facilities and programs ~~at which~~ where LAP services ~~under a LAP~~ may be provided:

- (a) ~~Dodson School~~ schools that receive federal funds under Title I of the Elementary and Secondary Education Act;
- (b) ~~Great Falls Rescue Mission~~ schools in which at least 65% of the student population is eligible for free or reduced price lunch under federal guidelines;
- (c) ~~Harlem Elementary School~~ hospice facilities;
- (d) ~~Harlem Junior/Senior High School~~ family violence shelters; and
- (e) ~~Paris Gibson Education Center~~ homeless shelters.

AUTH: 37-4-205, 37-4-401, 37-4-405, MCA

IMP: 37-4-401, 37-4-405, MCA

REASON: In 2021 the board discussed moving forward with proposing amendments to this rule by evaluating schools under a two-part test prior to adding additional schools as board defined public health facilities or programs under 37-4-405, MCA. The board never formally began the rulemaking process under the Montana Administrative Procedures Act as the Commissioner of the Department of Labor and Industry received a request for active supervision of the potential rule amendments under 37-1-121 and 37-1-122, MCA.

As required by the department's active supervision process, the commissioner requested information from the board regarding its proposal. After receiving the board's response, the commissioner requested supplemental information from the board. In its supplementary response, the board considered proposing amendments to require a collaborative agreement structure between dentists and hygienists relating to LAP hygienists' work.

In February 2022 following her analysis of public comments, professional association comments, and the information provided by the board, the commissioner determined that access to oral healthcare is a continuing issue in Montana, especially among American Indian and low-income children; and, that the public health concerns that led to creation of the LAP still existed in 2021.

The commissioner further determined the language in the potential rule proposal was not taken pursuant to a clearly articulated state policy and that the rule unduly restrained the trade of dental hygienists. The commissioner's opinion noted the proposal was devoid of any process by which a new facility may be named. As to the board's suggestion of a collaborative agreement, the commissioner noted that while the board may disagree with the Legislature's determination of the scope of practice for an LAP, it may not contravene legislative determinations that LAP practice is permitted. The commissioner disapproved of the proposed rule language and no changes to the board's rule were enacted.

To address the issues noted by the commissioner, the board is proposing these amendments to allow for a more general guidance for approved facilities, rather than listing individual locations. The board proposes using federal guidelines for free or reduced lunch and Title I funding for schools in defining facilities and programs. This is based on research staff and the board conducted on the laws in other states which allow for similar practice and methodology to identify students

who may not receive regular dental care due to the financial constraints of their parents.

Additionally, the board is adding hospice facilities in (2)(c) to correspond with the nursing homes, long term care facilities, and home health agencies as already defined by the Legislature in 37-4-405, MCA. The board is including family violence and homeless shelters under (2)(d) as those facilities contain "patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care".

Finally, the board is proposing to repeal sections (2), (3), and (4) as they are unnecessarily duplicative of existing rules that address application procedures, continuing education, and renewals.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](http://dli.mt.gov/rules) or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., January 19, 2024.

5. An electronic copy of this notice of public hearing is available at [dli.mt.gov/rules](http://dli.mt.gov/rules) and [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY  
DIANE KLEMANN, RDH, CHAIR

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Rule Reviewer

/s/ SARAH SWANSON  
Sarah Swanson, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 12, 2023.