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Bill Analysis
Legislative Service Commission

H.B. 373

125th General Assembly
(As Introduced)

Reps. Kearns, McGregor, Miller, Allen, Carano, Setzer

BILL SUMMARY

- Provides for licensure of expanded function dental auxiliaries (EFDAs) by the State Dental Board.
- Defines the scope of practice of EFDAs.
- Establishes procedures for issuance and renewal of EFDA registration.
- Specifies the entities authorized to offer continuing education courses to EFDAs and the number of hours of continuing education an EFDA must complete to renew registration.
- Permits the Dental Board to offer teacher's certificates to EFDAs licensed in another jurisdiction.
- Provides that an EFDA's supervising dentist and manager are subject to disciplinary action when an EFDA is found to have committed an action for which disciplinary action is prescribed.
- Provides that a dental assistant may not be assigned dental procedures requiring the professional competence of an EFDA.
- Authorizes the Dental Board to issue volunteer's certificates to retired EFDAs desiring to offer dental services to indigent and uninsured persons at nonprofit shelters or hospital facilities and provides immunity from civil liability for these certificate holders.
- Requires a court that has entered a judgment entry of conviction for a drug offense committed by an EFDA to transmit a certified copy of the entry to the Dental Board.

- Permits a city or a general health district board of health to purchase liability insurance for an EFDA with whom the board contracts for the provision of health care services.
- Requires an EFDA who knows or suspects abuse or neglect of or theft from a long-term care or a residential care facility resident to report that knowledge or suspicion to the Director of Health.
- Requires the Dental Board to adopt rules it considers necessary to implement and administer the laws governing the practice and licensure of EFDAs.

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CONTENT AND OPERATION

Background

(Existing R.C. 4715.39; Ohio Administrative Code 4715-3-01 and Chapter 4715-11)

Currently, the regulation of expanded function dental auxiliaries is governed primarily by administrative rules. The Revised Code provides that the State Dental Board may define through administrative rulemaking the duties that may be performed by dental assistants and "other individuals designated by the Board as qualified personnel."

Administrative rules adopted by the Dental Board specify that advanced qualified personnel, or "expanded function dental auxiliaries" (EFDAs), are persons who have passed the Board designated examination for EFDAs. EFDAs may perform "basic and advanced remediable intra-oral dental tasks or procedures" under the direct supervision and full responsibility of a licensed dentist. "Basic remediable intra-oral dental tasks or procedures" are defined as those dental tasks and procedures that do not create irreparable changes within the oral cavity or the contiguous structures. The rules include a long list of tasks and procedures that are considered basic remediable intra-oral dental tasks or procedures by the Board and define "advanced remediable inter-oral dental tasks and procedures" (see **COMMENT**).

The rules further provide that a dentist may not use more than two EFDAs at any given time and that a dentist who uses an EFDA must maintain in the dentist's office a current record of the training received by the EFDA and the EFDA's competency certification. A copy of the EFDA's training record and competency certification must also be sent to the Dental Board.

The bill provides for the licensing of EFDAs and codifies the procedures constituting the practice of EFDAs and the enforcement authority the Board holds with respect to these individuals.

Expanded function dental auxiliaries--scope of practice

(R.C. 4715.60 and 4715.62)

Under the bill, beginning January 1, 2005, an individual must be licensed under Ohio law to practice as an expanded function dental auxiliary (EFDA) if the individual is to be employed or to practice as an EFDA. EFDAs may practice in a dental office, public or private school, health care facility, dispensary, or public institution, but must practice under the direct supervision, order, control, and full responsibility of a dentist licensed in Ohio, when the supervising dentist is

physically present at the location at which the auxiliary is practicing.¹ The bill limits to two the number of EFDAs that any one dentist may supervise at one time.

As defined in the bill, "practice as an expanded function dental auxiliary" includes only the following procedures:

- (1) The procedures involved in the placement of restorative materials limited to amalgam restorative materials and non-metallic restorative materials, including direct-bonded restorative materials;
- (2) The procedures involved in the placement of sealants;
- (3) Any additional procedures specified by the Dental Board in rules.

The bill specifies that nothing in it authorizes an EFDA to engage in the practice of dental hygiene.

Licensure

(R.C. 4715.03, 4715.61, and 4715.64)

The bill creates a licensure process for EFDAs. Each individual seeking licensure as an EFDA must file, under oath, an application with the secretary of the Dental Board that provides the following information on a form prescribed by the Board:

- (1) Satisfactory proof of being at least 18 years of age and of good moral character;
- (2) Satisfactory proof of successfully completing the education or training requirements specified by the Board in rules, evidenced by presentation of a diploma or other certificate of graduation or completion that has been signed by an appropriate official of the education institution or training program that provided the education or training;
- (3) Evidence of having passed the examination the Dental Board is required to offer to eligible applicants as prescribed by the Board in rules;
- (4) Payment of the \$50 license fee.

¹ The bill defines "health care facility" as (1) a hospital registered in Ohio (R.C. 3701.07) or (2) an institution, residence, or facility that provides, for a period of at least 24 hours, care for individuals who are dependent on others, including a nursing home, residential care facility, home for the aging, and the Ohio Veterans' Home (R.C. 3721.01).

The bill requires the Dental Board to issue to each applicant who meets the requirements a license entitling the applicant to practice as an EFDA. Once issued, the EFDA must exhibit the license in a conspicuous place in the room in which the auxiliary practices.

Registration and renewal of expanded function dental auxiliary licenses

(R.C. 4715.63 and 4715.64)

The bill requires the secretary of the Dental Board to keep a record of each individual licensed as an EFDA. Each record must identify the location where the individual primarily practices and the name of each dentist who supervises the EFDA. Each licensed EFDA, whether a resident of Ohio or not, must notify the Board secretary in writing of any change in the EFDA's office address or employment within ten days after the change takes place.

The bill also requires each licensed EFDA to register with the Dental Board on or before January 1 of each odd-numbered year. Registration must be made on a form prescribed by the Board and furnished by the Board secretary and include the licensee's name, address, license number, and any other information required by the Board. At the time of registration, licensees must also pay a \$50 biennial registration fee to the Treasurer of State.

Registrations are effective for two years, beginning on January 1 of each odd-numbered year and ending on December 31 of the following even-numbered year, after which the registration may be renewed. Registration renewals must be made in accordance with the standard renewal procedure for professional and occupational licensing in Ohio law (R.C. 4745.01 to 4745.03). If a licensee fails to renew the licensee's registration, the licensee's license is automatically suspended. An EFDA whose license has been suspended for failure to renew may be reinstated by the payment of the sum of the biennial registration fee and \$31 to cover the costs of reinstatement.

Continuing education and basic life-support certification requirements

(R.C. 4715.65(A), (C), (D), and (E))

Each time an EFDA applies for renewal of registration, the EFDA must certify to the Dental Board, on a form prescribed by the Board, that in the preceding two years the EFDA has done both of the following:

(1) Completed a minimum of 12 hours of continuing EFDA education. Of the hours completed, not less than three hours may be in restorative procedures.

(2) Been certified to perform basic life-support procedures by having successfully completed a basic life-support training course certified by either the American Red Cross or the American Heart Association.

The bill requires a licensed EFDA to retain for a period of at least three years all receipts, vouchers, and certificates necessary to document completion of continuing education programs. The Board may request this information with or without cause.

The Board may excuse EFDAs from all or any part of the continuing education or basic life-support requirements because of any unusual circumstance, emergency, or special hardship.

Failure to comply with the continuing education and basic life-support requirements constitutes a failure to renew registration.

Continuing education programs

(R.C. 4715.65(B))

The bill provides that continuing education programs may be developed and offered to EFDAs by any of the following agencies or organizations:

(1) National, state, district, or local dental hygienists' associations affiliated with the American Dental Hygienists' Association.

(2) National, state, district, or local dental associations affiliated with the American Dental Association or National Dental Association.

(3) Accredited dental hygiene schools.

(4) Accredited dental colleges.

(5) National, state, district, or local EFDA associations.

(6) The accredited educational institutions or the training programs that provide the education or training necessary to obtain a license to practice as an EFDA.

(7) Other organizations, schools, paraprofessional programs, or agencies approved by the Board.

Teacher's certificates for EFDA's authorized to practice in another jurisdiction

(R.C. 4715.66)

Under the bill, the Dental Board may, without examination, issue a teacher's certificate to an EFDA who meets all of the following requirements:

- (1) Is authorized to practice as an EFDA in another state or country;
- (2) Pays a fee approved by the Board;
- (3) Submits an application endorsed by an accredited educational institution or training program in Ohio that provides EFDA education.

A teacher's certificate does not authorize the certificate holder to do anything beyond teaching or demonstrating the skills of an EFDA for the institution or program that endorses the application. A teacher's certificate is subject to the standard renewal procedure for professional and occupational licensing in Ohio law (R.C. 4745.01 to 4745.03).

EFDA students

(R.C. 4715.67)

Under the bill, certain laws governing the practice of dentistry, dental hygiene, and expanded function dental auxiliary do not apply to EFDA students who are participating in educational or training activities of an accredited educational institution or training program that lead to a license to practice as an EFDA. These laws include the following:

- (1) The prohibition against the practice of dental hygiene without a valid license to practice as a dental hygienist. (R.C. 4715.28.)
- (2) Disciplinary actions the Dental Board is authorized to take against individuals who are licensed by the Board. (R.C. 4715.30.)
- (3) The prohibition against the practice of expanded function dental auxiliary without a valid license to practice as an EFDA and the other laws governing the practice of EFDA's. (R.C. 4715.60 through 4715.66.)

Rulemaking authority

(R.C. 4715.68)

The bill requires the Dental Board to adopt rules, consistent with the Ohio Administrative Procedure Act (R.C. Chapter 119.), that the Board considers

necessary to implement and administer the laws governing the practice and licensure of EFDAs.

Enforcement

Disciplinary actions

(R.C. 4715.30)

Current law provides that the holder of a certificate or license issued by the Dental Board is subject to disciplinary action by the Board for a long list of reasons. One of the reasons for which a certificate or license holder may be disciplined is for providing or allowing dental hygienists or other practitioners of auxiliary dental occupations working under the certificate or license holder's supervision to provide dental care that departs from or fails to conform to accepted standards for the profession, whether or not injury to a patient results. The bill adds that a certificate or license holder is also subject to disciplinary action if that certificate or license holder provides or allows EFDAs working under the certificate or license holder's supervision to provide dental care that departs from or fails to conform to accepted standards for the profession, whether or not injury to a patient results.

Current law also provides that a manager, proprietor, operator, or conductor of a dental facility will be subject to disciplinary action if a dentist, dental hygienist, or qualified personnel providing services in the facility is found to have committed an action for which disciplinary action is prescribed. The bill adds that a manager, proprietor, operator, or conductor of a dental facility will be subject to disciplinary action *if an EFDA* providing services in the facility is found to have committed an action for which disciplinary action is prescribed.

Injunction to restrain practice as an EFDA

(R.C. 4715.05)

Existing law provides that the Dental Board may ask the Ohio Attorney General or the prosecuting attorney of any county where a dentist or dental hygienist is practicing without a valid license or certificate to apply to the common pleas court of the county where the unauthorized practice occurs for an injunction to restrain such practice. The court must grant injunctive relief on a showing that the person alleged to be engaging in the unauthorized practice of dentistry or dental hygiene is engaging in such unauthorized practice.

The bill expands the injunctive relief provision by authorizing the Board to seek an injunction against a person who practices without a license or certificate from the Board as required by the dental practices law (R.C. Chapter 4715.). Thus, the bill gives the Board authority to seek an injunction against a person who

engages in the practice of an expanded function dental auxiliary without a valid license to practice as an EFDA. Likewise, the bill requires a court to grant injunctive relief to the Board on a showing that the person alleged to be engaging in the unauthorized practice of expanded function dental auxiliary is engaging in such unauthorized practice.

Substance abuse treatment

(R.C. 4715.301)

Under current law, the Dental Board must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing standards for approving and designating physicians and facilities as treatment providers for dentists and dental hygienists with substance abuse problems. In turn, treatment providers are required to submit certain reports to the Board and to take other actions with respect to dentists or dental hygienists under the treatment providers' care. Current law also prescribes that in the absence of fraud or bad faith, no professional association of dentists or dental hygienists that sponsors a committee to provide peer assistance to dentists or dental hygienists with substance abuse problems, no representative or agent of such a committee or program, and no member of the Board may be liable for damages in a civil action by reason of actions taken to refer a dentist or dental hygienist to a Board-approved treatment provider or actions or omissions of the provider in treating a dentist or dental hygienist. Further, in the absence of fraud or bad faith, no person who reports to the Board a dentist or dental hygienist with a suspected substance abuse problem may be liable to any person for damages in a civil action as a result of making the report.

The bill expands the above provisions by doing all of the following:

(1) Requiring the Board to adopt rules establishing standards for approving and designating physicians and facilities as treatment providers for EFDAs;

(2) Requiring treatment providers to submit the same reports to the Board and to take the same actions with respect to EFDAs that the treatment providers must take with respect to dentists and dental hygienists under the treatment providers' care;

(3) Providing that in the absence of fraud or bad faith, no professional association of *license or certificate holders* that sponsors a committee to provide peer assistance to *license or certificate holders* with substance abuse problems, no representative or agent of such a committee or program, and no member of the Board may be liable for damages in a civil action by reason of actions taken to refer a *license or certificate holder* to a Board-approved treatment provider or actions or omissions of the provider in treating a *license or certificate holder*.

(4) Providing that in the absence of fraud or bad faith, no person who reports to the Board a *license or certificate holder* with a suspected substance abuse problem may be liable to any person for damages in a civil action as a result of making the report.

Procedures that may be assigned to dental assistants and other qualified personnel

(R.C. 4715.39(C))

Existing law provides that, subject to law and administrative rules adopted by the Dental Board, licensed dentists may assign to dental assistants and other qualified personnel dental procedures that do not require the professional competence or skill of a licensed dentist or a dental hygienist.

The bill further restricts the procedures a licensed dentist may assign to a dental assistant by providing that a dental assistant may not be assigned dental procedures that require the professional competence of an EFDA.

Prohibition against practicing expanded function dental auxiliary by non-licensees

(R.C. 4715.39(D)(2))

The bill specifies that nothing in it permits dental assistants or other qualified personnel to engage in the practice of expanded function dental auxiliary or to perform the duties of an EFDA other than as authorized by law.

Volunteer's certificates for retirees

(R.C. 4715.42)

Under current law, the Dental Board may issue a volunteer's certificate to a dentist or dental hygienist who is retired from the practice of dentistry or dental hygiene. The volunteer's certificate allows the certificate holder to provide dental services to indigent and uninsured persons at nonprofit shelters or hospital facilities. When applying for a volunteer's certificate, a retired dentist or dental hygienist must submit certain documentation to the Dental Board along with a completed application.

The bill permits a retired EFDA to also apply for a volunteer's certificate. Similar to a retired dentist or dental hygienist, a retired EFDA applying for a volunteer's certificate must submit the following documentation to the Dental Board:

(1) A copy of the retired EFDA's degree, diploma, or other certificate of graduation or completion from an accredited educational institution or training program that provides the education or training necessary to obtain a license to practice as an EFDA.

(2) A copy of either of the following, as applicable:

(a) A copy of the retired EFDA's most recent license to practice as an EFDA issued by a United States jurisdiction that licenses persons to practice expanded function dental auxiliary.

(b) A copy of the retired EFDA's most recent license equivalent to a license to practice expanded function dental auxiliary in one or more branches of the United States armed services that the United States government issued.

(3) Evidence of one of the following, as applicable:

(a) The retired EFDA has maintained for at least ten years prior to retirement full licensure in good standing in any United States jurisdiction that licenses persons to practice expanded function dental auxiliary.

(b) The retired EFDA has practiced as an EFDA in good standing for at least ten years prior to retirement in one or more branches of the United States armed services.

(4) A notarized statement from the retired EFDA, on a form prescribed by the Dental Board, that the retired EFDA will not accept any form of remuneration for any dental services rendered while in possession of a volunteer's certificate.

To be eligible to renew a volunteer's certificate, a retired EFDA must certify to the Dental Board that the retired EFDA has completed 18 hours of continuing EFDA education that meets the requirements discussed under "*Continuing education and basic life-support certification requirements*," above.

Penalties

(R.C. 4715.99)

Existing law provides that anyone who practices dentistry or dental hygiene without a valid license issued by the Dental Board is guilty of a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. The bill provides that anyone who practices as an EFDA without a valid license issued by the Dental Board is guilty of the same offenses.

Additional provisions

Immunity of health care professionals

(R.C. 2305.234)

Current law provides immunity from civil liability of health care professionals who provide services as volunteers in nonprofit shelters or health care facilities to persons who are indigent or uninsured. The bill adds professionals licensed as EFDAs to those who have the immunity.

Controlled substances

(R.C. 2925.01; 2925.02 to 2925.06, 2925.11 to 2925.14, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, 2925.37, and 2925.38 (all not in the bill))

Current law governing drug offenses defines a "professionally licensed person" as a person holding a license or certificate to practice or engage in one of a number of professions and occupations. If a professionally licensed person is found guilty of, or pleads guilty to, a drug offense, the court is required to transmit a certified copy of the judgment entry of conviction to the regulatory or licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license.

The bill adds EFDAs to those included in the definition of "professionally licensed person." Thus, if an EFDA is convicted of, or pleads guilty to, a drug offense, the court with jurisdiction of the EFDA's case must transmit a certified copy of the judgment entry of conviction to the Dental Board.

Liability insurance

(R.C. 3709.161)

Current law authorizes the board of health of a city or a general health district to purchase liability insurance for a health care professional with whom the board contracts for the provision of health care services. The bill includes EFDAs as health care professionals for which the board of health or health district may purchase insurance.

Duty to report abuse

(R.C. 3721.21)

Under current law, if a licensed health care professional knows or suspects abuse, neglect, or burglary of a resident of a long-term care facility or a residential care facility, the health care professional must report that knowledge or suspicion

to the Director of Health. The bill includes licensed EFDAs as health care professionals required to make such reports.

COMMENT

Basic Remediable Intra-oral Dental Tasks That EFDAs May Perform Under Administrative Rules

- Aspiration and retraction, excluding placement of gingival retraction materials.
- Suture removal
- All supportive services necessary to the maintenance of a hygienic practice environment, including, but not limited to, all sterilizing procedures
- Intra-oral instrument transfer
- Placement of rubber dam over preplaced clamp, and removal of clamp and rubber dam
- All supportive services or procedures necessary to protect the physical well-being of the patient during routine treatment procedures and during periods of emergencies
- Preliminary charting of missing and filled teeth
- Application of cavity varnish
- The preparation of materials, drugs, and medications for use in dental procedures
- Elastomeric impressions for diagnostic models and models to be used for opposing models in the construction of appliances and restorations
- Impression, fabrication, cementation and removal of provisional restorations, not to include palliative or sedative restorations
- All patient education services

- Taking impressions for the construction of custom athletic mouth protectors/ mouthguards, and trays for application of medicaments
- Preliminary selection and sizing of stainless steel crowns
- Preparing the teeth for restorations or for the bonding of orthodontic brackets by treating the supragingival coronal surfaces of the teeth to be bonded with a conditioning or etching agent and by the placement of a bonding agent adhesive
- Application of disclosing solutions
- Preliminary selection and sizing of orthodontic bands and arch wires
- Impressions for removable or fixed orthodontic appliances
- Caries susceptibility testing
- Checking for and removal of loose orthodontic bands and loose brackets
- Polymerization of light-activated restorative or bonding materials
- Demonstration of oral hygiene procedures, including, but not limited to, use of toothbrushes and dental floss
- Intra-oral bite registrations for diagnostic model articulation, restorations, and appliances
- Application and removal of periodontal dressings
- Shade selection for fabrication of appliances or restorations
- Irrigation and drying of canals during endodontic procedures
- Placement and removal of orthodontic separators and ties
- Application of topical anesthetics
- Placement of medication in the pulp chambers of teeth with non-vital pulp or instrumented root canals
- Topical applications of desensitizing agents to teeth
- Pulp testing
- Placement and removal of surgical dressings
- Placement and removal of orthodontic arch wires, auxiliary arch wires, and ligation of same to orthodontic bands or brackets
- Fluoride application

***Advanced Remediable Intra-oral Dental Tasks
Under Administrative Rules***

"Advanced remediable intra-oral dental tasks and procedures" are defined as tasks or procedures involved in the art of placement of preventive or restorative materials limited to the following:

- (1) Placement of sealants;
- (2) Amalgam restorative materials;
- (3) Non-metallic restorative materials, including direct-bonded restorative materials.

HISTORY

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