

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

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REQUEST FOR RULEMAKING (RFR)

1. Department:

Licensing and Regulatory Affairs

2. Bureau:

Bureau of Professional Licensing

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Dentistry - General Rules

5. Rule numbers or rule set range of numbers:

R 338.11101 - R 338.11821

6. Estimated time frame:

6 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The purpose of the Dentistry – General Rules is to regulate the prelicensure education, licensure, licensure renewal, relicensure, and continuing education, for dentists, dental therapists, registered dental assistants, and registered dental hygienists; delegation and assignment of dental procedures; dental specialties; anesthesia; intravenous conscious sedation, and enteral sedation training requirements; and, requirements for disposal of dental amalgam. The proposed rules will add rules pursuant to Public Act 463 of 2018, which requires the Department in consultation with the Board to promulgate any rules the Department considers necessary to implement sections 16651 to 16658 of the Public Health Code, MCL 333.16651 to 333.16658.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

MCL 333.16145 authorizes the Board to promulgate rules necessary or appropriate to fulfill its functions as prescribed in the Article 15 of the Public Health Code.

Public Act 463 of 2018 mandates that the Department, in consultation with the Board, promulgate rules the Department considers necessary to implement sections 16651 to 16658 of the Public Health Code, MCL 333.16651 to 333.16658, which regulates dental therapists.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

Rule promulgation authority includes: MCL 333.16148; MCL 333.16174; MCL 333.16178; MCL 333.16182; MCL 333.16186; MCL 333.16201; MCL 333.16204; MCL 333.16205; MCL 333.16215(6); MCL 333.16608; MCL 333.16611; MCL 333.16625; MCL 333.16626; MCL 333.16631; MCL 333.16644; Executive Reorganization Order No. 1991-9, MCL 338.3501; Executive Reorganization Order No. 1996-2, MCL 445.2001; Executive Reorganization Order No. 2003-1, MCL 445.2011; and Executive Reorganization Order No. 2011-4, MCL 445.2030.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

Yes, the Department in consultation with the Board is required to promulgate rules as follows: to include training standards for identifying victims of human trafficking, pursuant to MCL 333.16148; to complete continuing education (CE) hours in pain and symptom management for an applicant for licensure renewal, if continuing education is a condition for renewal, pursuant to MCL 333.16204; to promulgate rules regarding the best management practices for dental amalgam collection, disposal, and recycling and the retention and inspection of dental office records regarding dental amalgam, pursuant to MCL 333.16631; and to prescribe the form and content of a record of dental treatment on a patient to be used for identification purposes, pursuant to MCL 333.16644. Public Act 463 of 2018 mandates that the Department, in consultation with the Board, promulgate rules the Department considers necessary to implement sections 16651 to 16658 of the Public Health Code (Code), MCL 333.16651 to 333.16658, which regulate dental therapists.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

Each state establishes its own requirements with respect to dentists, dental therapists, hygienists, and dental assistants, so there are no federal rules or standards set by a national or state agency that most of the proposed rules can be compared to. However, the Amalgam Separator Act, 2008 PA 503, (2008), required dental offices to install systems to remove dental amalgam to reduce mercury from being discharged into sewers. Section 16631 of the Code, MCL 333.16631, (2008), required the Department in consultation with the Department of Environmental Equality, renamed the Michigan Department of Environment, Great Lakes and Energy (EGLE), to promulgate rules regarding best management practices for dental amalgam collection, disposal, and recycling and the retention and inspection of dental office records. The amalgam rules were effective in 2012. In addition, the United States Environmental Protection Agency (EPA) enacted requirements on the handling of mercury in 40 CFR Part 441 (2016). The date for compliance with the EPA's amalgam requirements for existing dental offices is July 14, 2020, and for newly purchased or built dental offices within 90 days of taking ownership.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

No. The subject matter of these rules is not currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

Proposed R 338.11811(2) does not exempt a prosthodontist from the amalgam requirements, and, therefore, the proposed rules are more stringent than the Federal CFR that regulates the discharge of amalgam from a dental office.

Even if the proposed rules are more stringent than the applicable federal standard, this is a result of 2008 PA 503, which lists the following as the only exemptions to the amalgam regulations: oral and maxillofacial surgeons, oral and maxillofacial radiologists, oral pathologists, orthodontists, periodontists, dentists while providing services in a dental school, in a hospital, or through a local health department, and dentists who install and use a holding tank and do not discharge amalgam waste.

No other rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

The Department worked with various associations, educational institutions, dental related businesses, and lobbyists in preparing the proposed rules.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

The rules were last amended on January 6, 2017. There have been no technological factors, economic conditions or other factors that would necessitate amendment of the rules.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

R 338.11107, which pertains to advertising will be rescinded as there is no statutory authority to promulgate this rule. R 338.11117, which pertains to violations of the Public Health Code will be rescinded as there is no statutory authority to promulgate this rule. R 338.11123, which pertains to training standards for identifying victims of human trafficking is being rescinded as it is being moved to the licensure provisions in the rules. R 338.11222, which pertains to licensure to practice dental hygiene for graduates from a school not in compliance with board standards will be rescinded because the board requires that all hygienists graduate from a school that meets the board's standards. R 338.11241 and R 338.11245, which pertain to requirements for retaking the dental assistant examination will be rescinded because the examination will no longer be offered by the department. R 338.11402 through R 338.11410, which pertain to delegation and assignment will be rescinded as the requirements will be provided in a table. R 338.11505, which pertains to the general requirements of a specialty license will be rescinded because the requirements do not apply to all specialty licenses, so the requirements have been added where appropriate. R 338.11604, which pertains to the reporting of morbidity and mortality to the board will be rescinded as the information is not being collected or used at this time. R 338.11704b and R 338.11704c, which pertain to relicensure will be rescinded as the requirements will be provided in a table.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

Yes