

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Bureau of Professional Licensing

Name of person filling out RIS:

Andria Ditschman

Phone number of person filling out RIS:

517-290-3361

E-mail of person filling out RIS:

DitschmanA@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2021-40 LR

Title of proposed rule set:

Dentistry - General Rules

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

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 the proposed rules can be compared to. However, the Amalgam Separator Act, 2008 PA 503, (2008), requires dental offices to install dental amalgam systems to reduce mercury from being discharged into sewers. Section 16631 of the Public Health Code (Code), MCL 333.16631, requires the Department of Licensing and Regulatory Affairs (Department), in consultation with the Department of Environmental Quality (DEQ), 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 (2017). The date for compliance with the EPA's amalgam requirements for existing dental offices was July 14, 2020, and for newly purchased or built dental offices within 90 days of taking ownership.

A. Are these rules required by state law or federal mandate?

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 CE is a condition for renewal, pursuant to MCL 333.16204; to promulgate rules to implement sections 16284 and 16285 pursuant to MCL 333.16287; 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, which regulates dental therapists, 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.

The following provisions allow for rule making: MCL 333.16145, 333.16148, 333.16174, 333.16178, 333.16182, 333.16186, 333.16201, 333.16204, 333.16205, 333.16215, 333.16287, 333.16608, 333.16611, 333.16625, 333.16626, 333.16631, 333.16644, 333.16651, 333.16656, 333.16658, 338.3501, 445.2001, 445.2011, and 445.2030.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

Proposed R 338.11811(2) does not exempt a prosthodontist from the amalgam requirements, therefore, the proposed rules are more stringent than the Federal regulation in 40 CFR Part 441 (2017) 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.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules are consistent with the standards required by the Code and are largely consistent with the requirements of other states in the Great Lakes region.

Part 1 of the proposed rules are similar to the standards and requirements in the other states in the Great Lakes region regarding requiring dental records and maintaining records regarding controlled substances. Other states do not have a requirement in the rules that a dental professional identify themselves.

Part 2: The licensure requirements and use of titles are similar to the standards and requirements in the other states in the Great Lakes region. Similar to Michigan, Illinois, Indiana, Minnesota, Ohio, and Pennsylvania all require the following for licensure: graduate from a Commission on Dental Accreditation (CODA) accredited program; pass the national board exam and clinical exam; and show good moral character. Michigan, Indiana, Minnesota, Ohio, and Wisconsin require passing a jurisprudence examination for a dental professional license. Michigan, Minnesota, Ohio, and Pennsylvania license dental assistants. Each has different educational and testing requirements. Indiana, Minnesota, Ohio, and Wisconsin limit the number of times a dental professional applicant may take the clinical examination. The proposed rules in Michigan have limits on retaking an examination only for dental assistants. For all other dental professionals limits on testing include those limitations established by the testing authority.

Part 3: The educational program standards proposed in Michigan for dentists and hygienists are similar to the standards and requirements in the other states in the Great Lakes region. All states in the Great Lakes region require graduation from a CODA accredited program for licensure as a dentist or hygienist. The educational requirements for dental assistants vary.

Part 4A and 4B: Michigan, Minnesota, Ohio, and Pennsylvania license allow dental assistants to participate in specific duties under various levels of supervision. Indiana and Illinois limit dental assistant functions but do not require a license. Wisconsin has very minimal requirements but does require a dental assistant to be supervised by a dentist and be appropriately trained. All states in the Great Lakes region have regulations on the functions of a hygienist. Michigan is still one of the few states that licenses dental therapists.

Part 5: Illinois and Minnesota have systems for specialty licensure similar to Michigan. Each state either issues a certification or license to applicants who have passed a specialty board examination. The specialties recognized include those recognized by the American Dental Association (ADA). All of the states in the Great Lakes region, except Pennsylvania, allow licensure for an applicant who is currently licensed in another state and has experience.

Part 6A and 6B: Michigan requires a dentist to obtain training and use appropriate facilities but does not require the dentist to apply for a permit. All of the states in the Great Lakes region regulate and require a permit to use general anesthesia. The proposed rules regulate the training of dentists who use general anesthesia, deep sedation, moderate sedation, or minimal sedation. In Michigan, the monitoring and assisting in the administration of nitrous oxide by a registered dental assistant is regulated through education. In Pennsylvania, a hygienist is not permitted to administer nitrous oxide. In Illinois, Minnesota, and Ohio, although the use is regulated, the hygienist does not need a permit. 6B Most states in the region to not have teledentistry regulations.

Part 7: The amount of CE hours required for dentists per year varies from 10 to 25. The amount of CE hours required for hygienists per year varies from 6 to 13.

Part 8: In other states that have amalgam regulations, the regulations are not handled through dentistry regulations.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

Overall, the standards in the proposed rules do not exceed those of the other states in the Great Lakes region. Although other states do not have a requirement that a dental professional identify for treatment to the patient, the proposed rules include this requirement because of the potential expected confusion in dental offices when dental therapists are licensed in this state. Michigan is one of the few states that licenses dental therapists. The proposed dental therapy rules are required by the Code to implement licensure of dental therapists. Although most states require a permit for anesthesia, the Code does not authorize the Board to require a permit.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

The Amalgam Separator Act, 2008 PA 503, (2008), requires dental offices that discharge dental amalgam into a wastewater system, to install a dental amalgam system to remove the dental amalgam and mercury before the waste is discharged. Section 16631 of the Code, MCL 333.16631, requires the Department, in consultation with the DEQ, renamed the 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 rules were effective in 2012, and require dentists, who discharge dental amalgam in a dental office, to remove the amalgam with an amalgam separator. The rules also require all dentists, who use, remove, or discharge dental amalgam, except those exempted from the rule, to comply with R 338.11815, which regulates the collection, disposal, and recycling of dental amalgam. The EPA enacted requirements on the handling of mercury in 40 CFR Part 441 (2017), for a dental discharger, which is defined as “a facility where the practice of dentistry is performed, including, but not limited to, institutions, permanent or temporary offices, clinics, home offices, and facilities owned and operated by federal, state or local governments, that discharges wastewater to a publicly owned treatment works.” The date for compliance with the EPA’s amalgam requirements for existing dental offices is July 14, 2020, and for new dental offices, within 90 days of taking ownership. The federal rules and the proposed rules are consistent with each other except the federal rules exempt dentists that are prosthodontists, while 2008 PA 503 does not include this exemption.

There are no other laws, rules, or other legal requirements that may duplicate, overlap, or conflict with these proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The proposed amalgam rules are mandated by 2008 PA 503. The department worked with EGLE to coordinate the proposed rules with the federal requirements. The proposed rules clarify the existing rules by updating legal citations, changing “school” to “educational program”, and moving the definition of recycle and recycling to the definition section.

No other coordination is needed because there are no other applicable laws that regulate the areas addressed in the proposed rules.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) is not applicable.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

R 338.11811(2) does not exempt a prosthodontist from the amalgam requirements. Therefore, the proposed rules are more stringent than the federal rules that regulate the discharge of amalgam from a dental office.

Even if the proposed rules are more stringent than the applicable federal regulations, 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.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

Part 1. The proposed rules modify the term used to describe an unregistered dental assistant from dental assistant to unregistered dental auxiliary (UDA) as dental assistant is a protected term in the Code. The proposed rules require a dental treatment record to include the patient's current health status as classified by the American Society of Anesthesiologists physical status classification system (ASAPS), as well as photographic images taken in the course of treatment.

Part 2. The proposed rules require applicants for licensure to meet the requirements in the Public Health Code-General Rules, R 338.7001 through R 338.7005, including complying with a minimum English language requirement and an implicit bias training requirement; require applicants for licensure to submit proof of current certification in basic advanced cardiac life support (BLS) or advanced cardiac life support (ACLS) for health care providers with a hands-on component, earned within the 2 year period prior to receiving the license; broaden the paths for licensure applicants by examination or endorsement who have attended an educational program that does not comply with the standards in the rules; include individuals authorized to practice dentistry in other states to supervise during dental therapy clinical practice in an educational program; require a dental assistant to pass both the clinical and written portion of the state's examination within 18 months of taking either examination, and retake both parts of the examination if he or she fails either part 3 successive times; require applicants for a limited license to attend 1 hour of infection control training; require applicants for endorsement and relicensure to disclose all licenses with other entities, report current discipline or sanctions on a license, have either BSL or ACLS, and meet the human trafficking training requirement, English language requirement, and implicit bias training; and allow licensure by endorsement for an applicant licensed in Canada.

The proposed requirements are designed to ensure that licensees are appropriately educated and trained, have passed a thorough examination, and have no disciplinary issues in other jurisdictions, so that citizens receiving care are protected.

Part 3. The proposed education requirements have been updated and are designed to ensure that licensees are appropriately educated and trained, so that citizens receiving care are protected.

Part 4A. The proposed rules regarding delegation, supervision, assignment of UDAs, registered dental assistants (RDA) and registered hygienists (RH) include: requiring a dentist to see a patient of record at least once every 24 months if duties will be delegated or assigned; require a UDA to have a BSL or ACLS and 1 hour of infection control before being delegated or assigned duties; and limit delegation and assignment to those duties included in Table 1 in the rules. The proposed rules, in this part, are designed to alter the wide-spread confusion amongst dental professionals regarding the procedures that they may perform and the training that is required.

Part 5. The proposed rules add the following specialty licenses: dental anesthesiology, dental public health, oral and maxillofacial radiology, oral medicine, and orofacial pain. The proposed rules require a licensee who holds a specialty license to notify the Department of any action that results in a suspension or revocation of a certification by an American board. The proposed rules are designed to clarify the requirements for licensure in a specialty practice to ensure specialists are safe to practice.

Part 6A. The proposed rules will modify the training requirements if a dentist is administering or collaboratively providing general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist. The proposed rules are designed to ensure that licensees are appropriately trained and are working in safe facilities, so that citizens receiving care are protected.

Part 6B. The proposed rules address consent and prescribing medication during telehealth to ensure that citizens receiving care through telehealth are receiving care equal to similar care received in-person.

Part 7. The proposed rules clarify the following: 20 hours of live courses may be earned through in-person or virtual continuing education; licensees may not earn continuing education credit for implicit bias training; and a request for a waiver of continuing education must be filed with the department at least 30 days prior to the last regularly scheduled board meeting before the expiration date of the license. The proposed rules are designed to ensure that dental professionals have appropriate on-going training to protect the citizens they serve.

Part 8. The proposed language will provide updates to the rules.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

It is expected that dental professionals will meet the requirements in the Public Health Code-General Rules, R 338.7001 through R 338.7005, including complying with, a minimum English language requirement and an implicit bias training requirement; dental professionals will have BSL or ACLS prior to being licensed; limited licensees will be trained in infection control; applicants for endorsement and relicensure will disclose all licenses with other entities, report current discipline or sanctions on a license, and meet the human trafficking training requirement, English language requirement, and implicit bias training; unlicensed assistants will no longer use the term dental assistant; more applicants will be licensed from Canada, other countries, and other states; more dentists will be eligible to supervise dental therapy program clinical hours; a dentist will meet with a patient in-person at least once in 24 months if duties will be delegated and assigned; UDAs will have more training; new dental specialty licensees will be issued in dental anesthesiology, dental public health, oral and maxillofacial radiology, oral medicine, and orofacial pain; a dentist with a specialty license whose American board certification is suspended or revoked will report this information to the Department; additional training will be required for dentists who administer or collaboratively provide general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist; and dental professionals using telehealth will meet safety requirements similar to in-person treatment.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The difference between the current behavior/practice and desired behavior/practice is: require licensees to meet the requirements in the Public Health Code-General Rules, R 338.7001 through R 338.7005, including complying with, a minimum English language requirement, and an implicit bias training requirement; require applicants for endorsement and relicensure to disclose all licenses with other entities, report current discipline or sanctions on a license, and meet the human trafficking training requirement, English language requirement, and implicit bias training; require dental professionals to be trained in BSL or ACLS prior to being licensed; require limited licensees to be trained in infection control; require unlicensed assistants to use UDA instead of referring to themselves as a dental assistant; license applicants who are licensed in Canada, other countries, and other states, who meet certain educational and examination requirements versus not providing alternative pathways to licensure; allow dentists from other states to supervise dental therapy program clinical hours; require a dentist to meet with a patient in-person at least once in 24 months if duties will be delegated and assigned; require more training for UDAs; license dental specialists in dental anesthesiology, dental public health, oral and maxillofacial radiology, oral medicine, and orofacial pain; require additional training for dentists who administer or collaboratively provide general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist; and require consent and prescribing requirements in telehealth.

C. What is the desired outcome?

The desired outcome is licensees will meet the requirements in the Public Health Code-General Rules, R 338.7001 through R 338.7005, including complying with, a minimum English language requirement, and an implicit bias training requirement; applicants for endorsement and relicensure will disclose all licenses with other entities, report current discipline or sanctions on a license, and meet the human trafficking training requirement, English language requirement, and implicit bias training; dental professionals will be trained in BSL or ACLS prior to being licensed; limited licensees will to be trained in infection control before licensed; unlicensed assistants will be referred to as UDAs; applicants licensed in Canada, other countries, and other states, who meet certain educational and examination requirements will have a pathway for licensure; dentists from other states may supervise dental therapy program clinical hours; dentists will meet with a patient in-person at least once in 24 months if duties will be delegated or assigned; UDAs will obtain additional training; dental specialists in dental anesthesiology, dental public health, oral and maxillofacial radiology, oral medicine, and orofacial pain will be licensed in this state; dentists who administer or collaboratively provide general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist will obtain additional training; and dental professionals who use telehealth will meet consent and prescribing requirements.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule is: licensees will not have to meet a minimum English language requirement and will not have education in implicit bias issues; the Department will not have previous licensure information on endorsement and relicensure applicants such as discipline or sanctions on another license; applicants for endorsement and relicensure will not have human trafficking training, minimum English language proficiency, or the implicit bias training; dental professionals will not be trained in BSL or ACLS prior to being licensed; limited licensees will not be trained in infection control before licensed; unlicensed assistants will continue to be referred to as dental assistants; applicants licensed in Canada, other countries, and other states, will have a more difficult time obtaining licensure; dentists from other states will be prohibited from supervising dental therapy program clinical hours; dentists will not be required to meet with a patient in-person at least once in 24 months if duties will be delegated or assigned; UDAs will not be required to have additional before they are assigned or delegated duties; there would be no dental specialty licensure requirements for dental anesthesiology, dental public health, oral and maxillofacial radiology, oral medicine, and orofacial pain; dentists who administer or collaboratively provide general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist would not be required to have additional training; and telehealth would not be regulated by the administrative rules.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The rationale for changing the rules is: licensees will meet the requirements in the Public Health Code-General Rules, R 338.7001 through R 338.7005, including complying with, a minimum English language requirement, and an implicit bias training requirement; applicants for endorsement and relicensure will disclose all licenses with other entities, report current discipline or sanctions on a license, and meet the human trafficking training requirement, English language requirement, and implicit bias training; dental professionals will be trained in BSL or ACLS prior to being licensed; limited licensees will to be trained in infection control before licensed; unlicensed assistants will be referred to as UDAs; applicants licensed in Canada, other countries, and other states, who meet certain educational and examination requirements will have a pathway for licensure; dentists from other states may supervise dental therapy program clinical hours; dentists will meet with a patient in-person at least once in 24 months if duties will be delegated or assigned; UDAs will obtain additional training; dental specialists in dental anesthesiology, dental public health, oral and maxillofacial radiology, oral medicine, and orofacial pain will be licensed in this state; dentists who administer or collaboratively provide general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist will obtain additional training; and dental professionals who use telehealth will meet consent and prescribing requirements.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply, as the proposed rules will require the following: licensees will meet the requirements in the Public Health Code-General Rules, R 338.7001 through R 338.7005, including complying with, a minimum English language requirement, and an implicit bias training requirement; applicants for endorsement and relicensure will disclose all licenses with other entities, report current discipline or sanctions on a license, and meet the human trafficking training requirement, English language requirement, and implicit bias training; dental professionals will be trained in BSL or ACLS prior to being licensed; limited licensees will to be trained in infection control before licensed; unlicensed assistants will be referred to as UDAs; applicants licensed in Canada, other countries, and other states, who meet certain educational and examination requirements will have a pathway for licensure; dentists from other states may supervise dental therapy program clinical hours; dentists will meet with a patient in-person at least once in 24 months if duties will be delegated or assigned; UDAs will obtain additional training; dental specialists in dental anesthesiology, dental public health, oral and maxillofacial radiology, oral medicine, and orofacial pain will be licensed in this state; dentists who administer or collaboratively provide general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist will obtain additional training; and dental professionals who use telehealth will meet consent and prescribing requirements.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

Rule 338.11605 that requires a course and instructors in enteral sedation to be approved by the board is being rescinded as the proposed rules will address training for all types of sedation.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The proposed rules are not expected to have a fiscal impact on the agency.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No agency appropriation has been made nor has a funding source been provided for expenditures associated with the proposed rules.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The following burdens will be placed on individuals as a result of the proposed rules: licensees must meet the English language requirement, an implicit bias training requirement, current certification in basic advanced cardiac life support (BLS) or advanced cardiac life support (ACLS) for health care providers with a hands-on component; and limited licensees must also attend 1 hour of infection control training; UDAs must have BSL or ACLS, and 1 hour of infection control before being delegated or assigned duties; a dentist administering or collaboratively providing general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist must complete a course in managing medical emergencies. The proposed rules are designed to ensure that licensees are appropriately trained and are working in safe facilities, so that citizens receiving care are protected.

The proposed rules will impose a burden on health care professionals by requiring that they invest time in obtaining the trainings. Promoting equity in access to and the provision of health care services to the residents of Michigan, as well as training in human trafficking, greatly outweighs that burden.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The rules are required by statute to provide a mechanism for licensing and regulation of the dental profession and are required to protect the public. Despite the cost-related burden of licensing, the rules and regulations are necessary in order to provide a framework of standards for educational, licensure, and continuing education requirements.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no anticipated increases in revenues, or cost increases or reductions, to other state or local government units as a result of the proposed rules.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

There are no anticipated or intended programs, services, duties, or responsibilities imposed on any city, county, town, village, or school district as a result of these proposed rules.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

There are no actions that governmental units must take to comply with these proposed rules.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

No appropriations have been made to any governmental units as a result of these rules. No additional expenditures are anticipated or intended with the proposed rules.

Rural Impact

16. In general, what impact will the rules have on rural areas?

The proposed rules are not expected to impact rural areas. The proposed rules apply to licensees, regardless of their location.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The proposed rules are not expected to impact rural areas. The proposed rules apply to licensees in the state, regardless of their location.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

No. Although the proposed rules include modifications to the existing rules that regulate the discharge of dental amalgam, none of the modifications are substantive.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The proposed rules impose requirements on individual licensees rather than small businesses. Even if a licensee's practice qualifies as a small business, the Department could not exempt his or her business because it would create a disparity in the regulation of the profession.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules cannot exempt small businesses because the rules do not directly regulate small businesses, but individual licensees.

While licensees may practice independently or as part of a small business, the law does not allow the rules to exempt these individuals from the requirements of the rules. However, the impact on licensees who practice as part of a small business is minimized in the proposed rules, as the rules are written broadly. As a result, a licensee, whether in small business or not, should not be significantly impacted by the changes.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

As of May 6, 2022, there were approximately 7,959 dentists, 112 clinical academic limited dentists, 47 educational limited dentists, 10,360 registered hygienists, 2 clinical academic limited hygienist, and 1,827 registered dental assistants licensed in Michigan.

No matter what type of business environment the licensee works in, he or she will have to take the necessary steps to comply with the proposed rules. The rules do not affect small businesses differently. The anticipated effects on licensees are minimal because they clarify what is already required of licensees and not of the business in which they may work.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The agency did not establish separate compliance or reporting requirements for small businesses. The proposed rules will apply to all licensed dentists, dental therapists, dental hygienists, and dental assistants. The rules were drafted to be the least burdensome on all affected licensees.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not consolidate or simplify the compliance and reporting requirements for small businesses, nor identify the skills necessary to comply with the reporting requirements as the proposed rules impose requirements on individual licensees, rather than small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The agency did not establish performance standards to replace design or operation standards required by these rules.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules affect individual licensees, rather than small businesses. Therefore, there is no disproportionate effect on small businesses because of their size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The proposed rules affect individual licensure applications and renewals, which are already required of all licensees, regardless of if they practice in a small business. There is no separate cost to small businesses.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There are no expected increased costs for small businesses concerning the costs of equipment, supplies, labor, or administrative costs.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no expected increased costs for small businesses concerning legal, consulting, or accounting services.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no expected costs to small businesses that will cause economic harm to a small business or the marketplace as a result of the proposed rules.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules impose requirements on licensees. Even if a licensee's employer qualifies as a small business, the Department could not exempt his or her business because it would create disparity in the regulation of licensees.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules impose requirements on licensees. Even if a licensee's employer qualifies as a small business, the Department could not exempt his or her business because it would create disparity in the regulation of licensees. Therefore, exempting or setting lesser standards of compliance for small businesses is not in the best interest of the public.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The Department worked with multiple stakeholders at the Michigan Board of Dentistry Rules Committee Work Group meetings, that included members from the Board of Dentistry, educational institutions, businesses, and other members of the public in the development of the proposed rules. The Board is composed of members of the profession and members of the public who may work in businesses in Michigan.

A. If small businesses were involved in the development of the rules, please identify the business(es).

Representatives from businesses were involved in the development of the rules. However, the Department is not aware if they meet the definition of a "small business."

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The Department does not expect any statewide compliance costs of the proposed rules on businesses or groups.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The Department does not expect any businesses or groups to be directly affected by, bear the cost of, or directly benefit from the proposed rules.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The Department does not expect the proposed rules to result in any additional costs such as new equipment, supplies, labor, accounting, or recordkeeping on businesses or other groups.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The options for an applicant to meet the English language requirement have been expanded by the proposed rules. The cost to comply with this requirement will range from no cost if the applicant simply shows that their educational program was taught in English, or they obtain transcripts from their English-speaking undergraduate or graduate school to the cost of a proficiency test. The estimated cost to take an English proficiency test ranges from \$130.00 to \$250.00 depending on the test.

The cost of obtaining the implicit bias training and human trafficking training will vary, depending on the program the individual chooses. Several Michigan hospitals offer implicit bias training free of charge. Human trafficking training is also offered in the state without a fee.

The estimated cost for certification in basic or advanced cardiac life support for health care providers with a hands-on component is \$100.00. However, the cost is outweighed by the benefit of ensuring that the applicant is trained in life support as a health care provider, with a hands-on component. The estimated cost for 1 hour of training in infection control is \$35.00. However, the cost is outweighed by the benefit of ensuring that the applicant is knowledgeable in infection control in a dental office.

The estimated cost for a course in managing medical emergencies will vary depending on the program the individual chooses.

The Department does not expect the proposed rules to result in any other additional compliance costs such as new educational costs, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or record keeping on the public.

A. How many and what category of individuals will be affected by the rules?

As of May 6, 2022, there were approximately 7,959 dentists, 112 clinical academic limited dentists, 47 educational limited dentists, 10,360 registered hygienists, 2 clinical academic limited hygienist, and 1,827 registered dental assistants licensed in Michigan.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The options for an applicant to meet the English language requirement have been expanded by the proposed rules. The cost to comply with this requirement will range from no cost if the applicant simply shows that their educational program was taught in English, or they obtain transcripts from their English-speaking undergraduate or graduate school to the cost of a proficiency test. The estimated cost to take an English proficiency test ranges from \$130.00 to \$250.00 depending on the test.

The cost of obtaining the implicit bias training and human trafficking training will vary, depending on the program the individual chooses. Several Michigan hospitals offer implicit bias training free of charge. Human trafficking training is also offered in the state without a fee.

The estimated cost for certification in basic or advanced cardiac life support for health care providers with a hands-on component is \$100.00. However, the cost is outweighed by the benefit of ensuring that the applicant is trained in life support as a health care provider, with a hands-on component. The estimated cost for 1 hour of training in infection control is \$35.00. However, the cost is outweighed by the benefit of ensuring that the applicant is knowledgeable in infection control in a dental office.

The estimated cost for a course in managing medical emergencies will vary depending on the program the individual chooses.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There are no other expected reductions in costs to businesses, individuals, groups of individuals or governmental units as a result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules will directly benefit the public by requiring the following: licensees will meet the requirements in the Public Health Code-General Rules, R 338.7001 through R 338.7005, including complying with, a minimum English language requirement, and an implicit bias training requirement; applicants for endorsement and relicensure will disclose all licenses with other entities, report current discipline or sanctions on a license, and meet the human trafficking training requirement, English language requirement, and implicit bias training; dental professionals will be trained in BSL or ACLS prior to being licensed; limited licensees will to be trained in infection control before licensed; unlicensed assistants will be referred to as UDAs which is not a protected title; applicants licensed in Canada, other countries, and other states, who meet certain educational and examination requirements will have a pathway for licensure; dentists from other states may supervise dental therapy program clinical hours; dentists will meet with a patient in-person at least once in 24 months if duties will be delegated or assigned; UDAs will obtain additional training; dental specialists in dental anesthesiology, dental public health, oral and maxillofacial radiology, oral medicine, and orofacial pain will be licensed in this state; dentists who administer or collaboratively provide general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist will obtain additional training; and dental professionals who use telehealth will meet consent and prescribing requirements.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The rules are not expected to have an impact on business growth, job creation, or job elimination.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

There is not expected to be a disproportionate effect due to industrial sector, segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

- [https://legislature.mi.gov/\(S\(ak0drxijxlofrlevvdpzvg5i\)\)/documents/mcl/pdf/mcl-368-1978-15-166.pdf](https://legislature.mi.gov/(S(ak0drxijxlofrlevvdpzvg5i))/documents/mcl/pdf/mcl-368-1978-15-166.pdf)
- <https://www.michigan.gov/lara/-/media/Project/Websites/lara/bpl/Shared-Files/BPL-Active-License-Counts.pdf?rev=6d563b51f44f4f34b075afa3497ca2dc>
- <https://coda.ada.org/en/current-accreditation-standards>
- <http://www.ed.gov/about/offices/list/OPE/index.html>
- <https://cpr.heart.org/en/courses/pals-course-options>
- <https://cpr.heart.org/>
- <https://ccepr.ada.org/en/for-ce-providers/ada-cerp-recognition-standards>
- www.agd.org
- www.danb.org
- <https://telehealth.org/state-regulation-of-telehealth/>

Anesthesia

- <https://www.asahq.org/>
- www.aaoms.org
- Ohio : <https://codes.ohio.gov/ohio-administrative-code/rule-4715-5-05>
- http://www.ada.org/~media/ADA/Education%20and%20Careers/Files/teaching_paincontrol_guidelines.pdf

- <https://www.ada.org/en/coda/current-accreditation-standards>
- <https://www.news-medical.net/health/What-is-the-Difference-Between-Sedation-and-General-Anesthesia.aspx>
- <https://www.dental.ohio.gov/Portals/0/Professions/Dentist/Applications/gaapp.pdf>

Dental Therapy and Canada

- <https://www.cdsbc.org/registration-renewal/dental-therapists/scope-of-practice>
- <https://www.canadavisa.com/dental-hygienists-therapists-3222.html>
- <https://www.aptnnews.ca/national-news/vital-dental-therapist-program-returning-to-northern-saskatchewan/>
- <https://www.cda-adc.ca/cdacweb/en/>

Pathways

<https://www.dentalcareersedu.org/dental-assistant-requirements-for-state-licensure/>
<https://www.smilemichigan.com/resources/careers/registered-dental-assistant/>
<https://catalog.wccnet.edu/current/programs/cfdac.php>
CAE Dental Home Page - CAE Dental
<https://www.wccnet.edu/learn/departments/alhd/dental/>

Examinations

info@ndeb-bned.ca
<https://adexexams.org/>
DLOSCE (ada.org)
<https://jcnde.ada.org/en/examinations>
DHLOSCE (ada.org)
<https://www.cdcaexams.org/adex-2/>
<https://jcnde.ada.org/en/examinations/national-board-dental-hygiene-examination>
<https://www.studentrdh.ca/pages/ndhce-info-canada>

Illinois Anesthesia Permits

<https://www.isds.org/advocacy/il-dental-practice-act-rules/il-controlled-substance#:~:text=Anesthesia%20Permits,Illinois%20Department%20of%20Professional%20Regulation>

Illinois Statute

<https://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1296&ChapAct=225%26nbsp%3BILCS%26nbsp%3B25%2F&ChapterID=24&ChapterName=PROFESSIONS%2BAND%2BOCCUPATIONS&ActName=Illinois%2BDental%2BPractice%2BAct%2E>

Illinois Deep Sedation and General Anesthesia Rules

<https://www.ilga.gov/commission/jcar/admincode/068/068012200E05200R.html>

Illinois Minimal Sedation

<https://www.ilga.gov/commission/jcar/admincode/068/068012200E05050R.html>

Illinois Moderate Sedation (Conscious Sedation)

<https://www.ilga.gov/commission/jcar/admincode/068/068012200E05100R.html>

Illinois Renewal

<https://www.ilga.gov/commission/jcar/admincode/068/068012200E05250R.html>

Ohio Equipment Check list

<https://www.dental.ohio.gov/LinkClick.aspx?fileticket=QA7pJrvETOk%3d&portalid=0×tamp=1592580155953>

Ohio Attestation

<https://dental.ohio.gov/Portals/0/Professions/Dentist/Applications/GAATTESTATION.pdf?ver=2016-06-29-094122-387>

Non-delegable dental tasks and procedures

https://dental.ohio.gov/Portals/0/Proposed%20Rule%20Changes/2021%205-Year%20Rule%20Review/4715-11-06.pdf?ver=2TiVZkKI_nZgv69tucnazw%3d%3d

Ohio General Anesthesia and Deep Sedation

<https://codes.ohio.gov/ohio-administrative-code/rule-4715-5-05>

Ohio Laws Rules Proposed rules
<https://dental.ohio.gov/Law-Rules/Law-Rules>

ADSA Specialty
<https://www.adsahome.org/>

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

No estimates or assumptions were made.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

Since the rules are required by statute, there is no other reasonable alternative to the proposed rules that would achieve the same or similar goal.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

There is no other reasonable alternative to the proposed rules that would achieve the same or similar goal.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Since the rules are authorized by statute, private market-based systems cannot serve as an alternative. Each state is responsible for implementing its own laws and rules pertaining to licensing dentistry professionals. Private market-based systems are not used for regulating licensees. The licensing and regulation of dentistry professionals are state functions, so a regulatory program independent of state intervention cannot be established. The profession has numerous professional associations that could be considered regulatory mechanisms that are independent of state intervention; however, these professional organizations would provide the public with significantly less protection because membership in many of these organizations is voluntary. This means an individual who meets the membership requirements, but does not join one of the professional organizations, would be able to practice and there would be no way to ensure their competency or hold them accountable.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Since the rules are required by statute, there are no alternatives to the proposed rules that the agency could consider. They are necessary for the administration and enforcement of the licensing process.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

English Language proficiency requirement and implicit bias training requirement: the rules will refer licensees to the Public Health Code-General Rules that explicitly outline the requirements.

Human trafficking training requirement: the rules will explicitly inform licensees of the human trafficking training requirements.