

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 312

As Amended by Senate Committee on Public
Health and Welfare

Brief*

SB 312, as amended, would expand the Dental Practices Act (ACT) by creating the practice of dental therapy and requiring the Kansas Dental Board (Board) to authorize a person to practice as a dental therapist if such person meets the qualifications set forth in the bill.

Prior to practicing as a dental therapist, a person would be required to pass an examination by the Board and upon passing the examination, pay a license fee to the Board as set by the Board. The Board would authorize a person to practice as a dental therapist if such person meets specific qualifications, works under the direct or general supervision of a Kansas licensed dentist, is licensed by the Board, and practices in accordance with the requirements set forth in the bill and the rules and regulations adopted by the Board.

Supervising Dentist

Any supervising dentist of a dental therapist would be required to:

- Enter into agreements to supervise no more than three dental therapists; and
- Be employed by an indigent health care clinic or enrolled as a Medicaid provider.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Qualifications

To qualify to practice as a dental therapist, such person would be required to be a licensed dental hygienist and meet the following requirements:

- Graduate of a dental therapist education program approved by the Board that requires the study of dental therapy, is determined by the Board to have standards of education not less than that required for accreditation by the Commission on Dental Accreditation of the American Dental Association, or, prior to such accreditation process for dental therapy programs, is approved by a licensing entity of another state or federal jurisdiction and that requires no less than 500 hours of clinical training. If the person's dental therapist training program did not include training on any individual competency stated below, the person would be required to provide documentation to the Board's satisfaction that such person successfully completed additional training on that competency;
- Pass a comprehensive, competency-based clinical examination approved by the Board and administered independently of an institution that provides dental therapist education; and
- Obtain a policy of professional liability insurance and show proof of such insurance, as required by rules and regulations.

Any person practicing as a dental therapist in violation of the above provisions would be guilty of a misdemeanor, and the Board would be allowed to revoke or suspend such person's license.

A dental therapist would be required to maintain current basic cardiac life support certification from the American Heart Association, or an equivalent certification approved by the Board.

Licensure Fees

The fees for dental therapist would be capped as follows:

- Certificate: \$25;
- Biennial license renewal: \$200;
- Examination: \$150; and
- Subsequent examination: \$100.

Scope of Practice

The practice of dental therapy would be performed under the direct or general supervision of a licensed dentist. The bill would define “direct supervision” to mean the supervision of tasks and procedures with the presence of the dentist in the office or on the premises at the time the tasks or procedures are being performed where the dentist personally diagnoses the condition to be treated, personally authorizes the procedure and, before dismissal of the patient, evaluates the dental therapist’s performance; and “general supervision” to mean the supervision of tasks or procedures without the presence of the dentist in the office or on the premises at the time the tasks or procedures are being performed, so long as those tasks and procedures are within the scope of the practice for a dental therapist.

Dental Hygiene

Subject to limitations imposed by rules and regulations adopted by the Board, a licensed dental therapist would be allowed to perform dental hygiene tasks and procedures. Limitation on locations or premises where a licensed dental hygienist may perform extended care permit III dental hygiene tasks and procedures would not apply to a licensed dental therapist.

The definition of “direct supervision” by a dentist as it relates to the performance of a dental hygienist would be amended to mean the supervision of tasks and procedures with the presence of the dentist in the office or on the premises at the time the tasks or procedures are being performed where the dentist personally diagnoses the condition to be treated, personally authorizes the procedure and, before dismissal of the patient, evaluates the dental hygienist’s performance.

General Supervision

A licensed dental therapist would be allowed to perform the following services under general supervision:

- Identification of oral and systemic conditions requiring evaluation or treatment, or both, by dentists, physicians, or other healthcare providers, and management of referrals;
- Comprehensive charting of the oral cavity;
- Oral health instruction, disease prevention education, and oral health-related nutritional and dietary instruction;
- Exposure of radiographic images;
- Dental prophylaxis, including sub-gingival scaling or polishing procedures, or both;
- Application of topical preventive or prophylactic agents;
- Pulp vitality testing;
- Application of desensitizing medication or resin;
- Fabrication of athletic mouthguards;
- Placement of a temporary filling, including glass ionomer and other palliative materials;

- Fabrication of soft occlusal guards;
- Tissue conditioning and soft relines;
- Changing of periodontal dressings;
- Tooth reimplantation and stabilization;
- Administration of local anesthesia, if the dental therapist has completed a course on local anesthesia;
- Administration of nitrous oxide, if the dental therapist has completed a course on nitrous oxide;
- Dispensing and administering by the oral or topical route, or both; non-narcotic analgesics; anti-inflammatory; and antibiotic medications as prescribed by a licensed health care provider;
- The formulation of a dental therapy care plan limited to approved procedures;
- Emergency palliative treatment of dental pain limited to approved procedures;
- The placement and removal of space maintainers;
- Fabrication and placement of single-tooth temporary crowns;
- Suture removal;
- Brush biopsies;
- Minor adjustment and repairs on removable prostheses;
- Re-cementing of permanent crowns; and
- Prevention, identification, and management of dental and medical emergencies.

Direct Supervision

A licensed dental therapist would be allowed to perform the following services under direct supervision:

- Extraction of erupted primary teeth that are non-ankylosed and that have a majority resorption of all root structures;
- Preparation and placement of direct restoration fabricated or made directly inside the mouth in primary and permanent teeth;
- Preparation and placement of preformed crowns on primary teeth;
- Indirect pulp capping on permanent teeth; and
- Indirect pulp capping on primary teeth.

License Revocation and Suspension

Scope of Practice

The Board would be allowed to suspend or revoke the license of any dentist who directs any dental therapist operating under such dentist's supervision to perform any operation other than what is permitted under the bill and would be allowed to suspend or revoke the license of any dental therapist found guilty of performing any operation other than those permitted under the bill. Prior to revoking or suspending a dental or dental therapist license in an administrative proceeding, the Board would be required to comply with notice and hearing requirements of the Kansas Administrative Procedure Act (KAPA).

Call Lists

The Board would be required to revoke or suspend the license of any licensed dental therapist who is found guilty of

using or attempting to use any prophylactic lists, call lists, records, reprints or copies, or information gathered therefrom of the names of patients whom the dental therapist might have served in the office of a prior employer, unless such names appear upon the bona fide call or prophylactic list of the dental therapist's present employer and were caused to so appear through the legitimate practice of dentistry.

The Board would be required to suspend or revoke the license of any licensed dentist who is found guilty of aiding or abetting, or encouraging a dental therapist employed by such dentist to make use of a prophylactic call list or calling or using written letters transmitted through the mail to solicit patronage from patients served in the office of any dentist formerly employing such dental therapist. The Board would not be allowed to make an order of suspension or revocation except after notice and opportunity for hearing in accordance with KAPA. Any final order of suspension or revocation of a license would be reviewable in accordance with the Kansas Judicial Review Act.

Rules and Regulations

Prior to July 1, 2020, the Board would be required to adopt rules and regulations as necessary to administer the provisions in the bill regarding the licensure of dental therapists. The bill would also require that prior to July 1, 2020, the Board have such rules and regulations proposed, submitted to the Secretary of Administration and the Attorney General for approval, notice of the proposed rules and regulations given, and a hearing held.

These rules and regulations provisions would be in effect upon publication in the statute book.

Dental Practices Act Provisions

The (Act) would be amended by adding dental therapist to the following provisions:

- Definitions of “proprietor,” “unlicensed proprietor,” and “health care provider”;
- Licensure, including expiration, renewal, reciprocity, qualifications, revocation or suspension, and fees;
- Circumstances for which the Board could refuse to issue a license or could take action against a license;
- Criminal punishment for practicing without first obtaining a license or violating the Act;
- Civil immunity for individuals of an association of dental therapists a conducting good faith investigation and transmittal of information made in good faith;
- Registration requirements for a mobile dental facility; and
- Compensation paid to a Board member conducting examinations.

Reciprocity

The bill would allow the Board, without examination, to issue a license as a dental therapist to an applicant holding a license in another state upon compliance with the requirements of professional qualification and experience required by the Act.

Each applicant for licensure as a dental therapist would be required to have a license to practice dental therapy in another U.S. state for a three year period immediately

preceding the date of application and would be required to have engaged in the active practice of dental therapy for at least three years prior to the date of application. Each applicant also would be required to provide a certificate from the executive director of the board of dental therapists of the state in which the applicant has been licensed and has practiced during the required period preceding the date of the application.

Additional Provisions

“Dental therapist” would be added to the definition of “health care provider” in statutes pertaining to health care provider peer review committees, and the requirement to disclose a reportable offense in accordance with the risk management protocols at a medical care facility.

The Dieticians Licensing Act would include licensed dental therapist as a person to whom such act would not apply as long as the licensed dental therapist did not hold himself or herself out to the public as a dietitian or licensed dietitian.

A licensed dental therapist would be subject to licensure as set forth in the Radiologic Technologists Practice Act.

The Board would be allowed to affiliate as an active member with the National Association of Dental Examiners for the purpose of conducting a standard examination for candidates for licensure as dental therapists. The Board would be required to adopt rules and regulations for qualifications and licensing of dental therapists.

A state officer who is a dental therapist employed by the Kansas Department for Aging and Disability Services would be an unclassified employee.

“Dental therapist” would be added to the statutory provisions pertaining to charitable healthcare provider.

Joint Report

The Kansas Department of Health and Environment (KDHE) and the Board would be required to submit a joint report to the Legislature on or before the first day of the 2030 Session that details the effects the enactment of the bill has had on access to dental care in rural Kansas, including but not limited to the number and geographical distribution of practicing dental therapists, the number of dentists supervising dental therapists, the number of participating Medicaid providers, the treated and untreated tooth decay rates of Medicaid beneficiaries, urgent need rates, and federally designated dental health professional shortage areas. These provisions would be in effect upon publication in the statute book.

Effective Date

Unless otherwise noted, the provisions in the bill would become effective on and after July 1, 2020.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of Senator Schmidt. In the Senate Committee hearing, a pediatric dentist and representatives of the Kansas Dental Association, Kansas Dental Hygienists’ Association, Kansas Department of Health and Environment, and Oral Health Kansas testified in support of the bill. Proponents generally stated expanding the Dental Practices Act to include dental therapists would expand dental services to underserved communities. Written-only proponent testimony was received from representatives of the Kansas Academy of Nutrition and Dietetics and Saint Francis Community Services.

Neutral testimony was provided by Representative Lusk (originally an opponent but subsequently changed position to neutral); a dentist; and representatives of the Kansas Action for Children, Kansas Association for the Medically Underserved, Kansas Health Care Association and Kansas Center for Assisted Living, Kansas Health Foundation, and LeadingAge Kansas. Written-only neutral testimony was received from representatives of Americans for Prosperity, Children's Alliance of Kansas, Heartland Institute, Kansas Advocates for Better Care, Kansas Association of Community Action Programs, Kansas Dental Board, Kansas Head Start Association, and Reach Healthcare Foundation.

Opponent written-only testimony was received from two dentists and a representative of the Kansas Board of Pharmacy.

The Senate Committee amended the bill by changing the definition of "general supervision" by adding oral health-related nutritional and dietary instruction and deleting counseling and analysis; by changing the definition of "direct supervision" to clarify a dental office extends to the premises where tasks or procedures are being performed, as it relates to dental therapy and dental hygiene; by adding language to state subject to certain limitations, a licensed dental therapist may perform dental hygiene tasks and procedures; and a technical amendment to update a term in the Act.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board indicates additional revenue from new dental therapist fees would be received; however, a precise fiscal effect on revenue cannot be estimated as the number of dental therapists who would become licensed with the Board is unknown. The fiscal note also states KDHE indicates the bill would have no fiscal effect on the agency. Any fiscal effect associated with the bill is not reflected in *The FY 2019 Governor's Budget Report*.