

WSR 23-08-067

EXPEDITED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed April 4, 2023, 8:44 a.m.]

Title of Rule and Other Identifying Information: The dental quality assurance commission (commission) is proposing amendments to update rules regarding health profession monitoring programs in line with the passage of SSB 5496. The proposal amends WAC 246-817-801 Intent, 246-817-810 Definitions used relative to substance abuse monitoring, 246-817-820 Approval of substance abuse monitoring programs, and 246-817-830 Participation in approved substance abuse monitoring program.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5496 updated terminology, definitions, and references for dentists in RCW 18.32.534 and clarified confidentiality protections in RCW 18.130.070 for health professional monitoring programs. The proposed rules make technical amendments to align with changes required from SSB 5496 without changing the intent.

Reasons Supporting Proposal: The proposed changes are necessary to align existing rules with updates made to statute in SSB 5496.

Statutory Authority for Adoption: RCW 18.32.0365; SSB 5496 (chapter 43, Laws of 2022).

Statute Being Implemented: SSB 5496.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amber Freeberg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed rules make technical amendments without changing the intent of the rule to align with changes made through the passage of SSB 5496. The proposed rules make changes or clarify language of a rule without changing its effect. Proposed changes are explicitly and specifically dictated by statute.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Amber Freeberg, Department of Health, P.O. Box 47852, Tumwater, WA 98540-7852, phone 360-236-4893, fax 360-236-2901, email <https://fortress.wa.gov/doh/policyreview>, AND RECEIVED BY June 5, 2023.

April 3, 2023

Lyle McClellan, DDS, Chair
Dental Quality Assurance Commission

OTS-4287.2

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-801 Intent. It is the intent of the legislature that the DQAC seek ways to identify and support the rehabilitation of dentists where practice or competency may be impaired due to (~~the abuse of drugs including alcohol~~) an applicable impairing or potentially impairing health condition. The legislature intends that these dentists be treated so that they can return to or continue to practice dentistry in a way which safeguards the public. The legislature specifically intends that the DQAC establish an alternate program to the traditional administrative proceedings against such dentists.

In lieu of disciplinary action under RCW 18.130.160 and if the DQAC determines that the unprofessional conduct may be the result of (~~substance abuse~~) an applicable impairing or potentially impairing health condition, the DQAC may refer the license holder to a physician health program or a voluntary substance (~~abuse~~) use disorder monitoring program approved by the DQAC.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-801, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-810 Terms used in WAC 246-817-801 through 246-817-830. "Aftercare" is that period of time after intensive treatment that provides the dentist or the dentist's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment and/or monitoring program staff.

(~~"Approved substance abuse monitoring program" or "approved monitoring program"~~ is a program the DQAC has determined meets the requirements of the law and the criteria established by the DQAC in the Washington Administrative Code which enters into a contract with dentists who have substance abuse problems regarding the required components of the dentist's recovery activity and oversees the dentist's compliance with these requirements. Substance abuse monitoring programs may provide evaluation and/or treatment to participating dentists.)

"Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 18.130.175.

"Approved use disorder monitoring program" or "approved physician health monitoring program" is a program the DQAC has determined meets the requirements of the law and the criteria established by the DQAC

in the Washington Administrative Code which enters into a contract with dentists who have use disorders or other potentially impairing health conditions regarding the required components of the dentist's recovery activity and oversees the dentist's compliance with these requirements. Substance use disorder or other potentially impairing health conditions monitoring programs may provide evaluation or treatment to participating dentists.

"Contract" is a comprehensive, structured agreement between the recovering dentist and the approved physician health program or substance use disorder monitoring program wherein the dentist consents to comply with the physician health program or substance use disorder monitoring program and the required components for the dentist's recovery activity.

"Dentist support group" is a group of dentists and/or other health professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.

"Random drug screens" are laboratory tests to detect the presence of drugs of abuse in bodily fluids collected under observation which are performed at irregular intervals not known in advance by the person to be tested.

"Substance ((abuse)) use disorder" is the impairment, as determined by the DQAC, of a dentist's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

"Twelve-steps groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, peer group association, and self-help.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-810, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-820 Approval of physician health programs or substance ((abuse)) use disorder monitoring programs. The DQAC will approve the physician health program or substance use disorder monitoring program(s) which will participate in the recovery of dentists. The DQAC will enter into a contract with the approved physician health program or substance ((abuse)) use disorder monitoring program(s) on an annual basis.

(1) An approved physician health program or substance use disorder monitoring program may provide evaluations and/or treatment to the participating dentists.

(2) An approved physician health program or substance use disorder monitoring program staff must have the qualifications and knowledge of both substance ((abuse)) use disorders, other potentially impairing health conditions, and the practice of dentistry as defined in this chapter to be able to evaluate:

- (a) Drug screening laboratories;
- (b) Laboratory results;

(c) Providers of substance abuse treatment for substance use disorders or other potentially impairing health conditions, both individual and facilities;

(d) Dentists' support groups;

(e) The dentists' work environment; and

(f) The ability of the dentist to practice with reasonable skill and safety.

(3) An approved physician health program or substance use disorder monitoring program shall enter into a contract with the dentist and the DQAC to oversee the dentist's compliance with the requirements of the program.

(4) An approved physician health program or substance use disorder monitoring program staff shall evaluate and recommend to the DQAC, on an individual basis, whether a dentist will be prohibited from engaging in the practice of dentistry for a period of time and restrictions, if any, on the dentist's access to controlled substances in the work place.

(5) An approved physician health program or substance use disorder monitoring program shall maintain records on participants.

(6) An approved physician health program or substance use disorder monitoring program shall be responsible for providing feedback to the dentist as to whether treatment progress is acceptable.

(7) An approved physician health program or substance use disorder monitoring program shall report to the DQAC any dentist who fails to comply with the requirements of the physician health program or substance use disorder monitoring program.

(8) An approved physician health program or substance use disorder monitoring program shall provide the DQAC with a statistical report on the program, including progress of participants, at least annually, or more frequently as requested by the DQAC.

(9) The approved physician health program or substance use disorder monitoring program shall receive from the DQAC guidelines on treatment, monitoring, and/or limitations on the practice of dentistry for those participating in the program.

(10) An approved physician health program or substance use disorder monitoring program shall provide for the DQAC a complete financial breakdown of cost for each individual dental participant by usage at an interval determined by the DQAC in the annual contract.

(11) An approved physician health program or substance use disorder monitoring program shall provide for the DQAC a complete annual audited financial statement.

(12) An approved physician health program or substance use disorder monitoring program shall enter into a written contract with the DQAC and submit monthly billing statements supported by documentation.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-820, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-830 Participation in physician health programs or approved substance ((abuse)) use disorder monitoring programs. (1) In lieu of disciplinary action, the dentist may accept DQAC referral into

an approved physician health program or substance ((abuse)) use disorder monitoring program.

(a) The dentist shall undergo a complete physical and psychosocial evaluation before entering the approved physician health program or substance use disorder monitoring program. This evaluation shall be performed by health care professionals with expertise in ((chemical dependency)) substance use disorders or other potentially impairing health conditions.

(b) The dentist shall enter into a contract with the approved physician health program or substance ((abuse)) use disorder monitoring program to comply with the requirements of the physician health program or substance use disorder program which shall include, but not be limited to, the following:

(i) The dentist shall agree to remain free of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(ii) The dentist shall submit to random drug screening as specified by the approved physician health program or substance use disorder monitoring program.

(iii) The dentist shall sign a waiver allowing the approved physician health program or substance use disorder monitoring program to release information to the DQAC if the dentist does not comply with the requirements of this contract.

(iv) The dentist shall undergo intensive ((substance abuse)) treatment of a substance use disorder or other potentially impairing health condition in an approved treatment facility.

(v) The dentist must complete the prescribed aftercare program of the approved physician health program or substance use disorder treatment facility, which may include individual ((and/or)) or group psychotherapy.

(vi) The treatment counselor(s) shall provide reports, as requested by the dentist, to the approved physician health program or substance use disorder monitoring program at specified intervals. Reports shall include treatment prognosis and goals.

(vii) The dentist shall attend dentists' support groups and/or twelve-step group meetings as specified by the contract.

(viii) The dentist shall comply with specified practice conditions and restrictions as defined by the contract.

(ix) Except for (b)(i) through (iii) of this subsection, an approved physician health program or substance use disorder monitoring program may make an exception to the foregoing comments on individual contracts.

(c) The dentist is responsible for paying the costs of the physical and psychosocial evaluation, substance ((abuse)) use disorder or other potentially impairing health condition treatment, random drug screens, and therapeutic group sessions.

(d) The dentist may be subject to disciplinary action under RCW 18.130.160 and 18.130.180 if the dentist does not consent to be referred to the approved physician health program or substance use disorder monitoring program, does not comply with specified practice restrictions, or does not successfully complete the program.

(2) A dentist who is not being investigated by the DQAC or subject to current disciplinary action, not currently being monitored by the DQAC for substance ((abuse)) use disorder or other potentially impairing health condition, may voluntarily participate in the approved physician health program or substance ((abuse)) use disorder monitoring program without being referred by the DQAC. Such voluntary partic-

ipants shall not be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for their substance ((~~abuse~~)) use disorder or other potentially impairing health condition, and shall not have their participation made known to the DQAC if they meet the requirements of the approved physician health program or substance use disorder monitoring program:

(a) The dentist shall undergo a complete physical and psychosocial evaluation before entering the approved physician health program or substance use disorder monitoring program. This evaluation shall be performed by health care professional(s) with expertise in ((~~chemical dependency~~)) substance use disorders or other potentially impairing health conditions.

(b) The dentist shall enter into a contract with the approved physician health program or substance ((~~abuse~~)) use disorder monitoring program to comply with the requirements of the program which may include, but not be limited to the following:

(i) The dentist shall undergo approved substance ((~~abuse~~)) use disorder or other potentially impairing health condition treatment in an approved treatment facility.

(ii) The dentist shall agree to remain free of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber as defined in RCW 69.41.030 and 69.50.101.

(iii) The dentist must complete the prescribed aftercare program of the approved physician health program or substance use disorder treatment facility, which may include individual ((~~and/or~~)) or group psychotherapy.

(iv) The dentist must cause the treatment counselor(s) to provide reports to the approved physician health program or substance use disorder monitoring program at specified intervals. Reports shall include treatment prognosis and goals.

(v) The dentist shall submit to random observed drug screening as specified by the approved physician health program or substance use disorder monitoring program.

(vi) The dentist shall attend dentists' support groups ((~~and/or~~)) or twelve-step group meetings as specified by the contract.

(vii) The dentist shall comply with practice conditions and restrictions as defined by the contract.

(viii) The dentist shall sign a waiver allowing the approved physician health program or substance use disorder monitoring program to release information to the DQAC if the dentist does not comply with the requirements of this contract.

(c) The dentist is responsible for paying the costs of the physical and psychosocial evaluation, substance ((~~abuse~~)) use disorder or other potentially impairing health condition treatment, random drug screens, and therapeutic group sessions.

(3) Treatment and pretreatment records shall be confidential as provided by law.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-830, filed 10/10/95, effective 11/10/95.]