

## WSR 21-06-105

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed March 3, 2021, 8:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-124.

Title of Rule and Other Identifying Information: WAC 246-817-420 Specialty representation, the dental quality assurance commission (commission) is proposing rule amendments for specialty representation by licensed dentists.

Hearing Location(s): On April 30, 2021, at 8:35 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the dental quality assurance commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without physical meeting space, will be held instead. To access the meeting: Please join meeting from your computer, tablet, or smartphone. Please register for dental quality assurance commission business meeting April 30, 2021, 8:30 a.m. PDT at <https://attendee.gotowebinar.com/register/3729077660833645840>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 30, 2021.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 23, 2021.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 711, email [jennifer.santiago@doh.wa.gov](mailto:jennifer.santiago@doh.wa.gov), [dental@doh.wa.gov](mailto:dental@doh.wa.gov), by April 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments clarify dental specialty areas of practice and requirements for those who want to represent themselves as a specialist. The proposed rule offers two options to obtain recognized specialty designation including approval by the National Commission on Recognition of Dental Specialties and Certifying Boards or programs approved by the United States Department of Education (USDOE).

The proposed rule will also require a licensed dentist in a group practice that includes two or more dentists to identify themselves as a general dentist or a specialist. If the provider is a specialist, the proposed rule then requires the provider to include the area of their specialty. In addition, the proposed rule clarifies the licensed dentist must now provide qualifications of specialty to a patient if requested.

Reasons Supporting Proposal: The commission received a petition for rule making in July 2017 requesting the commission recognize American Board of Dental Specialties (ABDS) boards/areas of practice specialty in WAC 246-817-420. The current rule lists American Dental Association recognized specialties only. The commission recognizes there are additional specialty areas in dentistry that could be considered.

Rule amendments will provide the public with information to prevent fraud or deceiving advertisements related to the skills or method of practice of the dentist. Advertising of dental specialty provides the public with perception related to the education and skill of the dentist. Clear standards will assist in ensuring the public is not deceived through representation and advertising.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.32.665.

Statute Being Implemented: RCW 18.32.002.

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

Name of Proponent: Dental quality assurance commission, governmental.

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

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, dental@doh.wa.gov.

The proposed rule does impose more-than-minor costs on businesses.

1. Description of the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule: The dental quality assurance commission (commission) is proposing amendments to specialty representation for dentists. The proposed rule amendments clarify dental specialty areas of practice and requirements for those who want to represent themselves as a specialist. The proposed rule offers two options to obtain recognized specialty designation and provides requirements for representation of themselves.

The commission received a petition for rule making in July 2017 requesting the commission recognize ABDS boards/areas of practice specialty in WAC 246-817-420. The current rule lists American Dental Association recognized specialties only. The commission determined ABDS certifying criteria did not meet minimum education and training standards nationally recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards. Although the commission did not add ABDS to the proposed rule, the commission recognizes there are additional specialty areas in dentistry that could be considered. The proposed rule offers additional methods to obtain specialty training by completing a Commission on Dental Accreditation advanced educational program or program of any other accreditors recognized by the USDOE which is at least two years in length in a special interest area of dentistry not recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards.

To ensure proper representation, effective July 1, 2022, the proposed rule will also require a licensed dentist in a group practice that includes two or more dentists to identify themselves as a general dentist or a specialist. If the provider is a specialist, the proposed rule then requires the provider to include the area of their specialty. In addition, the proposed rule clarifies the licensed dentist must now provide qualifications of specialty to a patient if requested.

Rule amendments will provide the public with information to prevent fraud or deceiving advertisements related to the skills or method of practice of the dentist. Advertising of dental specialty provides the public with perception related to the education and skill of the dentist.

2. Businesses required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds [are]:

NAICS Code: 621210.

NAICS Business Description: Offices of Dentists.

Number of Businesses in WA: 3551.

Minor Cost Threshold (1% of Average Annual Payroll):

$[(1,212,689 * 1000) / 3551] * (0.01) = \$3,415.$

3. Analysis of the probable cost of compliance with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue: There are no probable costs associated with the proposed changes that expand the training and education options to obtain specialty recognition. There are costs to complete training and education to become a specialist in an area of dentist [dentistry]; however the training and education are not a direct cost related to this rule and a licensed dentist will represent themselves as a general dentist if they have not completed such training.

There is also no cost for licensed dentists to comply with this proposed rule if they practice in a solo practice.

There are costs associated to the proposed rule for all dentists who work with two or more dentists in one practice whether a specialist or general dentist. The proposed rule requires these dentists to represent themselves as a general dentist or a specialist and requires the dentist to identify themselves as such when advertising. The rule clarifies when a dentist is actually a specialist in the state of Washington. To assist with costs, the commission included a delayed implementation to this section of July 1, 2022.

Costs range depending on the type of advertising that must be replaced or changed. Business cards, prescription pads, stationary [stationery], signage, and web modifications were considered. Estimated costs were determined by surveying a small sample of commission members and online research. Estimated costs range from \$420 to \$7600.

Business Cards: \$20-\$100.

Stationary [Stationery]: \$0-\$100.

Envelops [Envelopes]: \$0-\$200.

Prescription Pads: \$50-\$100.

Door/Window Signage: \$0-\$100.

Web/Electronic Updates: \$200-\$1000.

Outdoor Property Signage: \$150-\$6000.

Totals: \$420 - \$7600.

Although there are costs associated with the proposed rule, compliance with the proposed rule will not cause businesses to lose sales or revenue.

4. Analysis of whether the proposed rule may impose more-than-minor costs on businesses in the industry: The commission has determined that the probably [probable] costs of the proposed rules, which range from \$420-\$7,600, for some practices may exceed [the] minor cost threshold as calculated above as \$3,415.

5. Determination of whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule: The proposed rule does not have a disproportionate impact on small businesses versus big businesses. A licensed dentist practicing in an independent practice setting will incur no costs versus a larger group or clinic.

Licensed dentists work in many settings: Independent practice, partnerships, group practices, community clinics, general dental clinics, and universities. There are 6,659 licensed dentists as of June 30, 2019. We are unable to determine how many licensed dentists work in each different practice setting. Dentists that are part of larger group practices will be able to share in the costs to comply with the proposed rule. Dentists that work for community clinics, general dental clinics, or universities will most likely incur no costs to comply with the proposed rules. As business models differ so does the expectation of who will cover the costs to comply with the proposed rule. Ultimately, the licensed dentist needs to ensure all requirements have been met everywhere they provide dentistry.

6. Disproportionate impact on small businesses: Although it has been determined that the proposed rule does not have a disproportionate impact on small businesses, the commission is delaying the implementation of the rules that relate to dentists in groups of two or more to identify themselves as general or specialist dentist[s] to July 1, 2022, to help reduce the initial impact of the proposed rule.

7. Description of how small businesses were involved in the development of the proposed rule: The commission worked closely with stakeholders and other constituents to minimize the burden of this rule. The commission offered stakeholders many opportunities to participate in rule-making meetings and to provide suggested rule changes and comments. During open public rules meetings, several versions of the rules were discussed. After careful consideration, some of the suggested changes were accepted while others were rejected. Mutual interests were identified and considered through deliberations.

The commission's public participation process encouraged interested individuals to: Identify burdensome areas of the existing rule and proposed rule; propose initial or draft rule changes; and refine those changes.

The proposed rule amendments went through several stages of edits, review, and discussion and then further refinement before arriving at the final proposal. The end result of this process are proposed changes that will provide increased rule clarity, guidance and will ultimately be less burdensome than the original rule.

8. Estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: The commission does not anticipate any jobs created or lost as a result of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 711, email [jennifer.santiago@doh.wa.gov](mailto:jennifer.santiago@doh.wa.gov), [www.doh.wa.gov/dental](http://www.doh.wa.gov/dental).

March 3, 2021

Aaron Stevens, D.M.D., Chairperson  
Dental Quality Assurance Commission

**OTS-2147.4**

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

**WAC 246-817-420 Specialty representation.** (~~((1) It shall be misleading, deceptive or improper conduct for a dentist to represent or imply that he/she is a specialist or use any of the terms to designate a dental specialty such as:~~

- ~~(a) Endodontist~~
- ~~(b) Oral or maxillofacial surgeon~~
- ~~(c) Oral pathologist~~
- ~~(d) Orthodontist~~
- ~~(e) Pediatric dentist~~
- ~~(f) Periodontist~~
- ~~(g) Prosthodontist~~
- ~~(h) Public health~~

~~or any derivation of these specialties unless he/she is entitled to such specialty designation under the guidelines or requirements for specialties approved by the Commission on Dental Accreditation and the Council on Dental Education of the American Dental Association, or such guidelines or requirements as subsequently amended and approved by the DQAC, or other such organization recognized by the DQAC.~~

~~(2) A dentist not currently entitled to such specialty designation shall not represent that his/her practice is limited to providing services in a specialty area without clearly disclosing in the representation that he/she is a general dentist. A specialist who represents services in areas other than his/her specialty is considered a general dentist.)~~ In order to protect the public from inherently misleading claims of specialty expertise by dentists who are not adequately trained and experienced, a licensed dentist must comply with the requirements in this section to avoid deception of the public with accurate advertising and representation.

(1) A licensed dentist has the legal authority to practice in all areas of dentistry as defined in RCW 18.32.020 and also the authority to confine their practice in areas within the scope of their education, training, and experience and in accordance with chapters 18.32 RCW and 246-817 WAC.

(2) A licensed dentist may advertise or represent themselves as a specialist if the dentist meets the standards listed in subsection (4) of this section.

(3) A licensed dentist who does not meet the standards listed in subsection (4) of this section is considered a general dentist. A general dentist is permitted to render specialty services but shall not advertise or represent themselves as a specialist in the areas listed in subsection (4) of this section.

(4) A licensed dentist must comply with one of the following requirements before advertising or representing themselves as a specialist in Washington:

(a) Successfully complete a Commission on Dental Accreditation postdoctoral education program at least two years in length, and is recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards in one of the following specialty areas:

- (i) Dental anesthesiology;
- (ii) Dental public health;
- (iii) Endodontics;
- (iv) Oral and maxillofacial pathology;
- (v) Oral and maxillofacial radiology;

- (vi) Oral and maxillofacial surgery;
- (vii) Oral medicine;
- (viii) Orofacial pain;
- (ix) Orthodontics and dentofacial orthopedics;
- (x) Pediatric dentistry;
- (xi) Periodontics; or
- (xii) Prosthodontics.

(b) Successfully complete a Commission on Dental Accreditation advanced educational program or program of any other accreditors recognized by the United States Department of Education which is at least two years in length in a special interest area of dentistry not listed in (a) of this subsection.

(5) It is misleading, deceptive, or unprofessional conduct for a licensed dentist to advertise or represent themselves by adopting or using any title to the public as a dental specialist, expert, board certified, or diplomate practicing in an area when they have not successfully completed the requirements specified for the dental specialty listed in subsection (4) of this section.

(a) Effective July 1, 2022, a licensed dentist in a group practice that includes two or more dentists must be identified as a general dentist or a specialist as listed in subsection (4) of this section.

(b) A licensed dentist in a group practice who meets the standards listed in subsection (4) of this section shall include the area of their specialty.

(c) Qualifications of any licensed dentist must be made available to the public upon request.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-420, filed 10/10/95, effective 11/10/95.]