

## NOTICE OF INTENT

### Department of Health and Hospitals Board of Dentistry

Teledentistry;  
Authorized Duties  
(LAC 46:XXXIII.203 and .701)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760 (8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to promulgate LAC 45:XXXIII.203 and amend LAC 46:XXXIII.701.

The Louisiana State Board of Dentistry is promulgating LAC 46:XXXIII.203 to allow access for care to be more readily available to the citizens of the state of Louisiana. This rule is being promulgated to allow Louisiana dentists to perform teledentistry with the standard of care remaining the same.

The Louisiana State Board of Dentistry is amending LAC 46:XXXIII.701 to address access to care issues. This rule is being amended to allow hygienists, in very restricted circumstances, to perform radiographs, oral prophylaxis, sealants and/or fluoride varnish only under the supervision of a dentist via teledentistry.

### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS Part XXXIII. Dental Health Professions Chapter 2. Teledentistry

#### **§203. Teledentistry**

- 1. Teledentistry is defined as the use of medical or dental information exchanged from one site to another via electronic communications to provide dental treatment or diagnosis, but does not include email or telephone exchanges between a provider and a patient with whom an in-person provider-patient relationship has been established.**
- 2. Treatment or diagnosis of a patient via teledentistry is considered to occur at the location of the patient at the time of the treatment or diagnosis.**
- 3. Treatment or diagnosis via teledentistry may be provided to patients in Louisiana only by a dentist who holds a license issued by the Louisiana State Board of Dentistry. The Louisiana licensed dentist need not be in Louisiana while providing the teledentistry services.**
- 4. An exception to the requirement that the provider of teledentistry services to a patient in Louisiana hold a Louisiana license is when a Louisiana licensed dentist with an in-person relationship with a patient consults an expert with a valid dental license in another United States jurisdiction for advice regarding the patient's treatment or diagnosis; in this case the expert consulted need not have a Louisiana license.**

5. The standard of care applicable to a provider of teledentistry services, including obtaining informed consent and record documentation, is no different from the standard of care required in traditional dentistry.
6. Direct supervision by a dentist of staff performing dental related tasks may not be done via teledentistry except as otherwise provided by §701 of these rules.
7. Controlled substances may not be prescribed via teledentistry except in emergency situations where the dentist determines:
  - a. That immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user, and
  - b. That no appropriate alternate treatment is available, including administration of a drug that is not a controlled substance.

In an emergency situation the prescription for a controlled substance must be limited to the amount adequate to treat the patient during the emergency period.

8. The provider of teledentistry services must provide his identity to the patient, his location at the time of the service, the location of the patient records produced as a result of the treatment, and information on how the patient can obtain copies of the records produced as a result of the treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR (\_\_\_\_\_),

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**  
**Part XXXIII. Dental Health Professions**  
**Chapter 7. Dental Hygienists**

**§701. Authorized Duties**

A. – G.5. ...

H. Notwithstanding the above sections, a dental hygienist licensed in Louisiana may perform radiographs, oral prophylaxis, place sealants and place fluoride varnish without a Louisiana licensed dentist being physically present in the clinic if all of the following conditions are met:

1. The dental hygienist is employed by one of the following entities and is performing the radiographs, oral prophylaxis, sealants and/or the fluoride varnish as part of his employment with that entity:

a. \_\_\_\_\_ A government agency.

b. \_\_\_\_\_ A nonprofit entity that meets the statutory, regulatory and program requirements for grantees supported under Section 330 of the Public Health Service Act (42 U.S.C. §254b or its successor).

c. \_\_\_\_\_ A nonprofit entity providing the radiographs, oral prophylaxis, sealants and/or the fluoride varnish which receives no compensation for the provided service.

2. The radiographs, oral prophylaxis, sealants and/or the fluoride varnish are done in one of the following settings:

a. A public elementary or middle school in which 50% or more of students are economically disadvantaged or meeting with Community Eligibility Provision (CEP) requirements under the LA Department of Education and is in a parish with a parish-wide geographic Dental Health Professional Shortage Area (HPSA) scores above 15.

b. A fixed clinic of a nonprofit entity that meets the statutory, regulatory, and program requirements for grantees supported under Section 330 of the Public Health Service Act (42 U.S.C. §254b or its successor) that does not have a dentist employed by it and is in a parish with a parish-wide geographic Dental Health Professional Shortage Area (HPSA) scores above 15.

3. A Louisiana licensed dentist is providing direct supervision via teledentistry and reviews exams being done by the hygienist and images of the patient's oral cavity via the teledentistry connection. Unless restricted by bandwidth considerations, the teledentistry must be contemporaneous (synchronist). If bandwidth prohibits contemporaneous viewing by the dentist, non-contemporaneous (asynchronist) viewing of the patient may be employed, but the dentist must review the exam before the patient is dismissed from the clinic on the day of treatment.

4. Oral health education involving the benefits of sealants, fluoride varnish, and fluoridated water is provided to the patient or patient's representative.

5. All patients who are deemed to need additional treatment are referred to a dentist and follow up is done to confirm that the patient has obtained treatment and, if treatment has not been obtained, to re-urge the patient or his representatives to obtain treatment.

6. The patient or his representatives must give informed consent to the use of teledentistry in the supervision of the dental hygienist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 15:965 (November 1989), LR 19:206 (February 1993), LR 22:22 (January 1996), LR 22:1217 (December 1996), LR 24:1116 (June 1998), LR 27:1892 (November 2001), LR 32:2056 (November 2006), LR 37:590 (February 2011), LR 37:1406 (May 2011), amended by the Department of Health, Board of Dentistry, LR 43:48 (January 2017), LR 44:2007 (November 2018), LR

### **Family Impact Statement**

There will be no family impact in regard to issues set forth in R.S. 49:972.

### **Poverty Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973. In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

### **Small Business Statement**

The proposed rulemaking will not have any foreseeable impact on small businesses.

### **Provider Impact Statement**

The proposed rulemaking should not have any know or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect of the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

### **Public Comment**

Interested persons may submit written comments on these proposed rule changes to Arthur Hickham, Jr., Executive Director, Louisiana State Board of Dentistry, P.O. Box 5256, Baton Rouge, Louisiana, 70821. Written comments must be submitted to and received by the Board within 20 days of the date of the publication of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the Board within 20 days of the date of the publication of this notice.

### **Public Hearing**

A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be in writing and received by the board within 20 days of the date of the publication of this notice.

Arthur Hickham, Jr.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLES: Chapter 2. Teledentistry; and  
Chapter 7. Dental Hygienists**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will result in a one-time SGR expenditure of \$500 in FY 21 for the LA State Board of Dentistry (LSBD) to publish the notice of intent and proposed rule change in the Louisiana Register. The proposed rule change will not affect expenditures of local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed promulgated rule for §203 will directly affect Louisiana dentists because this rule would allow Louisiana dentists to perform dentistry via teledentistry. This promulgated rule will also make it clear that the standard of care remains the same. However, one exception is that a Louisiana licensed dentist, who is treating a patient in person can consult with a non-Louisiana licensed expert via teledentistry, if the consultant has a U.S. dental license.

The proposed rule change to §701 will directly affect hygienists, in very restricted circumstances, to perform radiographs, prophys, sealants and/or fluoride varnish under the supervision of a dentist via teledentistry. However, in order for a hygienist to be able to do these things under teledentistry supervision, the hygienist would have to be employed by an FQHC, a governmental agency, or a non-profit which is not receiving compensation for the work performed. If the hygienist is employed by one of these entities, then he or she would be able to perform the four listed procedures under teledentistry supervision, but only in very limited places:

1. A public elementary or middle school in which 50% or more of the students are economically disadvantaged and is in a parish with a Health Professional Shortage Area (HPSA) score above 15 (this would exclude all urban parishes in this state; thus, no schools in any urban area would qualify to allow hygienists to work under teledentistry supervision).
2. A fixed clinic of an FQHC that does not have a dentist and is in a parish with a HPSA score above 15. Again, this would exclude any FQHCs in urban areas. The dentist supervising via teledentistry would be required to view images of the oral cavity before the patient is discharged.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Arthur Hickham, Jr.  
Executive Director