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HOUSE BILL 261

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Rebecca Dow and Javier Martínez

AN ACT

RELATING TO OCCUPATIONAL LICENSING; AUTHORIZING THE NEW MEXICO BOARD OF DENTAL HEALTH CARE TO ISSUE A NEW MEXICO DENTISTRY LICENSE TO AN APPLICANT WHO HOLDS A LICENSE, OR WHO HAS OBTAINED EDUCATION OR TRAINING, FROM ANOTHER COUNTRY THAT HAS LICENSURE, EDUCATION AND TRAINING REQUIREMENTS THAT ARE AT LEAST EQUIVALENT TO THOSE OF NEW MEXICO.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-5A-3 NMSA 1978 (being Laws 1994, Chapter 55, Section 3, as amended) is amended to read:

"61-5A-3. DEFINITIONS.--As used in the Dental Health Care Act:

A. "assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to

1 determine the cause or nature of disease or its treatment;

2 B. "board" means the New Mexico board of dental
3 health care;

4 C. "certified dental assistant" means an individual
5 certified by the dental assisting national board;

6 D. "collaborative dental hygiene practice" means a
7 New Mexico licensed dental hygienist practicing according to
8 Subsections D through G of Section 61-5A-4 NMSA 1978;

9 E. "committee" means the New Mexico dental
10 hygienists committee;

11 F. "community dental health coordinator" means a
12 dental assistant, a dental hygienist or other trained personnel
13 certified by the board as a community dental health coordinator
14 to provide educational, preventive and limited palliative care
15 and assessment services working collaboratively under the
16 general supervision of a licensed dentist in settings other
17 than traditional dental offices and clinics;

18 G. "consulting dentist" means a dentist who has
19 entered into an approved agreement to provide consultation and
20 create protocols with a collaborating dental hygienist and,
21 when required, to provide diagnosis and authorization for
22 services, in accordance with the rules of the board and the
23 committee;

24 H. "dental hygiene-focused assessment" means the
25 documentation of existing oral and relevant system conditions

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1 and the identification of potential oral disease to develop,
2 communicate, implement and evaluate a plan of oral hygiene care
3 and treatment;

4 I. "dental assistant certified in expanded
5 functions" means a dental assistant who meets specific
6 qualifications set forth by rule of the board;

7 J. "dental hygienist" means an individual who has
8 graduated and received a degree from a dental hygiene
9 educational program that is accredited by the commission on
10 dental accreditation, that provides a minimum of two academic
11 years of dental hygiene curriculum and that is an institution
12 of higher education; and "dental hygienist" means, except as
13 the context otherwise requires, an individual who holds a
14 license to practice dental hygiene in New Mexico;

15 K. "dental laboratory" means any place where dental
16 restorative, prosthetic, cosmetic and therapeutic devices or
17 orthodontic appliances are fabricated, altered or repaired by
18 one or more persons under the orders and authorization of a
19 dentist;

20 L. "dental technician" means an individual, other
21 than a licensed dentist, who fabricates, alters, repairs or
22 assists in the fabrication, alteration or repair of dental
23 restorative, prosthetic, cosmetic and therapeutic devices or
24 orthodontic appliances under the orders and authorization of a
25 dentist;

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1 M. "dental therapist" means an individual who:
2 (1) is licensed as a dental hygienist;
3 (2) has provided, in accordance with board
4 rules, evidence to the board that the individual has graduated
5 and received a degree from a dental therapy education program
6 that is accredited by the commission on dental accreditation;
7 and

8 (3) except as the context otherwise requires,
9 is licensed to practice dental therapy in the state;

10 N. "dental therapy post-graduate clinical
11 experience" means advanced training in patient management and
12 technical competency:

13 (1) that is approved by the board, based on
14 educational and supervisory criteria developed by the board and
15 established by board rule;

16 (2) that is sanctioned by a regionally
17 accredited educational institution with a program accredited by
18 the commission on dental accreditation;

19 (3) that consists of two thousand hours of
20 advanced training or, if the dental therapy educational program
21 graduate has five years of experience as a dental hygienist,
22 one thousand five hundred hours of advanced training; and

23 (4) for which the dental therapist may have
24 been compensated;

25 O. "dental therapy practice agreement" means a

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1 contract between a supervising dentist and a dental therapist
2 that outlines the parameters of care, level of supervision and
3 protocols to be followed while performing dental therapy
4 procedures on patients under the supervising dentist's and
5 dental therapist's care;

6 P. "dentist" means an individual who has graduated
7 and received a degree from a school of dentistry that is
8 accredited by the commission on dental accreditation or from a
9 school of dentistry located outside the United States that the
10 board has determined provides an education that is at least
11 equivalent to the education provided by a school accredited by
12 the commission on dental accreditation and, except as the
13 context otherwise requires, who holds a license to practice
14 dentistry in New Mexico;

15 Q. "direct supervision" means the process under
16 which an act is performed when a dentist licensed pursuant to
17 the Dental Health Care Act:

18 (1) is physically present throughout the
19 performance of the act;

20 (2) orders, controls and accepts full
21 professional responsibility for the act performed; and

22 (3) evaluates and approves the procedure
23 performed before the patient departs the care setting;

24 R. "expanded-function dental auxiliary" means a
25 dental assistant, dental hygienist or other dental practitioner

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1 that has received education beyond that required for licensure
2 or certification in that individual's scope of practice and
3 that has been certified by the board as an expanded-function
4 dental auxiliary who works under the direct supervision of a
5 dentist;

6 S. "federally qualified health center" means a
7 health facility that the United States department of health and
8 human services has deemed to qualify for federal funds as a
9 federally qualified health center;

10 T. "federally qualified health center look-alike
11 facility" means a health facility that the federal centers for
12 medicare and medicaid services certifies as a federally
13 qualified health center look-alike facility;

14 U. "general supervision" means the authorization by
15 a dentist of the procedures to be used by a dental therapist,
16 community dental health coordinator, dental hygienist, dental
17 assistant or dental student and the execution of the procedures
18 in accordance with a dentist's diagnosis and treatment plan at
19 a time the dentist is not physically present and in facilities
20 as designated by rule of the board;

21 V. "indirect supervision" means that a dentist, or
22 in certain settings, a dental therapist, dental hygienist or
23 dental assistant certified in expanded functions, is present in
24 the treatment facility while authorized treatments are being
25 performed by a dental therapist, dental hygienist, dental

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1 assistant or dental student;

2 W. "long-term care facility" means a nursing home
3 licensed by the department of health to provide intermediate or
4 skilled nursing care;

5 X. "non-dentist owner" means an individual not
6 licensed as a dentist in New Mexico or a corporate entity not
7 owned by a majority interest of a New Mexico licensed dentist
8 that employs or contracts with a dentist or dental hygienist to
9 provide dental or dental hygiene services;

10 Y. "nonprofit community dental organization" means
11 a community-supported entity that:

12 (1) provides clinical dental services
13 primarily to low-income patients or medicaid recipients; and

14 (2) has demonstrated to the taxation and
15 revenue department that it has been granted exemption from the
16 federal income tax by the United States commissioner of
17 internal revenue as an organization described in Section
18 501(c)(3) of the United States Internal Revenue Code of 1986,
19 as amended or renumbered;

20 Z. "palliative procedures" means nonsurgical,
21 reversible procedures that are meant to alleviate pain and
22 stabilize acute or emergent problems; and

23 AA. "teledentistry" means a dentist's use of health
24 information technology in real time to provide limited
25 diagnostic and treatment planning services in cooperation with

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1 another dentist, a dental therapist, a dental hygienist, a
2 community dental health coordinator or a student enrolled in a
3 program of study to become a dental assistant, dental
4 hygienist, dental therapist or dentist."

5 SECTION 2. Section 61-5A-12 NMSA 1978 (being Laws 1994,
6 Chapter 55, Section 12, as amended) is amended to read:

7 "61-5A-12. DENTISTS--REQUIREMENTS FOR LICENSURE--
8 SPECIALTY LICENSE.--

9 A. All applicants for licensure as a dentist shall
10 have graduated and received a degree from a school of dentistry
11 that is accredited by the commission on dental accreditation or
12 from a school of dentistry located outside the United States
13 that the board has determined provides an education that is at
14 least equivalent to the education provided by a school
15 accredited by the commission on dental accreditation and shall
16 have passed the written portion of the dental examination
17 administered by the joint commission on national dental
18 examinations of the American dental association or, if the test
19 is not available, another written examination determined by the
20 board.

21 B. Applicants for a general license to practice
22 dentistry by examination shall be required, in addition to the
23 requirements set forth in Subsection A of this section, to pass
24 a test covering the laws and rules for the practice of
25 dentistry in New Mexico. Written examinations shall be

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1 supplemented by the board or its agents by administering to
2 each applicant a practical or clinical examination that
3 reasonably tests the applicant's qualifications to practice
4 general dentistry. These examinations shall include
5 examinations offered by the central regional dental testing
6 service, [~~northeast regional board of dental examiners~~]
7 commission on dental competency assessments, southern regional
8 testing agency or western regional examining board or any other
9 comparable practical clinical examination the board approves;
10 provided, however, that the board may disapprove any
11 examination after it considers compelling evidence to support
12 disapproval. Upon an applicant passing the written and
13 clinical examinations and payment in advance of the necessary
14 fees, the board shall issue a license to practice dentistry.

15 C. The board may issue a general license to
16 practice dentistry, by credentials, without a practical or
17 clinical examination to an applicant who is duly licensed by a
18 clinical examination as a dentist under the laws of another
19 state or territory of the United States or another country that
20 the board has determined has regulatory requirements at least
21 equivalent to those of New Mexico; provided that license is
22 active and that all dental licenses that individual possesses
23 have been in good standing for five years prior to application.
24 The credentials must show that no dental board actions have
25 been taken during the five years prior to application; that no

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1 proceedings are pending in any states or countries in which the
2 applicant has had a license in the five years prior to
3 application; and that a review of public records, the national
4 practitioner data bank or other nationally recognized data
5 resources that record actions against a dentist in the United
6 States or other countries does not reveal any activities or
7 unacquitted civil or criminal charges that could reasonably be
8 construed to constitute evidence of danger to patients,
9 including acts of moral turpitude.

10 D. The board may issue a general license to
11 practice dentistry by credentials to an applicant who meets the
12 requirements, including payment of appropriate fees and the
13 passing of an examination covering the laws and rules of the
14 practice of dentistry in New Mexico, of the Dental Health Care
15 Act and rules promulgated pursuant to that act, and who:

16 (1) has maintained a uniform service practice
17 in the United States military or public health service for
18 three years immediately preceding the application; or

19 (2) is duly licensed by examination as a
20 dentist pursuant to the laws of another state or territory of
21 the United States or another country that the board has
22 determined has regulatory requirements at least equivalent to
23 those of New Mexico.

24 E. The board may issue a specialty license by
25 examination to an applicant who has passed a clinical and

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1 written examination given by the board or its examining agents
2 that covers the applicant's specialty. The applicant shall
3 have a postgraduate degree or certificate from an accredited
4 dental college, school of dentistry of a university or other
5 residency program that is accredited by the commission on
6 dental accreditation or a dental college, school of dentistry
7 of a university or other residency program located outside the
8 United States that the board has determined provides an
9 education that is at least equivalent to the education provided
10 by a school accredited by the commission on dental
11 accreditation in one of the specialty areas of dentistry
12 recognized by the American dental association. The applicant
13 shall also meet all other requirements as established by rules
14 of the board, which shall include an examination covering the
15 laws and rules of the practice of dentistry in New Mexico. A
16 specialty license limits the licensee to practice only in that
17 specialty area.

18 F. The board may issue a specialty license, by
19 credentials, without a practical or clinical examination to an
20 applicant who is duly licensed by a clinical examination as a
21 dentist under the laws of another state or territory of the
22 United States or another country that the board has determined
23 has a clinical examination at least equivalent to that of New
24 Mexico and who has a postgraduate degree or certificate from an
25 accredited dental college, school of dentistry of a university

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1 or other residency program that is accredited by the commission
2 on dental accreditation or a dental college, school of
3 dentistry of a university or other residency program located
4 outside the United States that the board has determined
5 provides an education that is at least equivalent to the
6 education provided by a school accredited by the commission on
7 dental accreditation in one of the specialty areas of dentistry
8 recognized by the American dental association; provided that
9 license is active and that all dental licenses that individual
10 possesses have been in good standing for five years prior to
11 application. The credentials must show that no dental board
12 actions have been taken during the five years prior to
13 application; that no proceedings are pending in any states or
14 countries in which the applicant has had a license in the five
15 years prior to application; and that a review of public
16 records, the national practitioner data bank or other
17 nationally recognized data resources that record actions
18 against a dentist in the United States or other countries does
19 not reveal any activities or unacquitted civil or criminal
20 charges that could reasonably be construed to constitute
21 evidence of danger to patients, including acts of moral
22 turpitude. The applicant shall also meet all other
23 qualifications as deemed necessary by rules of the board, which
24 shall include an examination covering the laws and rules of the
25 practice of dentistry in New Mexico. A specialty license

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1 limits the licensee to practice only in that specialty area."

2 SECTION 3. Section 61-5A-14 NMSA 1978 (being Laws 1994,
3 Chapter 55, Section 14, as amended) is amended to read:

4 "61-5A-14. TEMPORARY LICENSURE.--The board or the
5 committee may issue a temporary license to practice dentistry
6 or dental hygiene to ~~[any]~~ an applicant who is licensed to
7 practice dentistry or dental hygiene in another state or
8 territory of the United States or who is licensed to practice
9 dentistry in another country that the board has determined has
10 regulatory requirements at least equivalent to those of New
11 Mexico and who is otherwise qualified to practice dentistry or
12 dental hygiene in this state. The following provisions shall
13 apply:

14 A. the applicant shall hold a valid license in good
15 standing in another state or territory of the United States or
16 in another country that the board has determined has regulatory
17 requirements at least equivalent to those of New Mexico;

18 B. the applicant shall practice dentistry or dental
19 hygiene under the sponsorship of or in association with a
20 licensed New Mexico dentist or dental hygienist;

21 C. the temporary license may be issued for those
22 activities as stipulated by the board or committee in the rules
23 of the board. It may be issued upon written application of the
24 applicant when accompanied by such proof of qualifications as
25 the secretary-treasurer of the board or committee, in ~~[his]~~ the

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1 secretary-treasurer's discretion, may require. Temporary
2 licensees shall engage in only those activities specified on
3 the temporary license for the time designated, and the
4 temporary license shall identify the licensed New Mexico
5 dentist or dental hygienist who will sponsor or associate with
6 the applicant during the time the applicant practices dentistry
7 or dental hygiene in New Mexico;

8 D. the sponsoring or associating dentist or dental
9 hygienist shall submit an affidavit attesting to the
10 qualifications of the applicant and the activities the
11 applicant will perform;

12 E. the temporary license shall be issued for a
13 period not to exceed twelve months and may be renewed upon
14 application and payment of required fees;

15 F. the application for a temporary license under
16 this section shall be accompanied by a license fee; and

17 G. the temporary licensee shall be required to
18 comply with the Dental Health Care Act and all rules
19 promulgated pursuant thereto."

20 SECTION 4. Section 61-5A-14.1 NMSA 1978 (being Laws 2011,
21 Chapter 113, Section 10) is amended to read:

22 "61-5A-14.1. PUBLIC-SERVICE LICENSURE.--The board or the
23 committee may issue a temporary public-service license to
24 practice dentistry or dental hygiene to an applicant who is
25 licensed to practice dentistry or dental hygiene in another

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1 state or territory of the United States or who is licensed to
2 practice dentistry in another country that the board has
3 determined has regulatory requirements at least equivalent to
4 those of New Mexico or who is enrolled as a dental resident in
5 a residency program in this state and the commission on dental
6 accreditation has accredited that program. That applicant
7 shall be otherwise qualified to practice dentistry or dental
8 hygiene in this state. The following provisions shall apply:

9 A. the applicant for public-service licensure shall
10 hold a valid license in good standing in another state or
11 territory of the United States or in another country that the
12 board has determined has regulatory requirements at least
13 equivalent to those of New Mexico or be enrolled as a dental
14 resident in a residency program in the state that the
15 commission on dental accreditation has accredited;

16 B. a temporary public-service license issued to a
17 dental residency student who has not taken and passed a
18 clinical examination accepted by the board shall not be renewed
19 after the student has completed the residency program;

20 C. the applicant shall practice dentistry or dental
21 hygiene under the sponsorship of or in association with a
22 licensed New Mexico dentist or dental hygienist;

23 D. the public-service license may be issued for
24 those activities as stipulated by the board or committee in the
25 rules of the board. It may be issued upon written application

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1 of the applicant when accompanied by such proof of
2 qualifications as the secretary-treasurer of the board or
3 committee, in the secretary-treasurer's discretion, may
4 require. Public-service licensees shall engage in only those
5 activities specified on the public-service license for the time
6 designated, and the public-service license shall identify the
7 licensed New Mexico dentist or dental hygienist who will
8 sponsor or associate with the applicant during the time the
9 applicant practices dentistry or dental hygiene in New Mexico;

10 E. the sponsoring or associating dentist or dental
11 hygienist shall submit an affidavit attesting to the
12 qualifications of the applicant and the activities the
13 applicant will perform;

14 F. the public-service license shall be issued for a
15 period not to exceed twelve months and may be renewed upon
16 application and payment of required fees;

17 G. the application for a public-service license
18 under this section shall be accompanied by a license fee;

19 H. the public-service licensee shall be required to
20 comply with the Dental Health Care Act and all rules
21 promulgated pursuant to that act; and

22 I. a dentist or dental hygienist providing dental
23 care services to a charitable dental care project may provide
24 dental care pursuant to a presumptive temporary public-service
25 license valid for a period of no longer than three days. The

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1 dentist or dental hygienist shall be otherwise subject to the
2 provisions of this section and board rules governing public-
3 service licensure. This presumptive temporary public-service
4 license is only valid when:

5 (1) the dentist or dental hygienist receives
6 no compensation;

7 (2) the project is sponsored by an entity that
8 meets the board's definition of "entity" and that the board has
9 approved to undertake the charitable project;

10 (3) the dental care is performed within the
11 limits of the license that the dentist or dental hygienist
12 holds in another jurisdiction;

13 (4) upon request, the out-of-state or out-of-
14 country dentist or out-of-state dental hygienist produces any
15 document necessary to verify the dentist's or dental
16 hygienist's credentials; and

17 (5) the out-of-state or out-of-country dentist
18 or out-of-state dental hygienist works under the indirect
19 supervision of a dentist or dental hygienist licensed in this
20 state."

21 SECTION 5. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2020.