



**Title 16, Division 11, Article 4, Sections 1116 & 1116.5  
Dental Hygiene Board of California**

**NOTICE OF PROPOSED RULEMAKING CONCERNING Mobile Dental Hygiene Clinics; Issuance of Approval; and Registered Dental Hygienist in Alternative Practice, Physical Facility Registration.**

**NOTICE IS HEREBY GIVEN** that the Dental Hygiene Board of California (Board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office on **Tuesday, March 19, 2024, by 5:00 p.m.**

The Board has not scheduled a public hearing on this proposed action. The Board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

### **AUTHORITY AND REFERENCE**

Pursuant to the authority vested by Business and Professions Code (BPC) sections 1905, 1906, 1926.1, 1926.2, 1926.3, 1926.4, and 1944, and to implement, interpret or make specific BPC sections 125.6, 137, 138, 142, 680, 1922, 1925, 1926, 1926.1, 1926.2, 1926.3, 1926.4, 1955, and 1962, the Board is considering changes to Division 11 of Title 16 of the California Code of Regulations as follows:

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Senate Bill 1202 (Leno, Chapter 331, Statutes of 2012) (SB 1202) added BPC sections 1926.1 and 1926.2 to the Code, authorizing RDHAPs to operate mobile dental hygiene clinics (MDHCs). In addition, SB 1202 created BPC sections 1944(g) and (h) which state: “(g) The fee for registration of a mobile dental hygiene unit shall not exceed one hundred fifty dollars (\$150);” and “(h) The biennial renewal fee for a mobile dental hygiene unit shall not exceed two hundred and fifty dollars (\$250).”

Additionally, SB 1202 added BPC sections 1926.3, and 1926.4, requiring RDHAPs to register their place or places of practice with the executive officer and to receive permission from the Board, subject to a biennial renewal fee, to have an additional place of practice. SB 1202 also created BPC sections 1944(i) and (j) which state: “(i) The fee for an additional office permit shall not exceed two hundred fifty dollars (\$250); and “(j) The biennial renewal fee for an additional office as described in Section 1926.4 shall not exceed two hundred fifty dollars (\$250).”

During the initial regulatory process, the Board determined there was a lack of authority to conduct reviews and inspections of MDHCs and physical facilities to ensure the health and safety of services provided to consumers at MDHCs and physical facilities. To address this, Senate Bill 534 (Jones, Chapter 491, Statutes of 2021) (SB534) granted the Board authority for announced and unannounced reviews and inspections to ensure the health and safety of services provided at MDHCs and physical facilities, as well as to ensure continued compliance with all laws and regulations applicable to MDHCs and physical facilities.

This proposal implements sections 1926.1, 1926.2, 1926.3, and 1926.4 by: (1) establishing a process by which an RDHAP may apply to register a MDHC or physical facility; (2) establishing minimum operating requirements for MDHCs and physical facilities; (3) requiring RDHAPs to provide the Board access to MDHCs and physical facilities to determine compliance with all laws and regulations applicable to MDHCs and physical facilities; (4) establishing a registration renewal process for MDHCs and physical facilities; and (5) establishing a process for the RDHAP to notify the Board and active patients of record of the cessation of operation of a MDHC or physical facility and for the preservation of patient care records.

The Board approved the proposed languages, associated forms incorporated by reference, established fees by resolution at the Board’s November 19, 2022, Full Board teleconference, and delegated authority to the Board’s Executive Officer to make any technical, non-substantive changes, if necessary.

**Anticipated Benefits of the Proposed Regulation:**

The anticipated benefits of the proposed regulation are:

- First, establishing a process by which an RDHAP may apply to register and renew registration of an MDHC or physical facility promotes a fair, equal, and clear process for RDHAPs to apply for registration and renewal from the Board.
- Second, establishing minimum operating requirements for MDHCs and physical facilities ensures MDHCs and physical facilities operate at established, safe levels, ensuring clean and safe facilities for treatment of the RDHAP’s patients.
- Third, requiring RDHAPs to provide the Board access to MDHCs and physical facilities will promote RDHAPs’ compliance and cooperation with Board reviews of MDHC and physical facility requirements. This promotes safety of the public

because it incentivizes RDHAPs to follow all laws, regulations, and standards applicable to MDHCs and physical facilities.

- Fourth, establishing a process for the RDHAP to notify the Board and active patients of record of the cessation of operation of an MDHC or physical facility ensures the patients are given adequate notice of the closure, allowing patients adequate time to find another provider to continue their care, as well as provides adequate time to access to their records for transfer to the new provider. This enhances patient safety by ensuring the patient's records are available for the patient's new provider and ensures continuity of care for the RDHAPs' patients.

### **Determination of Inconsistency and Incompatibility with Existing State Regulations:**

During the process of developing this regulation, the Board has conducted a search of any similar regulations on this topic and has concluded the proposed regulatory action is not inconsistent or incompatible with existing state regulations.

### **Documents Incorporated by Reference:**

- Application for Registration of a Mobile Dental Hygiene Clinic (MDHC) [MDHC-01 (New 11/2022).]
- Registered Dental Hygienists in Alternative Practice: Registration of Physical Facilities" [form DHBC HAPR-01 New (11/2022).]

### **DISCLOSURES REGARDING PROPOSED ACTION**

The DHBC has made the following initial determinations:

### **Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:**

The Board anticipates modest participation with initial MDHC applications ranging from 2 to 4 per year and initial physical facility applications (first and second locations) ranging from 3 to 6 per year, which would result in workload costs and revenues as follows:

**Registration (costs):** The Board estimates workload and costs ranging from \$1,647 to \$12,823 per year and up to \$63,107 over a ten-year period.

Additionally, the Board will incur one-time workload and costs of approximately \$2,000 to update the current MDHC and physical facility registration forms and \$35,000 to post them on the Board's website.

**Compliance Inspection (costs):** The Board estimates workload and costs ranging from \$8,940 to 21,976 per year and up to \$140,992 over a ten-year period.

**Enforcement-Related (costs):** In the event a registrant is determined to be in non-compliance, the Board may issue a citation and fine. The total workload and costs, including an appeal of the citation is estimated to be approximately \$10,000 per issuance. The Board does not have a total fiscal estimate of enforcement-related costs at this time.

Any workload and costs are anticipated to be absorbed within existing resources.

**Registration Fee (revenues):** The proposed regulations are anticipated to generate initial and renewal registration fee revenues ranging from \$360 to \$3,480 per year and up to \$17,660 over a ten-year period.

**Enforcement-Related (revenues):** In the event, a registrant is determined to be out-of-compliance with the proposed regulations, the Board is authorized to issue a citation and fine of up to \$5,000. Because the number of future violations of non-compliance is unknown, the Board does not have a total revenue estimate related to citations and fines at this time.

The regulations do not result in costs or savings in federal funding to the state.

**Nondiscretionary Costs/Savings to Local Agencies:** None.

**Local Mandate:** None.

**Cost to any Local Agency or School District for which Government Code Sections 17500 through 17630 Require Reimbursement:** None.

### **Business Impact**

This regulation will have an economic impact on businesses. However, there will not be a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

The initial physical facility registration and portable equipment does not impose any regulatory fee. Again, this is necessary because the RDHAP category was created by the Board to provide dental hygiene care to the public in DHCAI dental health professional shortage areas, thereby increasing access to care for Californians.

The proposed regulations impose an initial MDHC registration fee of \$100 and a \$160 biennial renewal registration fee, as well as an initial registration fee of \$160 for each additional (second) physical facility registration and a \$250 biennial renewal registration fee.

The Board estimates MDHC and physical facility registration fee costs ranging from \$360 to \$3,480 per year and up to \$17,660 over a ten-year period.

The proposed regulatory language defines parameters for the Board to conduct inspections of MDHCs and physical facilities to ensure compliance. In the event, a registrant is determined to be out-of-compliance with the proposed regulations, the Board is authorized to issue a citation and fine of up to \$5,000. Because the number of future violations of non-compliance is unknown, the Board does not have a total cost estimate related to citations and fines at this time.

Any workload related to reporting requirements are anticipated to be incurred within normal business operations and not result in additional costs.

**Cost Impacts on a Representative Private Person or Businesses:**

This regulation will have a minor economic impact on private individuals. This initial determination is based on the following facts:

Initial physical facility registration and portable equipment does not impose any regulatory fee. The impact would be the time for the private individual to fill out the form and gather documentation for the application.

Additionally, the Board has determined this regulatory action may have a minor economic impact on private individuals applying for an additional physical facility registrations or MDHC registration.

This regulation will have a minor economic impact on private businesses. This initial determination is based on the following facts:

The proposed regulations impose an initial MDHC registration fee of \$100 and a \$160 biennial renewal registration fee, as well as an initial registration fee of \$160 for each additional (second) physical facility registration and a \$250 biennial renewal registration fee.

The Board estimates MDHC and physical facility registration fee costs ranging from \$360 to \$3,480 per year and up to \$17,660 over a ten-year period.

The proposed regulatory language defines parameters for the Board to conduct inspections of MDHCs and physical facilities to ensure compliance. In the event, a registrant is determined to be out-of-compliance with the proposed regulations, the Board is authorized to issue a citation and fine of up to \$5,000. Because the number of future violations of non-compliance is unknown, the Board does not have a total cost estimate related to citations and fines at this time.

**Significant Effect on Housing Costs:** None.

**Business Reporting Requirement:**

The regulation will require businesses to file a report with the Board. The change in regulatory language will require the RDHAP to provide documentation to the Board

[forms MDHC-01 (New 11/2022) and DHBC HAPR-01 New (11/2022)] (1) upon application for MDHC and physical facility registrations; (2) at every biennial registration renewal; and (3) at any time there are any changes to the MDHC and/or physical facility registrations which require a report per the regulations. It is necessary for the health, safety, and welfare of the people of the state that the regulation apply to businesses. Any workload related to reporting requirements related to this proposal are anticipated to be incurred within normal business operations and not anticipated to result in additional costs.

### **Results of the Economic Impact Analysis/Assessment:**

Impact on Jobs/Businesses: The Board has determined this regulatory action will not create jobs within the State of California because the proposed language in the regulation only allows already licensed RDHAPs to open MDHCs and physical facilities, as specified.

The Board determined this regulatory action will not create new businesses or eliminate existing businesses, and will not affect the expansion of businesses currently doing business within the State of California as the proposed language in the regulation only allows already licensed RDHAPs to open MDHCs and physical facilities, as specified.

Benefits of the Proposed Action: This regulatory proposal will positively impact worker safety as the proposed language in the regulation would ensure MDHCs and physical facilities adhere to all laws, regulations, and standards applicable to a MDHCs and physical facilities, including worker safety (OSHA).

This regulatory proposal will positively impact the health and welfare of California residents as the proposed language in the regulation would ensure MDHCs and physical facilities to adhere to all laws, regulations, and standards applicable to a DHEP, including patient safety (e.g., HIPAA, HSC, CDC). Additionally, this regulatory proposal will increase access to care to the public in DHCAI dental health professional shortage areas, as well as those patients unable to access traditional dental care due to disabilities.

This regulatory proposal will not affect the state's environment because this proposed regulation does not involve environmental issues.

Effect on Small Business: The Board determined this regulatory action would have a positive impact on small businesses, including the ability of small business to compete in this state because the proposed language in the regulation defines parameters for the Board to issue MDHC and physical facility registrations, thereby increasing small businesses in California.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action described in this Notice or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of the law.

Interested persons are invited to present statements or arguments in writing relevant to the above determinations during the written comment period.

## CONTACT PERSONS

Inquiries or comments concerning the proposed regulatory action may be directed to the following designated agency contact persons:

Dental Hygiene Board of California  
Attn: Adina A. Pineschi-Petty DDS  
2005 Evergreen St, Ste. 1350  
Sacramento, CA 95815  
Phone: 916-576-5002  
Email: [adina.petty@dca.ca.gov](mailto:adina.petty@dca.ca.gov)

Backup Contact Person:  
Attn: Anthony Lum  
2005 Evergreen St, Ste. 1350  
Sacramento, CA 95815  
Phone: 916-576-5004  
Email: [anthony.lum@dca.ca.gov](mailto:anthony.lum@dca.ca.gov)

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Dr. Pineschi-Petty at the above address. In her absence, please contact the designated back-up contact person.

## AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Board may adopt the amendments as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that was noticed to the public. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for review and or written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text by contacting Dr. Pineschi-Petty at the address above.

## **AVAILABILITY OF FINAL STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting Dr. Pineschi-Petty at the address above.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to Dr. Pineschi-Petty at the address above or by accessing the website listed below.

## **TEXT OF THE PROPOSAL**

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the ISOR, and all of the information on which the proposal is based, may be obtained upon request from the Board at 2005 Evergreen Street, Suite 1350, Sacramento, California 95815, or by accessing the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the ISOR, and the text of the regulations can be accessed through the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.