

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 16-172)**

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**Overview and Legal and Fiscal Impact**

The regulations implement Chapters 106 and 111 of 2016 (House Bills 470 and 680) by authorizing a licensed dental hygienist to administer (1) nitrous oxide to dental patients under certain circumstances or (2) local anesthesia by infiltration or by inferior alveolar nerve block to facilitate the performance of either dental or dental hygiene procedures.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of Health and Mental Hygiene:**

Board of Dental Examiners: Practice of Dental Hygiene:  
COMAR 10.44.04.02 through .06, .08, .11, .13, .15, and .17 through .28  
Fees: COMAR 10.44.20.02

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**Legal Analysis**

**Background**

Historically, dental hygienists in Maryland have practiced under the indirect supervision of a dentist, which means the dentist authorizes the procedure and remains in the office while it is being performed. The scope of dental hygienist practice has steadily expanded and two bills passed during the 2016 session of the General Assembly. Chapter 106 of 2016 (House Bill 470) authorized dental hygienists to administer nitrous oxide to a patient under the supervision of a dentist who is physically present on the premises and prescribes the administration of nitrous oxide by the dental hygienist. Before the passage of House Bill 470, a dental hygienist could only monitor a patient to whom nitrous oxide had already been administered. Chapter 111 of 2016 (House Bill 680) authorized dental hygienists to administer local anesthesia to facilitate the general practice of dental hygiene by a dental hygienist or the practice of dentistry by a dentist, rather than only for specified procedures performed by a dental hygienist.

## **Summary of Regulations**

The regulations implement Chapters 106 and 111 of 2016 (House Bills 470 and 680) by authorizing a licensed dental hygienist to administer (1) nitrous oxide to dental patients under certain circumstances or (2) local anesthesia by infiltration or by inferior alveolar nerve block to facilitate the performance of either dental or dental hygiene procedures. The regulations also update references for the American Board of Dental Examiners, Inc., to the Commission on Dental Competency Assessments (CDCA).

### **Administering Nitrous Oxide**

The regulations authorize a licensed dental hygienist to administer nitrous oxide to a dental patient under the supervision of a dentist who is physically present on the premises and prescribes the administration of nitrous oxide by the dental hygienist. Before administering nitrous oxide, a dental hygienist must be recognized by the Board of Dental Examiners as being qualified to administer nitrous oxide. To be recognized as qualified, a dental hygienist must complete specified education and training requirements and pass the CDCA Nitrous Oxide Examination for Dental Hygienists. The regulations specify that beginning October 1, 2016, the board will no longer issue a recognition to monitor a patient to whom nitrous oxide has been administered, however, the regulations allow dental hygienists recognized to monitor a patient before October 1, 2016 to continue to monitor patients but not administer nitrous oxide. A dental hygienist who administers nitrous oxide or monitors a patient to whom nitrous oxide has been administered is prohibited from (1) treating any other patient during the administration or monitoring or (2) leaving the operatory during the administration or monitoring. The regulations establish a \$50 fee for recognition by the board to administer nitrous oxide. The board will waive the fee for a dental hygienist who holds a recognition to monitor a patient to whom nitrous oxide has been administered, has passed the CDCA Nitrous Oxide Examination for Dental Hygienists, and otherwise meets the requirements to administer nitrous oxide.

### **Administering Local Anesthesia**

The regulations authorize a dental hygienist to administer local anesthesia by infiltration or by inferior alveolar nerve block to facilitate the general practice of dental hygiene by a dental hygienist or the practice of dentistry by a dentist, rather than only for specified procedures performed by a dental hygienist. Before administering local anesthesia by infiltration or by inferior alveolar nerve block to facilitate the general practice of dental hygiene or the practice of dentistry, a dental hygienist must be recognized by the board as being qualified to administer local anesthesia. The education and training requirements remain the same as those currently required for recognition by the board to administer local anesthesia to facilitate the performance of dental hygiene procedures.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The Department of Health and Mental Hygiene cites §§ 4-206.1, 4-206.3, and 4-207(b) of the Health Occupations Article as statutory authority for the regulations. Sections 4-206.1 and 4-206.3 require a dental hygienist to successfully complete any education requirements and examinations required by the board before administering local anesthesia by infiltration or by inferior alveolar nerve block to facilitate the performance of either dental or dental hygiene procedures. Section 4-207(b) requires the board to set reasonable fees for its services.

Although not cited by the department, § 4-205(a) of the Health Occupations Article authorizes the board to adopt regulations governing reasonable requirements for education, training, evaluation, and examination of a dental hygienist before the dental hygienist may administer local anesthesia by infiltration or by inferior alveolar nerve block or administer nitrous oxide. Additionally, § 4-205(a) authorizes the board to adopt reasonable regulations for administering by a dental hygienist of local anesthesia by infiltration or administering nitrous oxide.

With the addition of § 4-205(a), this authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The regulations implement provisions of Chapter 106 of 2016 (House Bill 470), which authorized dental hygienists to administer nitrous oxide to a patient under specified circumstances. The fiscal and policy note for House Bill 470 assumed a minimal special fund revenue increase for the State Board of Dental Examiners beginning in fiscal 2017, based on the following assumptions (1) dental hygienists who currently hold a certificate to monitor the administration of nitrous oxide would apply for a certificate to administer nitrous oxide in fiscal 2017 and would pay the associated application fee and (2) more dental hygienists would seek certificates to administer nitrous oxide compared to the current number of dental hygienists who hold certificates to monitor the administration of nitrous oxide.

However, the regulations require the board to waive the application fee for a dental hygienist who applies to administer nitrous oxide if the dental hygienist holds a certificate to monitor the administration of nitrous oxide and otherwise meets the board's requirements. Further, the board currently advises that it anticipates receiving approximately the same number of applications from dental hygienists to administer nitrous oxide as it has historically received

from dental hygienists to monitor the administration of nitrous oxide; therefore, there is no fiscal impact. The Department of Legislative Services concurs.

The regulations also implement provisions of Chapter 111 of 2016 (House Bill 680), which expanded the scope of practice for dental hygienists by authorizing dental hygienists to administer local anesthesia to facilitate the general practice of dental hygiene or dentistry, rather than only for specified procedures. Any fiscal impact associated with this change has already been assumed under the fiscal and policy note for House Bill 680.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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