# PROPOSED RULE MAKING

**CR-102 (June 2012)**
**(Implements RCW 34.05.320)**
Do **NOT** use for expedited rule making

**Agency:** Department of Health- Dental Quality Assurance Commission

☒ **Preproposal Statement of Inquiry was filed as WSR** 12-14-068 and 13-04-075 **; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR _ ; or**
☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR**
☐ **Continuance of WSR**

**Title of rule and other identifying information:** (Describe Subject)
Chapter 246-817 WAC, amending the chapter to establish requirements for dental anesthesia assistant certification. Amendments also include adding dental assistants and expanded function dental auxiliaries to WAC 246-817-450, and 460.

**Hearing location(s):** Department of Health
Point Plaza East
310 Israel Rd. S.E., Room 152/153
Tumwater, WA 98501

Date: June 7, 2013 Time: 8:00 a.m.

**Submit written comments to:**
Name: Jennifer Santiago
Address: PO BOX 47852
Olympia, WA 98504-7852
e-mail: http://www3.doh.wa.gov/policyreview/
fax 360-236-2901 by (date) 05/31/2013

**Assistance for persons with disabilities:** Contact Jennifer Santiago by 05/31/2013
TTY (800) 833-6388 or () 711

**Date of intended adoption:** 06/07/2013
(Note: This is **NOT** the **effective** date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**
Engrossed Second Substitute Senate Bill (E2SSB) 5620 (chapter 23, Laws of 2012) now chapter 18.350 RCW creates a new credential/profession, certified dental anesthesia assistant (DAA). The proposed rules implement E2SSB 5620 (chapter 23, Laws of 2012) and establish certification criteria. The DAA would work under supervision of an oral and maxillofacial surgeon or dental anesthesiologist. The level of supervision required varies with the task being performed. Adds all dental professionals regulated by the Dental Quality Assurance Commission to the established sexual misconduct rules.

**Reasons supporting proposal:**
The bill authorizes the Dental Quality Assurance Commission (commission) to develop rules for approving training programs, renewal of certification, and continuing education requirements for DAAs. The proposed rules help ensure public safety by including all dental professionals under the authority of the commission in the sexual misconduct rules. The existing sexual misconduct rules were established in 2006 prior to the creation of registered dental assistants, licensed expanded function dental auxiliaries, and certified dental anesthesia assistants.

**Statutory authority for adoption:**
Chapter 18.350 RCW, RCW 18.32.0365 and 18.32.640

**Statute being implemented:**
Chapter 18.350 RCW

**Is rule necessary because of a:**

| | | |
|---|---|---|
| Federal Law? | ☐ Yes | ☒ No |
| Federal Court Decision? | ☐ Yes | ☒ No |
| State Court Decision? | ☐ Yes | ☒ No |

If yes, CITATION:

**DATE** 04/11/2013

**NAME** (type or print)
Paul W. Bryan, D.M.D.

**SIGNATURE**
Paul W. Bryan

**TITLE**
Dental Quality Assurance Commission Chair

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 11, 2013
TIME: 4:20 PM

WSR 13-09-039

**(COMPLETE REVERSE SIDE)**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

None

**Name of proponent:** (person or organization) Department of Health Dental Quality Assurance Commission

☐ Private
☐ Public
☒ Governmental

**Name of agency personnel responsible for:**

| | Name | Office Location | Phone |
|---|---|---|---|
| Drafting..... | Jennifer Santiago | 111 Israel Rd. SE, Tumwater, WA 98501 | 360-236-4893 |
| Implementation.... | Jennifer Santiago | 111 Israel Rd. SE, Tumwater, WA 98501 | 360-236-4893 |
| Enforcement..... | Jennifer Santiago | 111 Israel Rd. SE, Tumwater, WA 98501 | 360-236-4893 |

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:
Name: Jennifer Santiago
Address: PO BOX 47852
Olympia, WA 98504-7852

phone 360-236-4893
fax 360-236-2901
e-mail jennifer.santiago@doh.wa.gov

☒ No. Explain why no statement was prepared.
A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

**Is a cost-benefit analysis required under RCW 34.05.328?**

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name: Jennifer Santiago
Address: PO BOX 47852
Olymipa, WA 98504-7852

phone 360-236-4893
fax 360-236-2901
e-mail jennifer.santiago@doh.wa.gov

☐ No: Please explain:

AMENDATORY SECTION (Amending WSR 10-07-026, filed 3/8/10, effective 4/8/10)

**WAC 246-817-185 Temporary practice permits--Eligibility.** Fingerprint-based national background checks may cause a delay in credentialing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit, as defined in RCW 18.130.075, shall be issued at the written request of an applicant for dentists, expanded function dental auxiliaries, dental anesthesia assistants, and dental assistants. The applicant must be credentialed in another state, with credentialing standards substantially equivalent to Washington.

(2) The conditions of WAC 246-817-160 must be met for applicants who are graduates of dental schools or colleges not accredited by the American Dental Association Commission on Dental Accreditation.

NEW SECTION

**WAC 246-817-205 Dental anesthesia assistant certification requirements.** An applicant for certification as a dental anesthesia assistant must submit to the department:

(1) A completed application on forms provided by the secretary;

(2) Applicable fees as defined in WAC 246-817-99005;

(3) Evidence of:

(a) Completion of a commission approved dental anesthesia assistant education and training. Approved education and training includes:

(i) Completion of the "Dental Anesthesia Assistant National Certification Examination (DAANCE)" or predecessor program, provided by the American Association of Oral and Maxillofacial Surgeons (AAOMS); or

(ii) Completion of the "Oral and Maxillofacial Surgery Assistants Course" course provided by the California Association of Oral and Maxillofacial Surgeons (CALAOMS); or

(iii) Completion of substantially equivalent education and training approved by the commission.

(b) Completion of training in intravenous access or phlebotomy. Training must include:

(i) Eight hours of didactic training that must include:

(A) Intravenous access;
(B) Anatomy;
(C) Technique;
(D) Risks and complications; and
(ii) Hands on experience starting and maintaining intravenous lines with at least ten successful intravenous starts on a human or simulator/manikin; or
(iii) Completion of substantially equivalent education and training approved by the commission;
(c) A current and valid certification for health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS);
(d) A valid Washington state general anesthesia permit of the oral and maxillofacial surgeon or dental anesthesiologist where the dental anesthesia assistant will be performing his or her services;
(e) Completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8; and
(4) Any other information determined by the commission.

AMENDATORY SECTION (Amending WSR 06-07-036, filed 3/8/06, effective 4/8/06)

**WAC 246-817-440 Dentist continuing education requirements.** (1) **Purpose.** The dental quality assurance commission (DQAC) has determined that the public health, safety and welfare of the citizens of the state will be served by requiring all dentists, licensed under chapter 18.32 RCW, to continue their professional development via continuing education after receiving such licenses.

(2) **Effective date.** The effective date for the continuing education requirement for dentists is July 1, 2001. The first reporting cycle for verifying completion of continuing education hours will begin with renewals due July 1, 2002, and each renewal date thereafter. Every licensed dentist must sign an affidavit attesting to the completion of the required number of hours as a part of their annual renewal requirement.

(3) **Requirements.** Licensed dentists must complete twenty-one clock hours of continuing education, each year, in conjunction with their annual renewal date. DQAC may randomly audit up to twenty-five percent of practitioners for compliance after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.

(4) **Acceptable continuing education - Qualification of courses for continuing education credit.** DQAC will not authorize or approve specific continuing education courses. Continuing education course work must contribute to the professional knowledge and development of the practitioner, or enhance services provided to patients.

For the purposes of this chapter, acceptable continuing education means courses offered or authorized by industry

recognized state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors, or types of continuing education courses may include, but are not limited to:

(a) The American Dental Association, Academy of General Dentistry, National Dental Association, American Dental Hygienists' Association, National Dental Hygienists' Association, American Dental Association specialty organizations, including the constituent and component/branch societies.

(b) Basic first aid, CPR, BLS, ACLS, OSHA/WISHA, or emergency related training; such as courses offered or authorized by the American Heart Association or the American Cancer Society; or any other organizations or agencies.

(c) Educational audio or videotapes, films, slides, internet, or independent reading, where an assessment tool is required upon completion are acceptable but may not exceed seven hours per year.

(d) Teaching a seminar or clinical course for the first time is acceptable but may not exceed ten hours per year.

(e) Nonclinical courses relating to dental practice organization and management, patient management, or methods of health delivery may not exceed seven hours per year. Estate planning, financial planning, investments, and personal health courses are not acceptable.

(f) Dental examination standardization and calibration workshops.

(g) Provision of clinical dental services in a formal volunteer capacity may be considered for continuing education credits when preceded by an educational/instructional training prior to provision of services. Continuing education credits in this area shall not exceed seven hours per renewal cycle.

(5) Refer to chapter 246-12 WAC, Part 7, administrative procedures and requirements for credentialed health care providers for further information regarding compliance with the continuing education requirements for health care providers.

NEW SECTION

**WAC 246-817-445 Dental anesthesia assistant continuing education requirements.** (1) To renew a certification a certified dental anesthesia assistant must complete a minimum of twelve hours of continuing education every three years and follow the requirements of chapter 246-12 WAC, Part 7.

(2) Continuing education must involve direct application of dental anesthesia assistant knowledge and skills in one or more of the following categories:

(a) General anesthesia;

(b) Moderate sedation;

(c) Physical evaluation;

(d) Medical emergencies;

(e) Health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS);

(f) Monitoring and use of monitoring equipment;

(g) Pharmacology of drugs; and agents used in sedation and anesthesia.

(3) Continuing education is defined as any of the following activities:

(a) Attendance at local, state, national, or international continuing education courses;

(b) Health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS), or emergency related classes;

(c) Self-study through the use of multimedia devices or the study of books, research materials, or other publications.

(i) Multimedia devices. The required documentation for this activity is a letter or other documentation from the organization. A maximum of two hours is allowed per reporting period.

(ii) Books, research materials, or other publications. The required documentation for this activity is a two-page synopsis of what was learned written by the credential holder. A maximum of two hours is allowed per reporting period.

(d) Distance learning. Distance learning includes, but is not limited to, correspondence course, webinar, print, audio/video broadcasting, audio/video teleconferencing, computer aided instruction, e-learning/on-line-learning, or computer broadcasting/webcasting. A maximum of four hours of distance learning is allowed per reporting period.

## SEXUAL MISCONDUCT ((~~RULES FOR DENTISTS~~))

AMENDATORY SECTION (Amending WSR 08-01-137, filed 12/19/07, effective 1/19/08)

**WAC 246-817-450 Definitions.** The definitions in this section apply throughout this section and WAC 246-817-460 unless the context clearly requires otherwise.

(1) "((~~Dentist~~)) Health care provider" means an individual applying for a credential or credentialed specifically as defined in chapters 18.32, 18.260, and 18.350 RCW.

(2) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the

health care of, a patient.

(3) "Key party" means a person legally authorized to make health care decisions for the patient.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients, including palliative care, as consistent with community standards of practice for the dental profession. The activity must be within the scope of practice of the ((~~dentist~~)) health care provider.

(5) "Patient" means an individual who receives health care services from a ((~~dentist~~)) health care provider. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the ((~~dentist~~)) health care provider and the person. The fact that a person is not receiving treatment or professional services is not the sole determining factor.

AMENDATORY SECTION (Amending WSR 08-01-137, filed 12/19/07, effective 1/19/08)

**WAC 246-817-460 Sexual misconduct.** (1) A ((~~dentist~~)) health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the ((~~dentist's~~)) health care provider's scope of practice;

(c) Rubbing against a patient or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals without using gloves;

(g) Not allowing a patient privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(h) Not providing the patient a gown or draping except as may be necessary in emergencies;

(i) Dressing or undressing in the presence of the patient or key party;

(j) Removing patient's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(k) Encouraging masturbation or other sex act in the presence of the ((~~dentist~~)) health care provider;

(l) Masturbation or other sex act by the ((~~dentist~~)) health

care provider in the presence of the patient or key party;

(m) Soliciting a date with a patient or key party;

(n) Discussing the sexual history, preferences or fantasies of the ((~~dentist~~)) health care provider;

(o) Any behavior, gestures, or expressions that can reasonably be interpreted as seductive or sexual;

(p) Sexually demeaning behavior including any verbal or physical contact which can reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient or key party;

(q) Photographing or filming the body or any body part or pose of a patient or key party, other than for legitimate health care purposes; or for the educational or marketing purposes with the consent of the patient; and

(r) Showing a patient or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) A ((~~dentist~~)) health care provider shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the ((~~dentist's~~)) health care provider's sexual needs.

(3) A ((~~dentist~~)) health care provider shall not engage in the activities listed in subsection (1) of this section with a former patient or key party if the ((~~dentist~~)) health care provider:

(a) Uses or exploits the trust, knowledge, influence or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the ((~~dentist's~~)) health care provider's personal or sexual needs.

(4) When evaluating whether a ((~~dentist~~)) health care provider has engaged or has attempted to engage in sexual misconduct, the commission will consider factors, including but not limited to:

(a) Documentation of a formal termination;

(b) Transfer of care to another health care provider;

(c) Duration of the ((~~dentist-patient~~)) health care provider-patient relationship;

(d) Amount of time that has passed since the last dental health care services to the patient;

(e) Communication between the ((~~dentist~~)) health care provider and the patient between the last dental health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's personal or private information was shared with the ((~~dentist~~)) health care provider;

(g) Nature of the patient's health condition during and since the professional relationship; and

(h) The patient's emotional dependence and vulnerability.

(5) Patient or key party initiation or consent does not excuse or negate the ((~~dentist's~~)) health care provider's responsibility.

(6) These rules do not prohibit:

(a) Providing health care services in case of emergency where

the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to the dental profession; or

(c) Providing dental services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the ((~~dentist~~)) health care provider where there is no evidence of, or potential for, exploiting the patient.

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

**WAC 246-817-710 Definitions((~~--The definitions in this section apply throughout WAC 246-817-701 through 246-817-790 unless the context clearly requires otherwise~~)).** The definitions in this section apply throughout WAC 246-817-701 through 246-817-790 unless the context clearly requires otherwise.

(1) **"Analgesia"** is the diminution of pain in the conscious patient.

(2) **"Anesthesia"** is the loss of feeling or sensation, especially loss of sensation of pain.

(3) **"Anesthesia ((~~assistant/anesthesia~~)) monitor"** means a credentialed health care provider specifically trained in monitoring patients under sedation and capable of assisting with procedures, problems and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(4) **"Anesthesia provider"** means a dentist, physician anesthesiologist, dental hygienist or certified registered nurse anesthetist licensed and authorized to practice within the state of Washington.

(5) **"Close supervision"** means that a supervising dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. The supervising dentist is continuously on-site and physically present in the treatment facility while the procedures are performed by the assistive personnel and capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operatory.

(6) **"Deep sedation/analgesia"** is a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

((~~(6) **"Direct supervision"** means that a licensed provider whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedure to be performed. A dentist must be physically present in the treatment facility while the procedures are performed.~~))

(7) **"Dental anesthesia assistant"** means a health care provider certified under chapter 18.350 RCW and specifically trained to perform the functions authorized in RCW 18.350.040 under supervision of an oral and maxillofacial surgeon or dental anesthesiologist.

(8) **"Direct visual supervision"** means ((~~direct~~)) supervision by an oral and maxillofacial surgeon or dental anesthesiologist by verbal command and under direct line of sight ((~~to the activity being performed, chairside~~)).

((~~(8)~~)) (9) **"General anesthesia"** is a drug induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof may be impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

((~~(9)~~)) (10) **"Local anesthesia"** is the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

((~~(10)~~)) (11) **"Minimal sedation"** is a drug induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

((~~(11)~~)) (12) **"Moderate sedation"** is a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Moderate sedation can include both moderate sedation/analgesia (conscious sedation) and moderate sedation with parenteral agent.

((~~(12)~~)) (13) **"Parenteral"** means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract (i.e., intramuscular, intravenous, intranasal, submuscosal, subcutaneous, intraosseous).

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

**WAC 246-817-720 Basic life support requirements.** Dental staff providing direct patient care in an in-office or out-patient setting must hold a current and valid health care provider basic life support (BLS) certification. Dental staff providing direct patient care include: Licensed dentists, licensed dental hygienists, licensed expanded function dental auxiliaries, certified dental anesthesia assistants, and registered dental assistants.

Newly hired office staff providing direct patient care are required to obtain the required certification within forty-five days from the date hired.

NEW SECTION

**WAC 246-817-771 Dental anesthesia assistant.** (1) A dental anesthesia assistant must be certified under chapter 18.350 RCW and WAC 246-817-205.

(2) A dental anesthesia assistant may only accept delegation from an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.

(3) Under close supervision, the dental anesthesia assistant may:

(a) Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation, or general anesthesia; and

(b) Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.

(4) Under direct visual supervision, the dental anesthesia assistant may:

(a) Draw up and prepare medications;

(b) Follow instructions to deliver medications into an intravenous line upon verbal command;

(c) Adjust the rate of intravenous fluids infusion beyond a keep open rate;

(d) Adjust an electronic device to provide medications, such as an infusion pump;

(e) Administer emergency medications to a patient in order to assist the oral and maxillofacial surgeon or dental anesthesiologist in an emergency.

(5) The responsibility for monitoring a patient and determining the selection of the drug, dosage, and timing of all anesthetic medications rests solely with the supervising oral and maxillofacial surgeon or dental anesthesiologist.

(6) A certified dental anesthesia assistant shall notify the commission in writing, on a form provided by the department, of any

changes in his or her supervisor.

(a) The commission must be notified of the change prior to the certified dental anesthesia assistant accepting delegation from another supervisor. The certified dental anesthesia assistant may not practice under the authority of this chapter unless he or she has on file with the commission such form listing the current supervisor.

(b) A supervisor must be an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.

(c) For the purposes of this subsection "any change" means the addition, substitution, or deletion of supervisor from whom the certified dental anesthesia assistant is authorized to accept delegation.