

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 968

(Delegate Kipke, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Health Occupations – Dental Assistants – Certification and Regulation

This bill establishes an “expanded function dental assistant” (EFDA) credential and specifies the additional intraoral procedures that may be performed by an EFDA. The State Board of Dental Examiners (BDE) may adopt regulations, including reasonable policies and guidelines for a dental assistant to assist in performing authorized intraoral procedures and reasonable education or training requirements for an individual to become an EFDA and perform the authorized intraoral procedures. An individual may be simultaneously certified as a dental radiation technologist (DRT) and an EFDA. The bill establishes an additional disciplinary ground for a licensed dentist who allows a dental assistant to assist in the practice of dentistry (1) in an unauthorized manner; (2) without specifically instructing the certified dental assistant to perform an intraoral procedure that the certified dental assistant is authorized to perform; or (3) failing to provide direct supervision of a dental assistant.

Fiscal Summary

State Effect: BDE special fund revenues increase by an indeterminate amount beginning in FY 2023 from fees, as discussed below. Special fund expenditures increase by as much as \$95,700 in FY 2023 for staff to administer the new certification. Future years reflect annualization and increases in ongoing costs.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	-	-	-	-	-
SF Expenditure	\$95,700	\$115,700	\$119,100	\$122,300	\$125,700
Net Effect	(\$-)	(\$-)	(\$-)	(\$-)	(\$-)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Dental assistant” means an individual who directly assists a dentist in the practice of dentistry. “Expanded function dental assistant” means a dental assistant who is certified by BDE to perform specific intraoral procedures.

Intraoral Procedures a Dental Assistant May Assist with Without Certification

A dental assistant may assist a licensed dentist in providing the following intraoral procedures under the direct supervision of a licensed dentist *without* being certified by BDE:

- rinsing and aspiration of the oral cavity;
- retraction of the lips, cheeks, tongue, and flaps;
- placement and removal of materials for the isolation of the dentition, provided that the material is not retained by the dentition;
- instructing on oral hygiene;
- taking impressions for study models or diagnostic casts;
- constructing athletic mouth guards on models;
- applying topical anesthesia;
- curing with halogen light;
- checking for loose bands; and
- any other procedure that BDE authorizes by a rule or regulation.

A dental assistant may assist in performing intraoral photography, other than conventional or digital x-ray, under the general supervision of a licensed dentist who reviews the photography and authorizes the treatment plan without being certified by BDE.

Intraoral Procedures for Which a Dental Assistant Must Be Certified

Except for a licensed dentist or dental hygienist, an individual must be an EFDA authorized to perform at least one of the following intraoral procedures before the individual may perform the intraoral procedure:

- assisting in orthodontic procedures authorized by BDE in regulation;
- placing dental sealants;
- coronal polishing only to remove stain or biofilm (1) in connection with a dental prophylaxis, as specified and (2) before a dentist performs an esthetic or cementation procedure;
- applying silver diamine fluoride;

- monitoring nitrous oxide by observing a patient (1) during the flow of nitrous oxide; (2) during the reduction of the flow of nitrous oxide; (3) during the shutting off of equipment controlling the flow of nitrous oxide; and (4) at all times in between the start of the flow of nitrous oxide until the nitrous oxide has been terminated and the patient has fully awoken and is coherent; or
- additional intraoral procedures authorized by BDE in regulations.

An EFDA may perform a procedure if a licensed dentist (1) gives specific instructions to perform the procedure and (2) directly supervises the procedure.

Qualifications to Obtain Expanded Function Dental Assistant Certification

To qualify for certification as an EFDA, an applicant must (1) be of good moral character; (2) be at least 18 years old; (3) have graduated high school or attained a high school equivalency; (4) have successfully completed a board-approved course of study related to the intraoral procedure for which the applicant has applied for a certificate; (5) have the appropriate certification from the Dental Assisting National Board; (6) have passed any examination provided for in regulations adopted by BDE; and (7) submit to a State criminal history records check. The applicant must submit an application as required by BDE and pay an application fee.

An applicant who qualifies for a certificate is entitled to be examined as required by BDE. BDE must notify each qualified applicant of the time and place of the examination. BDE must determine the subjects, scope, form, and the passing score for examinations. An applicant must pay an examination fee to BDE. The fee must be an amount that does not exceed the costs of administering the examination.

Each certificate must include the (1) name of the certified individual; (2) date the certification was issued; (3) intraoral procedures that the individual is qualified to perform; (4) serial number; (5) signatures of the BDE president and secretary; and (6) seal of BDE. The board must replace a lost or destroyed certificate if the certified dental assistant pays a fee set by the board that approximated the actual cost of replacing the certificate.

A certificate expires on the date set by BDE, unless renewed for an additional term. At least one month before a certificate expires, BDE must send a renewal notice stating the date the current certificate expires, the date by which the renewal application must be received by BDE, and the amount of the renewal fee. The certificate and any renewal must be kept in the office where the dental assistant is employed.

The board may deny a general license to practice dentistry, a limited licensed to practice dentistry, or a teacher's license to practice dentistry to any applicant, reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the licensee allows a dental assistant to assist in the practice of

dentistry (1) in an unauthorized manner; (2) without specifically instructing the certified dental assistant to perform an intraoral procedure; or (3) failing to provide direct supervision of a dental assistant.

Approved Course of Study

BDE may not approve a course of study for an applicant to qualify as an EFDA unless it is part of (1) a U.S. Department of Labor Job Corps Dental Assisting program; (2) a dental assisting program located within an institution of postsecondary education that is accredited by an accrediting institution recognized by the U.S. Department of Education; (3) a dental assisting program that is located within a high school and is recognized by an accrediting body recognized by the U.S. Department of Education or the high school accrediting body of a State; or (4) a dental assisting program that is accredited by the Council on Dental Accreditation or a successor organization.

Current Law: Individuals must be licensed by BDE as a dentist to practice dentistry, or as a dental hygienist to practice dental hygiene. In general, dental assistants are not required to be licensed or certified by BDE. However, dental assistants may be registered as qualified in general duties (GD) or qualified in orthodontics (QO), and/or certified as a DRT. Under the Code of Maryland Regulations (COMAR) 10.44.01, a dental assistant is a person, other than a licensed dentist or dental hygienist, employed for the purpose of assisting a dentist in the performance of intraoral duties related to dental care. A dental assistant performs intraoral services under the supervision of a licensed dentist, including:

- rinsing and aspiration of the oral cavity;
- retraction of the lips, cheeks, tongue, and flaps;
- placement and removal of materials for the isolation of the dentition, provided that the material is not retained by the dentition;
- instructing on oral hygiene;
- performing intraoral photography other than conventional or digital x-ray;
- taking impressions for study models or diagnostic casts;
- constructing athletic mouth guards on models;
- applying topical anesthesia;
- curing with halogen lights;
- checking for loose bands; and
- any other procedure authorized by a rule or regulation.

General Duties Recognition

A dental assistant may be registered as GD if the dental assistant (1) has successfully completed a board-approved course of at least 35 hours related to general duties dental assisting and (2) is certified by the Dental Assisting National Board as GD. A dentist may use the services of a dental assistant GD to perform the following intraoral tasks, provided that the tasks are performed only in response to a specific instruction from and under the direct supervision of a licensed dentist:

- performing vitality tests;
- taking impressions for study models or diagnostic casts;
- taking alginate impressions for intraoral appliances;
- applying topical fluoride;
- applying desensitizing agents;
- applying topical anesthesia;
- placing or removing a rubber dam;
- etching;
- curing with halogen light;
- fabricating indirect restorations in a dental office;
- placing or removing a matrix band;
- drying a root canal;
- preparing and fitting stainless steel crowns;
- placing or removing retraction cord;
- preparing temporary crowns;
- cementing temporary crowns or restorations;
- removing temporary crowns;
- removing excess cement;
- removing or placing a periodontal dressing;
- removing sutures;
- constructing athletic mouth guards on models; and
- any other duty approved by BDE.

Orthodontic Duties Recognition

A dental assistant may be recognized as QO if the dental assistant (1) has successfully completed a board-approved course of at least 35 hours related to orthodontic dental assisting and (2) is certified by the Dental Assisting National Board as QO. A dentist may permit a dental assistant QO to perform the following intraoral tasks, provided that the

tasks are performed only in response to a specific instruction from and under the direct supervision of a licensed dentist:

- taking impressions for study models or diagnostic casts;
- applying topical fluoride;
- preparing and fitting orthodontic bands;
- etching;
- removing excess cement from around orthodontic bands;
- placing and removing arch wires;
- cementing of orthodontic bands, placement of bonded attachments, or the removal of cemented or bonded orthodontic bands and attachments;
- placing elastics and ligatures;
- selecting headgear;
- applying desensitizing agents;
- applying topical anesthesia;
- constructing athletic mouth guards on models;
- taking alginate impressions for intraoral appliances;
- curing with halogen light; and
- any other duty approved by BDE.

Dental Radiation Technologist

Under Maryland regulations (COMAR 10.44.19), a DRT means an individual other than a licensed dentist or dental hygienist who practices dental radiation technology. An individual must be certified by BDE as a DRT to place or expose of dental radiographs.

To qualify as a DRT, an applicant must be (1) at least 18 years old; (2) of good moral character; (3) hold a high school degree or the equivalent; (4) complete the board-approved educational requirements established by the Maryland State Dental Association or the Maryland Dental Society; (5) complete a board-approved course of at least 24 hours related to dental radiology; (6) pass an examination administered or approved by BDE; and (7) meet any requirements established by the American Dental Association or any applicable federal standards for training and certification as a DRT.

State Revenues: Under the bill, BDE may set an application fee, an examination fee, a renewal fee, and a replacement certificate fee. The examination fee must be in an amount that does not exceed the costs of administering the examination. Currently, BDE registers dental assistants as GD or QO for a one-time fee of \$20. The initial DRT fee is \$20 with a \$68 renewal fee every two years. BDE advises that that initial and renewal fees for EFDAs

will likely be the same as those for DRTs. Since BDE must develop regulations for the new certification program, certifications are not likely issued until the last quarter of fiscal 2023.

Currently, there are approximately 12,000 dental assistants in the State. Although dental assistants are not required to become certified under the bill, BDE estimates that many dental assistants will seek certification to perform additional intraoral procedures. *For illustrative purposes only*, if all 12,000 dental assistants seek certification under the bill, special fund revenues increase by \$240,000 for initial certification and by an additional \$816,000 biannually thereafter to account for renewal fees. As dental assistants are not required to seek certification under the bill and may still obtain GD or DO credentials, the actual number of individuals who will seek certification as an EFDA and the related increase in special fund revenues cannot be reliably estimated at this time.

Special fund revenues increase by an additional indeterminate amount from examination and certificate replacement fees. Any impact on special fund revenues from the imposition of existing penalties or fines is anticipated to be minimal.

State Expenditures: Currently, BDE only certifies dental assistants as DRTs; however, based on an anticipated significant number of individuals seeking to become EFDAs under the bill, BDE advises that additional staff are necessary. Thus, BDE special fund expenditures increase by as much as \$95,712 in fiscal 2023. This estimate reflects the cost of hiring two office clerks to update policies and procedures and review initial and renewal EFDA application documents. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$85,962
Operating Expenses	<u>9,750</u>
Total FY 2023 Special Fund Expenditures	\$95,712

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent a lesser number of individuals seek certification under the bill, BDE special fund expenditures are reduced.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 714 (Senator Reilly) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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