2021 ASSEMBLY BILL 402

June 17, 2021 - Introduced by Representatives PLUMER, CABRAL-GUEVARA, BILLINGS, BROOKS, BALDEH, DOYLE, DUCHOW, GUNDRUM, KURTZ, LOUDENBECK, MOSES, MURPHY, MURSAU, NEYLON, NOVAK, ROZAR, SHELTON, SORTWELL, STEFFEN, SUBECK, SUMMERFIELD, TAUCHEN, THIESFELDT, TITTL and VANDERMEEER, cosponsored by Senators FELZKOWSKI, BALLWEG, BERNIER, COWLES, FEYEN, JACQUE, NASS, RINGHAND, L. TAYLOR and WIRCH. Referred to Committee on Health.

AN ACT to renumber and amend 447.05; to amend 440.08 (2) (a) (intro.), 447.04 (title), 447.07 (3) (intro.), 447.07 (3) (e), 447.07 (3) (f), 447.07 (3) (g), 447.07 (3) (h), 448.03 (2) (a), 448.21 (1) (a), 450.03 (1) (e) and 462.02 (2) (d); and to create 440.03 (13) (b) 28m., 447.035, 447.04 (3) and 447.05 (1) (b) of the statutes; relating to: certification of expanded function dental auxiliaries, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill establishes a certification program for expanded function dental auxiliaries administered by the Dentistry Examining Board. Under the bill, a person who is not licensed as a dentist or as a dental hygienist may perform the following activities, as delegated and supervised by a licensed dentist, if the person is certified by the examining board as an expanded function dental auxiliary: 1) placing and finishing restoration material after a dentist prepares a tooth for restoration; 2) applying sealants; 3) coronal polishing; 4) impressions; 5) temporizations; 6) packing cord; 7) removing cement from crowns; 8) adjusting dentures and other removable oral appliances; 9) removing sutures and dressings; 10) supragingival scaling; and
11) applying topical fluoride, fluoride varnish, or similar dental topical agent. The bill authorizes the examining board to promulgate rules for the certification and practice of expanded function dental auxiliaries, but prohibits the examining board from promulgating rules that allow an expanded function dental auxiliary to cut hard or soft tissue, diagnose, or plan treatments.

The examining board may grant a permanent certification as an expanded function dental auxiliary to an applicant who, among other things, has practiced as a dental assistant for a certain period, completes an accredited instructional program, and is proficient in cardiopulmonary resuscitation. Under the bill, the examining board investigates, holds hearings, and makes findings pertaining to violations of the bill and other statutes enforced by the examining board, and the examining board may impose on violators the same penalties that apply under current law to dentists and dental hygienists.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 440.03 (13) (b) 28m. of the statutes is created to read:

440.03 (13) (b) 28m. Expanded function dental auxiliary.

SECTION 2. 440.08 (2) (a) (intro.) of the statutes is amended to read:

440.08 (2) (a) (intro.) Except as provided in par. (b) and in ss. 440.51, 442.04, 444.03, 444.11, 447.04 (2) (c) 2., 447.05 (1) (b), 449.17 (1m) (d), 449.18 (2) (e), 463.10, 463.12, and 463.25 and subch. II of ch. 448, the renewal dates for credentials are as follows:

SECTION 3. 447.035 of the statutes is created to read:

447.035 Certification; expanded function dental auxiliaries. (1) In this section, “auxiliary” means an expanded function dental auxiliary.

(2) Notwithstanding s. 447.03 (1) and (2), a certification to practice as an auxiliary granted under s. 447.04 (3) shall permit the holder to perform all of the following as delegated and supervised by a dentist:
(a) Placement and finishing of restoration material after the dentist prepares a tooth for restoration.

(b) Application of sealants.

(c) Coronal polishing.

(d) Impressions.

(e) Temporizations.

(f) Packing cord.

(g) Removal of cement from crowns.

(h) Adjustment of dentures and other removable oral appliances.

(i) Removal of sutures and dressings.

(j) Supragingival scaling.

(k) Application of topical fluoride, fluoride varnish, or similar dental topical agent.

(3) (a) The examining board shall, subject to pars. (b) and (c), promulgate rules for the certification and practice of auxiliaries.

(b) The rules promulgated under par. (a) shall do all of the following:

1. Require an applicant to the accredited instructional program described in subd. 2. to demonstrate in his or her application that the individual satisfies one of the following criteria in order to be permitted to enroll in the instructional program:

   a. Has completed at least 1,000 hours practicing as a dental assistant and holds the certified dental assistant credential issued by the Dental Assisting National Board, Inc., or its successor.

   b. Has completed at least 2,000 hours practicing as a dental assistant, as verified by the supervising licensed dentist.
2. Require an applicant for certification under s. 447.04 (3) to demonstrate to the satisfaction of the examining board that the applicant has successfully completed an accredited instructional program that provides training in practice as an auxiliary and requires no fewer than 70 hours of classroom instruction.

3. Require a dentist who delegates a procedure to an auxiliary certified under s. 447.04 (3) to remain on the premises where the auxiliary is performing the procedure until the procedure is complete and the dentist has verified that the procedure has been performed successfully.

4. Require each auxiliary to maintain current proficiency in cardiopulmonary resuscitation, including the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

(c) The rules promulgated under par. (a) may not permit an auxiliary to perform any of the following:

1. Cutting of hard or soft tissue.
2. Diagnosis.
3. Treatment planning.

SECTION 4. 447.04 (title) of the statutes is amended to read:

447.04 (title) Licensure; certification.

SECTION 5. 447.04 (3) of the statutes is created to read:

447.04 (3) EXPANDED FUNCTION DENTAL AUXILIARIES. The examining board shall grant a certification to practice as an expanded function dental auxiliary to an individual who does all of the following:

(a) Pays the fee specified in s. 440.05 (1).
(b) Submits evidence satisfactory to the examining board that he or she has completed the accredited instructional program required under s. 447.035 (3) (b) 2.

(c) Submits evidence satisfactory to the examining board that he or she has current proficiency in cardiopulmonary resuscitation, including the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

**SECTION 6.** 447.05 of the statutes is renumbered 447.05 (1) (a) and amended to read:

447.05 (1) (a) Renewal Except as provided in par. (b), renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee determined by the department under s. 440.03 (9) (a).

(2) The examining board may not renew a license to practice dentistry unless the applicant for renewal attests that he or she has complied with s. 447.056, that he or she has current proficiency in cardiopulmonary resuscitation, including and that he or she has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

(3) The examining board may not renew a license to practice dental hygiene unless the applicant for renewal attests that he or she has complied with s. 447.055 and any rules promulgated by the examining board under s. 447.055, that he or she has a current certification in cardiopulmonary resuscitation, and that he or she has current proficiency in the use of an automated external defibrillator achieved
through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

**SECTION 7.** 447.05 (1) (b) of the statutes is created to read:

447.05 (1) (b) A certification to practice as an expanded function dental auxiliary granted under s. 447.04 (3) is permanent unless revoked and not subject to periodic renewal.

**SECTION 8.** 447.07 (3) (intro.) of the statutes is amended to read:

447.07 (3) (intro.) Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations and conduct hearings in regard to any alleged action of any dentist or dental hygienist, or expanded function dental auxiliary, of a mobile dentistry program registrant, or of any other person it has reason to believe is engaged in or has engaged in the practice of dentistry or dental hygiene, or the operation of a mobile dentistry program, in this state, and may, on its own motion, or upon complaint in writing, reprimand any dentist or dental hygienist, or expanded function dental auxiliary who is licensed or certified under this chapter, or any mobile dentistry program registrant, or deny, limit, suspend, or revoke his or her license or certificate, or the registration of the mobile dentistry program registrant, if it finds that the dentist, dental hygienist, expanded function dental auxiliary, or mobile dentistry program registrant has done any of the following:

**SECTION 9.** 447.07 (3) (e) of the statutes is amended to read:

447.07 (3) (e) Subject to ss. 111.321, 111.322, and 111.335, been convicted of a crime, the circumstances of which substantially relate to the practice of dentistry or dental hygiene, the practice of an expanded function dental auxiliary, or the operation of a mobile dentistry program.
SECTION 10. 447.07 (3) (f) of the statutes is amended to read:

447.07 (3) (f)  Violated this chapter or any federal or state statute or rule that relates to the practice of dentistry or, dental hygiene, or an expanded function dental auxiliary, or the operation of a mobile dentistry program.

SECTION 11. 447.07 (3) (g) of the statutes is amended to read:

447.07 (3) (g) Subject to ss. 111.321, 111.322 and 111.34, practiced dentistry or dental hygiene or as an expanded function dental auxiliary while his or her ability was impaired by alcohol or other drugs.

SECTION 12. 447.07 (3) (h) of the statutes is amended to read:

447.07 (3) (h) Engaged in conduct that indicates a lack of knowledge of, an inability to apply or the negligent application of, principles or skills of dentistry or dental hygiene or the practice of an expanded function dental auxiliary.

SECTION 13. 448.03 (2) (a) of the statutes is amended to read:

448.03 (2) (a) Any person lawfully practicing within the scope of a license, permit, registration, certificate, or certification granted to practice midwifery under subch. XIII of ch. 440, to practice professional or practical nursing or nurse–midwifery under ch. 441, to practice chiropractic under ch. 446, to practice dentistry or dental hygiene or as an expanded function dental auxiliary under ch. 447, to practice optometry under ch. 449, to practice acupuncture under ch. 451 or under any other statutory provision, or as otherwise provided by statute.

SECTION 14. 448.21 (1) (a) of the statutes is amended to read:

448.21 (1) (a) The practice of dentistry or dental hygiene within the meaning of ch. 447 or the practice of an expanded function dental auxiliary under s. 447.035.

SECTION 15. 450.03 (1) (e) of the statutes is amended to read:
450.03 (1) (e) Any person lawfully practicing within the scope of a license, permit, registration, certificate, or certification granted to provide home medical oxygen under s. 450.076, to practice professional or practical nursing or nurse-midwifery under ch. 441, to practice dentistry or dental hygiene or as an expanded function dental auxiliary under ch. 447, to practice medicine and surgery under ch. 448, to practice optometry under ch. 449, or to practice veterinary medicine under ch. 89, or as otherwise provided by statute.

SECTION 16. 462.02 (2) (d) of the statutes is amended to read:

462.02 (2) (d) A dentist licensed under s. 447.04 (1), a dental hygienist licensed under s. 447.04 (2), a person certified as an expanded function dental auxiliary under s. 447.04 (3), or a person under the direct supervision of a dentist.

SECTION 17. Nonstatutory provisions.

(1) Emergency rules. Using the procedure under s. 227.24, the dentistry examining board shall promulgate the rules for the certification and practice of expanded function dental auxiliaries required under s. 447.035 (3). Notwithstanding s. 227.24 (1) (a) and (3), the dentistry examining board is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and (2), an emergency rule promulgated under this subsection remains in effect for one year after its promulgation, or until permanent rules take effect, whichever is sooner, and the effective period may not be further extended under s. 227.24 (2).