

**Dental Hygiene Board of California
California Department of Consumer Affairs**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Amended Regulations: Process for Approval of a New RDH Educational Program.

Section Affected: Section 1104.1 of Title 16 of the California Code of Regulations (CCR)

Specific Purpose of Each Adoption, Amendment, or Repeal:

1. Background/Statement of the Problem

The Dental Hygiene Board of California (Board) is charged with oversight of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions (collectively RDHs). The Board carries out its regulatory authority through enforcement of statutory provisions of the Dental Practice Act, Business and Professions Code (BPC or Code) sections 1900 through 1967.4, and Title 16 of the California Code of Regulations (CCR). The Board's core functions are issuing licenses to qualified applicants, investigating consumer complaints filed against licensees, disciplining licensees for sustained violations of the BPC and Title 16 of the CCR, regulating and approving RDH educational programs, and monitoring licensees placed on disciplinary probation by the Board.

Senate Bill (SB) 1482 (Hill, Chapter 858, Statutes of 2018) amended BPC section 1941 to require new educational programs for dental hygienists to submit a feasibility study demonstrating a need for a new educational program and to apply for approval from the Board before seeking any required approval for initial accreditation from the Commission on Dental Accreditation of the American Dental Association (CODA) or an equivalent body. SB 534 (Jones, Chapter 491, Statutes of 2021) amended BPC section 1941 to extend the same application requirements to proposed new educational programs for registered dental hygienists in alternative practice and registered dental hygienists in extended functions.

This proposal will: (1) clarify the collective reference of "RDHs" to include registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions within the regulation; (2) eliminate specific reference to the title and last revision date of CODA standards as compliance with current CODA standards are required pursuant to BPC section 1941(a); (3) clarify the reference for CODA to mean the "Commission on Dental Accreditation;" (4) clarify the Board's statutory responsibility for determining accrediting body equivalence; and (5) provide corresponding amendments to the form incorporated by reference.

At the March 19, 2022, Board meeting, staff provided the initial proposed language and associated form incorporated by reference to the Board addressing the statutory changes implemented by SB 534. The Board approved the proposed amended language and associated form and directed DHBC staff to begin the rulemaking process for 16 CCR section 1104.1.

The Board determined 16 CCR section 1104.1 would benefit from a two-stage process of: (1) submitting non-substantive amendments pursuant to 1 CCR section 100; and (2) submitting substantive amendments under the regular rulemaking process. The 1 CCR section 100 rulemaking process was completed on June 6, 2022.

At the Board's July 23, 2022, Board meeting, the Board approved the proposed language and the associated form incorporated by reference, and delegated authority to the Board's Executive Officer to make any technical, non-substantive changes, if necessary.

2. Anticipated Benefit(s) from this Regulatory Action:

The anticipated benefits of the proposed regulation are:

- First, clarifying the collective reference for RDHs to include registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions, promotes a fair, equal, and clear process for RDH educational programs to apply for approval from the Board.
- Second, eliminating the reference to the title and last revision date of CODA standards is necessary to ensure all proposed new RDH educational programs follow current CODA standards. This promotes safety of the public because CODA standards are continuously updated to provide the latest safety standards for patient care, and the Board ensures proposed new RDH educational programs follow these standards while caring for patients.
- Third, clarifying the Board determines accrediting body equivalence adds an explanation to the reference and is necessary for clarity as the Board is responsible for all aspects governing California RDH educational programs.
- Fourth, providing corresponding amendments to the form incorporated by reference within the regulation is necessary to make the application consistent with the proposed amended language in the regulation.

Factual Basis/Rationale

Relocation of periods throughout

The Board moves periods to go inside of quotes in subdivisions (a)(3), (b), (c), and (d) for grammatical correctness.

Subdivision (a)

The Board proposes to amend subdivision (a) as follows:

1. Add “, registered dental hygienists in alternative practice, or registered dental hygienists in extended functions (collectively RDHs).”

SB 534 amended BPC section 1941 to require proposed new educational programs for registered dental hygienists in alternative practice and registered dental hygienists in extended functions to submit a feasibility study demonstrating a need for a new educational program and to apply for approval from the Board before seeking any required approval for initial accreditation from CODA, or an equivalent body. Previously, this section only applied to new educational programs for registered dental hygienists.

Therefore, this proposed amendment is necessary to make subdivision (a) consistent with amended statute BPC section 1941.

2. Delete “03/2022” and add “07/2022” for the form incorporated by reference “Instructions for Institutions Seeking Approval of a New RDH Educational Program.”

This is necessary to update the form’s date to correspond with changes enacted by this regulatory action.

Subdivision (b)

The Board proposes to amend subdivision (b) as follows:

1. Delete “CODA’s” and add “the Commission on Dental Accreditation’s (CODA).”

This is necessary to define and clarify the correct accrediting body referenced within the regulation.

This proposed amendment to subdivision (b) is consistent with language in other Board regulations. (See e.g., Cal. Code Regs., tit. 16, § 1104(b).)

2. Add “, as determined by the Dental Hygiene Board.”

This amendment is necessary to define and clarify the Board’s statutory authority to evaluate all RDH educational programs that apply for approval and grant or deny approval of those applications in accordance with regulations adopted by the Board. (Bus. & Prof. Code § 1905(a)(1).)

This proposed amendment to subdivision (b) is consistent with language in other Board regulations. (see e.g., Cal. Code Regs., tit. 16, § 1104(b).)

3. Delete “contained in CODA’s “Accreditation Standards for Dental Hygiene

Education Programs” (As Last Revised: February 6, 2015) which is hereby incorporated by reference” and add “as required by section 1104(b)(1).”

The Board proposes referencing the Self-Study Report and accreditation standards as required in regulation (16 CCR section 1104(b)(1)), instead of their last revision date. RDH educational programs prepare a Self-Study Report for CODA and must prepare it in accordance with current CODA standards. In addition, RDH programs are required to submit the Self-Study report to the Board. (Cal. Code Regs., tit. 16, § 1104(b)(1).) As the Board does not evaluate whether the Self-Study Report complies with CODA’s standards, the regulation need not expressly incorporate CODA’s standards. Additionally, the Board proposes to delete “which is hereby incorporated by reference.” This statement is now unnecessary because the regulation no longer references specific standards.

This proposed amendment to subdivision (b) is consistent with requirements in other Board regulations. (See e.g., Cal. Code Regs., tit. 16, §§ 1103(c), and 1104(b)(1).)

Form Incorporated by Reference, EDP-I-01 Rev 03/2022

The Board proposes to amend the form incorporated by reference as follows:

1. Feasibility Study Instructions Form EDP-I-01 Rev 03/2022” Title: Deletion of “03/2022” and addition of “07/2022” after “Rev.”
2. Footer: Deletion of “03/2022” and addition of “07/2022” after “Rev.”

The Board incorporates by reference the rationale for subdivision (a), section two above.

3. Page 1, First Paragraph: Deletion of “Registered Dental Hygienists” and addition of “registered dental hygienists” after “programs for.”

This proposed amendment is simply revising capitalization to make the reference to “registered dental hygienists” grammatically agree with references to “registered dental hygienists in alternative practice, and registered dental hygienists in extended functions.”

4. Page 1, First Paragraph: Addition of registered dental hygienists in alternative practice, or registered dental hygienists in extended functions” before “(” and “collectively” before RDHs).”

The Board incorporates by reference the rationale for subdivision (a), section one above.

5. Page 2, First Paragraph: Deletion of “, unless an extension is granted by the DHBC executive officer, or his/her designee. An extension may be granted at the discretion of the executive officer or his/her designee for administrative

purposes and/or requests for additional information. For example, an institution may undergo a natural disaster, or be unable to complete construction of a new facility due to extenuating circumstances out of its control” after required fee.”

The Board removes this section because in the Board’s experience, one year is sufficient to complete the process for applying to the Board for a prospective new RDH educational program. Additionally, under past and current practice, the Board provides form EDP-I-01 to inquiries by prospective new RDH educational programs as to the application process for Board approval of a new RDH program. Additionally, the Board advises the prospective new RDH educational program that a feasibility study is required to be submitted as a part of the application. The Board expects, per Step 3 of the application, the proposed RDH educational program to have staff or a consultant(s) who possess the requisite knowledge and expertise to complete a feasibility study that conforms to the requirements specified in the instructions. Furthermore, the Board encourages the prospective new RDH educational program to ensure all aspects of the feasibility study are complete prior to application. Accordingly, under current processes, extensions do not become necessary.

6. Page 3, Section 1) a.: addition of a period after “of licensee.”

The proposed amendment is simply adding a “period” to the end of a sentence to correct a grammatical error.

7. Page 7, Step 6, First Paragraph: Deletion of “contained in CODA’s “Accreditation Standards for Dental Hygiene Education Programs” (As Last Revised: February 6, 2015)”

The Board incorporates by reference the rationale for subdivision (b), section three above.

8. Page 7, Step 6, First Paragraph: Addition of “pursuant to BPC section 1941(a).”

The Board incorporates by reference the rationale for subdivision (b), section three above.

Additionally, the Board proposes to reference the Board’s statutory authority to grant or renew approval of RDH educational programs meet the minimum standards set by the CODA, or an equivalent body, as determined by the Board.

9. Page 8, First Paragraph: Add “California laws and” prior to “regulations” and delete “found in CODA’s “Self-Study Guide for the Evaluation of a Dental Hygiene Education Program” (As Last Revised: January 1, 2016).”

First, the Board deletes “found in CODA’s “Self-Study Guide for the Evaluation of a Dental Hygiene Education Program” (As Last Revised: January 1, 2016)” after “verify

that the Self-Study Report meets all applicable CODA standards and regulations.” This is necessary because CODA only has “standards” and does not have “regulations.” Therefore, this is an incorrect statement, does not apply to the scope of CODA’s authority, and should be removed. Additionally, the Board incorporates by reference the rationale for subdivision (b), section three above.

Second, the Board adds “California laws and” prior to “regulations” because all prospective new RDH educational programs shall meet all applicable CODA standards and California laws and regulations pursuant to 16 CCR section 1104(b)(5).

Underlying Data:

- Senate Bill 1482 (Hill, Chapter 858, Statutes of 2018).
- Senate Bill 534 (Jones, Chapter 491, Statutes of 2021).
- Minutes: DHBC Full Board WebEx Teleconference, March 19, 2022.
- Meeting Materials: DHBC Full Board WebEx Teleconference, March 19, 2022.
- Minutes: DHBC Full Board Meeting, July 23, 2022.
- Meeting Materials: DHBC Full Board Meeting, July 23, 2022.
- Printout from <https://www.ada.org/en/coda/accreditation/faq> (retrieved on 8/3/22).

Business Impact:

This regulation may have an economic impact on private and public postsecondary educational institutions in the amount of two thousand, one hundred dollars (\$2,100) if applying for approval of a new RDH educational program. This initial determination is based on the following facts:

Business and Professions Code section 1944(a)(9) states the fee for each curriculum review and feasibility study review for educational programs for dental hygienists who are not accredited by a dental hygiene board-approved agency shall not exceed two thousand, one hundred dollars (\$2,100). The amount collected is used to offset the cost of the feasibility study review and site visit inspection by staff.

Economic Impact Assessment:

The Board determined this regulatory action would positively impact jobs within the State of California as the proposed language in the regulation allows for the approval of prospective new RDH educational programs and therefore allow for the employment of faculty by the institutions.

The Board determined this regulatory action would create new businesses within the State of California as the proposed language in the regulation allows new RDH educational programs to open and operate within the state.

This regulatory proposal will positively impact worker safety as the proposed language in the regulation would ensure new RDH educational programs adhere to all laws, regulations, and standards applicable to an RDH educational program, including worker

safety.

This regulatory proposal will positively impact the health and welfare of California residents as the proposed language in the regulation would ensure new RDH educational programs adhere to all laws, regulations, and standards applicable to an educational program, including patient safety.

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

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

The Board initially determined that no reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner which ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

- 1) Not adopt the regulation: This alternative was rejected by the Board as BPC section 1941 requires the Board to include the same application requirements for proposed new educational programs for registered dental hygienists in alternative practice and registered dental hygienists in extended functions as the Board has for new educational programs for registered dental hygienists.
- 2) Adopt the regulation: The Board determined this alternative is the most feasible because it establishes a regulation for the Board to approve new RDH educational programs ensuring compliance with all laws, regulations, and CODA

Fiscal Impact Assessment:

The Board is not currently aware of any RDH educational program considering seeking approval with the Board and does not have an estimate of total workload costs or revenues at this time.

To the extent an educational institution opts to apply to the Board for approval in the future, Board staff will be required to review the feasibility study and to complete a site visit inspection.

The review of a feasibility study is anticipated to take approximately 12 hours to complete because the documents are usually in excess of 500 to 800 pages. A typical

DHEP site visit inspection takes approximately 12 hours (8 hours of on-site inspection time plus 4 hours to write the report) to complete.

The site visit inspection is conducted by an Associate Governmental Program Analyst (AGPA) and a Subject Matter Expert (SME). The total cost for a potential new RDH educational program review is approximately \$4,000 per inspection as follows:

New RDH Educational Program Review Workload Costs	
Initial Review	Costs
Review of Feasibility Study (*AGPA 12 hours @ \$92 per hour)	\$1,104
Inspection (*AGPA 12 hours @ \$92 per hour)	\$1,104
Subject Matter Expert (SME) - (12 hours @ \$150 per hour)	\$1,800
Travel (AGPA/SME - airfare, hotel, car rental, & per diem @ \$593 per day)	\$640
Total Costs:	\$4,008

*AGPA - Associate Governmental Program Analyst (approx. \$92 per hour - includes Dist Admin)

The Board will also incur one-time costs of approximately \$530 to update and post the application form to its website.

Additionally, the Board will charge \$2,100 to review and approve an RDH educational program. The Board notes, this amount is less than actual workload costs, but limited under current law.

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