

STATE OF KANSAS  
KANSAS DENTAL BOARD

**NOTICE OF PUBLIC HEARING ON PROPOSED ADMINISTRATIVE REGULATIONS**

A public hearing will be conducted at 9:00 a.m., on the 8<sup>th</sup> day of November, 2019 at the Landon State Office Building, 5<sup>th</sup> Floor, 900 SW Jackson Street, Room 509, Topeka, Kansas 66612, to consider the adoption of K.A.R. 71-5-11 and K.A.R. 71-8-8 as permanent regulations of the Kansas Dental Board.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed adoption of K.A.R. 71-5-11 and K.A.R. 71-8-8. All parties may submit written comments prior to the hearing to the Executive Director of the Kansas Dental Board, B. Lane Hemsley, [dental.info@ks.gov](mailto:dental.info@ks.gov), or Landon State Office Building, 900 SW Jackson, Room 455-S, Topeka, Kansas 66612-1231. All interested parties will be given a reasonable opportunity to present their views orally on the proposed adoption of the regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting the Kansas Dental Board, Landon State Office Building, 900 SW Jackson, Room 455-S, Topeka, Kansas 66612-1231, (785) 296-6400 (or TYY 1-800-766-3777). Handicapped parking is located on the west and north sides of the building, and the north entrance to the building is accessible to individuals with disabilities.

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The regulations are proposed for adoption as permanent regulations. A summary of the proposed regulations is as follows:

**K.A.R. 71-5-11.** The effect of this regulation requires that during the administration of parenteral conscious sedation or deep sedation or general anesthesia there must be continuous monitoring for the presence of exhaled carbon dioxide using a capnograph, unless doing so would be precluded or invalidated by the nature of the patient, procedure or equipment.

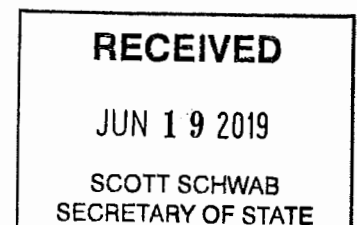
**Summary of Economic Impact Statement.** This amendment is not expected to have any economic impact on governmental agencies or units. It will require Level II and Level III sedation permit holders to own a capnograph monitoring device with a cost of approximately \$2,000.00. It is anticipated that most all Level III permit holders already own such a device. It is anticipated that the economic impact, if any, on the general public will be extremely minimal.

**K.A.R. 71-8-8.** This regulation provides that if a patient, parent or guardian has provided consent to a nursing home or school to access a patient's dental records, the operator of a mobile dental facility or portable dental operation shall provide the nursing home or school the information sheet required by K.A.R. 71-8-8.

**Summary of Economic Impact Statement.** This amendment is not expected to have any economic impact on governmental agencies or units, persons subject to the proposed amendment or the general public.

Copies of the regulations and the economic impact statements may be obtained from the Kansas Dental Board, Landon State Office Building, 900 SW Jackson, Room 455-S, Topeka, Kansas 66612-1231, (785) 296-4690, or by accessing the Board's website at <http://www.dental.ks.gov>.

B. Lane Hemsley  
Executive Director



71-5-11. Level II permit: parenteral conscious sedation. (a) To be eligible for issuance of a level II permit, each dentist shall submit the following to the board:

(1) An application on the form provided by the board;

(2)(A) Evidence of a current "advanced cardiovascular cardiac life support for the health care provider" certificate from the American heart association;

(B) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (a)(2)(A) by the board from a provider approved by the board; or

(C) evidence of satisfactory completion of a simulated office emergency course approved by the board;

(3)(A) Evidence of having successfully completed a course or postdoctoral training program in parenteral conscious sedation that is approved by the board; or

(B) evidence of performance of at least 20 clinical cases of parenteral sedation over the preceding two years, which shall be evaluated by the board;

(4) a level II permit fee of \$150; and

(5) an explanation of any sedation-related mortality or morbidity that occurred to a patient of the applicant during the preceding five years and could have been associated with the administration of a sedative agent.

(b) To be approved by the board, each course or training program specified in paragraph (a)(3)(A) shall meet the following requirements:

(1) Provide comprehensive training in the administration and management of parenteral conscious sedation;

(2) include training in patient evaluation and selection, use of equipment, personnel requirements, monitoring, documentation, patient medical management, and emergency management, including emergency airway management; and

(3) include ~~a minimum of~~ at least 40 hours of didactic instruction and 20 clinical cases of parenteral conscious sedation.

(c)(1) Each level II permit shall be required to be renewed before the expiration of the dentist's license and

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as part of the biennial license renewal.

(2) To apply for renewal of a level II permit, each dentist shall provide the following to the board:

(A)(i) Evidence of a current “advanced cardiovascular ~~cardiac~~ life support ~~for the health care provider~~” certificate from the American heart association;

(ii) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (c)(2)(A)(i) by the board from a provider approved by the board; or

(iii) evidence of satisfactory completion, within the 12-month period preceding the filing of the renewal application, of a simulated office emergency course approved by the board;

(B) in addition to the continuing education required to renew the dentist’s license, proof of eight hours of continuing education limited to sedation, which shall include the complications associated with parenteral conscious sedation and their management; and

(C) the biennial renewal fee of \$150.

(d) Before administering parenteral conscious sedation, each treating dentist shall meet all of the requirements specified in K.A.R. 71-5-10(d).

(e) During the administration of parenteral conscious sedation, each treating dentist shall meet the following requirements:

(1) Meet the requirements specified in K.A.R. 71-5-10(e);

(2) continuously monitor for the presence of exhaled carbon dioxide using a capnograph, unless doing so would be precluded or invalidated by the nature of the patient, procedure, or equipment; and

(3) ensure that an automated external defibrillator or defibrillator is available and in working order.

(f) Whenever parenteral conscious sedation is administered, a record containing the information specified in K.A.R. 71-5-10(f)(1), (3), (4), (5), (6), and (7) shall be contemporaneously created. This record shall include the following:

(1) The name and amount of each fluid administered;

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(2) the site of administration of each medication and the type of catheter used, if applicable; and

(3) documentation of the sedative agents administered, the approximate time when the sedative agents were administered, the amount of each agent administered, and the patient's blood pressure, heart rate, and oxygen saturation readings at the start of sedation, at the end of the surgical or operative procedure, and at five-minute intervals throughout the procedure.

These records shall be maintained for at least 10 years as a part of the patient's record.

(g) During the administration of parenteral conscious sedation and the recovery phase, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-10(g)(1), (2), and (3) and the following conditions are met:

(1) The patient's blood pressure, heart rate, and oxygen saturation reading are recorded at least every five minutes.

(2) The patient's ability to appropriately respond to physical stimulation or verbal command is documented every five minutes.

(h) Following the administration of parenteral conscious sedation and the recovery phase, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-10(h) are met.

(i) Whenever parenteral conscious sedation is administered, the records required by K.A.R. 71-5-10(i) shall be contemporaneously created. These records shall be maintained for at least 10 years as part of the patient's record.

(Authorized by K.S.A. 2008-Supp. 65-1444, K.S.A. 2008-Supp. 65-1447, and K.S.A. 74-1406; implementing K.S.A. 2008-Supp. 65-1444 and K.S.A. 2008-Supp. 65-1447; effective Nov. 19, 2010; amended

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71-8-8. Information for patients. (a) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Nursing home" means an adult care home as defined in K.S.A. 39-923, and amendments thereto.

(2) "School" means any preschool and any public or private elementary or secondary school.

(b) During or at the conclusion of each patient's visit to the mobile dental facility or portable dental operation, the patient, parent, or guardian shall be provided with an information sheet. If the patient, parent, or guardian has provided consent for ~~an institutional facility~~ a nursing home or school to access the patient's dental health records, the institution shall also be provided with a copy of the information sheet. ~~"Institutional facility" shall include a long-term care facility or school.~~

~~(b)~~(c) Each information sheet shall include the following information:

(1) The address and telephone number of record required by K.A.R. 71-8-4;

(2) the name of each dentist and dental hygienist who provided services;

(3) a description of the treatment rendered, including the billed service codes and fees associated with the treatment, tooth numbers along with surface and quadrant descriptors when appropriate, and the names and telephone numbers of the billing entity and any third party being billed;

(4) the date of the services and the location where the services were rendered;

(5) the name and telephone number of the entity to contact for information regarding the processing and payment for billed services; and

(6) if necessary, referral information to another health care provider. (Authorized by and implementing L. 2005, ch. 115, §2K.S.A. 65-1469; effective Feb. 17, 2006; amended P-\_\_\_\_\_.)

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**Kansas Administrative Regulations  
Economic Impact Statement  
For the Kansas Division of the Budget**

Kansas Dental Board  
Agency

B. Lane Hemsley  
Agency Contact

785-296-4690  
Contact Phone Number

71-5-11  
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget  
900 SW Jackson, Room 504-N  
Topeka, KS 66612

**I. Brief description of the proposed rule(s) and regulation(s).**

71-5-11 Level II permit: parenteral conscious sedation. The amendment corrects the name of the required "advanced cardiac life support" certificate and requires use of a capnograph monitoring device to continuously monitor exhaled carbon monoxide while the patient is under sedation. Because KAR 71-5-12's incorporation by reference of the KAR 71-5-11 (Level III permit) requirements are the same, requirement will be made for patients receiving deep sedation and general anesthesia.

**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)**

Neither amendment is mandated by the federal government.

**III. Agency analysis specifically addressing following:**

**A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;**

The Board does not anticipate the amendment will enhance or restrict business growth or activity.

**B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

The 71-5-11 amendment will require dentists administering Level II or Level III sedation to own a capnograph monitoring device. The average cost for such a device is \$2,000.

**C. Businesses that would be directly affected by the proposed rule and regulation;**

The amendment to 71-5-11 will affect only dentists administering Level II and Level III sedation.

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**D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

The amendment to 71-5-11 is a benefit to patients receiving Level II and Level III sedation because capnography assists the dentist in assuring the patient is receiving adequate ventilation (air movement in and out of the lungs) while under sedation. It has been credited with preventing a high percentage of avoidable anesthesia mishaps. The Board believes capnography in these settings is the standard of care. The American Association of Oral and Maxillofacial Surgeons requires its member Oral Surgeons to use capnography. The benefit in terms of patient safety far outweighs the cost of the device.

**E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

The Board does not believe that the regulation will adversely affect on any business and economic development with the State of Kansas, local government and individuals.

**F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

Currently there are approximately 41 Level II and permit holders in Kansas and 61 Level III permit holders. Virtually all of the Level III permit holders are oral surgeons who the Board believes are already using capnography. The cost of a capnograph monitoring device is approximately \$2,000.00. If none of the 41 Level II permit holders have a capnograph monitoring device, the total cost to the population would be \$82,000. Because of the way dentist are typically paid for their services, it is not clear that the \$2,000 cost to an individual dentist would be passed on to patients.

**Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?**

YES  NO

**Give a detailed statement of the data and methodology used in estimating the above cost estimate.**

The Oral Surgeon member of the Board, who currently uses a capnograph monitoring device, provided the cost of the device. The number of permit holders was taken from the Board's records.

**Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.**

YES  NO

**G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or**

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imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

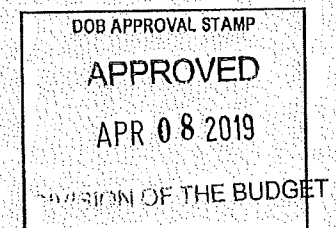
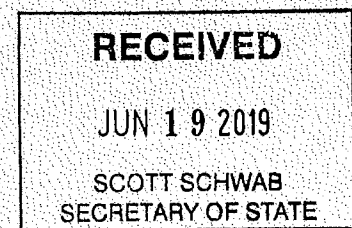
N/A

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The Oral Surgeon member of the Board, who, like other oral surgeons, uses capnography, advised the Board that the use of capnography during Level II and Level III sedation is the standard of care and is required by the American Association of Oral and Maxillofacial Surgeons of its Oral Surgeon members.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

N/A



**Kansas Administrative Regulations  
Economic Impact Statement  
For the Kansas Division of the Budget**

Kansas Dental Board  
Agency

B. Lane Hemsley  
Agency Contact

785-296-4690  
Contact Phone Number

71-8-8  
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget  
900 SW Jackson, Room 504-N  
Topeka, KS 66612

**I. Brief description of the proposed rule(s) and regulation(s).**

71-8-8 Information for patients. The amendment allows a nursing home or school, with patient consent, to receive treatment related information from a mobile dental facility providing dental services at the nursing home or school.

**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)**

Neither amendment is mandated by the federal government.

**III. Agency analysis specifically addressing following:**

**A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;**

The Board does not anticipate the amendment will enhance or restrict business growth or activity.

**B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

The 71-8-8 amendment will have no economic impact.

**C. Businesses that would be directly affected by the proposed rule and regulation;**

The 71-8-8 amendment will affect only operators of a mobile dental facility.

**D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

The amendment to 71-8-8 will allow operators of mobile dental facility, when authorized by a patient, to provide treatment

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records to the nursing home or school where the patient resides or received services. This is a benefit when the facility is maintaining other treatment records of the patient.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The Board does not believe that the regulation will have an adverse affect on any business or economic development with the State of Kansas, local government and individuals.

- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

The Board does not believe the amendment to 71-8-1 will increase any costs.

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES  NO x

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

N/A

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES  NO x

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

N/A

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The amendment to 71-8-8 was requested by a Mobile Dental Facility operator and discussed by the Board at one of its meetings.

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- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and who would be affected by the failure to adopt the rule(s) and regulation(s).

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