



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Dentistry WV Board of TITLE-SERIES: 5-14  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 5-14 Mobile Dental Facilities & Portable Dental Units

**PRIMARY CONTACT**

NAME: WV Board of Dentistry  
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CITE STATUTORY AUTHORITY: 30-4-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

30-4-6 is the section of the practice act giving the Board rule making authority which includes regulation of mobile dental facilities and portable dental units.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 4/23/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 5/24/2024

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Notice was sent to the WV Dental Association and the WV Dental Hygienist's Association and was placed on the home page of our website.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This proposed rule adds a sunset provision. Changes a dental treatment light to a dental light source. Deletes the requirement of a lead apron and thyroid collar when x-rays are made. Adds the requirement of emergency drugs and deletes the reference of an anesthesia permit holder by class. Adds a requirement of any operator or licensee to provide patient records and x-rays when requested by a subsequent treating dentist no later than 10 days from the request.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule regulates the practice of dentistry via a mobile dental facility or use of a portable dental unit. The rule has not been updated since it was first promulgated and needed to be updated and a provision concerning release of records included.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule change should not have an economic impact on revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This rule change should not have an economic impact on any special revenue accounts of state government.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

This rule change should not have an economic impact on the State or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This rule should not affect the revenue or expenditures of the Board.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Susan Combs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 5  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF DENTISTRY

SERIES 14  
MOBILE DENTAL FACILITIES & PORTABLE DENTAL UNITS

**§5-14-1. General.**

- 1.1. Scope. This legislative rule regulates mobile dental facilities.
- 1.2. Authority. – W.Va. Code §30-4-6.
- 1.3. Effective Date. -- ~~May 1, 2014~~
- 1.4. Filing Date. ~~April 1, 2014~~
- 1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2035.

**§5-14-2. Definitions.**

As used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meanings ascribed in this section.

- 2.1. Board - means West Virginia Board of Dentistry.
- 2.2. Dental Home - means a licensed primary dental care provider who has an ongoing relationship with a patient where comprehensive oral health care is continuously accessible, coordinated, family-centered and provided in compliance with the policies of the American Dental Association.
- 2.3. Mobile Dental Facility - means any self-contained facility in which dentistry or dental hygiene will be practiced which may be moved, towed, or transported from one location to another.
- 2.4. Operator - means a licensed dentist or an organization authorized by the ~~Dental Practice Act Board~~ to employ or contract with licensed dentists or dental hygienists to whom the permit is issued as provided by this rule.
- 2.5. Permit - means an authorization granted by the Board to operate a mobile dental facility or use a portable dental unit in the State of West Virginia.
- 2.6. Portable Dental Unit - means any non-facility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis at an out of office location, including but not limited to, patients' homes, schools, nursing homes or other institutions.
- 2.7. Session - means a period of time during which personnel associated with a permitted facility or unit are available to provide dental services at a location.

**§5-14-3. General Rules for Mobile Dental Facilities and Portable Dental Units.**

- 3.1. In order to operate a mobile dental facility or portable dental unit, an operator shall first obtain a permit issued by the Board.

**§5-14-4. Application Requirement and Issuance of Permit.**

4.1. Before an operator operates a mobile dental facility or portable dental unit, the West Virginia Board of Dentistry shall issue a permit to an operator to operate a mobile dental facility or portable dental unit.

4.2. An application for a mobile dental facility or portable dental unit shall be submitted to the Board along with the appropriate fee as set forth by the Board's fee schedule, 5CSR3.

4.3. Before issuing a permit to operate a mobile dental facility or portable dental unit, the Board shall determine that an operator meets all qualifications under this rule.

4.4. The initial application for a mobile dental facility or portable dental unit permit shall include:

4.4.1. ~~(a)~~ The full name, an address of record that is not a PO Box, and telephone number of each dentist, dental hygienist, or operator who will operate a mobile dental facility or use a portable dental unit.

4.4.2. ~~(b)~~ Proof of insurance from a licensed insurance carrier that the operator has in force at least one million dollars/three million dollars of general liability insurance, malpractice insurance or bond or the Federal/State non-profit equivalency. An operator shall maintain the insurance coverage at all times during which the operator holds a permit issued by the Board to operate a mobile dental facility or portable dental unit.

4.4.3. ~~(c)~~ The physical address, mailing address, and official telephone number of record of the operator.

4.4.4. ~~(d)~~ A copy of a written agreement for the emergency follow-up care for patients treated in the mobile dental facility or portable dental unit and such agreement must include identification of and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area.

4.4.5. ~~(e)~~ A statement that the mobile dental facility or portable dental unit has access to communication facilities which will enable dental personnel to contact assistance as needed in the event of an emergency.

4.4.6. ~~(f)~~ A statement that all applicable federal, state, local laws, regulations and ordinances dealing with radiographic equipment, storage and use of flammable materials, acceptable sanitation and zoning standards along with the facility construction standards, including required or suitable access for disabled individuals have been complied with.

4.4.7. ~~(g)~~ A statement that the applicant possesses all applicable county and city licenses or permits to operate the mobile dental facility or portable dental unit.

4.4.8. ~~(h)~~ A copy of a written policy concerning infection control procedures and how instruments are to be sterilized and transported, which must comply with the Centers for Disease Control's recommendations for infection control practices for dentistry.

**§5-14-5. Required Equipment.**

5.1. A mobile dental facility must include:

5.1.1. ~~(a)~~ Dental treatment chair;

5.1.2. ~~(b)~~ A dental ~~treatment~~ light source;

5.1.3. ~~(c)~~ When radiographs are to be made by the mobile dental facility a radiographic unit that is properly monitored by the proper authorized agency of the State of West Virginia;

~~(d) When radiographs are to be made by the mobile dental facility, a lead apron including a thyroid collar;~~

5.1.4. ~~(e)~~ A portable delivery system, or an integrated system if used in a mobile dental facility;

5.1.5. ~~(f)~~ An evacuation unit suitable for the procedure being performed;

5.1.6. ~~(g)~~ A list of appropriate and sufficient dental instruments including explorers and mouth mirrors, and infection control supplies, such as gloves, face masks, etc. that are on hand;

5.1.7. ~~(h)~~ Ready access by a ramp or lift;

5.1.8. ~~(i)~~ Covered, non-corrosive container for deposit of waste materials including biohazardous materials;

5.1.9. ~~(j)~~ Automated external defibrillator ~~if Class 2, 3 or 4 anesthesia is used in the mobile dental facility~~ and emergency drugs;

5.1.10. ~~(k)~~ Smoke and carbon ~~dioxide~~ monoxide detectors.

5.2. A portable dental unit must include:

~~(d) When radiographs are to be made by the mobile dental facility, a lead apron including a thyroid collar;~~

5.2.1. ~~(e)~~ A portable delivery system, or an integrated system if used in a mobile dental facility;

5.2.2. ~~(f)~~ An evacuation unit suitable for the procedure being performed;

5.2.3. ~~(g)~~ A list of appropriate and sufficient dental instruments including explorers and mouth mirrors, and infection control supplies, such as gloves, face masks, etc. that are on hand;

5.2.4. ~~(h)~~ Ready access by a ramp or lift;

5.2.5. ~~(i)~~ Covered, non-corrosive container for deposit of waste materials including biohazardous materials;

5.2.6. ~~(j)~~ Automated external defibrillator ~~if Class 2, 3 or 4 anesthesia is used in the mobile dental facility~~ and emergency drugs;

#### **§5-14-6. Operational Requirements.**

6.1. A permit holder is required to operate a permitted mobile dental facility or portable dental unit in compliance with all state laws and regulations. Further, all permit holders shall:

6.1.1. ~~(a)~~ Notify the Board in writing with 30 days of a change of address, whether a physical or mailing address;

6.1.2. ~~(b)~~ Prominently display all dental and dental hygienists licenses and/or current renewal certificates, mobile dental facility permit, portable dental unit permit, or duplicates thereof;

6.1.3. ~~(c)~~ Maintain, in full compliance with all record-keeping requirements contained in these rules, all dental records and official records at the official address of record for the facility or unit;

6.1.4. ~~(d)~~ Notify the Board in writing of a change in personnel listed as required by this rule within 30 days of any such change; and

6.1.5. ~~(e)~~ Before utilizing a mobile dental facility or portable dental unit to provide treatment to a patient, arrange for:

6.1.5.a. ~~(1)~~ Access to a properly functioning sterilization system;

6.1.5.b. ~~(2)~~ Ready access to an adequate supply of potable water; and

6.1.5.c. ~~(3)~~ Ready access to toilet facilities.

6.2. All written or printed materials available from or issued by the mobile dental facility or portable dental unit must contain the official address and phone number of record for the facility or unit.

6.3. A mobile dental facility or portable dental unit may operate only when all requirements described in these rules are being met.

6.4. All permits to operate a mobile dental facility or portable dental unit shall expire September 1 each year, or on the date when the permit holder is no longer associated with the facility or unit, whichever occurs first.

6.5. Upon cessation of operations by the mobile dental facility or portable dental unit, the permit holder shall notify the Board of the final disposition of patients records and charts.

6.6. A permit to operate a mobile dental facility or portable dental unit is not transferrable.

6.7. The Board may inspect a mobile dental facility or portable dental unit prior to issuance of a permit or anytime the Board deems necessary for protection of the public.

6.8. The Board may suspend or revoke a permit if upon investigation and after opportunity for a hearing, a determination is made of non-compliance with State, Federal laws, the Dental Practice Act or the rules of the Board.

#### **§5-14-7. Informed Consent; Post Care Information.**

7.1. A licensee providing dental care at a mobile dental facility or through a portable dental unit shall not perform services on a minor or incapacitated person without the signed informed consent of a parent or guardian. The informed consent form must be obtained prior to any dental service in a mobile dental facility or through a portable dental unit. The informed consent form is required for the initial visit for diagnostic and preventative services. Consent for subsequent treatment may be written or verbal provided that the verbal consent is documented in the patient record.

7.2. The informed consent form shall include, at a minimum, the following information:

7.2.1. ~~(a)~~ Name of the operator of the mobile dental facility or portable dental unit;



7.2.2. ~~(b)~~ Permanent office address of the mobile dental facility or portable dental unit that is not a PO Box;

7.2.3. ~~(c)~~ Telephone number and/or other emergency contact number where calls will be returned within 24 hours of being received;

7.2.4. ~~(d)~~ Services to be provided;

7.2.5. ~~(e)~~ Whether the prospective minor or incapacitated patient received dental care from a licensed dentist during the previous twelve months: *Provided*, That if the dental care was received from a mobile dental facility or ~~through~~ through a portable dental unit, the name, address and telephone number of the mobile dental facility or portable dental unit's dental home shall be documented: *Provided further*, the licensee shall contact such dental home to notify the dental home of the minor or incapacitated person's interest in receiving the dental care at the mobile dental facility or through the portable dental unit. If the dental home confirms that an appointment for the minor or incapacitated individual is scheduled with the dental home, the licensee shall encourage the parent or guardian of the minor or incapacitated individual to seek care from the dental home; and

7.2.6. ~~(f)~~ The informed consent form must be signed by the parent or legal guardian of the minor or incapacitated individual and shall document that the parent or legal guardian understands that the prospective patient may choose at any time to receive care from their dental home rather than from the mobile dental facility or portable dental unit.

7.3. A licensee providing dental care at a mobile dental facility or through a portable dental unit shall not perform services on an adult without first obtaining a signed informed consent form from the prospective patient. The informed consent form shall document that the prospective patient understands that he or she may choose at any time to receive care from his or her dental home rather than at the mobile dental facility or through the portable dental unit, that the patient has elected to receive care at the mobile dental facility or through the portable dental unit, and that the mobile dental facility or portable dental unit is now the prospective patient's dental home and will be responsible for post-op complications and general dental care.

7.4. Each person receiving dental care in a mobile dental facility or through a portable dental unit shall receive a copy of the informed consent form and an information sheet at the end of the visit.

7.5. The information sheet provided to the patient after dental care is rendered at a mobile dental facility or through a portable dental unit shall contain:

7.5.1. ~~(a)~~ Name of the licensee(s) who provided service;

7.5.2. ~~(b)~~ Telephone number and/or other emergency contact number where calls will be returned within 24 hours of being received;

7.5.3. ~~(c)~~ Listing of treatment rendered including, when applicable, billing codes, fees and tooth numbers;

7.5.4. ~~(d)~~ Description of treatment that is needed or recommended;

7.5.5. ~~(e)~~ Referrals to specialists or other dentist if mobile facility or portable dental unit is unable to provide the necessary treatment; and

7.5.6. ~~(F)~~ Consent form or a documented, verbal consent for additional treatment or altered treatment plan when applicable.

7.6. Any operator of a mobile dental facility or portable dental unit, or any licensee providing dental care at a mobile dental facility or through a portable dental unit, that accepts or treats a patient but does not refer patients for follow-up care when such follow-up care is clearly necessary, shall be considered to have abandoned the patient and will subject the operator, licensee, or both to disciplinary action by the Board.

7.7. Any operator or licensee working in a mobile dental facility or with a portable dental unit shall provide patient records and diagnostic quality radiographs to a subsequent treating dentist upon request or no later than 10 business days from the request.

**§5-14-8. Permit to be Renewed Annually; Annual Report to be filed.**

8.1. On or before the first day of September of each year, operators holding a permit to operate mobile dental facility shall submit a renewal application along with a renewal fee as set forth by the Board's fee schedule 5CSR3. The Board, at its discretion, may alter or eliminate the required fee based on a demonstration of hardship by the applicant.

8.2. On or before the first day of September of each year, operators holding a permit to operate a portable dental unit shall submit a renewal application along with a renewal fee as set forth by the Board's fee schedule 5CSR3. The Board, at its discretion, may alter or eliminate the required fee based on a demonstration of hardship by the applicant.

8.3. An annual report shall be filed with the Board at the time of renewal each year. The annual report shall consist of a written report for the preceding year ending June 30 that details the location, including a street address, the dates of each session, the number of patients served, the types of dental procedures performed, and quantity of each service provided.

**§5-14-9. Sale of Mobile Dental Facility or Portable Dental Unit.**

9.1. If a mobile dental facility or portable dental unit is sold, the current permit operator shall inform the Board by certified mail within ten days after the date of the sale is final.

**§5-14-10. Cessation of Operation of a Mobile Dental Facility or Portable Dental Unit.**

10.1. An operator of a mobile dental facility or portable dental unit shall notify the Board at least thirty days before cessation of operations. Notification shall include without limitation:

10.1.1. ~~(a)~~ The final day of operation of the mobile dental facility or portable dental unit; and

10.1.2. ~~(b)~~ A description of the manner and procedure by which patients may obtain their records or transfer the records to another ~~dentists~~ dental practice.

10.2. A copy of the notification shall be sent to all patients.

10.3. The operator shall take all necessary action to ensure that the patient records are available to the patient, a representative of the patient, or a subsequent treating dentist.

**§5-14-11. Applicability.**

**5CSR14**

11.1. An operator, dentist or dental hygienist working or performing services at a mobile dental facility or through a portable dental unit is subject to this rule.

**§5-14-12. Penalties.**

12.1. An operator, dentist or dental hygienist who violates this rule is subject to disciplinary actions as set forth in Chapter 30, Article 4, of the West Virginia Code.