

# SENATE BILL 1082

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By: **Senator Conway**

Introduced and read first time: February 19, 2016

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners – Ownership, Management, and Operation of a**  
3 **Dental Practice**

4 FOR the purpose of altering a certain provision of law to exempt certain entities from the  
5 requirements of the Maryland Dentistry Act; prohibiting the State Board of Dental  
6 Examiners from requiring a person to be licensed by the Board to engage in certain  
7 activities in the State; prohibiting the Board from adopting regulations restricting  
8 certain activities; prohibiting certain persons from aiding or abetting the  
9 unauthorized practice of dentistry; establishing certain penalties for aiding or  
10 abetting the unauthorized practice of dentistry; altering certain penalties;  
11 exempting certain persons from certain penalty provisions; requiring the dentist and  
12 dental hygienist members of the Board to be appointed with the advice and consent  
13 of the Senate; repealing certain provisions of law that require certain lists to have  
14 certain numbers of names; repealing the requirement that the Board take certain  
15 actions when there is a vacancy on the Board; requiring the Office of Oral Health in  
16 the Department of Health and Mental Hygiene to include the exception provided for  
17 in a certain provision of this Act in a certain report; making conforming changes;  
18 providing for the effective dates of this Act; providing for the termination of certain  
19 provisions of this Act; altering a certain definition; and generally relating to the  
20 ownership, management, and operation of a dental practice.

21 BY repealing and reenacting, with amendments,  
22 Article – Health Occupations  
23 Section 4–101(l), 4–102, 4–202, 4–301, 4–601, and 4–606  
24 Annotated Code of Maryland  
25 (2014 Replacement Volume and 2015 Supplement)

26 BY repealing and reenacting, without amendments,  
27 Article – Health Occupations  
28 Section 4–201 and 4–602  
29 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2014 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,  
Article – Health – General  
Section 13–2504  
Annotated Code of Maryland  
(2015 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That the Laws of Maryland read as follows:

**Article – Health Occupations**

4–101.

(1) **(1)** “Practice dentistry” means to:

**[(1)] (I)** Be a manager, a proprietor, or a conductor of or an operator in any place in which a dental service or dental operation is performed intraorally;

**[(2)] (II)** Perform or attempt to perform any intraoral dental service or intraoral dental operation;

**[(3)] (III)** Diagnose, treat, or attempt to diagnose or treat any disease, injury, malocclusion, or malposition of a tooth, gum, or jaw, or structures associated with a tooth, gum, or jaw if the service, operation, or procedure is included in the curricula of an accredited dental school or in an approved dental residency program of an accredited hospital or teaching institution;

**[(4)] (IV)** Perform or offer to perform dental laboratory work;

**[(5)] (V)** Place or adjust a dental appliance in a human mouth; or

**[(6)] (VI)** Administer anesthesia for the purposes of dentistry and not as a medical specialty.

**(2) “PRACTICE DENTISTRY” INCLUDES:**

**(I) PATIENT EVALUATION, DIAGNOSIS, AND DETERMINATION OF TREATMENT PLANS;**

**(II) DETERMINATION OF OR INFLUENCE ON TREATMENT OPTIONS;**

**(III) DETERMINATION AND ESTABLISHMENT OF PATIENT CLINICAL PROTOCOLS;**

1                   (IV) THE EMPLOYMENT, CLINICAL SUPERVISION, OR  
2 TERMINATION OF EMPLOYMENT OF A DENTIST, DENTAL HYGIENIST, OR DENTAL  
3 ASSISTANT WHO ASSISTS IN THE PROVISION OF CLINICAL CARE AND TREATMENT TO  
4 DENTAL PATIENTS;

5                   (V) DIRECT CLINICAL SUPERVISION OVER THE TRAINING OF A  
6 DENTAL HYGIENIST OR DENTAL ASSISTANT WHO ASSISTS IN THE PROVISION OF  
7 CLINICAL CARE AND TREATMENT TO DENTAL PATIENTS; AND

8                   (VI) THE PREPARATION, OWNERSHIP, OR CONTROL OF PATIENT  
9 TREATMENT RECORDS.

10 4–102.

11           (a) (1) Except as otherwise provided in this subsection, this title does not limit  
12 the right of an individual to practice a health occupation that the individual is authorized  
13 to practice under this article.

14           (2) The provisions of this title do not affect a physician while practicing  
15 medicine, unless the physician practices dentistry as a specialty.

16           (b) This title does not prohibit an educational program broadcast on radio or  
17 television by the Department or by the health department of a political subdivision of this  
18 State.

19           (c) (1) This title does not apply to [a]:

20                   (I) A clinic maintained by [a]:

21                           1. A public school[, a];

22                           2. A FEDERAL, State, OR LOCAL GOVERNMENT AGENCY  
23 OR institution[.];

24                           3. A DENTAL OR DENTAL HYGIENE PROGRAM THAT IS  
25 APPROVED BY THE COMMISSION ON DENTAL ACCREDITATION (CODA) FOR AN  
26 INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN § 10–101 OF THE EDUCATION  
27 ARTICLE; or

28                           4. A charitable [institution, or a business corporation, for its  
29 pupils, inmates, or employees if:



1 (ii) 4 shall be licensed dental hygienists; and

2 (iii) 3 shall be consumer members.

3 (3) (i) [Subject to subsection (b)(1) of this section, the] **THE** Governor  
4 shall appoint the [dentist] Board members, with the advice [of the Secretary, from a list of  
5 names submitted to the Governor by the Board.

6 (ii) The number of names on the list for one vacancy shall be at least  
7 four names, for two vacancies at least three names for each vacancy, and for three or more  
8 vacancies at least two names for each vacancy.

9 (4) (i) Subject to subsection (b)(2) of this section, the Governor shall  
10 appoint the dental hygienist Board members, with the advice of the Secretary, from a list  
11 of names submitted to the Governor by the Board.

12 (ii) The number of names on the list shall be four times the number  
13 of vacancies.

14 (5) The Governor shall appoint the consumer members with the advice of  
15 the Secretary and the advice] and consent of the Senate.

16 [(6)] (4) To the extent practicable, the members appointed to the Board  
17 shall reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the  
18 State.

19 [(b)] (1) For each licensed dentist vacancy, the Board shall:

20 (i) Send by electronic mail or regular mail a solicitation for  
21 nominations to fill the vacancy to:

22 1. Each dentist licensed by the Board; and

23 2. Each State dental organization affiliated with a national  
24 organization; and

25 (ii) Conduct a balloting process by which each dentist licensed by the  
26 State is eligible to vote to select the names of the licensed dentists to be submitted to the  
27 Governor.

28 (2) For each licensed dental hygienist vacancy, the Board shall:

29 (i) Send by electronic mail or regular mail a solicitation for  
30 nominations to fill the vacancy to:

31 1. Each dental hygienist licensed by the Board; and



1 (ii) A member of the association's governing board or committee;

2 (iii) A member of the association's house of delegates; or

3 (iv) A voting member of a committee of the association that  
4 contributes to the establishment of governmental, regulatory, or legislative policy  
5 objectives of the association.

6 **[(e)] (D)** Each consumer member of the Board:

7 (1) Shall be a member of the general public;

8 (2) May not be or ever have been a dentist or dental hygienist or in training  
9 to become a dentist or dental hygienist;

10 (3) May not have a household member who is a dentist or dental hygienist  
11 or in training to become a dentist or dental hygienist;

12 (4) May not participate or ever have participated in a commercial or  
13 professional field related to dentistry;

14 (5) May not have a household member who participates in a commercial or  
15 professional field related to dentistry; and

16 (6) May not have had within 2 years before appointment a substantial  
17 financial interest in a person regulated by the Board.

18 **[(f)] (E)** While a member of the Board, a consumer member may not have a  
19 substantial financial interest in a person regulated by the Board.

20 **[(g)] (F)** Before taking office, each appointee to the Board shall take the oath  
21 required by Article I, § 9 of the Maryland Constitution.

22 **[(h)] (G)** (1) The term of a member is 4 years.

23 (2) The terms of the members are staggered as required by the terms  
24 provided for members of the Board on October 1, 2006.

25 (3) At the end of a term, a member continues to serve until a successor is  
26 appointed and qualifies.

27 (4) A member who is appointed after a term has begun serves only for the  
28 rest of the term and until a successor is appointed and qualifies.

29 (5) A member may not be appointed for more than 2 consecutive full terms.

1 (6) To the extent practicable, the Governor shall fill any vacancy on the  
2 Board within 60 days of the date of the vacancy.

3 [(i)] (H) (1) The Governor may remove a member for incompetence,  
4 misconduct, continued neglect of duties imposed by this subtitle, unprofessional conduct,  
5 or dishonorable conduct.

6 (2) The Governor shall remove a member whom the Governor finds to have  
7 been absent from 2 successive Board meetings without adequate reason.

8 4-301.

9 (a) (1) Except as otherwise provided in this title, an individual shall be  
10 licensed by the Board to practice dentistry before the individual may practice dentistry on  
11 a human being in this State.

12 (2) Except as otherwise provided in this title, an individual shall be  
13 licensed by the Board to practice dental hygiene before the individual may practice dental  
14 hygiene on a human being in this State.

15 (b) This section does not apply to:

16 (1) A student of dentistry while engaged in an educational program at an  
17 approved school of dentistry;

18 (2) A student of dental hygiene while engaged in an approved educational  
19 program in dental hygiene;

20 (3) A dentist while performing official duties in a federal dental service;

21 (4) An individual licensed to practice dentistry in any other state or a  
22 foreign country, while the individual:

23 (i) Makes a clinical demonstration before a dental society, dental  
24 convention, association of dentists, or dental college; or

25 (ii) Performs professional duties on a specific case for which the  
26 individual is called into this State; or

27 (5) A dental assistant, if the dental assistant:

28 (i) Subject to the rules and regulations adopted by the Board,  
29 performs only procedures that do not require the professional skills of a licensed dentist;  
30 and

31 (ii) Performs intraoral tasks only under the direct supervision of a  
32 licensed dentist who personally is present in the office area where the tasks are performed.



1           **(C) THE BOARD MAY NOT REQUIRE A PERSON TO BE LICENSED BY THE**  
2 **BOARD TO ENGAGE IN ANY OF THE FOLLOWING ACTIVITIES IN THE STATE:**

3                   **(1) (I) OWNING REAL PROPERTY OR FURNISHINGS, EQUIPMENT,**  
4 **OR OTHER GOODS OR SERVICES THAT ARE USED BY A DENTIST OR A DENTAL**  
5 **PRACTICE; OR**

6                   **(II) PROVIDING FINANCING TO A DENTIST OR A DENTAL**  
7 **PRACTICE FOR REAL PROPERTY OR FURNISHINGS, EQUIPMENT, OR OTHER GOODS**  
8 **OR SERVICES THAT ARE USED BY THE DENTIST OR DENTAL PRACTICE;**

9                   **(2) LEASING TO A DENTIST OR A DENTAL PRACTICE REAL PROPERTY**  
10 **OR FURNISHINGS, EQUIPMENT, OR OTHER GOODS THAT ARE USED BY THE DENTIST**  
11 **OR DENTAL PRACTICE;**

12                   **(3) MANAGING OR CONDUCTING ADMINISTRATIVE OR OTHER**  
13 **RELATED FUNCTIONS OF A DENTAL PRACTICE;**

14                   **(4) PROVIDING ANY SERVICES REQUESTED BY A DENTIST OR A**  
15 **DENTAL PRACTICE, INCLUDING:**

16                           **(I) BOOKKEEPING;**

17                           **(II) ACCOUNTING;**

18                           **(III) TAX PREPARATION SERVICES;**

19                           **(IV) INTERACTING WITH PATIENTS AND THIRD PARTY PAYORS;**

20                           **(V) CREATING AND PLACING ADVERTISING AND MARKETING**  
21 **MATERIALS THAT HAVE BEEN APPROVED BY A DENTIST;**

22                           **(VI) DETERMINING WHICH INFORMATION TECHNOLOGY TO**  
23 **ACQUIRE AND ASSISTING ITS ACQUISITION;**

24                           **(VII) HUMAN RESOURCE SERVICES;**

25                           **(VIII) GENERAL OFFICE MANAGEMENT AND PROPERTY**  
26 **MANAGEMENT AND MAINTENANCE SERVICES; AND**

27                           **(IX) ASSISTING IN RISK MANAGEMENT, INCLUDING LEGAL AND**  
28 **REGULATORY COMPLIANCE AND THE PROCESSING OF INSURANCE CLAIMS;**

1           **(5) PROVIDING GOODS AND SERVICES TO A DENTIST OR A DENTAL**  
 2 **PRACTICE, INCLUDING GOODS AND SERVICES FOR WHICH THE DENTIST OR DENTAL**  
 3 **PRACTICE PAYS A FEE THAT IS CALCULATED BASED ON THE REVENUES OR PROFITS**  
 4 **GENERATED BY THE USE OF THE GOODS OR SERVICES, OR ANOTHER MEASURE OF**  
 5 **THE USE OF THE GOODS OR SERVICES; AND**

6           **(6) ARRANGING FOR, OR OTHERWISE PROVIDING, TRAINING OR**  
 7 **OTHER SERVICES REQUESTED BY A DENTIST, INCLUDING:**

8           **(i) CLINICAL TRAINING COURSES AND ASSISTANCE WITH PEER**  
 9 **OR OTHER CLINICAL REVIEW ACTIVITIES, INCLUDING COURSES OR CLINICAL**  
 10 **REVIEW ACTIVITIES THAT INVOLVE DENTISTS AND DENTAL HYGIENISTS LICENSED**  
 11 **IN OTHER STATES; AND**

12           **(ii) ASSISTANCE IN STORING OR MAINTAINING CLINICAL**  
 13 **RECORDS TO WHICH A PATIENT AND A DENTIST ARE REQUIRED TO HAVE ACCESS.**

14           **(D) THE BOARD MAY NOT ADOPT REGULATIONS RESTRICTING THE**  
 15 **ACTIVITIES DESCRIBED IN SUBSECTION (C) OF THIS SECTION.**

16           SECTION 2. AND BE IT FURTHER ENACTED, That the laws of Maryland read as  
 17 follows:

### 18                           **Article – Health Occupations**

19           4–601.

20           (a) Except as otherwise provided in this title, a person may not practice, attempt  
 21 to practice, or offer to practice dentistry or dental hygiene on a human being in this State  
 22 unless licensed by the Board.

23           (b) A person may not aid or abet **THE** unauthorized practice of **DENTISTRY OR**  
 24 dental hygiene in this State.

25           4–602.

26           (a) (1) Except as otherwise provided in this section, unless authorized to  
 27 practice dentistry under this title, a person may not represent to the public by title, by  
 28 description of services, methods, or procedures, or otherwise, that the person is authorized  
 29 to practice dentistry in this State.

30           (2) Unless authorized to practice dental hygiene under this title, a person  
 31 may not represent to the public by title, by description of services, methods, or procedures,  
 32 or otherwise, that the person is authorized to practice dental hygiene in this State.

1 (b) This title does not affect the right of a holder of a dental degree who does not  
2 directly or indirectly practice or attempt to practice dentistry in this State to use the degree  
3 or an abbreviation for the degree in connection with the name of the holder.

4 4-606.

5 (a) **[A] EXCEPT FOR A PERSON WHOSE LICENSE HAS LAPSED FOR A PERIOD**  
6 **OF NOT MORE THAN 6 MONTHS**, A person who practices or attempts to practice dentistry  
7 without a license in violation of § 4-601(a) of this subtitle, **AIDS OR ABETS THE**  
8 **UNAUTHORIZED PRACTICE OF DENTISTRY IN VIOLATION OF § 4-601(B) OF THIS**  
9 **SUBTITLE**, or represents to the public in violation of § 4-602 of this subtitle that the person  
10 is authorized to practice dentistry is guilty of a misdemeanor **FOR THE FIRST OFFENSE**  
11 **AND A FELONY FOR A SUBSEQUENT OFFENSE** and on conviction is subject to:

12 (1) For a first offense, a fine not exceeding **[\$2,000] \$3,000** or  
13 imprisonment in jail not exceeding 6 months; or

14 (2) For a subsequent offense, a fine not exceeding **[\$6,000] \$8,000** or  
15 imprisonment in the State penitentiary not exceeding **[1 year] 18 MONTHS**.

16 (b) **[A] EXCEPT FOR A PERSON WHOSE LICENSE HAS LAPSED FOR A PERIOD**  
17 **OF NOT MORE THAN 6 MONTHS**, A person who practices or attempts to practice dental  
18 hygiene without a license in violation of § 4-601(a) of this subtitle, aids or abets  
19 unauthorized practice of dental hygiene in violation of § 4-601(b) of this subtitle, or  
20 represents to the public in violation of § 4-602 of this subtitle that the person is authorized  
21 to practice dental hygiene is guilty of a misdemeanor and on conviction is subject to a fine  
22 not exceeding \$1,000.

23 (c) A person who violates any provision of Subtitle 4 of this title, which relates to  
24 dental laboratory work, or who advertises a dental appliance in violation of § 4-503(c) of  
25 this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding  
26 **[\$2,000] \$3,000 PER DAY** or imprisonment in jail not exceeding **[6] 18** months.

27 SECTION 3. AND BE IT FURTHER ENACTED, That the laws of Maryland read as  
28 follows:

29 **Article – Health – General**

30 13-2504.

31 (a) (1) The Office of Oral Health shall conduct an annual evaluation of the  
32 Program.

33 (2) The evaluation required under this subsection shall include:

1 (i) Data on any progress resulting from each grant awarded under  
2 this subtitle;

3 (ii) Data on any progress of the overall Program;

4 (iii) Data demonstrating any increase in the use of restorative dental  
5 care among underserved populations; and

6 (iv) Data from any statewide survey conducted by the Department  
7 that demonstrates any progress of the Program.

8 (b) The Department, in conjunction with the Office of Oral Health, shall report to  
9 the Governor and, in accordance with § 2-1246 of the State Government Article, the  
10 General Assembly on or before November 1 of each year on:

11 (1) The results of the Program;

12 (2) Findings and recommendations for the Oral Health Program and any  
13 other oral health programs established under Title 18, Subtitle 8 of this article;

14 (3) The availability and accessibility of dentists throughout the State  
15 participating in the Maryland Medical Assistance Program;

16 (4) The outcomes that managed care organizations and dental managed  
17 care organizations under the Maryland Medical Assistance Program achieve concerning  
18 the utilization of targets required by the Five Year Oral Health Care Plan, including:

19 (i) Loss ratios that the managed care organizations and dental  
20 managed care organizations experience for providing dental services; and

21 (ii) Corrective action by managed care organizations and dental  
22 managed care organizations to achieve the utilization targets; [and]

23 (5) The allocation and use of funds authorized for dental services under the  
24 Maryland Medical Assistance Program; **AND**

25 **(6) THE EXCEPTION PROVIDED FOR IN § 4-102(C)(1)(III) OF THE**  
26 **HEALTH OCCUPATIONS ARTICLE.**

27 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take  
28 effect July 1, 2017.

29 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section  
30 4 of this Act, this Act shall take effect July 1, 2016. Section 3 of this Act shall remain  
31 effective for a period of 4 years and, at the end of June 30, 2020, with no further action

1 required by the General Assembly, Section 3 of this Act shall be abrogated and of no further  
2 force and effect.