

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 544 (Senator Conway)
 Education, Health, and Environmental Affairs

Health Occupations - Advanced Practice Dental Hygiene

This bill requires an individual, beginning October 1, 2020, to be licensed by the State Board of Dental Examiners in order to “practice advanced practice dental hygiene,” with specified exemptions. “Practice advanced practice dental hygiene” is the provision of oral health care services, including preventive, oral evaluation and assessment, educational, palliative, therapeutic, and restorative services, as authorized by a supervising dentist. The board must adopt implementing regulations and set reasonable fees.

Fiscal Summary

State Effect: No effect in FY 2019. Special fund expenditures increase in FY 2020 for one contractual position. Future year expenditures reflect elimination of the contractual position at the end of FY 2021. Special fund revenues increase beginning in FY 2020.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
SF Revenue	\$0	-	-	-	-
SF Expenditure	\$0	\$22,600	\$36,500	\$0	\$0
Net Effect	\$0	(\$22,600)	(\$36,500)	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Advanced practice dental hygienist” means an individual who is licensed to practice advanced practice dental hygiene in the State. “Delegation agreement” means a document that is executed by a supervising dentist and an advanced practice dental hygienist that meets the bill’s requirements. “Direct supervision” means supervision by a licensed dentist who is readily available at the practice site of an advanced practice dental hygienist for consultation or intervention. “General supervision” means supervision by a licensed dentist who might not be physically present at the practice site of an advanced practice dental hygienist.

Scope of Practice

A licensed advanced practice dental hygienist may only perform acts that are appropriate to the education, training, and experience of the advanced practice dental hygienist and customary to the practice of the supervising dentist. Services that may be provided include radiograph interpretation, space maintainer placement, pulpotomies of primary teeth, oral evaluations and assessments, and specified nonsurgical extractions.

An advanced practice dental hygienist may not perform any dental act that has not been delegated by a supervising dentist, and a supervising dentist may not supervise an advanced practice dental hygienist in the performance of delegated acts without filing a delegation agreement with the board.

A licensed advanced practice dental hygienist may practice under the general supervision of a dentist only after practicing under the direct supervision of a dentist for at least 500 hours.

Delegation Agreements and Limits on Supervision

A delegation agreement must include specified provisions, including a description of authorized practice settings, delegated acts, and attestations of supervision requirements. A delegation agreement must be submitted with an application fee, which must be set by the board. A supervising dentist may not supervise more than six advanced practice dental hygienists at the same time.

Qualifications for Licensure

An applicant for an advanced practice dental hygienist license must (1) be of good moral character; (2) be at least 18 years of age; (3) be a licensed dental hygienist; and (4) satisfy the bill's educational and examination requirements. An advanced practice dental hygienist licensed in another state must satisfy specified educational and examination requirements and may not be under disciplinary investigation or have been subject to discipline that would be grounds for disciplinary action under State law.

Application and Renewal of License

An applicant for an initial license to practice advanced practice dental hygiene must submit the appropriate application to the board and the associated fee. A license expires on the date set by the board, unless the license is renewed for an additional term. A license may not be renewed for a term longer than two years.

At least one month before a license expires, the board must send the licensee a renewal notice with specified information, including the renewal fee. In order to renew a license, a licensee must complete continuing education requirements, as set by the board. A licensee may also apply for license reinstatement under specified circumstances.

Disciplinary Proceedings

An advanced practice dental hygienist may not surrender a license, and a license may not lapse by operation of law, while the licensee is under investigation or while charges are pending, unless the board agrees to accept the surrender of the license.

The bill lists 22 grounds on which the board may deny a license to an applicant, fine a licensee, reprimand a licensee, place a licensee on probation, or suspend or revoke a license. The board may fine a licensee up to \$5,000 in lieu of, or in addition to, other disciplinary action. The board must set standards for the imposition of fines in regulations. Such fines must be paid to the general fund.

Before the board takes any disciplinary action, the board must give the individual an opportunity for a hearing before the board, which must be conducted in accordance with the Administrative Procedure Act. A person aggrieved by a final decision of the board may not appeal the decision to the Secretary of Health but may take a direct judicial appeal.

An individual who practices, attempts to practice, or offers to practice advanced practice dental hygiene without a license is guilty of a misdemeanor and on conviction is subject to a fine of up to \$5,000 or imprisonment for up to two years.

Board Reporting Requirements

By January 1, 2021, and by January 1 of each year for five years, the board must submit a report on (1) the number of advanced practice dental hygienists licensed; (2) the number of delegation agreements submitted for approval, approved, modified, and disapproved; and (3) for modified or disapproved delegation agreements, the reason for the modification or disapproval.

Funding Provisions

The bill expresses the intent of the General Assembly that the Governor provide funds in the fiscal 2020 and 2021 budgets at a level sufficient to allow the board to begin licensing advanced practice dental hygienists, and that when special funds become available for the regulation of advanced practice dental hygienists, the special funds are to be used to reimburse the general fund for the initial start-up costs of licensure.

Current Law: Under the Health Occupations Article, individuals must obtain a license from the State Board of Dental Examiners in order to practice dentistry or dental hygiene. Dentists are subject to license denials as well as reprimands, probations, suspensions, and revocations on various grounds including fraudulently obtaining or using a license or fraudulently obtaining a fee; committing a felony involving moral turpitude; providing dental services while under the influence of drugs or alcohol; practicing dentistry in a professionally incompetent manner or grossly incompetent manner; having a suspended or revoked license in another state; allowing an unauthorized individual to practice dentistry or dental hygiene under their supervision; behaving dishonorably or unprofessionally; violating rules adopted by the board; and failing to comply with the U.S. Centers for Disease Control and Prevention's guidelines on universal precautions (except in extreme situations as specified), among other enumerated actions. Dental hygienists are subject to discipline on similar grounds.

The board has the authority to impose a penalty of up to \$5,000 instead of or in addition to taking certain disciplinary actions. Any such penalties are paid to the general fund.

A person who practices or attempts to practice dentistry without a license or misrepresents to the public regarding the person's authorization to practice dentistry is guilty of a misdemeanor and on conviction is subject to a fine of up to \$2,000 or imprisonment for up to six months for a first offense and a fine of up to \$6,000 or imprisonment for up to one year for a subsequent offense.

A person who unlawfully practices or attempts to practice dental hygiene, aids or abets the unauthorized practice of dental hygiene, or misrepresents to the public regarding the

person's authorization to practice dental hygiene, is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

Background: The State Board of Dental Examiners is mandated to protect the public by regulating the practice of dentistry and dental hygiene in Maryland. Among the enumerated duties, the board issues licenses, adopts standards of practice for dentistry, investigates complaints based on alleged violations of regulations and statutes, and disciplines licensees.

According to *RDH Magazine*, the advanced dental hygiene practitioner (ADHP) is a model developed by the American Dental Hygienists' Association. This category is considered a mid-level oral health provider and is a master's level program open to licensed dental hygienists who have a bachelor's degree. ADHPs are intended to provide oral health education, a full range of dental hygiene preventive services, radiographs, nonsurgical periodontal therapy, and other services. Some states have adopted their own version of this category of licensure; for example, Minnesota authorizes licensure of "advanced dental therapists" which follows the ADHP model.

State Fiscal Effect: In fiscal 2017, there were 3,567 licensed dental hygienists in the State. Information as to the number of states that currently license advanced practice dental hygiene, or the number of available and qualifying educational programs, is not readily available. Thus, it is unclear how many individuals may apply for licensure under the bill. As noted previously, Minnesota licenses "advanced dental therapists," which may be comparable to advanced practice dental hygienists. According to a 2016 report, there were 63 dental therapists in Minnesota in December 2016; approximately half of surveyed dental therapists were also advanced dental therapists.

This analysis assumes that a limited number of licensed dental hygienists apply for licensure as an advanced practice dental hygienist. Thus, DLS advises that any responsibilities under the bill to initially implement the licensing program can be performed by one contractual employee. Once the program is operational, existing board staff can likely absorb renewals and ongoing new license applications and approval of delegation agreements. This analysis also assumes that, as licensure is not required until October 1, 2020, the board does not adopt implementing regulations and does not begin accepting applications until fiscal 2020 (despite the bill's October 1, 2018 effective date).

Thus, special fund expenditures for the board increase by \$22,568 in fiscal 2020 for the board to hire one full-time, contractual employee to assist with implementing the licensure program for advanced practice dental hygienists, including developing regulations, reviewing applications, and approving delegation agreements, with a start date of January 1, 2020. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$17,365
Operating Expenses	<u>5,203</u>
Total FY 2020 State Expenditures	\$22,568

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Future year expenditures reflect elimination of the contractual position at the end of fiscal 2021. To the extent more applications for licensure as an advanced practice dental hygienist are received than anticipated, expenditures for the board may increase beyond this estimate.

Board special fund revenues increase beginning in fiscal 2020 due to receipt of fees associated with licensure, including submission of delegation agreements. The board anticipates, and the bill allows for, biennial license renewal. Accordingly, special fund revenues increase every two years for each advanced practice dental hygienist licensed. Due to the relatively few dental hygienists anticipated to also become licensed as advanced practice dental hygienists, the impact on special fund revenues is likely minimal. However, the extent of this impact depends on the specific fees for initial licensure, delegation agreement approval, and license renewal, to be determined by the board. Regardless, this analysis assumes the board sets fees to ensure sufficient special fund revenues to approximately cover the cost of the licensure program. General fund revenues may also increase beginning in fiscal 2021 (after licensure is required), to the extent the board imposes disciplinary fines for licensed advanced practice dental hygienists.

Although the bill expresses the intent of the General Assembly that the Governor provide general funds in the fiscal 2020 and 2021 budgets to cover the cost of implementing advanced practice dental hygienist licensure and that special funds be used to reimburse the general fund at a later date, this analysis assumes that the board has sufficient special funds to cover the cost of implementing the licensure program. The board is anticipated to have a fiscal 2019 closing fund balance of \$299,865 (12.7% of the fiscal 2019 allowance). Further, as noted previously, this analysis assumes that implementation does not begin until fiscal 2020 and that the board sets fees to approximate the cost of licensure.

Small Business Effect: Potential meaningful for small business dental practices that may hire advanced practice dental hygienists under the bill.

Additional Comments: As introduced, SB 1013 of 2017 would have established a similar “dental therapist” license. The bill passed the Senate with amendments and received a hearing in the House Health and Government Operations Committee, but no further action

was taken. Its cross file, HB 1214 of 2017, also received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Additional Information

Prior Introductions: None.

Cross File: HB 879 (Delegate Cullison) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Office of Administrative Hearings; *RDH Magazine*; *2016 Minnesota's Dental Therapist Workforce Report*; Department of Legislative Services

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