

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 371

(Senator West, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

State Board of Dental Examiners - Ownership, Management, or Operation of a
Dental Practice

This bill requires a dental practice to be owned, managed, or operated only by a licensed dentist. Specified persons and entities, including a dental practice in which at least 60% of patients are Medicaid-eligible, are exempt from this requirement. Accordingly, the bill alters the definition of “practice dentistry.” **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: The bill does not directly affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill alters the definition of “practice dentistry” to add being an owner or manager and repeal being a proprietor or conductor in any place in which a dental service or dental operation is performed intraorally. “Practice dentistry” is expanded to include (1) patient evaluation, diagnosis, and determination of treatment plans; (2) determination of treatment options, including the choice of restorative and treatment materials and diagnostic equipment; and (3) determination and establishment of patient protocols, standards of care, and practice guidelines.

The ownership, management, or operation of a dental practice includes (1) hiring, supervision, or termination of dentists, dental hygienists, and dental assistants; (2) direct

supervision over training for dental hygienists and dental assistants; (3) preparation and control of treatment records; and (4) ethical sharing of dental practice income, revenues, profits, or fees.

An unlicensed person may perform specified administrative activities, including owning, leasing, or otherwise providing real property or equipment used by a dental practice; bookkeeping, accounting, and tax preparation; payroll; billing and collections services; administrative management of patient records; advertising and marketing; providing services to assist in recruitment; hiring, supervising, and terminating nonprofessional office staff; human resource related services; information technology procurement; general property management and maintenance; risk management; productivity, efficiency, and cost management consulting services; receiving compensation that is not based upon revenues, profits, or a percentage of revenues or profits; and contracting with a third party to provide any of the above specified services.

The bill's requirements relating to the ownership or management of a dental practice do not apply to specified entities, including specified clinics, a government agency, specified nonprofit organizations, and a dental practice in which at least 60% of the patients on whom procedures are performed during the calendar year are Medicaid-eligible. However, dentists, dental hygienists, dental assistants, and dental technicians employed by these exempt entities are still subject to licensure requirements and the authority of the State Board of Dental Examiners.

The bill adds the acceptance or tender of rebates or split fees as additional grounds for discipline for licensed dentists. In an action brought by the State Board of Dental Examiners against a licensed dentist, the dentist may not raise as a defense that a duty or obligation was delegated or assigned to a third party.

Current Law: Under the Health Occupations Article, an individual must obtain a license from the State Board of Dental Examiners in order to practice dentistry. "Practice dentistry" encompasses being a manager, proprietor, or conductor of or an operator in any place in which a dental service or operation is performed intraorally.

A dentist is subject to license denial as well as reprimand, probation, suspension, and revocation 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. A dental hygienist is subject to discipline on similar grounds.

The board has the authority to impose a penalty of up to \$5,000, in addition to taking certain disciplinary actions or instead of suspending a license to practice dentistry. Any such penalty is 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 maximum penalty of either a \$2,000 fine or six months imprisonment for a first offense. The maximum penalty for a subsequent offense increases to either a \$6,000 fine or one year imprisonment.

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 maximum fine of \$1,000.

A person who violates specified provisions relating to dental laboratory work or advertising a dental appliance is guilty of a misdemeanor and on conviction is subject to a maximum penalty of either a \$2,000 fine or six months imprisonment.

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.

In 2014, the board proposed regulations that would have established that only a dentist may own, manage, conduct, operate, or be the proprietor of a dental practice. Additionally, the regulations would have specified that a person is not prohibited from providing goods or services for the support of the business of a dental practice as long as the person does not (1) provide goods or services in exchange for a percentage or share of revenue or profits of the dental practice or (2) exert authority or control over the clinical practice of dentistry. The regulations would have also specified that the following would not be considered to be exerting control over a dental practice: (1) a lease, mortgage agreement, or other arrangement regarding the use of space for dental offices, based on a nonpercentage fee reasonably related to the fair market value of the office space or (2) agreements relating to the purchase, sale, financing, or lease of dental equipment, instruments, and supplies as long as the dentist maintained complete control over the instruments and supplies and the agreement did not include a revenue percentage fee. The regulations were not adopted.

Senate Bill 421/House Bill 766 of 2015 would have exempted certain clinics, government agencies, and nonprofit organizations from the authority of the board. Additionally, Senate Bill 887 of 2015 would have (1) removed managers, proprietors, and conductors of or operators in any place in which a dental service or operation is performed intraorally from the definition of “practice dentistry” and (2) exempted specified individuals from State licensure requirements, including those who provide administrative and related services to dental practices. Senate Bill 421 and House Bill 766 were withdrawn. Senate Bill 887 was referred to interim study by the Senate Education, Health, and Environmental Affairs Committee. In response, MDH convened a stakeholder workgroup to study and make recommendations about ownership of dental practices in Maryland. The workgroup comprised dental providers, nonprofits, dental service organizations, and board representatives and considered which entities should be exempt from ownership requirements, what activities should be performed by a dentist, and what activities could be performed by an unlicensed party.

Small Business Effect: The bill requires dental practices to be owned, managed, and operated by licensed dentists. However, persons who are not licensed dentists are authorized to provide specified services for dental practices. Further, the bill adds an additional grounds for discipline.

Additional Information

Prior Introductions: HB 358 of 2018, a bill with similar provisions, received an unfavorable report from the House Health and Government Operations Committee. Similar bills, HB 1292 of 2017 and HB 1468 of 2016, received hearings in the House Health and Government Operations Committee, but no further action was taken on either bill.

Cross File: HB 470 (Delegate Cullison) - Health and Government Operations.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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