



The Maryland State Dental Association Opposes SB 486 – Labor and Employment – Employment Standards During an Emergency (Maryland Essential Workers’ Protection Act)

Respectfully submitted by Daniel T. Doherty, Jr. on behalf of the Maryland State Dental Association

Obviously, everyone, every business and profession have suffered physically, mentally and financially during the COVID Pandemic. Dentistry has been adversely affected in many ways since March 5, 2020. Except for emergency care, dental offices were closed for 52 days under the Governor’s Executive Order. During that time many dentists donated their supplies of PPE to other health facilities and providers who were on the front lines treating COVID-19 patients. Dentists returned to their offices only to learn that the PPE required under CDC guidelines to treat dental patients substantially increased their costs by as much as \$24/patient. They were informed by the Attorney General’s Consumer Protection Division that they could not under Maryland law charge their patients for these additional costs, and insurance carriers and Medicaid did not cover these expenses. Add 52 days of lost income, obligations to pay rent, utilities and other overhead expenses, while trying to minimize lost income to their staffs and the cumulative impact is staggering. Reopening was not, and still is not, at the pre-COVID level due to patient reluctance, and the necessary spacing of appointments to assure social distancing.

This is not to say that other professions weren’t also devastated, as were their employees. As a result, everyone is looking for solutions to the current dilemma, and searching for ways to prepare for the next catastrophe. However, at least for the dental profession and its employees, SB 486 is not the answer. It is nearly impossible to cite all of the problems and unintended consequences of the bill, however the following briefly states the most egregious provisions.

A. The Provisions Requiring Oversight by the Department of Labor and Mandating a Health Emergency Preparedness Plan Are Not Appropriate for the Practice of Dentistry

During the pandemic the guidelines for providing for the safety and health of employees and patients are established by the CDC. These guidelines lay out the protective measures for controlling infection, both in terms of PPE and sanitation. To prescribe that the Maryland Department of Labor intercede in evaluating the CDC guidelines, or determine if the dental office’s work environment is unsafe, or set requirements to remedy an alleged “unsafe work environment” places a dental office in the middle of a potential conflict between the CDC and the Maryland Department of Labor. Clearly, the safety of the work environment in a dental office should not be in the purview of the Department, but rather the CDC and the State Board of Dental Examiners. For these reasons dental offices and treatment facilities should not be subject to the provisions of § 3-1606.

At least within the context of dentistry, the methodology or “plan” to respond to a catastrophic health emergency depends upon what is the nature of the health emergency. The preparedness plan for COVID-19 will not be the same as a plan for responding to a hurricane or earthquake, or a nuclear disaster. In fact, the plan for a different contagious disease in all probability will be different from the

COVID-19 Plan. What occurs in reality is first there is the catastrophic health emergency, and then, in that context, a dental office will develop an appropriate response plan under the guidance of the CDC, the Maryland State Board of Dental Examiners and the Maryland Office of Oral Health. For these reasons the SB 486 provisions requiring an anticipatory health preparedness plan do not work in the context of dentistry.

B. The Provisions of §3-1607 are Ambiguous, Overly Burdensome, and Impose Prohibitive Financial Obligations.

§3-1607 requires an employer to take proactive steps when a “worker has contracted an infectious disease at a worksite” to minimize the risk of transmission. First, an infectious disease includes a myriad of illnesses including the most prevalent – the common cold. Second, how does an employer determine where the employee was exposed to, or contracted the “disease”. Is it more likely that the employee was exposed because of social contact outside of the dental office, or in the dental office where PPE is provided and strict infection control protocols are followed? Third, to impose the financial responsibility on a dental practitioner for all costs associated with testing for a potentially unknown unidentified infectious disease is unwarranted and unreasonable.

C. The Mandates to Provide Paid Bereavement Leave, Health Leave, Hazard Pay and Assistance for Unreimbursed Health Care Costs are Unreasonable and Will Lead to the Financial Collapse of Many Dental Practices.

How can one expect a small dental office to provide 3 days of paid Bereavement Leave plus 14 days of paid Health Leave to its employees during a catastrophic emergency which more likely than not will also negatively impact the dental practice’s revenues and profitability? Further, under financially adverse conditions for a dental practice, how can one impose a \$3.00 hazard pay add-on? For a 2-dentist practice with 5 employees this will equal over \$31,000 a year. Finally, to require a dental practice to absorb unreimbursed health care costs for a worker who has a sickness or injury related in some way to the emergency, even though it is unrelated to their employment in the dental practice, is patently unfair.

Conclusion: All Marylanders have been impacted by the current COVID-19 Pandemic. It has had a devastating effect on all workers, and on all businesses – large and small. The desire to find a way to defray the financial impact of the pandemic on workers is understandable. However, the provisions of SB 486 are of the type one would expect to find in a collective bargaining agreement. They are tailored more appropriately for large employers that employ union workers. SB 486 is not appropriate, and in fact would be destructive, if applied to health care practices like dentistry.

For these reasons the Maryland State Dental Association Respectfully Requests that SB 486 receive an Unfavorable Report.

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