

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 438 (Delegate West)
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 that serves patients of whom 75% are Medicaid-eligible, are exempt from this requirement. Accordingly, the bill alters the definition of “practice dentistry.” It also adds a new grounds for disciplinary action, prohibits a person from aiding or abetting the unauthorized practice of dentistry, and establishes and enhances penalties. The State Board of Dental Examiners is authorized to issue cease and desist orders and assess civil fines for specified violations. The Maryland Department of Health (MDH) must include an evaluation of an exemption from the dental practice ownership requirements in its Oral Health Safety Net Program annual report. **The bill generally takes effect July 1, 2018; however, the new prohibition against aiding or abetting the unauthorized practice of dentistry, cease and desist authority, civil fine authority, and new and enhanced criminal penalty provisions take effect July 1, 2019. MDH’s new evaluation requirement and the specified exemption for dental practices serving patients of whom 75% are Medicaid-eligible terminate July 1, 2022.**

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from new civil fines. The bill’s requirements can likely be handled with existing budgeted resources.

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Provisions of the Bill that Take Effect July 1, 2018

The bill alters the definition of “practice dentistry” to encompass being an owner, a manager, or an operator in any place in which a dental service or dental operation is performed intraorally; the bill repeals being a proprietor or conductor from this definition. “Practice dentistry” includes (1) patient evaluation, diagnosis, and determination of treatment plans; (2) determination of or influence on treatment options, including which specified materials and equipment should be used and where to obtain the materials and equipment; (3) determination and establishment of patient protocols, standards, and practice guidelines; and (4) any other decision that affects patient care and treatment.

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, ownership, or 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 or leasing real property or equipment used by a dental practice; bookkeeping, accounting, and tax preparation; payroll and billing services; advertising and marketing; information technology procurement; human resources; general office or property management and maintenance; and risk assessment.

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 75% 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 exemption for a dental practice in which at least 75% of the patients on whom procedures are performed during the calendar year are Medicaid-eligible terminates July 1, 2022.

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.

In its annual evaluation report on the Oral Health Safety Net Program, MDH must include information relating to the bill's exception for dental practices that offer dental services to Medicaid-eligible patients from the bill's ownership and management provisions (until that exception terminates).

Provisions of the Bill that Take Effect July 1, 2019

In addition to any other penalties or disciplinary action authorized, the board may issue a cease and desist order for conduct in violation of the ownership requirements established by the bill, as well as practicing dentistry or dental hygiene without a license, aiding or abetting the unauthorized practice of dentistry or dental hygiene, misrepresentation, specified practice limitations, dental laboratory work, or any other conduct that is grounds for discipline under existing law.

The bill establishes a prohibition against aiding or abetting the unauthorized practice of dentistry. It increases criminal penalties for a person who practices or attempts to practice dentistry without a license or misrepresents authorization to do so and establishes the same penalties for a person who aids or abets the unauthorized practice of dentistry. Accordingly, such a person is guilty of a felony (rather than a misdemeanor as under current law) and on conviction is subject to a maximum penalty of either a \$5,000 fine or one year imprisonment for a first offense. The maximum penalty for a subsequent offense increases to either a fine of \$20,000 *per day* or five years imprisonment. The board may also assess a civil fine of up to \$50,000 for these violations in accordance with board regulations. These provisions do not apply to a person whose license has lapsed for six months or less.

The bill specifies that a person whose license has lapsed for six months or less is not subject to the existing criminal penalty for practicing or attempting to practice dental hygiene without a license, aiding or abetting the unauthorized practice of dental hygiene, or misrepresenting authorization to practice dental hygiene. However, the board may also assess a civil fine of up to \$50,000 for these violations in accordance with board regulations; again, the civil fine may not be assessed against a person whose license to practice dental hygiene has lapsed for six months or less.

A person who violates specified provisions relating to dental laboratory work or advertising a dental appliance is guilty of a felony (rather than a misdemeanor as under current law) and on conviction is subject to a maximum penalty of either a fine of \$2,000 *per day* or two years imprisonment.

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.

The Oral Health Safety Net Program provides start-up funding to expand oral health capacity for underserved low-income and disabled individuals, including individuals enrolled in Medicaid and the Maryland Children's Health Program. MDH's Office of Oral Health has to conduct an annual evaluation of the program and report specified information to the Governor and the General Assembly by November 1 of each year.

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, increases existing criminal penalties for several violations of law, and establishes new criminal penalties for persons who aid or abet the unauthorized practice of dentistry. Violators may also be subject to civil fines, as assessed by the board.

Additional Information

Prior Introductions: HB 1292 of 2017, a similar bill, received a hearing in the House Health and Government Operations Committee, but no further action was taken. HB 1468

of 2016, a bill with similar provisions, also received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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