

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1214 (Delegate Cullison, *et al.*)
 Health and Government Operations

Health Occupations - Dental Therapists - Licensure

This bill requires an individual to be licensed by the State Board of Dental Examiners in order to practice dental therapy in the State, beginning October 1, 2019. The board must adopt implementing regulations and set reasonable fees. By January 1, 2018, and by January 1 of each year for five years, the board must submit a report on (1) the number of dental therapists licensed; (2) the number of collaboration agreements submitted for approval, approved, modified, and disapproved; and (3) for modified or disapproved collaboration agreements, the reason for the modification or disapproval. The bill also expresses the intent of the General Assembly that the Governor provide funds in the fiscal 2018 and 2019 budgets at a level sufficient to allow the board to begin licensing dental therapists, and that when special funds become available for the regulation of dental therapists, the special funds are to be used to reimburse the general fund for the initial start-up costs of licensure.

Fiscal Summary

State Effect: No effect in FY 2018. Special fund expenditures for the State Board of Dental Examiners increase by \$22,300 in fiscal 2019 for the board to hire one full-time contractual employee to assist with implementing the licensure program under the bill. Future year expenditures reflect the elimination of the contractual position at the end of FY 2020. Special fund revenues increase beginning in FY 2019 due to licensing fees. General fund revenues are not materially affected due to the imposition of fines.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	\$0	-	-	-	-
SF Expenditure	\$0	\$22,300	\$36,500	\$0	\$0
Net Effect	\$0	(\$22,300)	(\$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 for small business dental practices that may hire dental therapists under the bill.

Analysis

Bill Summary:

Definitions

“Collaboration agreement” means a document that is executed by a supervising dentist and a dental therapist that meets the bill’s requirements.

“Dental therapist” means an individual who is licensed to practice dental therapy in the State.

“Direct supervision” means supervision by a licensed dentist who is readily available at the practice site of a dental therapist for consultation or intervention. “General supervision” means supervision by a licensed dentist who might not be physically present at the practice site of a dental therapist.

“Practice dental therapy” means to provide oral health care services, including preventive, oral evaluation and assessment, educational, palliative, therapeutic, and restorative services, as authorized in an approved collaboration agreement.

Scope of Practice

Beginning October 1, 2019, an individual must be licensed by the board in order to practice dental therapy in the State. The bill exempts the following individuals from these requirements: (1) a student of dental therapy who is engaged in an approved educational program and (2) an individual who is licensed to practice dental therapy in another state or country while the individual makes a clinical demonstration before a dental society, dental convention, or dental therapy class.

A licensed dental therapist may only perform acts that are specified in the collaboration agreement; appropriate to the education, training, and experience of the dental therapist; and customary to the practice of the supervising dentist. Services that may be provided include the following:

- any acts within the scope of practice of a licensed dental hygienist;
- any services and procedures included in the Commission on Dental Accreditation dental therapy standards;

- interpretation of radiographs;
- placement of space maintainers;
- pulpotomies on primary teeth;
- oral evaluations and assessments of dental disease and the formation of an individualized treatment plan;
- specified nonsurgical extractions; and
- any other services specified in the collaboration agreement.

A dental therapist may not perform any dental act that has not been delegated by a supervising dentist, and a supervising dentist may not supervise a dental therapist in the performance of delegated acts without filing a collaboration agreement with the board.

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

Collaboration Agreements

A collaboration agreement must be consistent with any standards set by the Commission on Dental Accreditation and must include (1) the practice settings in which the dental therapist may provide services; (2) the extent to which the dental therapist may supervise dental assistants; (3) any limitation on services that may be provided by the dental therapist; (4) the level of supervision required for particular services or practice settings; and (5) specified practice protocols.

The collaboration agreement must also specify clear expectations for the establishment of a permanent dental home that (1) promotes regular visits with the supervising dentist; (2) facilitates accessible communication between the supervising dentist and the patient; and (3) ensures continuity of care. The agreement must be updated as necessary, with the approval of the board.

A supervising dentist may have a collaboration agreement with up to six dental therapists at the same time. The board may approve, modify, or disapprove a collaboration agreement in accordance with board regulations. The board must notify the supervising dentist and the dental therapist of the reason for a modification or disapproval and may not restrict the submission of amendments. The board must take action on a collaboration agreement within 90 days after receiving a completed collaboration agreement.

If the board determines that a supervising dentist or dental therapist is practicing in a manner that is inconsistent with the bill's requirements, the board may demand modification of the practice, withdraw approval of the collaboration agreement, or refer the matter for disciplinary action.

Qualifications for Licensure

An applicant for a dental therapist 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. A dental therapist 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.

An applicant for a dental therapist license must have completed a dental therapist education program that is administered by an institution of higher education, meets specified accreditation standards, and addresses the dental care needs of patients with special needs, as specified.

Application and Renewal of License

An applicant for an initial license to practice dental therapy 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 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.

The board must pay all collected fees to the Comptroller, who must distribute the fees to the board's special fund.

Disciplinary Proceedings

A dental therapist 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 and Mental Hygiene but may take a direct judicial appeal.

An individual who practices, attempts to practice, or offers to practice dental therapy 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.

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 in addition to taking certain disciplinary actions or instead of suspending licenses to practice dentistry. 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 The Pew Charitable Trusts, dental therapists are midlevel providers, similar to physician assistants, who deliver preventive and routine restorative care, such as fillings, temporary crowns, and extractions of badly diseased or loose teeth. The Pew Charitable Trusts reports that, as of January 2017, three states (Maine, Minnesota, and Vermont) allow dentists to hire dental therapists. Eleven states (other than Maryland) are currently considering whether to authorize dental therapy: Arizona, Hawaii, Kansas, New Hampshire, New Mexico, North Dakota, Massachusetts, Michigan, Ohio, Rhode Island, and Texas. Washington and Oregon authorize dental therapists in tribal areas and are currently considering whether to expand authorization statewide. Alaskan native tribes have also authorized dental therapy.

State Fiscal Effect: The State Board of Dental Examiners advises that it must hire one full-time permanent position in fiscal 2019 to review collaboration agreements and otherwise implement the bill's requirements to license dental therapists. The board advises that this position must start by February 1, 2019, in order to begin licensing dental therapists on October 1, 2019.

The board was unable to estimate the number of licensed dental hygienists in Maryland who might apply for licensure as a dental therapist under the bill (the board advises that there are currently 3,567 licensed dental hygienists in the State). Additionally, given that only three states currently license dental therapists, and that none of these states (nor the states currently considering licensing dental therapists) neighbor Maryland, it is unclear how many individuals from other states may apply for licensure under the bill. As of March 1, 2017, there were 73 licensed dental therapists in Minnesota (compared with 5,643 licensed dental hygienists).

This analysis assumes that a limited number of licensed dental hygienists in Maryland apply for licensure as a dental therapist and that a limited number of dental hygienists in other states also apply. Thus, the Department of Legislative Services (DLS) advises that any responsibilities under the bill to initially implement the licensing program can be performed by a contractual employee. Once the program is operational, existing board staff can likely absorb renewals, approval of collaboration agreements, and ongoing new license applications. This analysis also assumes that, as licensure is not required until October 1, 2019, the board does not adopt implementing regulations and does not begin accepting applications until fiscal 2019 (despite the bill's October 1, 2017 effective date).

Thus, special fund expenditures for the board increase by \$22,320 in fiscal 2019 for the board to hire one full-time, contractual employee to assist with implementing the licensure program for dental therapists, including reviewing applications and required collaboration

agreements, with a start date of January 1, 2019. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$17,367
Operating Expenses	<u>4,953</u>
Total FY 2019 State Expenditures	\$22,320

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 2020. To the extent more applications for dental therapist licensure are received than anticipated, expenditures for the board may increase beyond this estimate.

Because, as noted above, one of the requirements for licensure as a dental therapist is holding a dental hygienist license, DLS advises that there is no substitution effect for this license. Instead, to the extent any dental hygienists qualify for and take advantage of the dental therapist license, all special fund fee revenues collected represent an increase over current fees. Any such increase does not take place until fiscal 2019, at the earliest, when application fees are submitted with applications for initial licensure. The board anticipates, and the bill allows for, biennial license renewal. Accordingly, special fund revenues increase every two years for each dental therapist licensed. Although the bill does not specify whether a licensee must continue to maintain licensure as a dental hygienist at renewal, the requirement for a licensee to “otherwise be entitled to be licensed” at renewal appears to establish a requirement to continue to hold the dental hygienist license as well.

Due to the relatively few dental hygienists anticipated to also become licensed as dental therapists, the impact on special fund revenues is likely minimal. However, the extent of this impact depends on the specific fees for initial applications and renewals, 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 2020 (when licensure is required), to the extent the board imposes disciplinary fines for licensed dental therapists.

Finally, DLS notes that, although the bill expresses the intent of the General Assembly that the Governor provide general funds in the fiscal 2018 and 2019 budgets to cover the cost of implementing dental therapist 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 2018 closing fund balance of \$1.5 million (51% of the fiscal 2018 allowance).

Further, as noted previously, this analysis assumes that implementation does not begin until fiscal 2019 and that the board sets fees to approximate the cost of licensure.

Additional Comments: The bill requires the board to report on the number of dental therapists licensed and certain actions taken regarding collaboration agreements beginning January 1, 2018. However, DLS notes that licensure is not required until October 1, 2019.

Additional Information

Prior Introductions: None.

Cross File: SB 1013 (Senator Conway) - Education, Health, and Environmental Affairs.

Information Source(s): Minnesota Board of Dentistry; Department of Health and Mental Hygiene; The Pew Charitable Trusts; Department of Legislative Services

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