

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 1124 (Senator Conway)
Education, Health, and Environmental Affairs

Maryland Dentistry Act - Scope of Practice and Penalties for Violations

This bill authorizes an individual who is not licensed as a dentist by the State Board of Dental Examiners to own, manage, or operate a dental practice by exempting specified persons who provide goods and services to, or who operate or manage, dental practices from board licensure requirements. Accordingly, it establishes a definition for “dental practice” and modifies the definition of “practice dentistry.” Additionally, the bill (1) increases the criminal penalties for practicing dentistry without a license or misrepresentation to the public and establishes criminal penalties for aiding or abetting the unauthorized practice of dentistry; (2) exempts a person who practices or attempts to practice dentistry without a license from these criminal penalties if the person’s license has been expired for up to six months; (3) exempts a person who practices or attempts to practice dental hygiene without a license from existing criminal penalties for the unauthorized practice of dental hygiene, misrepresentation to the public, or the aiding or abetting of the unauthorized practice of dental hygiene, if the person’s license has been expired for six months or less; and (4) increases the criminal penalties for specified provisions relating to dental laboratory work and advertising a dental appliance.

Fiscal Summary

State Effect: The new and enhanced criminal penalty provisions likely do not have a material impact on State finances or operations. The board can handle any increase in disciplinary action within existing budgeted resources.

Local Effect: The new and enhanced criminal penalty provisions likely do not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful, as discussed below.

Analysis

Bill Summary: “Dental practice” means an entity that is owned entirely by one or more licensed dentists and that is formed under State law for the purpose of rendering professional services.

The bill removes 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” under the Health Occupations Article.

The board may not require individuals who are engaged in the following activities to be licensed by the board:

- owning, leasing, or otherwise providing, or contracting to own, lease, or otherwise provide, any asset used by a licensed dentist or dental practice, including real property, furnishings, equipment, inventory, and other goods;
- maintaining or contracting to maintain dental records;
- employing, contracting for, or otherwise providing the services of personnel other than a licensed dentist;
- managing, conducting, or contracting to manage or conduct a dental practice, including performing administrative functions and other functions that do not include the practice of dentistry;
- providing consulting, financial, or other services relating to productivity, efficiency, and cost management of a dental practice that do not include the practice of dentistry; or
- receiving fees for goods or services that are provided to a dentist or dental practice.

A dentist or dental practice is not prohibited from contracting to receive or receiving or benefiting from the aforementioned services. The board may not prohibit a person from contracting to provide or engaging in such services, nor may it prohibit a dentist or dental practice from contracting to receive or benefiting from such services.

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 misdemeanor and on conviction is subject to a maximum penalty of either a \$3,000 fine or six months imprisonment for a first offense. The bill specifies that a subsequent offense is a felony (rather than a misdemeanor as under current law) that is subject to a maximum penalty of either a fine of \$8,000 or 18 months imprisonment. These provisions do not apply to a person if the person's license has been expired for six months or less.

The bill specifies that a person whose license has been expired 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.

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 fine of \$3,000 *per day* or 18 months 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 his or her 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. According to the Department of Health and Mental Hygiene (DHMH), for fiscal 2018, the estimated number of licensed dentists is 5,143 and the estimated number of licensed dental hygienists is 3,613.

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, DHMH 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 allows individuals who are not licensed dentists to serve as owners, managers, and operators of small business dental practices. Specified providers of goods and services to dental practices, including administrative personnel, are also exempt from board licensure requirements. Further, the bill 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.

Additional Information

Prior Introductions: SB 887 of 2015, a bill with similar provisions, received a hearing in the Senate Education, Health, and Environmental Affairs Committee and was referred to interim study.

Cross File: HB 1584 (Delegate Angel) - Rules and Executive Nominations.

Information Source(s): Department of Legislative Services

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