

HOUSE BILL REPORT

HB 1389

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to dental practice and solicitation by corporations.

Brief Description: Concerning dental practice and solicitation by corporations.

Sponsors: Representatives Harris, Cody, Manweller, Jinkins, Robinson and Gregerson.

Brief History:

Committee Activity:

Health Care & Wellness: 2/14/17, 2/17/17 [DPS].

Brief Summary of Substitute Bill

- Permits an unlicensed person or entity to own or lease assets used by a dental practice, employ or contract for services of personnel other than licensed dental providers, provide business support and management services to a dental practice, and receive fees for such services.
- Prohibits interference with a dentist's independent clinical judgment.
- Prohibits a dentist from abandoning a patient, and requires a dentist to provide notifications under certain circumstances.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Caldier, Clibborn, DeBolt, Harris, Jinkins, MacEwen, Maycumber, Riccelli, Robinson, Rodne, Slatter, Stonier and Tharinger.

Staff: Alexa Silver (786-7190).

Background:

Practice of Dentistry.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Dentists are licensed and regulated by the Dental Quality Assurance Commission. No person may practice dentistry without first obtaining a license. The practice of dentistry is defined as:

- owning, maintaining, or operating an office for the practice of dentistry;
- representing oneself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw;
- offering or undertaking to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or taking impressions of the teeth or jaw;
- engaging in any of the practices included in the curricula of recognized and approved dental schools or colleges; or
- professing to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

Corporations are prohibited from practicing dentistry or soliciting dental patronage for dentists employed by a corporation. This restriction does not apply to corporations or associations that furnish information or clerical services to a licensed dentist, so long as the information or services can be furnished by unlicensed persons and the dentist assumes full responsibility for the information and services.

Practice of Dentistry in Oregon and Alaska.

In Oregon and Alaska, only a licensed dentist may own, operate, conduct, or maintain a dental practice, office, or clinic, but an unlicensed person is explicitly permitted to:

- own or lease tangible or intangible assets used in a dental office or clinic, including real property, furnishings, equipment, and inventory, excluding patient records related to clinical care;
- employ or contract for services of personnel other than licensed dentists; and
- manage the business aspects of a dental office or clinic that do not include the clinical practice of dentistry.

Uniform Disciplinary Act.

Under the Uniform Disciplinary Act, the Secretary of Health investigates complaints regarding unlicensed practice and may issue a cease and desist order and impose a fine of up to \$1,000 per day. Unlicensed practice is also a gross misdemeanor for the first violation and a class C felony for subsequent violations.

Communication with a Government Agency.

Individuals who make good faith reports to government agencies are immune from liability for claims based on that communication. In addition, the agency receiving the information may intervene in and defend against such a lawsuit.

Summary of Substitute Bill:

Language providing that the prohibition on corporate practice of dentistry does not apply to entities that furnish information or clerical services to a dentist is removed. A person or entity not licensed by the Dental Quality Assurance Commission may:

- own or lease any assets used by a dental practice, including real property, furnishings, equipment, instruments, materials, supplies, and inventory, excluding dental patient records;
- employ or contract for the services of personnel other than licensed dentists, licensed dental hygienists, licensed expanded function dental auxiliaries, certified dental anesthesia assistants, and registered dental assistants;
- provide business support and management services to a dental practice, including as the sole provider of the services; and
- receive fees related to ownership or leasehold of assets, employment of personnel, and business support and management services provided to a dental practice, calculated as agreed to by the dental practice owner.

A person not licensed as a dentist, or an entity that is not a professional entity, practices dentistry in violation of the law and is subject to enforcement under the Uniform Disciplinary Act (UDA) if it interferes with a dentist's independent clinical judgment by:

- limiting the time spent with a patient or performing dental services, or placing conditions on the number of patients treated or procedures completed;
- limiting or imposing requirements on: a dentist's treatment decisions; the manner in which a dentist uses equipment or materials; the use of a laboratory or materials, supplies, instruments, or equipment necessary to provide diagnoses and treatment consistent with the standard of care; professional training necessary to serve patients; referrals to other practitioners; advertising, if it would result in a violation of the dentistry law or the UDA; or communications with patients; or
- interfering with access to patient records or a refund of a payment.

An attending dentist may not neglect, ignore, abandon, or refuse to complete the current procedure for a patient without reasonable cause. A dentist who withdraws responsibility for a patient must advise the patient that: (1) termination of treatment is contemplated and that another dentist should be sought; and (2) the dentist will be reasonably available for up to 15 days to render emergency care. A dental practice owner who is discontinuing a dental practice or moving to a new location must comply with these notice requirements or make arrangements for the transfer of active patient records to a dentist, professional entity, or patient. An unlicensed person or entity may not intentionally prevent a dental practice owner from complying with these requirements.

If a dentist provides services as an employee or contractor of another dentist or entity authorized to render dental services or operate a dental office: (1) the other dentist or entity is responsible for the continuing treatment of patients; and (2) the employee/contractor dentist does not abandon a patient for whom continuing treatment responsibility is retained by the other dentist or entity. A licensed dentist who is the owner of an entity is considered the attending dentist responsible for the entity's compliance with these requirements.

The requirement to obtain a license to practice dentistry is clarified by providing that no person may practice dentistry *in this state* without obtaining a license.

Communicating information to a state agency under the statutes governing good faith communication with a government agency is subject to those statutes.

Substitute Bill Compared to Original Bill:

The substitute bill adds the provisions related to: (1) interference with a dentist's independent clinical judgment; (2) abandonment or withdrawal of responsibility for a patient; (3) notice when discontinuing a practice or moving to a new location; (4) the clarification regarding the requirement to obtain a license; and (5) communication with a government agency.

Appropriation: None.

Fiscal Note: Available. A new fiscal note was requested on February 17, 2017.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Dentists should be able to choose among different business models, because not everyone wants to run a business. Working with a dental support organization allows dentists to focus their time on patients, rather than administrative services. Dentists that contract with dental support organizations make decisions for their patients and have total control over patient treatment plans. The bill does not anticipate that dental support organizations will be practicing dentistry. These practices help address access issues.

The law has not kept up with the evolution of dentistry. Ambiguity in the law allowed businesses to open where a nondentist dictated how dentistry should be practiced. The bill clarifies that only the dentist can hire clinical staff and own patient records. This bill is a strengthened version of an Oregon law that passed in 2003. Dentists who support changing the law have been harassed and intimidated by the Washington State Dental Association. The Dental Quality Assurance Commission (DQAC) has regulatory authority over the dentist, and dental support organizations should not be regulated by the DQAC.

The proposed substitute bill includes points related to the dentist's judgment and allows the Department of Health to investigate the unlicensed practice of dentistry and impose penalties. It attempts to provide a choice of models and competition within the market, balanced with patient protection and prevention of undue influence of the dentist. No other state regulates facilities separately from the dentist who owns the practice.

With a dental franchise, the dentist owns all aspects of the business, and there is no clinical direction from the corporate office. The franchise model allows dentists to offer extended hours and lower fees. The locations are independently owned and operated by Washington-licensed dentists.

(Opposed) The priority for dental support organizations is profits, not quality dental care or patient safety. Dentists are just employees, not owners of the practice. Unlicensed staff encourage dentists to provide unethical care. Dentists are ranked on the profits they generate. The lack of supplies means that proper infection protocols are not met. They provide dangerous care and charge more than they quote. Patients have had serious infections.

Choice in the marketplace is supported, as long as it safeguards patient care. The dentist's decision making should be paramount. Leases for property or equipment must be independent of service contracts, because if a dental support organization can ask a dentist to leave, that is not an ownership model.

Dental support organizations are not aimed at providing access. The federal anti-kickback statute does not apply to dental support organizations because they do not accept Medicaid. When physicians are employed by a health care facility, the facility is regulated. Dental support organizations want to be unlicensed and unregulated.

A United States Senate report found that dental support organizations provided more than managerial decisions and in some cases had complete control over the clinic. The report recommended that states enforce existing laws against the corporate practice of dentistry.

Persons Testifying: (In support) Representative Harris, prime sponsor; Jeff Pearson, Bright Now Dental; Karen Sheppard, Gentle Dental; Roman Daniels-Brown, Pacific Dental Services; Amber Lewis and Scott Probst, Comfort Dental; Melissa Johnson, Willamette Dental Group; and Lisa Thatcher and Cliff Webster, Association of Dental Support Organizations.

(Opposed) Trent House, Tana Wells, Mai-Ian Phan, Debra Enneking, Emily Studebaker, and Cynthia Pauley, Washington State Dental Association.

Persons Signed In To Testify But Not Testifying: None.