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## Health Care & Wellness Committee

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### HB 1598

**Brief Description:** Concerning agreements between dentists and third parties that provide supportive services to dentists.

**Sponsors:** Representatives Sullivan, DeBolt, Kilduff, Caldier, Muri and Young.

#### Brief Summary of Bill

- Permits dentists to enter into lease agreements and agreements for the provision of services in support of a dental practice if certain standards are met.
- Grants whistleblower protections to a certain reports on the unlicensed practice of dentistry.

**Hearing Date:** 2/14/17

**Staff:** Alexa Silver (786-7190).

#### Background:

##### Practice of Dentistry.

Dentists are licensed and regulated by the Dental Quality Assurance Commission. No person may begin the practice of 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

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- 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.

#### Professional Service Corporation Act.

Under the Professional Service Corporation Act, an individual or group of individuals who practice the same profession (including dentistry) may incorporate for the purpose of rendering that professional service to the public. Professional corporations may only provide services through persons who are licensed or authorized to perform the professional services, but a person licensed in another state may become a member of a professional corporation in Washington that performs the same services.

#### Whistleblowers.

A whistleblower who communicates a complaint or information to a government agency is immune from civil liability for claims based on that communication in any matter reasonably of concern to the agency. A person who prevails in this defense is entitled to recover statutory damages of \$10,000 in addition to expenses and attorneys' fees.

#### **Summary of Bill:**

#### Agreements for the Provision of Support Services.

A dentist or group practice of dentists may enter into an agreement with a third party for the provision of services in support of a dental practice, and the third party does not maintain or operate an office for the practice of dentistry, as long as the following standards are met:

- The agreement is in writing, signed by the parties, and covers all of the services that the third party will provide for the term of the agreement;
- The agreement does not exceed a term that is reasonable and necessary, up to a maximum duration of five years;
- The third party's compensation is set in advance, is consistent with fair market value in arm's-length transactions, and does not take into account the volume or value or referrals or business otherwise generated between the parties;
- Patients are fully informed of the agreement; and
- The agreement does not expressly or impliedly interfere (or have the effect of interfering) with patient care or the dentist's independent judgment, including:
  - by limiting the time a dentist spends with patients or performing services or by placing conditions on the number of patients that must be treated or the number or types of procedures that must be completed;
  - by limiting or imposing requirements on the dentist's decisions regarding treatment, the manner in which a dentist uses equipment or materials, the use of a laboratory, the professional training the dentist deems reasonably necessary, the dentist's referrals, the dental benefits accepted, the dentist's billing practices, the dentist's or practice's advertising, or communications with patients;

- by interfering with the dentist's right to access patient records or the dentist's decision to refund a patient's payment; or
- by limiting or interfering with the dentist's ability to hire, supervise, and fire staff, including hygienists, dental assistants, and office managers.

In proceedings under the dentistry law or the Uniform Disciplinary Act (UDA), the burden of proof is on the party defending the third-party agreement to show that compensation paid under the agreement is set in advance and consistent with fair market value.

"Third party" means a person, other than a bona fide employee of a dentist or group practice, who has an agreement to perform services for, or on behalf of, the dentist or group practice, including a person or affiliate that has a direct or indirect financial relationship with the third party.

"Arm's-length" means bona fide bargaining between well-informed parties to an agreement who are not otherwise in a position to generate business for the other party.

Compensation is "set in advance" only if the aggregate compensation over the term of the agreement is fixed, does not include a percentage-based component, and does not include a provision allowing a non-dentist third party to be compensated with equity ownership in the practice. Compensation is considered "consistent with fair market value" only if it is consistent with the value in arm's-length transactions and is included in a third-party agreement as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for any other party to the agreement.

#### Lease Agreements.

A dentist or group practice of dentists may enter into an agreement with a third party to lease space or equipment for operation of the dental practice office if any management or other personal service agreement is independent of the space or equipment lease agreement between the parties. The third party is presumed to have been operating an office for the practice of dentistry if the third party: (1) terminates a lease for space or equipment without the consent of the dentist or group practice within two years of the termination of the management or other personal service agreement; or (2) enters into a new management or other personal service agreement or a new space or equipment lease agreement with a different dentist or group practice in the same location. This presumption is rebuttable with clear and convincing evidence that the space or equipment lease agreement was terminated and any new agreement executed for a permissible purpose.

#### Dental Office Ownership.

The existing prohibition on an unlicensed person owning, maintaining, or operating an office for the practice of dentistry is restated, and the prohibition applies notwithstanding the provisions of the Professional Service Corporation Act.

#### Enforcement and Whistleblower Protections.

Pursuant to the UDA, the Dental Quality Assurance Commission may subpoena an agreement between a dentist or group practice of dentists and a third party if the agreement is probative to an issue raised in a complaint and believed to be in violation of the above requirements.

An employee, independent contractor, or health care professional is a whistleblower if the person reports, in good faith, to the Department of Health or any agency or branch of state or local government practices that may constitute the unlicensed practice of dentistry by a person who is a party to a management or other personal service agreement with a licensed dentist or group practice. Statutes that protect persons who communicate to government agencies apply to these reports, and a person who has been subjected to reprisal or retaliatory action has remedies under these statutes, as well as the Washington Law Against Discrimination. A whistleblower's identity must remain confidential.

**Appropriation:** None.

**Fiscal Note:** Available.

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