

FINAL BILL REPORT

SHB 2229

C 210 L 18
Synopsis as Enacted

Brief Description: Concerning the applicability of dental practice laws to integrated care delivery systems.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representative Macri).

House Committee on Health Care & Wellness
Senate Committee on Health & Long Term Care

Background:

Practice of Dentistry.

Dentists are licensed and regulated by the Dental Quality Assurance Commission (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. However, a person or entity not licensed by the 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;

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- 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.

Uniform Disciplinary Act.

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.

Under the UDA, 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.

Federal Anti-kickback Law.

Federal law provides criminal penalties for individuals or entities that knowingly and willingly offer, pay, solicit, or receive remuneration in order to induce or reward the referral of business that is reimbursable under any federal health care programs. The types of remuneration specifically prohibited include kickbacks, bribes, and rebates made in cash or in kind.

Anti-kickback Safe Harbors.

There are safe-harbor protections for certain payment practices and business arrangements that would otherwise be considered suspect under the federal law. If all the conditions of the safe harbor are met, the practices are not subject to criminal prosecution.

The personal services and management contracts safe harbor requires that the following seven standards are met:

- the agreement is set out in writing and signed by the parties;
- the agreement covers all of the services the agent provides to the principal for the term of the agreement and specifies the services to be provided by the agent;
- if the agreement is intended to provide for the services of an agent on a periodic, sporadic, or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, and the exact charge for such intervals;
- the terms of the agreement are for not less than one year;
- the aggregate compensation paid to the agent over the term of the agreement is in advance, is consistent with fair market value in arms-length transactions, and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made by a federal health care program;

- the services performed under the agreement do not involve the counselling or promotion of a business arrangement or other activity that violates any state or federal law; and
- the aggregate services contracted for do not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the service.

The price reductions offered to eligible managed care organizations (MCO) safe harbor provides for several arrangements:

- An agreement between an eligible MCO and a first tier contractor providing or arranging for services must meet three standards:
 - the parties have an agreement signed and set out in writing that specifies the items and services covered by the agreement, which is at least one year and specifies that the contractor may not claim payment from a federal health care program for items or services covered under the agreement except for several specified contracts;
 - in establishing the agreement terms, neither party gives or receives remuneration in return or to induce the provision or acceptance of business for which payment may be made by a federal health care program on a fee-for-service or cost basis; and
 - neither party shirks the financial burden of the agreement to the extent that increased payments are claimed from a federal health care program.
- An agreement between a first tier contractor and a downstream contractor or two downstream contractors to provide or arrange for items or services, must meet the above three conditions and the agreement between eligible MCOs and a first tier contractor covering the items or services that are covered by the arrangement between the parties may not involve:
 - a federally qualified health center receiving supplemental payments;
 - a health maintenance organization (HMO) or competitive medical plan with a cost-based contract; or
 - a federally qualified HMO, unless the items or services are covered by a risk based contract.

A first tier contractor is an individual or entity that has a contract directly with an eligible MCO. A downstream contractor is an individual or entity that has a subcontract directly or indirectly with a first tier contractor to provide items or services that are covered by an agreement between an eligible MCO and first tier contractor.

The space rental and equipment rental safe harbors require the following six standards:

- the lease agreement is set out in writing and signed by the parties;
- the lease covers all of the premises or all of the equipment leased between the parties for the term of the lease and specifies the premises or equipment covered by the lease;
- if the lease is intended to provide the lessee with access to the premises or equipment for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals;
- the terms of the lease are for not less than one year;
- the aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions, and is not determined in a manner that takes into account

- the volume of value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part by a federal health care program; and
- the aggregate space or equipment rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

Summary:

A licensed health service contractor organized as a nonprofit integrated care delivery system may contract for the services of a licensed dentist or employ or contract for the services of licensed dental hygienists, licensed expanded function dental auxiliaries, certified dental anesthesia assistants, and registered dental assistants if the agreement between the parties meets the requirements of following federal anti-kickback safe harbors:

- the personal services and management contracts safe harbor; and
- either:
 - the managed care organization safe harbor requirements; or
 - the space rental safe harbor and the equipment rental safe harbor.

Health carriers may enter into provider contracts or provider compensation agreements with a dentist or dental practice.

Votes on Final Passage:

House	98	0	
Senate	49	0	(Senate amended)
House	96	0	(House concurred)

Effective: June 7, 2018