

# HOUSE BILL REPORT

## SHB 2229

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### As Amended by the Senate

**Title:** An act relating to the applicability of dental practice laws to integrated care delivery systems.

**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).

#### **Brief History:**

##### **Committee Activity:**

Health Care & Wellness: 1/30/18, 1/31/18 [DPS].

##### **Floor Activity:**

Passed House: 2/12/18, 98-0.

Senate Amended.

Passed Senate: 2/27/18, 49-0.

#### **Brief Summary of Substitute Bill**

- Exempts licensed health care service contractors that are organized as nonprofit integrated care delivery systems from provisions that prohibit corporations from practicing dentistry or from soliciting dental patronage for dentists employed by a corporation.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 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, Slatter, Stonier and Tharinger.

**Staff:** Kim Weidenaar (786-7120).

#### **Background:**

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*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.*

### 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;
- employ or contract for the services of personnel other than licensed dentists, including 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 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
- communicating with patients; or
- interfering with access to patient records or a refunding of a payment.

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.

#### Health Care Service Contractor.

A health care service contractor is an entity that accepts prepayment for health care services from, or for the benefit of, enrollees as consideration for providing the enrollees with health care services. A health care service contractor offering coverage to individuals or small groups is required, under the federal Patient Protection and Affordable Care Act, to cover 10 categories of essential health benefits. A health care service contractor is defined as any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which, not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services. It does not include direct patient-provider primary care practices, which provide patients all primary care services provided in the health care practitioners office for a set fee, regardless of the number of visits. Patients pay a monthly fee directly outside of any insurance the individual may have.

#### Anti-kickback Statute.

Federal law known as the anti-kickback statute 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.

Subsequent legislation established safe-harbor protections for certain payment practices and business arrangements that would otherwise be considered suspect under the statute. 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 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 eligible MCO and the 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 cannot 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.
- A first tier contractor and a downstream contractor or two downstream contractors to provide or arrange for items or services, must meet the four standards:
  - the parties have an agreement signed and set out in writing that specifies the items and services covered by the agreement, which is for at least one year and specifies that the party providing the services or items cannot claim payment from a federal health care program for items or services covered by the agreement;
  - 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;
  - neither party shirks the financial burden of the agreement to the extent that increased payments are claimed from a federal health care program; and
  - the agreement between eligible managed care organizations and first tier contractor covering the items or services that are covered by the arrangement between the parties does 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 same 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 of Substitute Bill:**

In order to be exempted from the prohibitions on the corporate practice of dentistry and solicitation of dental patronage for dentists employed by a corporation, an arrangement for care delivery between a licensed health service contractor organized as a nonprofit integrated care delivery system and a health care provider, the arrangement between the parties must meet the requirements of following anti-kickback statute 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.

These entities are still subject to other limits on unlicensed individuals or corporations including the prohibitions on interfering with a dentist's clinical judgement.

### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment: removes the exemption from the prohibition on the corporate practice of medicine for an arrangement between a health care service contractor organized as a nonprofit integrated care delivery system and a health care provider if certain requirements are met; replaces that exemption with a specific allowance for a health care service contractor organized as a nonprofit integrated care delivery system to contract for the services of licensed dentists, and employ or contract for the services of licensed dental hygienists, licensed expanded function dental auxiliaries, certified dental anesthesia assistants, and registered dental assistants if certain requirements are met; and provides that the act does not prohibit health carriers from entering into provider contracts or provider compensation agreements with a dentist or dental practice.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) A bill on the corporate practice of dentistry passed last year, however, it did not consider the impacts on Kaiser, which has a long standing integrated dental practice. Kaiser has an exclusive partnership with a dentist-owned organization, but ambiguity in the previous bill threatened its existence. During the interim stakeholders worked together to come to an agreement that will ensure that Kaiser's integrated dental practice can continue while also safeguarding patients. This bill will eliminate the statutory ambiguity and will allow Kaiser to continue to operate its integrated dental services.

(Opposed) None.

**Persons Testifying:** Representative Macri, prime sponsor; Steve Bush, Kaiser Permanente Dental; and Mellani McAleenan, Washington State Dental Association.

**Persons Signed In To Testify But Not Testifying:** None.