

BILL ANALYSIS

Senate Research Center

S.B. 960
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Health & Human Services
5/4/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas ranks first among states in the number of dentists needed on a per capita basis, according to Kaiser Family Foundation's "State Health Facts." Dental support organizations (DSOs), which serve more than 700 dentists, help address this problem by supplying efficient business services, allowing dentists to focus their professional skills and judgment on clinical care. In addition, DSOs can make it possible for beginning dentists to enter the market and to retain older dentists who may want to continue caring for patients without the burdens and expense of running their own businesses.

Current statutes do not provide a clear division between what are considered clinical and non-clinical functions. S.B. 960 identifies 16 broad clinical functions that only a licensed dentist may perform, and 10 business functions that a DSO may perform, such as leasing office space, ordering supplies, accounting, bookkeeping, et cetera.

By clarifying the divisions between clinical and non-clinical, S.B. 960 ensures that dentists maintain their independent professional judgment at all times, and the Texas State Board of Dental Examiners retains its authority to take action if any non-dentist improperly influences the dentist's independent professional judgment.

As proposed, S.B. 960 amends current law relating to the right of a dentist to contract for certain services.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the State Board of Dental Examiners is rescinded in SECTION 2 (Section 254.0011, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 251, Occupations Code, by adding Section 251.0041, as follows:

Sec. 251.0041. IMPROPER INFLUENCE ON PROFESSIONAL JUDGMENT. (a) Defines "dentist."

(b) Provides that a dentist who enters into any contract or other agreement that allows a person other than a dentist one or more of the following rights or authorities is presumed to have allowed the other person to control, influence, or otherwise interfere with the exercise of the dentist's independent professional judgment regarding the diagnosis or treatment of a dental disease, disorder, or physical condition:

(1) controlling, owning, or setting any conditions for access to or the specific contents of dental records of patients of a dentist;

(2) setting a maximum or other standardized time for the performance of specific dental procedures;

- (3) placing any limitation or requirement on treatments, referrals, or consultations except those based on the professional judgment of the dentist;
- (4) limiting or imposing requirements concerning the type or scope of dental treatment, procedures, or services that may be recommended, prescribed, directed, or performed, except that a dentist may limit the dentist's practice, or the practice of a dentist employed by or contracting with the dentist, to certain procedures or the treatment of certain dental diseases;
- (5) limiting or imposing requirements concerning the supplies, instruments, or equipment deemed reasonably necessary by a dentist to provide diagnoses and treatment of the patients of the dentist, including a restriction on the use of a dentist's money for the purchase of supplies, instruments, or equipment;
- (6) limiting or imposing requirements for the professional training deemed necessary by the dentist to properly serve the patients of the dentist;
- (7) directing or influencing the selection of specific diagnostic examinations and treatments or practices regarding patients without due regard to the recommended diagnostic examinations and treatment agreed upon by the dentist and the patient, except that a dentist having the responsibility for training or supervising another dentist may reasonably limit treatments or practices as a part of the training or supervision of a dentist based upon the training and competency of a dentist to perform certain treatments or practices;
- (8) limiting or determining the duties of professional, clinical, or other personnel employed to assist a dentist in the practice of dentistry;
- (9) establishing professional standards, protocols, or practice guidelines which, in the professional judgment of the dentist providing dental service to the dentist's patient, conflict with generally accepted standards within the dental profession;
- (10) encouraging impermissible referrals from unlicensed persons in consideration of a fee;
- (11) placing limitations or conditions upon communications that are clinical in nature with the dentist's patients;
- (12) precluding or restricting a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;
- (13) scheduling patients of the dentist in a manner that may have the effect of discouraging new patients from coming into the dentist's practice or postponing future appointments or giving scheduling preference to an individual, class, or group;
- (14) penalizing a dentist for reporting violations of a law regulating the practice of dentistry;
- (15) conditioning the payment of fees to a dentist or the amount of management fees a dentist must pay on the referral of patients to other health care providers specified by a non-dentist; or

(16) interfering with a dentist's decision regarding the refund of any payment made by a patient for dental services.

(c) Provides that if a person who is not a dentist enters into any contract or other agreement with a dentist that allows the person one or more of the following rights or authorities, the person is presumed not to have engaged in the practice of dentistry as defined by Section 251.003 (Practice of Dentistry) without a license or to have been allowed to control, influence, or otherwise interfere with the exercise of the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder, or physical condition:

(1) leases, mortgages, ownership agreements, or other arrangements regarding use of space for dental offices based on a fee or amount that is reasonably related to the fair market value of the office space at the time the lease or other arrangement is entered into;

(2) the purchase, sale, financing, or lease of dental equipment, instruments, and supplies as long as the dentist maintains the complete care, custody, and control of the dental equipment, instruments, and supplies and the lease does not provide for a payment or fee based upon a percentage of the revenue received by the dentist or the dental practice;

(3) accounting, bookkeeping, banking, investment, or similar financial services, including services related to the payment of invoices, obligations, and debts of a dentist;

(4) the financing, lease, use, or ownership of non-dentist business equipment such as telephones, computers, software, and general office equipment at reasonable, market-related fees;

(5) services regarding the pledge, collection, or sale of accounts receivable from patients;

(6) billing and collection services;

(7) advertising and marketing services as long as the dentist remains solely responsible for the content of any advertising or marketing services and for ensuring that the advertising and marketing services conform to all applicable legal requirements;

(8) consulting and advising regarding professional development, business practices, and third party payor arrangements, and the provision of business and other nonclinical services for the day-to-day operation of a dental office which do not limit the dentist's ability to use the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder, or physical condition;

(9) employing or retaining the services of personnel working in a dental office, other than the dentist; or

(10) providing loans, capital, or funding to a dentist, including under a secured arrangement.

(d)(1) Provides that the presumption established by Subsection (b) may be rebutted by evidence that the contract or agreement did not result in a person who is not a dentist controlling, influencing, or otherwise interfering with the exercise of the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder, or physical condition.

(2) Provides that the presumption established by Subsection (c) may be rebutted by evidence that the contract or agreement actually resulted in a person who is not a dentist controlling, influencing, or otherwise interfering with the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder, or physical condition. Provides that evidence is not admissible to rebut the presumption established by Subsection (c) if the evidence relates to:

(A) the length of the contract or agreement;

(B) whether an unlicensed person provides all, substantially all, or is the exclusive provider of such undertakings to a dentist or dental office; or

(C) subject to the limitations of Subsection (b)(5), whether the dentist has authorized an unlicensed person to have signature authority over the dentist's accounts.

(e) Provides that this rule does not apply to a person or circumstance described by Section 251.004 (Exemption from Practice of Dentistry), 260.001 (Employment by Estate of Dentist or Person Acting for Mentally Incompetent Dentist), 260.002 (Employment by Certain Nonprofit Health Organizations), 260.003 (Employment By Organizations Serving Undeserved Populations), or 260.004 (Employment by Governmental Entity).

SECTION 2. Amends Section 254.0011, Occupations Code, as follows:

Sec. 254.0011. RULES RELATING TO CONTROL OF DENTAL PRACTICE. Prohibits the State Board of Dental Examiners (board) from adopting rules to prohibit or otherwise restrict a dentist's right to contract with :

(1) Creates this subdivision from existing text; or

(2) a person for the provision of management services.

Deletes existing Subsection (a) prohibiting the board from adopting rules relating to the practice of dentistry as described by Section 251.003(a)(9) to prohibit a dentist from engaging in contracts that allow a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment.

Deletes existing Subsection (b) prohibiting the rules adopted by the board under this subtitle from precluding a dentist's right to contract with a management service organization.

Deletes existing text providing that rules affecting contracts for provision of management services apply the same to dentists contracting with management service organizations and to dentists otherwise contracting for management services.

SECTION 3. Effective date: September 1, 2015.