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DENTAL HYGIENIST BOARD

House Bill 4657 as passed by the House
Second Analysis (8-31-94)

Sponsor: Rep. Tracey Yokich
Committee: Public Health

THE APPARENT PROBLEM:

Currently, the board of dentistry regulates dentists, dental assistants, and dental hygienists. The board consists of thirteen voting members: seven dentists, two dental hygienists, two dental assistants, and two public members. At the request of the Michigan Dental Hygienists' Association, legislation has been introduced that would create a board of dental hygiene that was separate from the board of dentistry.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code (MCL 333.16131 et al.) to create a board of dental hygiene, separate from the board of dentistry. The bill also would explicitly add that boards or task forces couldn't promulgate rules that modified (expanded or constricted) the scope of practice definition for the health profession governed by that board or task force. Finally, the bill would increase the number of public members on the board of dentistry by two, for a total of four public members.

The Michigan Board of Dental Hygiene. The bill would create a nine-member board of dental hygiene, consisting of five dental hygienists and four public members. Board meeting times would have to be agreed to by a vote of at least five board members.

The board would issue dental hygienist's licenses only to individuals who had graduated from a nationally-accredited, board-approved two-year dental hygiene program. A dental hygienist's license would be valid until its expiration date, and would be renewed if the applicant met all of the conditions for renewal.

Administrative rules. Unless amended or rescinded by the board of hygiene, rules promulgated by the board of dentistry pertaining to the practice of dental hygiene would remain in effect. After the bill took effect, the board of hygiene would enforce rules described in the bill.

Practice of dental hygiene. Currently, the health code defines "practice as a dental hygienist" to mean "practice at the assignment of a dentist in that specific area of dentistry based on specialized knowledge, formal education, and skill, with particular emphasis on preventive services and oral health education." ("Assignment" means that a dentist has assigned a patient of record for certain services described by the dentist.) The bill would keep this definition and the existing definition of "assignment," but would add that the assigning dentist wouldn't have to be physically present in the treatment room when a dental hygienist performed the assigned services.

The bill would prohibit the practice (or alternative practice) of dental hygiene without a license, and would restrict "deep scaling, root planing, and the removal of calcareous deposits" to licensed dentists and licensed dental hygienists. The bill also would require dental hygienists to comply with infection control standards established by the Occupational Safety and Health Administration and approved by the board (or other infection control guidelines promulgated or approved by the board). Dental hygienists would be prohibited from discriminating against or refusing, denying, or withholding professional services from people infected with hepatitis B or by the human immunodeficiency virus (HIV).

Alternative practice of dental hygiene. The bill would define the "alternative practice of dental hygiene" as it currently is defined in the health code. That is, currently a dental hygienist can perform dental hygiene services under the supervision of a dentist as part of a program for dentally underserved populations in Michigan conducted by local, state, or federal grantee agencies for patients who weren't assigned by a dentist. (The code further specifies the conditions under which the DPH can designate someone as a grantee health agency for a two-year period.)

HOUSE BILL 4657 / (8-31-94)

BACKGROUND INFORMATION:

According to the Michigan Dental Hygienists' Association, dental hygiene is the science and practice of the prevention of oral disease. A dental hygienist is a preventive oral health professional licensed in dental hygiene who provides educational, clinical, and therapeutic services supporting total health through the promotion of optimal oral health.

In order to be licensed, a dental hygienist must have successfully completed an accredited dental hygiene program (which at a minimum is a two-year college program, though the majority of dental hygienists complete three years of college credits) and passed both a national examination and a regional board comprehensive and clinical examination. A licensed dental hygienist is called a "registered dental hygienist" or "RDH." A dental assistant, in contrast, is not required to become licensed in Michigan unless he or she performs specific services and functions. A non-licensed dental assistant may perform basic supportive procedures under the supervision of a dentist. In order to perform other services or functions detailed in law (including placing a temporary filling, and placing and removing rubber dams), an individual must be licensed as a "registered dental assistant" ("RDA") by completing an accredited dental assistant's course (typically less than a one-year program), and passing a state board administered comprehensive and clinical examination.

FISCAL IMPLICATIONS:

According to the Office of Health Services in the Department of Commerce, the costs of implementing this bill would consist primarily of reimbursement to board members for board meetings, which currently average \$60 to \$70 per board member per meeting (a \$50 per diem plus mileage and meals), though for board members from the Upper Peninsula this could be as high as \$300 per member per meeting (because of the distance traveled and the costs of lodging). (9-28-93)

ARGUMENTS:**For:**

The practice of dental hygiene has become a highly professionalized field that deserves to be regulated by its own board. Dental hygienists are perhaps

unusual among health professionals in that they have been licensed or registered in Michigan for over 70 years, but unlike other licensed health professionals, haven't had their own regulatory board. A report by the state of Maryland suggests that one of the reasons why changes in regulatory policy relating to dental hygienists have often been slow is because of "the perception that dental hygienists are a mere economic component in the operation of a dental office, rather than a skilled professional." And yet "[t]he practice of dental hygiene has experienced changes in educational preparation and practice. The development of dental hygiene has culminated in the creation of a specialized area of dental care, combining special skills with a rigorous academic education and practical training. Dental hygiene has progressed from an optional method of distributing the dentist's office workload to a broad-based, highly skilled profession which plays a major role in preventive dentistry and periodontics. The practice of dental hygiene is now an integral part of the quality dental care which the informed consumer-patient has come to expect." It is time that dental hygienists be self-regulating health care professionals, like other health care professionals.

For:

Proponents of the bill argue that a major problem with dentist-dominated boards is that they allow dentists to restrict their competition in the dental health market. Proponents also argue that dentist-dominated boards neglect dental hygiene issues and that dental hygienists are under-represented on such boards.

Dentistry has a vested economic interest in controlling potential competition from dental hygienists, who are employed by dentists. According to a report conducted by the state of Maryland's Department of Fiscal Services, evaluating that state's Board of Dental Examiners, "[r]egulation of dental hygienists by dental boards has persisted since the practice of dental hygiene was first recognized in 1915." And yet, having a single, dentist-dominated board regulating not only dentists but also dental hygienists and dental assistants -- both of whom are employed by dentists -- constitutes an inherent conflict of interest. As the Maryland report notes, "[r]egulation of dental hygienists is inherently problematic because dentists are their primary employers. The U.S. Federal Trade Commission has observed that dentist representatives on dental regulatory boards have a

vested economic interest in defining, regulating, and controlling the practice of dental hygiene and otherwise influencing its development."

Although dental hygienists usually have at least one dental hygienist member on the dental boards that regulate them, their representation usually is minimal and grossly under-represents their actual numbers. For example, the Maryland report notes that "[o]ver the years, there has been minimal, if any, dental hygiene representation on these [dental] boards. In fact, dental hygienists have consistently been under-represented, [with] the average number of dental hygienists on an eight member [dental] board [being] one." For example, Pennsylvania, Connecticut, South Carolina, and Maryland each have one dental hygienist member on their dental regulatory boards, while Georgia reportedly has only a single dental hygienist "advisor" to its dental board. In South Carolina, where the regulatory board has one dental hygienist member and seven dentist members, there are 1,369 dental hygienists and 1,841 dentists. Thus, there are 263 dentists for each dentist member on the board, while the lone dental hygienist member represents all 1,369 of the state's dental hygienists.

Some states, such as Michigan, Colorado, and Arkansas, have two dental hygienist members on their dental boards. But even though Michigan reportedly has about as many dental hygienists as dentists, there are seven dentist members on the board to the two dental hygienist members. What is more, the dental hygienists on the Michigan dental board do not even have full voting privileges: the dental hygienist board members cannot vote on issues affecting dentists, though the dentist members can and do vote on issues affecting dental hygienists (and public members, who may have little or no expertise in the area of dentistry or dental hygiene, can vote on all issues before the board.)

Despite the \$85,530 that dental hygienists paid last year in license fees, proponents of the bill argue that the practice of dental hygiene and issues related to preventive oral health care services receive little attention from the existing board, partly because the board is swamped with issues arising in relation just to dentistry and its subspecialties and partly because a dentist-dominated board views dental hygiene issues as "auxiliary" and less important than dentist-related issues. One example given is that it took the existing board thirteen years to adopt Michigan

Dental Hygienists' Association-proposed rule changes to mandate continuing education for relicensure of dental hygienists.

Reports conducted by the states of Maryland and South Carolina recommend that dental hygienists be allowed to regulate themselves, and Michigan should do so as well. The Maryland report acknowledges that "[t]he issue regarding representation of dental hygienists on the board is complex: It is very difficult for a board dominated by dentists to consider dental hygiene matters from an unbiased viewpoint." The report goes on to say that in order to eliminate dentists' vested economic interest in controlling the practice of dental hygiene and to minimize the inherent conflict between dentists and dental hygienists, "there must be adequate representation of hygienists on the board [and] dental hygienists must have the authority to define and regulate the practice of dental hygiene."

Response:

It should be noted that neither Maryland nor South Carolina unequivocally recommended establishing separate boards of dental hygiene. Rather, each of these state's reports recommend that either (a) the composition of their existing boards of dentistry be changed "to more adequately represent the interests of both dentists and dental hygienists" or (b) their respective legislatures "consider enacting legislation to create a separate board of dental hygienists."

Against:

Opponents of the bill argue that establishing a separate board for dental hygienists is simply the first step in the expansion of dental hygienists' scope of practice, and, eventually, of course, to higher health care costs. In fact, one of the objections raised by opponents of the bill is that it would open the door to independent practice for dental hygienists. Finally, opponents say that at the very least, the bill would increase costs to the state by increasing the regulatory bureaucracy.

Response:

Proponents of the bill point out that the bill would neither increase the scope of practice of dental hygienists (scope of practice cannot be increased by board-promulgated rules but only by new legislation) nor lead to independent practice by dental hygienists. A form of independent practice, called "contractual practice," already is legal in Michigan. Under this kind of practice, dental hygienists can own their own dental or dental hygiene practice so long as they contract with a dentist to provide the initial examination and

treatment planning required by law. The bill would provide for self-regulation, but would not increase (or establish new forms of) independent practice. Dental hygienists would continue to provide services only to patients who had first been examined by a licensed dentist and for whom the dentist had established a treatment plan. (It also might be pointed out that this fear -- of independent practice by dental hygienists -- supports the view of proponents of the bill that the existing board of dentistry in fact serves to protect the interests of dentists, as employers of dental hygienists, over that of patients and of dental hygienists.) Finally, proponents of the bill point out that dental hygienists have been required to be licensed since 1923, and therefore already are regulated by the state. The bill would create a new regulatory board, which would place additional demands on the state. But proponents also argue that the dental hygiene profession, which reportedly ranks as the fifth largest group of licensed health professionals in the state (reportedly there currently are 7,271 dental hygienists -- and 7,743 dentists -- in the state), already is paying for such regulation -- but in fact is not receiving adequate regulation because of the composition of the board currently regulating dental hygienists. It also should be pointed out that it is a recognized fact that the regulated health professions currently are not adequately regulated in part because license and registration fees are not "dedicated" to regulation of the professions from which the fees are collected. That is, the fees are collected supposedly in order to regulate the health professions, but the appropriations for regulating the health professions virtually never match the fees collected for their regulation. In this sense, then, the bill might well increase the amount of money the state would have to spend on regulation, but it is likely that the fees currently being collected would in fact pay for this regulation (and it should be pointed out that the state already is paying for two dental hygienists on the board of dentistry).

Against:

Washington apparently is the only state where dental hygienists have their own regulatory board (though dental hygienists in the Canadian provinces of Ontario and Quebec also have their own regulatory boards as well). Michigan should remain with the majority of states on this issue.

Response:

Reportedly this bill is part of a national movement to establish separate boards for dental hygienists, so Michigan could be on the cutting edge of dental

hygiene regulation if the bill is enacted. Ironically, the dental hygienists now are in the position that dentists were years ago, when dentists were regulated under the board of medicine. Not only did dentists manage to get their own board separate from that of physicians, but so too did nurses. The only other licensed health professionals who do not have their own boards are dental assistants (see **BACKGROUND INFORMATION**) and licensed practical nurses (who are regulated under the board of nursing). It is well past time for dental hygienists, whose position in dentistry is comparable to that of nurses in medicine, to have their own regulatory board.

Against:

It has long been the policy in the state of Michigan that there are certain criteria that should be used in identifying health occupations for which licensure, and, presumably, separate regulatory boards, should be established. As Strichartz' Commentary on the Michigan Public Health Code indicates, "[t]he priority for making judgments about the need for licensure is 'promoting safe and competent health care for the public.' If this requirement is not met there is doubt about the need to license that health occupation...A critical requirement is that the public can only be effectively protected through licensure." There has been no evidence whatsoever presented that would indicate that the public safety and health has been harmed by dental hygienists not having their own, separate regulatory board, and until such evidence can be presented, they should remain under the Board of Dentistry.

Response:

This argument is a red herring, since the question at issue here is not licensure of dental hygienists (who have been licensed for years in Michigan) but rather that of their having their own regulatory board. (What is more, even the section of the Public Health Code setting out requirements for licensure was repealed by Public Act 79 of 1993[enrolled House Bill 4295], which was part of the package of legislation that revised the disciplinary process for health care professionals and, among other things, did away with the long-inactive Health Occupations Council, which had been supposed to decide whether additional health professionals should be licensed or registered under the health code.)

POSITIONS:

The Michigan Dental Hygienists' Association

strongly supports the bill. (8-15-94)

The American Dental Hygienists' Association supports the bill. (8-24-94)

The Michigan Dental Association opposes the bill. (8-15-94)

The Bureau of Occupational and Professional Regulation (in the Department of Commerce) opposes the bill. (8-24-94)