

Legislative Analysis



MOBILE DENTAL FACILITY

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House Bill 4865 as enrolled

Public Act 100 of 2014

Sponsor: Rep. Peter MacGregor

House Committee: Health Policy

Senate Committee: Health Policy

Analysis as enacted (10-27-14)

BRIEF SUMMARY: The bill would:

- Require a permit issued by the Department of Community Health to operate a mobile dental facility.
- Require mobile dental facilities to meet certain requirements, including mandated equipment, toilet facilities, and a phone or device to summon emergency services.
- Require operators of mobile dental facilities to comply with state, federal, and local laws applicable to mobile dental facilities and laws regarding infectious waste management and disposal and sanitation.
- Require a memorandum of agreement between a mobile dental facility and another dentist for referrals for follow-up treatment or comprehensive dental services if the mobile facility does not provide such services.
- Require consent of patients prior to treatment and that certain information be provided to patients.
- Subject operators to departmental discipline for certain conduct.
- Require patient records to be available to patients if the mobile dental facility ceases operation.
- Exempt a mobile dental facility that provides services for free from regulation under the bill's provisions.
- Define terms.

FISCAL IMPACT: The bill will have a fiscal impact on the Department of Community Health, as detailed later in the analysis.

THE APPARENT PROBLEM:

Millions in the nation face barriers to dental care, with estimates by the American Dental Association that more than 181 million Americans will not visit a dentist this year. Now that studies are finding a connection between poor oral health and the onset of many serious (even life-threatening) health conditions such as heart and lung disease, stroke, diabetes, and even low-birth weight premature babies, the importance of early and regular dental care cannot be ignored. In addition, dental pain results in absenteeism from work or school. Dental pain also sent over two million people in the nation to the emergency room in 2010.

Lack of dental insurance, income level, and residence in a nursing home often impact a person's access to dental care, but so does geography, as some locations in the state have few or no dental providers. One way to increase access to dental services to underserved populations has been to provide service via mobile units – either by use of a specially-outfitted van or using portable equipment that can be set up inside a school or community building or used at the bedside of a nursing home resident.

Dental professionals must be licensed by the State of Michigan to engage in the practice of their profession, but mobile dental facilities have not been regulated. Many believe that the lack of regulation has led to some "bad actors" in the field and has generated complaints to the Department of Community Health, the Michigan Board of Dentistry, and the Michigan Dental Association by patients receiving care from mobile units.

In particular, the lack of continuing care has been a recurring problem. If a patient does not have a dental home, a mobile facility may identify the need for comprehensive care, but not necessarily provide such care. Even if the patient connects with a local dentist later, the patient's records from the mobile facility may not be accessible. As a result, duplicate x-rays and evaluations may need to be performed, which leads to other problems. If a patient has public or private dental insurance, the insurer may not cover duplicative services – resulting in unnecessary out-of-pocket expenses for the patient. Parents report that they are not always informed of services provided to their children by mobile facilities visiting their children's pre-schools or schools and may find out only when their insurance later rejects a claim by their dental home as having already been paid out for the service provided. Moreover, some dentists complain that they have seen mobile facilities place sealants on decayed teeth and even put fillings on healthy tooth surfaces. Without regulation, however, it is difficult to identify the offending practitioner or to access previous x-rays or reports that could substantiate such unprofessional conduct.

At least 13 states regulate mobile dental facilities (West Virginia put rules in place this past May). Some say regulation would establish a minimum level of care for mobile facilities to follow, increase follow-up care, ensure patients and dentists doing follow-up care have access to x-rays and other imagery services performed by a mobile facility, and ensure that patients know who to call in an emergency and how to contact the mobile dental facility if needed. Legislation to address the concerns raised regarding mobile dental facilities was subsequently offered.

THE CONTENT OF THE BILL:

House Bill 4865 creates Part 216, entitled "Mobile Dental Facility," within Article 17 (Facilities and Agencies) of the Public Health Code; the bill takes effect April 1, 2015.

The bill requires the Department of Community Health (DCH) to provide oversight of mobile dental facilities via a permitting process. An operator of a mobile dental facility would have to obtain a permit before offering dental services at the facility. The facility would have to have an operator in charge at all times. An operator may contract or

employ other dentists, dental hygienists, or dental assistants to work in the mobile facility, and the operator could hold a permit for multiple mobile dental facilities. Failure to comply with federal, state, or local laws applicable to the mobile dental facility or any of the requirements of Part 216 would subject the operator to disciplinary action by DCH.

"Mobile dental facility" is defined to mean either a site used on a temporary basis to provide dental services using portable equipment (for example, at a nursing home) or a self-contained, intact facility in which dentistry or dental hygiene is practiced that may be transported from one location to another.

An "operator" would mean a dentist or dental hygienist with a current and valid Michigan license who utilizes and holds a mobile dental facility permit. The term would also include a Michigan corporation, limited liability company, partnership, or any governmental agency contracting with individuals licensed to practice dentistry or dental hygiene in the state that utilizes and holds a permit for a mobile dental facility.

Additional provisions of the bill include the following:

Exemption from oversight under Part 216

Any individual or entity that owns, operates, or provides services at a mobile dental facility is exempt from regulation under the new Part 216 if the facility is used solely to provide services that are rendered without compensation. (Other provisions of law would still apply, however.)

Permits

- The Department of Community Health would establish a permit application and renewal process, determine registration fees, and late renewal fees. (The fees are not established in the bill, but a registration fee could not exceed the cost of a dental license renewal fee; a late fee not to exceed the late renewal fee for a dental license would be charged for an application that is not timely filed.) Applications would have to be approved or denied by DCH within 60 days of receipt. Permits would be valid for three years.
- Compliance with all applicable requirements of Part 216 by an applicant is required for permit approval.
- Permits will not be transferable, but could be used temporarily as an interim permit while the new operator of an existing facility applies for a new permit.
- Permit applications must include certain information as specified in the bill, such as:
 - A list of each dentist, dental hygienist, or dental assistant providing care at or within the mobile dental facility; their addresses; and state occupational license number.

- A written plan and procedure for providing emergency follow-up care to each patient treated at the mobile dental facility.
- If the operator does not provide for follow-up services at a site within a reasonable distance for the patient and is not exempt under Sec. 21611, a signed memorandum of agreement (MOA) between the operator and at least one dentist or party who can arrange for or provide follow-up services within a reasonable distance for the patient. The MOA must state that the contracting dentist or party will accept referrals of patients treated at the mobile dental facility, though the MOA to accept a referral does not require the dentist or part to treat that patient. (Under Section 21611, an operator who has an MOA due to its status as a state-designated or funded oral health prevention program with DCH oversight is exempted from any requirement concerning a memorandum of agreement under the bill.)
- If the operator provides only preventative dental services and is not exempt under Sec. 21611, a signed MOA for referral for comprehensive dental services between the operator and at least one dentist or party who can arrange for or provide comprehensive services to the patient within a reasonable distance for the patient.
- Proof of general liability insurance issued by a Michigan-licensed insurance carrier.

Operators would be required to:

- Comply with all federal, state, and local laws, regulations, and ordinances applicable to operating a mobile dental facility concerning such things as radiographic equipment, flammability, sanitation, zoning, and construction standards (including access for persons with disabilities), and also to state, federal, and local laws and administrative rules and regulations pertaining to sanitation, infectious waste management and disposal, occupational safety, and disease prevention.
- Maintain onsite availability of a communication device for making and receiving telephone calls and summoning emergency services.
- Make immediately available a copy of the facility's permit or of the license of each dentist, dental hygienist, or dental assistant working at the mobile dental facility upon request.
- Refrain from providing dental services at a mobile dental facility unless it is equipped with, or has appropriate access to, an instrument sterilization system, potable hot and cold water or hand sanitizer, toilet facilities, smoke and carbon monoxide detectors (as applicable), properly registered and inspected radiographic equipment, and a communication device to make and receive telephone calls and summon emergency services.

- Refrain from providing services unless the mobile dental facility is equipped with, or there is appropriate access to, proper lighting, portable suction, hand pieces, dental instruments, and supplies.
- Report to DCH, within 30 days, a change in the operator of the facility, address or phone number of the operator, a change in an MOA, cessation of operations, or any MOA entered into after obtaining a permit to operate a mobile dental facility.
- Adhere to the process established in the bill by which a mobile dental facility would be dissolved upon cessation of operation. Dissolution includes making patient dental records available to the patients or transferring the records to the patient or another dentist and notification to patients of the availability of their records.
- Obtain consent for treatment (see below).

Consent for treatment

- An operator must obtain written consent of patients prior to providing dental services. Parents or guardians of minors or incapacitated individuals could provide consent. When providing services in a nursing home, the operator could obtain a doctor's order from the patient's attending physician or the medical director of the nursing home in lieu of any other required consent.
- The consent form must include, at a minimum, the following:
 - Name and permanent address of the operator.
 - Telephone number a patient may call 24 hours a day for emergency calls.
 - A list of services to be provided.
 - A statement that the patient understands that treatment may be obtained at the patient's dental home rather than at a mobile dental facility and that obtaining duplicate services at a mobile dental facility could affect benefits from private insurance, a state or federal program, or other third-party provider of dental benefits.
- If the patient is a minor or incapacitated person, the form must include a request for the name or contact information for the dentist or dental office that provided dental services in the past 12 months.

Written treatment plans

- An operator (or designee) must establish a written treatment plan for each patient, and provide the patient with a copy. If the patient receives the services in a nursing home, the treatment plan must be given to the nursing home for inclusion in the patient's health chart.

- The written treatment plan must address comprehensive dental services to be provided either at the mobile dental facility or through an affiliated dentist, dental office, or party who can arrange for or provide those services under an MOA with the operator.
- If the treatment plan cannot be completed at the mobile dental facility, the operator or designee must make a reasonable attempt to refer the patient to a dentist or party who can arrange for or provide services under an MOA until the treatment plan is completed or the patient ceases treatment. The operator or designee must attempt to contact a parent or guardian regarding the referral if the patient is a minor or incapacitated person. If arrangements for continued treatment are unsuccessful, the operator or designee must place written documentations of the attempts in the patient's record and make the documentation available to the DCH upon request. A copy of the documentation must also be sent to the patient, and to the nursing home for inclusion in the patient's health chart if the services are received in a nursing home. Failure to comply with this provision is grounds for disciplinary action by DCH (the bill does not specify the type of action the department could take, such as fine or license sanctions).

Facility requirements

- Require a licensed dentist to be present at any time comprehensive dental services are performed, but not if only preventive dental services are performed.
- Allow a facility that is part of a program that provides comprehensive dental services, or is established under an MOA for referrals for comprehensive dental services, to provide imagery services without a dentist present.
- Allow a facility that is part of a program to provide preventive dental services to a nursing home, assisted living center, or similar setting to provide imagery services without a dentist present if the person taking the images obtains permission from the supervising dentist.

Information provided to patients

Each person receiving dental services at a mobile dental facility must receive the following information:

- Name of the dental professional, or the party arranging for or providing the dental services.
- Telephone number or emergency contact number to reach the facility in an emergency.
- Description of any further dental services advisable or that have been scheduled.
- Referral to a specialist, dentist, or party who can arrange for or provide comprehensive dental services if the services cannot be provided at the mobile facility. Upon request of the dentist or party accepting the referral, the operator must transmit all imagery records taken of the patient at the mobile dental facility.
- A copy of the consent form authorizing additional treatment.

Miscellaneous provisions

- Allow the DCH to promulgate rules to implement Part 216.
- Specify that if any provision in the bill conflicts with a federal law regulating nursing homes, the federal law would prevail.
- Specify that the Part 216 would not require new or additional third-party reimbursement or mandated worker's compensation benefits for services rendered by a mobile dental facility.

FISCAL INFORMATION:

House Bill 4865, as enrolled, will increase costs and revenue for the Michigan Department of Community Health (DCH) to create, operate, and maintain a new permit process for mobile dental facilities. Costs may also be incurred by DCH to enforce compliance with permit requirements, request and receive certain documentation, or promulgate rules, as permitted by the bill.

The bill may have permit and compliance cost implications for local units of government that operate a mobile dental facility as part of a public health and/or school health dental program.

The bill establishes that the permit fee charged by DCH can be no greater than a dental license fee, which is currently \$285 for a 3-year period (current law allows the dental licensure fee to be increased annually). The number of currently operating mobile dental facilities is not known, although there are estimates of 60-70 facilities. If 70 facilities apply for and receive a permit, fee revenue to DCH will total \$19,950 over 3 years, averaging \$6,650 annually to support the permit program. If the fee charged is less than \$285, the revenue will be less.

Under current provisions of the Public Health Code, the fee for the 3-year permit would be collected in the year in which the permit is issued, the fee revenue would be deposited in the state treasury to the credit of the General Fund, and the cost of licensure activities shall be supported by license fees. If DCH costs to operate and enforce the permit process exceed fee revenues, the department will be required to perform these functions within its existing budget, and reduce programming in other areas.

ARGUMENTS:

For:

Proponents of mobile dentistry say it has the ability to provide preventive or comprehensive services, or both, to geographically underserved areas, to underserved populations such as migrant workers and low-income or uninsured adults and children, to adults or children without a dental home, and to people who are unable to travel or have difficulty traveling to a dentist's office, such as nursing home residents, people with disabilities, and shut-ins. Typically, mobile dental facilities make regular stops at Head Start centers, K-12 schools, and nursing homes to provide preventive care and evaluate a

patient's dental care needs. On the other hand, critics have said that a lack of standards and regulations have resulted in a variety of complaints, including that some patients receive duplicative services when later visiting a dental home due to the lack of records following the patient from the mobile facility (and that insurance providers are billed for duplicative services, resulting in higher costs to patients); that some patients receive substandard care (e.g., sealants placed over cavities); and, in some instances, that patients are subject to overtreatment, such as unnecessary fillings. According to testimony, too often patients did not even know the name of the mobile dental provider that treated them or their children, making it difficult to reach the dentist in case of a complication, for state licensing entities to go after bad actors, or for dental providers who later treat a mobile dental clinic patient to track down the patient's dental records. Moreover, without regulation, there is no way to know who is, and who isn't, providing mobile services in the state.

The bill represents a concerted effort among dental clinics, operators of mobile dental facilities, and nonprofits and governmental agencies that provide dental care to underserved populations to establish a minimum level of care standard for mobile dental facilities. The standards will protect patients yet not create a regulatory burden that would force such providers out of business. The bill was amended several times during the legislative process to incorporate recommendations by stakeholders to ensure that provisions will not compromise the ability of mobile facilities to continue to provide services to nursing home residents or interfere with the ability of certain longstanding programs to continue their services to low-income or uninsured individuals (such as PA 161 programs). In addition, any operator of a mobile dental facility that provides only free care to patients will not be subject to the bill's regulations (although they will still be subject to their own licensing statutes under the Public Health Code). Therefore, the public health and well-being should be protected without undue burdens placed on those who provide dental care via mobile units.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.