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House Bill 4865 (Substitute H-2 as passed by the House)
Sponsor: Representative Peter MacGregor
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 3-20-14

CONTENT

The bill would add Part 216 (Mobile Dental Facility) to the Public Health Code to do the following:

- **Require a person to obtain a permit from the Department of Licensing and Regulatory Affairs (LARA) in order to operate a mobile dental facility.**
- **Require a permit applicant to give LARA specific information, including a written plan for providing emergency follow-up care to facility patients and any necessary memoranda of understanding with other dentists to provide follow-up care and comprehensive dental services within a reasonable distance of a patient.**
- **Require a mobile facility to have an operator in charge at all times.**
- **Require a mobile dental facility operator to comply with all applicable State, Federal, and local laws, regulations, and ordinances.**
- **Require a mobile dental facility to have ready access to specific equipment.**
- **Require an operator to establish a written treatment plan for each patient who received dental services at the mobile facility.**
- **Require an operator to obtain the patient's written consent, or the consent of a parent or guardian, as applicable, before providing any dental services to a patient at a mobile dental facility.**
- **Require each patient to receive prescribed information from the mobile facility.**
- **Require an operator to submit an annual report on activities performed at the facility for Medicaid and uninsured patients, subject to specific exceptions.**
- **Require an operator to notify all treatment venues, provide for the availability of patients' dental records, and notify patients of that availability, upon ceasing operation.**
- **Exempt from Part 216 a mobile dental facility used solely to provide services that were rendered without compensation.**
- **Provide that a Federal law regulating nursing homes would prevail in a conflict with Part 216.**
- **Authorize the Michigan Board of Dentistry to promulgate rules to implement Part 216.**
- **Provide that 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.**

The bill would take effect 90 days after it was enacted.

Mobile Dental Facility Operator Permit

Under Part 216, an operator would have to obtain a permit for a mobile dental facility before offering dental services at the facility. "Operator" would mean either of the following:

- An individual with a valid, current license to practice dentistry or dental hygiene in Michigan who used and held a permit under Part 216 for a mobile dental facility.
- A nonprofit or for-profit corporation or any governmental agency contracting with individuals licensed to practice dentistry or licensed dental hygienists, who used and held a permit for a mobile dental facility.

"Mobile dental facility" would mean either of the following:

- A self-contained, intact facility in which dentistry or dental hygiene was practiced that could be transported from one location to another.
- Any facility where dental services were rendered using portable equipment.

A mobile dental facility would have to have an operator in charge at all times. An operator could contract or employ other dentists, dental hygienists, or dental assistants to work in a mobile facility. An operator could hold a permit for one or more mobile facilities.

An individual or entity seeking a permit to operate a mobile dental facility would have to submit an application on a form provided by LARA. An application would have to include a registration fee in an amount determined by LARA but not more than the cost of a dental license renewal fee.

A permit would be valid for three years. An application for renewal could be submitted by the last day of the month in which the permit expired upon submission to LARA of proof of compliance with the requirements of Part 216. A permit application that was not filed in a timely manner would be subject to a late fee in an amount determined by LARA as the additional cost of processing the late renewal, but not more than a dental license late renewal fee.

A permit could not be issued unless the applicant were in compliance with all applicable requirements of Part 216.

A permit would be nontransferable. If the operator of the facility changed, the permit would no longer be valid. If an application for a new permit to continue operating the facility, however, were submitted within 30 days after the change of operator, the former permit would be valid as an interim permit until the application was approved or denied, for a maximum of 90 days.

The Department would have to approve or deny a permit application within 60 days after receiving it.

Along with the permit application, and subsequently, within 10 days after a request from LARA, an applicant would have to provide all of the following information, as applicable:

- A list of each dentist, dental hygienist, and dental assistant who would provide care at or within the mobile facility, including, at a minimum, each individual's name, address, telephone number, and State occupational license number.
- A written plan and procedure for providing emergency follow-up care to each patient treated at the facility.
- If the operator did not provide follow-up services at a site within a reasonable distance for the patient, a signed memorandum of agreement between the operator and at least

one dentist or party who could arrange for or provide such services at a site within a reasonable distance.

- If the operator provided only preventative dental services, a signed memorandum of agreement for referral for comprehensive dental services between the operator and at least one dentist or party who could arrange for or provide comprehensive services to the patient within a reasonable distance for the patient.
- Proof of general liability insurance covering the facility that was issued by a licensed insurance carrier authorized to do business in Michigan.

The memorandum of agreement regarding follow-up emergency care would have to state that the contracting dentist or party would accept referrals of patients treated at the mobile dental facility. The agreement to accept a referral would not require the dentist or party to treat the patient.

"Memorandum of agreement" would mean written documentation of an agreement between parties to work together cooperatively on an agreed-upon project or meet an agreed-upon objective. The purpose of a memorandum of agreement would be to have a written understanding of the agreement between the parties. The memorandum would serve as a legal document that was binding and held the parties responsible to their commitment, along with describing the terms and details of the cooperative agreement.

"Preventative dental services" would mean dental services that include screening of a patient, assessment of a patient, prophylaxis, fluoride treatments, and application of sealants. The term would exclude imagery studies. "Imagery" would mean visualization of oral and facial structures using specialized instruments and techniques for diagnostic purposes. "Screening of a patient" would mean screening, including State- or Federally mandated screening, to determine an individual's need to be seen by a dentist for diagnosis. "Assessment of a patient" would mean a limited clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation, or injury, and the potential need for referral for diagnosis and treatment.

"Comprehensive dental services" would mean clinical evaluation, including diagnosis and treatment planning; imagery services; and indicated treatment that may include preventative, restorative, and surgical procedures that are considered necessary for an individual patient. "Clinical evaluation" would mean a diagnostic service provided by a dentist that includes a complete intra- and extra-oral inspection. The service also could include other modalities of examination to identify signs of oral or systemic disease, malformation, or injury, and could include the completion of diagnosis and treatment planning to determine the treatment needs of an individual patient.

Operator Requirements

An operator would have to comply with all applicable Federal, State, and local laws, regulations, and ordinances, including those concerning radiographic equipment, flammability, sanitation, zoning, and construction standards, including standards relating to required access for people with disabilities.

An operator also would have to maintain continuously at the mobile facility a communication device for making and receiving telephone calls and summoning emergency services.

Upon request from any person, an operator would have to make available immediately a copy of the license of each dentist, dental hygienist, or dental assistant working at the facility, as well as a copy of the facility permit required under Part 216.

The facility operator and the operator's agents and employees would have to comply with all Federal, State, and local laws, administrative rules, regulations, and ordinances applicable

to the facility and to the individuals and entities that provided the dental services at the facility, including those concerning sanitation, infectious waste management and disposal, occupational safety, and disease prevention.

Facility Equipment & Conditions

A mobile dental facility would have to have ready access to all of the following functional equipment:

- An instrument sterilization system.
- Potable hot and cold water and/or hand sanitizer.
- Toilet facilities.
- Smoke and carbon monoxide detectors, as applicable.
- Radiographic equipment properly registered and inspected, as applicable, by the State.
- A communication device available continuously for making and receiving telephone calls and summoning emergency services.

A mobile dental facility also would have to have ready access to the following dental equipment:

- Proper lighting.
- Portable suction.
- Hand pieces.
- Dental instruments.
- Supplies.

Except as otherwise provided, a licensed dentist would have to be present in the mobile facility at any time comprehensive dental services that were not preventative dental services were performed on a patient. A licensed dentist would not have to be present when a facility provided only preventative services.

If a mobile dental facility were part of a program that provided comprehensive dental services or were established under a memorandum of agreement that provided for referral for such services, the facility could provide imagery services without a dentist present.

If a mobile facility were part of a program that provided preventative dental services to a nursing home, assisted living center, or other similar setting, with permission of the supervising dentist, the facility could provide imagery services without a dentist present.

Treatment Plan

An operator or the operator's designee would have to establish a written treatment plan for, and provide a copy to, each patient who received dental services at a mobile dental facility. The treatment plan would have to address comprehensive dental services to be provided either by the mobile facility or through an affiliated dentist, dental office, or party who could arrange for or provide those services under a memorandum of agreement with the operator.

If the treatment plan could not be completed during the patient's initial visit to the mobile facility, the operator or designee would have to make a reasonable attempt to refer the patient to a dentist or party who could arrange for or provide services under a memorandum of agreement until the treatment plan was completed or the patient ceased treatment. If the patient were a minor or incapacitated person, the mobile facility operator also would have to attempt to contact a parent or guardian and inform him or her of the referral. If the operator or designee were unable to make arrangements for continued treatment, the operator would have to place written documentation of the attempts in the patient record and make the documentation available to LARA upon request. A copy of the

documentation also would have to be sent to the patient. Failure of the operator or designee to comply with these requirements would be cause for disciplinary action by the Board of Dentistry.

Patient Consent

An operator would have to obtain the patient's written consent, or the consent of a parent or guardian of a patient who was a minor or legally incapable of consent, before providing any dental services to a patient at a mobile dental facility. The consent form would have to include at least all of the following information:

- The name of the mobile facility providing dental services.
- The permanent address of the mobile dental operator.
- The telephone number that a patient could call 24 hours a day for emergency calls.
- A list of the services to be provided.

The form also would have to contain a statement indicating that the patient, parent, or guardian understood that treatment could be obtained at the patient's dental home rather than at a mobile facility, and that obtaining duplicate services at a mobile facility could affect benefits the patient received from private insurance, a State or Federal program, or other third-party provider of dental benefits. ("Dental home" would mean a network of individualized care based on risk assessment that included oral health education, dental screenings, preventative dental services, diagnostic services, comprehensive dental services, and emergency services.)

If the patient were a minor or incapacitated person, the consent form also would have to include a request for the name or contact information for the dentist or dental office that provided dental services in the past 12 months.

Patient Information

Each person receiving services at a mobile facility would have to receive all of the following information:

- The name of the dentist, dental hygienist, dental assistant, or party who arranged for or provided the dental services to the patient.
- The telephone number or emergency contact number to reach the mobile facility and/or operator in case of emergency.
- A list of the dental services rendered.
- A description of any further dental services that were advisable or that had been scheduled.
- A copy of the consent form authorizing additional treatment.
- Upon request, a copy of any of the patient's diagnostic imaging materials.
- A referral to a specialist, dentist, or party who could arrange for or provide necessary comprehensive dental services if the mobile facility were unable to provide them.

Upon request of the dentist or party who accepted the referral, the operator would have to transmit all imagery records the mobile facility obtained for the patient.

Disciplinary Action

An operator who failed to comply with applicable Federal, State, or local laws and rules governing the practice of dentistry, dental hygiene, or any of the requirements of Article 17 (Facilities and Agencies) of the Code would be subject to disciplinary action by LARA or the Board of Dentistry, as applicable.

Annual Report; LARA Notification

The operator of a mobile dental facility would have to submit an annual report on activities performed at the facility for Medicaid and uninsured patients during the one-year period following approval of the application under Part 216 and for each subsequent one-year period. Mobile operators that submitted reports as part of a State-designated or State-funded oral health prevention program with oversight from the Department of Community Health would be exempt from the annual reporting requirement.

An annual report would have to include all of the following information:

- A list of all locations, including street address, city, and state, where any level of dental service was provided.
- The dates when dental services were provided.
- The total number of patients treated at each location.
- The total number and types of dental services provided.

The operator or the operator's designee would have to notify LARA and the Board of Dentistry within 30 days after any of the following occurrences:

- A change in ownership of the mobile facility.
- A change in a required memorandum of agreement.
- A change in the mobile facility's address or telephone number.
- Cessation of operation of the mobile facility.
- Any memorandum of agreement entered into after obtaining a permit under Part 216.

Cessation of Operation

When a mobile dental facility ceased operation, the operator would have to provide written notice to all treatment venues and, upon request, provide evidence of the notice to the Board of Dentistry. Additionally, the operator would have to provide for availability of each active patient's dental records either by transferring the records to another dentist, or by making the records available to the patient or his or her parent or legal guardian from the mobile facility for 180 days after the facility ceased operation and, upon the patient's request, transferring the records to the active patient, his or her parent or guardian, or another dentist.

("Active patient" would mean a person who had received any type of dental care in a mobile dental facility in the preceding 24 months.)

The operator also would have to notify each active patient or his or her parent or legal guardian that the records were available, and include the name and contact information for the dentist if the records were transferred.

Upon LARA's request, the operator would have to provide documentation that a reasonable attempt was made to contact each active patient or a parent or guardian to provide information concerning storage and retrieval of the patient's records.

Exemption from Part 216 Regulation

A mobile dental facility and any individual or entity owning, operating, or providing services at the facility would be exempt from Part 216 if the facility were used solely to provide services that were rendered without compensation.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local units of government. The fiscal impact on LARA would ultimately depend on whether the \$270 application and renewal fees paid every three years would be sufficient to cover LARA's costs in administering the program. It is expected that approximately 65 facilities would be licensed under the program, meaning the licenses would generate about \$17,550 the first year and a like amount every third year thereafter. The funds would be deposited in the Health Professions Regulatory Fund, which is used by LARA to fulfill responsibilities under Articles 7, 8, and 15 of the Public Health Code (which govern controlled substances, pharmaceutical-grade cannabis, and occupations, respectively).

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.