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BILL ANALYSIS

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Senate Bill 541 (as reported without amendment)
Sponsor: Senator Mike Shirkey
Committee: Health Policy

Date Completed: 12-18-17

RATIONALE

Dental therapists are midlevel providers, similar to physician assistants, who are trained to provide a limited number of preventative and routine restorative dental services under the supervision of a licensed dentist. While dental therapists are used in more than 50 other countries, only a small number of states and some tribal communities have permitted the licensure of dental therapists in the United States. However, recent calls for expanding access to dental care have led several states to consider legislation, pilot programs, and other proposals to authorize dental therapy. According to U.S. Health Resources and Services Administration, as of November 2017, over 1.3 million Michigan residents were living in a designated dental health professional shortage area. Many people believe that training and licensing individuals as dental therapists could help address service gaps in the State, particularly in underserved rural and urban communities. It has been suggested that Michigan allow the licensure of dental therapists to improve access to oral health care for those populations in the State.

CONTENT

The bill would amend Part 166 (Dentistry) of the Public Health Code to provide for the licensure of dental therapists. Specifically, the bill would do the following:

- **Establish the qualifications for dental therapist licensure, including education, examination, and completion of a supervised clinical practice requirement.**
- **Establish a continuing education requirement for renewal of a dental therapist license.**
- **Prescribe the scope of practice of a dental therapist.**
- **Prohibit a dental therapist from prescribing a Schedule 2 to 5 controlled substance.**
- **Prescribe the health settings in which a dental therapist could practice, including a dental shortage area and a facility serving low-income patients and those without dental coverage.**
- **Allow a dental therapist to practice only under a written practice agreement with a supervising dentist, and prescribe the elements that an agreement would have to address.**
- **Specify that a dental therapist who provided services or procedures beyond those authorized in the agreement would be considered to have engaged in unprofessional conduct and would be subject to disciplinary action.**
- **Allow a dental therapist to supervise up to three dental assistants and two dental hygienists in a particular practice setting, if authorized in the agreement.**
- **Require a supervising dentist to arrange for, and require a dental therapist to provide a referral for, any necessary services that exceeded the dental therapist's scope of practice.**
- **Include a dental therapist among the health care professionals who may use a dental assistant as a second pair of hands.**

-- Require the Michigan Board of Dentistry, in consultation with the Department of Health and Human Services (DHHS), to complete a study on the impact of dental therapist licensure and report to the DHHS, the Department of Licensing and Regulatory Affairs (LARA), and the Legislature.
-- Require LARA or the Board to promulgate rules it considered necessary to implement the bill's provisions.
-- Require the Board to include two dental therapists as voting members, beginning five years after the bill took effect.

The bill also would amend Part 161 (General Provisions) of the Code to do the following:

-- Establish fees for dental therapist application processing, examination, licensing, and examination review.
-- Include unprofessional conduct by a dental therapist among the grounds for disciplinary action.
-- Prescribe disciplinary sanctions, including license revocation, for a violation.

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

Dental Therapist Licensure; Temporary License; License Renewal

An individual who was granted a license under Part 166 as a dental therapist could engage in practice as a dental therapist to the extent permitted under the bill. "Practice as a dental therapist" would mean providing any of the care and services, and performing any of the duties, permitted under the bill (described below).

To qualify for licensure as a dental therapist, an individual would have to apply to the Department of Licensing and Regulatory Affairs on forms provided by the Department, pay an application fee, and demonstrate that he or she had graduated from a dental therapy education program that satisfied the following:

-- Met the standards established for accreditation of a degree-granting program in dental therapy education at an approved postsecondary education institution.
-- As determined by LARA in consultation with the Michigan Board of Dentistry, met the accreditation standards for dental therapy education programs established by the Commission on Dental Accreditation.
-- Was accredited by the Board.
-- Met any other requirements for dental therapy education programs adopted by the Board.

The individual also would have to demonstrate that he or she had met the following:

-- Passed a comprehensive, competency-based clinical examination approved by LARA that included an examination of the applicant's knowledge of Michigan laws and rules promulgated under Part 166.
-- Completed 500 hours of supervised clinical practice under the direct supervision of a dentist and in conformity with rules adopted by the Board.

An individual engaged in completing his or her supervised clinical practice would be eligible for a temporary license as a dental therapist.

("Direct supervision" would mean that a dentist complies with the following:

-- Designates a patient of record upon whom the procedures are to be performed and describes the procedures to be performed.
-- Examines the patient before prescribing the procedures to be performed and upon completion of the procedures.
-- Is physically present in the office at the time the procedures are being performed.)

The Board would have to grant a license to practice as a dental therapist to an applicant for licensure who met the above requirements and rules adopted for licensure, and paid the application fee. The dental therapist also would have to pay the license fee.

The Board also would have to grant a temporary dental therapist license to an applicant for licensure who had met the above requirements and rules promulgated by the Board, and who had paid the required fee.

As a condition of renewal of a license to practice, a dental therapist would have to submit evidence of successful completion of 35 hours of continuing education in the two years before renewal. Continuing education would have to conform to the requirements of Part 161 concerning continuing education courses and include Board-approved courses, including a course in cardiopulmonary resuscitation. The Board could refuse renewal to an applicant who had not satisfied these requirements or could renew a license on terms and conditions established by the Board.

Scope of Practice

A licensed dental therapist could provide the following care or services under the supervision of a dentist:

-- Identifying oral and systemic changes that require evaluation or treatment by dentists, physicians, or other health care professionals, and managing referrals.
-- Comprehensive charting of the oral cavity.
-- Providing oral health instruction and disease prevention education, including nutritional counselling and dietary analysis.
-- Administering and exposing radiographic images.
-- Dental prophylaxis, including subgingival scaling or polishing procedures.
-- Dispensing and administering via the oral or topical route nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a health care professional.
-- Applying topical preventative or prophylactic agents, including fluoride varnish, silver diamine fluoride and other fluoride treatments, antimicrobial agents, and pit and fissure sealants.
-- Pulp vitality testing.
-- Applying desensitizing medication or resin.
-- Fabricating athletic mouth guards.
-- Changing periodontal dressings.
-- Administering local anesthetic and nitrous oxide analgesia.
-- Simple extraction of erupted primary teeth.
-- Emergency palliative treatment of dental pain related to a care or service described in these provisions.
-- Preparation and placement of direct restoration in primary and permanent teeth.
-- Fabrication and placement of single-tooth temporary crowns.
-- Preparation and placement of preformed crowns on primary teeth.
-- Indirect and direct pulp capping on permanent teeth.
-- Indirect pulp capping on primary teeth.
-- Suturing and suture removal.
-- Minor adjustments and removal of space maintainers.
-- Nonsurgical extractions of periodontally diseased permanent teeth with tooth mobility +3, although, a dental therapist would not be permitted to extract a tooth for any patient if the tooth were erupted, impacted, or fractured, or needed to be sectioned for removal.
-- Performing related service and functions authorized by the supervising dentist and for which the dental therapist was trained.
-- Performing any other duties of a dental therapist that were authorized by Board rule.

A dental therapist would be prohibited from prescribing a Schedule 2 to 5 controlled substance.

("Health care professional" would mean an individual who was authorized to practice a health care profession under Article 15 (Occupations) of the Code.)

Settings for Practice as a Dental Therapist

After completing the required 500 hours of supervised clinical practice, a dental therapist could provide services included within the scope of practice as a dental therapist and under the supervision of a dentist in the following health settings:

-- A licensed hospital.
-- A health facility or agency, other than a hospital, that was licensed and reimbursed as a federally qualified health center (FQHC) or that had been determined by the U.S. Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services to meet the requirements for funding under Section 330 the Public Health Service Act (which provides for grants to plan and develop health centers that serve medically underserved populations).
-- An FQHC that was licensed as a health facility or agency under the Code.
-- An outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act, or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act (which provides for contracts and grants to establish programs in urban centers to make services more accessible to urban Indians).
-- A health setting in a geographic area was designated as a dental shortage area by the HHS.
-- A school-based health center.

(As defined in Federal law cited by the bill, a school-based health clinic is a health clinic that is located in or near a school facility of a school district or board, or of an Indian tribe or tribal organization; is organized through school, community, and health provider relationships; is administered by a sponsoring facility; provides through health professionals primary health service to children in accordance with state and local law; and satisfies other requirements that a state may establish for the operation of such a clinic. A school-based health center also must provide, at minimum, comprehensive primary health services during school hours to children and adolescents by health professionals in accordance with established standards, community practice, reporting laws, and other state law, including parental consent and notification laws that are not inconsistent with Federal law, and may not perform abortion services.)

A dental therapist could also provide services in any other clinic or practice setting, including a mobile dental unit, in which at least 50% of the total patient base of the dental therapist consisted of patients who met any of the following:

-- Were enrolled in a health care program administered by the Michigan DHHS.
-- Had a medical disability or chronic condition that created a significant barrier to receiving dental care.
-- Did not have dental coverage, either through a public health care program or private insurance, and had an annual gross family income equal or less than 200% of the Federal poverty level.
-- Did not have dental coverage, either through a State public health care program or private insurance, and whose family gross income was equal to or less than 200% of the Federal poverty level.

Written Practice Agreement

A dental therapist could practice only under the supervision of a dentist through a written practice agreement signed by the dental therapist and the dentist. The dental therapist could provide only the services that were within the scope of his or her practice, were authorized by a supervising dentist, and were provided according to written protocols or standing orders established by the supervising dentist.

("Written practice agreement" would mean a document that was signed by a dentist and a dental therapist and that, in conformity with the legal scope of practice as a dental therapist, outlined the functions that the dental therapist would be authorized to perform.)

A dental therapist could provide services to patient who had not first seen a dentist for an examination if the supervising dentist had given the dental therapist written authorization and standing protocols for the services and reviewed the patient record as provided in the practice agreement. The standing protocols could require the supervising dentist to personally examines patients either face-to-face or by the use of electronic means.

A written practice agreement between a supervising dentist and a dental therapist would have to include the following:

-- The services and procedures and the practice settings for those services and procedures that the dental therapist could provide, together with any limitations on those services and procedures.
-- Any age-specific and procedure-specific practice protocols, including case selection criteria, assessment guidelines, and imaging frequency.
-- Procedures to be used with patients treated by the dental therapist for obtaining informed consent and for creating and maintaining dental records.
-- A plan for review of patient records by the supervising dentist and the dental therapist.
-- A plan for managing medical emergencies in each practice setting in which the dental therapist provided care.
-- A quality assurance plan for monitoring care, including patient care review, referral follow-up, and a quality assurance chart review.
-- Protocols for administering and dispensing medications, including the specific circumstances under which medications could be administered and dispensed.
-- Criteria for providing care to patients with specific medical conditions or complex medical histories, including requirements for consultation before initiating care.
-- Specific written protocols, including a plan for providing clinical resources and referrals, governing situations in which the patient required treatment that exceeded the dental therapist's capabilities or the scope of his or her practice.

A supervising dentist would have to actively participate in drafting a written practice agreement with a dental therapist. Revisions to the agreement would have to be documented in a new agreement signed by the supervising dentist and the dental therapist.

A supervising dentist and a dental therapist who signed a written practice agreement would each have to file a copy of the agreement with the Board, keep a copy for each of their own records, and make a copy available to patients of the dental therapist on request. The Board would have to make a copy of a written practice agreement in its records available to the public on request.

A dental therapist who provided services or procedures beyond those authorized in the practice agreement would engage in unprofessional conduct for the purposes of disciplinary action (described below).

A supervising dentist would not be permitted to supervise more than four dental therapists.

A dental therapist could supervise dental assistants and hygienists to the extent permitted in a written practice agreement; however, a dental therapist would not be permitted to supervise more than three dental assistants and two dental hygienists in any one practice setting.

A health facility or agency could not require a dentist to enter into a written practice agreement with a dental therapist as a condition of employment.

Referrals

A supervising dentist would have to arrange for another dentist or specialist to provide any services needed by a patient of a dental therapist who was supervised by that dentist that were beyond the scope of practice of the dental therapist and that the supervising dentist was unable to provide. In accordance with a practice agreement, a dental therapist would have to refer patients to another

qualified dental professional or health care professional to receive needed services that exceeded the scope of the dental therapist's practice.

Second Pair of Hands

Under Part 166, a dental hygienist may use a dental assistant to act as his or her second pair of hands. A dental assistant may function as a second pair of hands for a dentist or dental hygienist if certain conditions are met. Under the bill, a dental therapist also could use a dental assistant as a second pair of hands, and a dental assistant could function as a second pair of hands for a dental therapist if the therapist were actively performing services in the mouth of a patient while the assistant was assisting him or her.

The current provisions related to the use of a dental assistant as a second pair of hands do not require new or additional third-party reimbursement or mandated worker's compensation benefits for services rendered by an individual who is licensed as a dental assistant or dental hygienist. The bill also would refer to services rendered by an individual licensed as a dental therapist.

Study

Within seven years after the bill took effect, the Board, in consultation with the DHHS Director or his or her designees, would have to conduct and complete a study concerning the impact of licensing dental therapists on patient safety, cost-effectiveness, and access to dental services in the State. The study would have to focus on the following outcome measures:

-- Number of new patients served.
-- Reduction in waiting time for needed services.
-- Decreased travel time for patients.
-- Impact on emergency room use for dental care.
-- Costs to the health care system.

Within 30 days after completion of the study, the Board would have to give a written report concerning the results to the LARA Director, the DHHS Director, and the chairs of the standing committees of the Senate and House of Representatives responsible for health policy.

Title Protection

The Code restricts the use of certain words, titles, and letters only to those people authorized to use them. The bill also would include "dental therapist" and "D.T.".

Board of Dentistry

The Code requires that the Michigan Board of Dentistry consist of the following 19 voting members:

-- Ten dentists (including at least two who have a health profession specialty certification).
-- Four dental hygienists.
-- Two dental assistants.
-- Three public members.

Beginning five years after the bill took effect, the Board also would have to include two dental therapists, bringing the total number of voting members on the Board to 21. The appointed dental therapists would have to meet the requirements of Part 161.

The Code specifies that a Board member who is licensed to practice as a dental hygienist or dental assistant votes as an equal member of the Board in all matters except designated matters that apply only to dentists and not to dental hygienists or dental assistants. Under the bill, dental therapists would be equal voting members of the Board, subject to the same limitation.

Fees

The Code prescribes certain fees for individuals licensed or seeking licensure to practice as a dentist, dental assistant, or dental hygienist under Part 166. For an individual licensed or seeking licensure to practice as a dental therapist, the bill would prescribe a $15 application processing fee, a $300 examination fee, a $40 per-year license fee, a $15 temporary license fee, a $15 per-year limited license fee, and a $50 examination review fee.

Disciplinary Action

The Code requires LARA to investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The Department may hold hearings, administer oaths, and order the taking of relevant testimony. After its investigation, LARA must provide a copy of the administrative complaint to the appropriate disciplinary subcommittee. If one or more grounds for disciplinary subcommittee action exist, the disciplinary subcommittee must impose sanctions. The grounds for action include unprofessional conduct.

Under the bill, "unprofessional conduct" would include a dental therapist's provision of services or procedures beyond those authorized in the written practice agreement. The sanctions for such a violation would be probation, limitation, denial, fine, suspension, or revocation.

MCL 333.16221 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill is a common-sense, cost-effective piece of legislation that would enable dentists to delegate routine procedures to dental therapists working under a dentist's supervision. Providers are constantly looking at more effective ways to limit clinical costs, increase quality of care, and stimulate the economy. Implementing evidence-based models of care, such as dental therapy, could help accomplish these goals. Allowing dental therapists to perform routine preventative and basic restorative care would allow dentists to focus their time, experience, and skill on more complicated procedures. The dental therapist model helps round out a dental care team's skill and expertise, similar to how dental hygienists and dental assistants have worked well for many years. The bill simply would give dental practices the option to expand their capacity by using dental therapists, so if a practice did not believe that employing dental therapists would be an effective way to expand its capacity, there would be no mandate that it do so. Also, the bill would give a supervising dentist the power to determine how best to augment his or her practice by leveraging the scope of a dental therapist.

The skills needed to become a dental therapist in Michigan would require graduating from a CODA (Commission on Dental Accreditation) accredited college or university, passing a State licensing exam, and completing 500 clinical hours under the supervision of a dentist. Dental therapy students would take the same classes as dental students, would have to demonstrate the same competencies on the procedures they were trained to provide, and would be held to the same industry standards as students who were training to become dentists.

Supporting Argument

Michigan is currently facing a shortage of dental care providers. The bill would increase the pool of providers who would be able to complete many of the routine preventative and restorative procedures that patients require. It also would help ease recruitment challenges and help address gaps in access to dental care in underserved populations.

Response: Contrary to what some people believe, there is not a shortage of dental care providers. Currently, there are thousands of licensed dentists, registered dental assistants, and

registered dental hygienists in Michigan who are unemployed or underemployed, so the State has the workforce in place to deal with the access-to-care problem. Dental offices also have the capacity to see more patients. The main issue is a serious maldistribution of providers. The majority of providers are concentrated in large urban and suburban areas, which does nothing to help people in remote rural and other underserved communities.

Opposing Argument
There are several factors other than lack of providers that are affecting access to care, such as a lack of understanding the need for good oral health, an unbalanced distribution of providers, cultural and language problems, poorly funded public health program, and low Medicaid reimbursement rates.

Response: Regarding the last factor, simply increasing reimbursement would not lead to an overall increase in utilization, even if there were the resources to increase reimbursement. Furthermore, although educating people on the importance of proper dental care could help them take better care of themselves in the future, it would not address the immediate dental problems that they face.

Opposing Argument
Dental therapists would not go into rural areas for the same reasons that dentists are not practicing in those areas: they cannot make a living. The State should be exploring solutions to attract providers to those areas, rather than licensing individuals as dental therapists.

Response: Dental therapists may be willing to work in rural and underserved areas because they often come from the underserved communities that they eventually would serve.

Opposing Argument
Rather than creating a new type of provider, expanding the programs allowed under Public Act 161 of 2005 or expanding the duties of registered dental hygienists (RDHs) would be a better solution to addressing the access-to-care problem. Public Act 161 amended the Public Health Code to authorize what are called Public Dental Prevention Programs, which allow public and nonprofit entities, schools, and nursing homes to administer dental services to unassigned and underserved populations in Michigan. These programs require a collaborate agreement between a dentist and an RDH under which the RDH may perform preventative procedures, such as cleanings, application of fluoride and/or sealants, nutritional counseling, and patient education with minimal supervision.

Response: Although prevention is crucial to oral health, amending the provisions enacted bu Public Act (PA) 161 would not increase access to the most commonly needed restorative care. Also, PA 161 programs also are not able to provide the necessary comprehensive dental services that many underserved populations require. Nearby dental safety-net locations often have long wait time for appointments or have limited availability to provide necessary dental treatment. Additionally, PA 161 programs have experienced difficulties in identifying local dentists with the capacity and willingness to accept patient referrals and ensure that necessary care can be completed. Adding dental therapists to dental care teams could increase access to immediate restorative care, cut down on wait lists for restorative care, reduce emergency room use for dental care, and reduce travel time for patients needing restorative care.

Legislative Analyst: Stephen Jackson

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 bill would establish a licensing program for those wishing to practice dental therapy in Michigan, along with various fees that would support that program. The proposed fees are in line with fees currently associated with the licensure of dentists, dental assistants, and dental hygienists.

According to a report published by LARA, fees for dentistry-related professions generate revenue in excess of costs on an annual basis, so it would be reasonable to assume that, on a long-term basis, the proposed fees for dental therapists would do the same.

Fiscal Analyst: Josh Sefton

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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.