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BILL ANALYSIS

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Senate Bill 541 (as enacted) **PUBLIC ACT 463 of 2018**
Sponsor: Senator Mike Shirkey
Senate Committee: Health Policy
House Committee: Health Policy

Date Completed: 2-6-19

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 may help address service gaps in the State, particularly in underserved rural and urban communities. Accordingly, it was 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 amends Part 166 (Dentistry) of the Public Health Code to provide for the licensure of dental therapists. Specifically, the bill does 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 may 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 must address.**
- **Specify that a dental therapist who provides services or procedures beyond those authorized in the agreement is considered to have engaged in unprofessional conduct and may 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 exceed 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 require the DHHS to report to the Director of the Department of Licensing and Regulatory Affairs (LARA), and the Legislature.
-- Require LARA, in consultation with the Board, to promulgate rules it considers necessary to implement the bill's provisions, within 12 months after the bill's effective date.
-- Require the Board to include an additional dentist and one dental therapist as voting members, beginning five years after the bill's effective date.

The bill also amends 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.

Additionally, the bill amends Part 170 (Medicine) of the Code to specify that certain requirements do not apply to an applicant who is granted a clinical academic license between January 1, 2011, and January 1, 2017.

The bill will take effect on March 27, 2019.

Dental Therapist Licensure; Temporary License; License Renewal

The bill allows an individual who is granted a license under Part 166 as a dental therapist to engage in practice as a dental therapist to the extent permitted under the bill. "Practice as a dental therapist" means 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 must 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 has graduated from a dental therapy education program that satisfies the following:

-- Meets 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, meets the accreditation standards for dental therapy education programs established by the Commission on Dental Accreditation.
-- Is accredited by the Board.
-- Meets any other requirements for dental therapy education programs adopted by the Board.

The individual also must demonstrate that he or she has 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.

("Direct supervision" means 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 must grant a license to practice as a dental therapist to an applicant for licensure who meets the above requirements and rules adopted for licensure, and pays the application fee. The dental therapist also must pay the license fee.

As a condition of renewal of a license to practice, a dental therapist must certify that he or she successfully completed 35 hours of continuing education in the two years before renewal. Continuing education must conform to the requirements of Part 161 concerning continuing education courses and include Board-approved courses, including a course in cardiopulmonary resuscitation.

Scope of Practice

A licensed dental therapist may 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 counseling 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.
-- Placement and removal of space maintainers.
-- Nonsurgical extractions of periodontally diseased permanent teeth with tooth mobility +3, however, a dental therapist may not extract a tooth for a patient if the tooth is unerupted, 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 is trained.
-- Performing any other duties of a dental therapist that are authorized by Board rule.

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

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

Settings for Practice as a Dental Therapist

A dental therapist may 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 is licensed and reimbursed as a federally-qualified health center (FQHC) or that has 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 is 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 correctional facility (a facility or institution that houses a prisoner population under the jurisdiction of the Department of Corrections).
-- A health setting in a geographic area is designated as a dental shortage area by the HHS.
-- A local health department.
-- 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 also may provide services in any other clinic or practice setting, including a mobile dental unit, in which at least 50% of the annual total patient base of the dental therapist consists of patients who meet any of the following:

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

Written Practice Agreement

A dental therapist may practice only under the supervision of a dentist through a written practice agreement signed by the dental therapist and the dentist. The dental therapist may provide only the services that re within the scope of his or her practice, are authorized by a supervising dentist, and are provided according to written protocols or standing orders established by the supervising dentist. ("Written practice agreement" means a document that is signed by a dentist and a dental therapist and that, in conformity with the legal scope of practice as a dental therapist, outlines the functions that the dental therapist is authorized to perform.)

A dental therapist may perform an oral evaluation and assessment of dental disease and develop and individualized treatment plan if the supervising dentist has given the dental therapist written authorization to provide the services and reviews the patient record as provided in the practice agreement. The written practice agreement may require the supervising dentist to examine patients personally, either face-to-face or by the use of electronic means.

A written practice agreement between a supervising dentist and a dental therapist must include the following:

-- The services and procedures and the practice settings for those services and procedures that the dental therapist may 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 provides 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 may 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 requires treatment that exceeds the dental therapist's capabilities or the scope of his or her practice.

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

A supervising dentist and a dental therapist who sign a written practice agreement each must keep a copy for each of their own records, and make a copy available to dental therapist's patients or the Department on request. A written practice agreement is valid for three years. A supervising dentist and dental therapist must each review the practice agreement before renewing it.

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

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

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

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

Referrals

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

professional or health care professional to receive needed services that exceed 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 may use a dental assistant as a second pair of hands, and a dental assistant may function as a second pair of hands for a dental therapist if the therapist is actively performing services in the mouth of a patient while the assistant is 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 refers to services rendered by an individual licensed as a dental therapist.

Study

Within seven years after the bill's effective date, the DHHS, in consultation with LARA, must 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 must 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 DHHS must give a written report concerning the results to the LARA 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 includes "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.

The bill adds an additional dentist as a voting member, bringing the total number of dentists to 11. Beginning five years after the bill's effective date, the Board must include one dental therapist, bringing the total number of voting members on the Board to 21. The appointed dental therapist must 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 are 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 prescribes 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" includes a dental therapist's provision of services or procedures beyond those authorized in the written practice agreement. The sanctions for a violation are probation, limitation, denial, fine, suspension, or revocation.

Clinical Academic Limited License

The Code allows the Board of Medicine to grant a full license to practice medicine to an applicant who has completed the requirements for a degree in medicine at a school located outside the United States or Canada if the applicants demonstrates to the Board all of the following:

-- That he or she has engaged in the practice of medicine for at least 10 years after completing the requirements for a degree in medicine.
-- That he or she has completed at least three years of postgraduate clinical training in an institution that has an affiliation with a medical school that is listed in a directory of medical schools published by the World Health Organization as approved by the Board.
-- That he or she has achieved a score determined by the Board to be a passing score on an initial medical licensure examination approved by the Board.
-- That he or she has safely and competently practiced medicine under a clinical academic limited license granted by the Board for one or more academic institutions located in Michigan for at least two years immediately preceding the date of application for a license, during which time the applicant functioned at least 800 hours per year in the observation and treatment of patients.

Under the bill, the postgraduate training and licensure examination requirements do not apply to an applicant who is granted a clinical academic limited license between January 1, 2011 and January 1, 2017, and who has continuously held a license to practice medicine from the bill's effective date through the date of application for a full license.

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 will 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 and increase quality of care. Implementing evidence-based models of care, such as dental therapy, may help accomplish these

goals. Allowing dental therapists to perform routine preventative and basic restorative care allows 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 gives dental practices the option to expand their capacity by using dental therapists. If a practice does not believe that employing dental therapists is an effective way to expand its capacity, there is no mandate that it do so. Also, the bill gives 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 include graduating from a 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 must take the same classes as dental students, must demonstrate the same competencies on the procedures they are trained to provide, and are held to the same industry standards as students who are training to become dentists.

Supporting Argument

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

Response: It is inaccurate to say that there is 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; 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. Allowing a dental therapist who has undergone less training or education than a dentist to drill and extract teeth will not improve access to dental care. According to testimony presented before the Senate Committee on Health Policy, although Minnesota passed its dental therapist legislation in 2009, there are only 76 dental therapists licensed in the state, and only nine of those dental therapists are practicing in rural areas.

Supporting Argument

According to testimony presented before the House Committee on Health Policy, 77 of Michigan's 83 counties have at least one dental health professional shortage area. This means that many Michigan residents are not receiving dental care, especially residents in rural and urban areas. The bill will address this issue by allowing dental therapists to work in shortage areas and at Federally-qualified health centers, or to see patients who are uninsured or on Medicaid. In 2015, only 27% of adults on Medicaid had a dental visit, and in 2016, nearly half of all children covered by Medicaid or Healthy Kids Dental received no dental services. Nearly 2.5 million Michigan residents receive health care through Healthy Michigan or the traditional Medicaid program. Allowing highly-trained dental therapists to provide care will allow these individuals to receive basic dental care.

Opposing Argument

There are several factors other than lack of providers that are affecting access to dental 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. Allowing individuals who are lesser trained and educated than dentists to perform dental procedures will not improve access to care.

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

Opposing Argument
Dental therapists do 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.

Opposing Argument
Rather than creating a new type of provider, expanding the programs allowed under Public Act (PA) 161 of 2005 or expanding the duties of registered dental hygienists (RDHs) is a better solution to addressing the access-to-care problem. Public Act 161 amended the Public Health Code to create the Public Dental Prevention Program, which allows 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 by PA 161 will not increase access to the most commonly needed restorative care. Also, PA 161 programs 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 may 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 will have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs, and no fiscal impact on local units of government. The bill establishes a licensing program for those wishing to practice dental therapy in Michigan, along with various fees that 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 is reasonable to assume that, on a long-term basis, the proposed fees for dental therapists will do the same.

Fiscal Analyst: Josh Sefton

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