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**SENATE BILL 5322**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators King, Frockt, Miloscia, Conway, Hobbs, and Becker

AN ACT Relating to patient safeguards in agreements between dentists and third parties that provide support services to dentists; amending RCW 18.32.020, 18.32.655, and 18.32.091; adding a new section to chapter 18.32 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that Washington law should allow dentists to determine, based on their individual circumstances, which dental practice model would allow them to best serve the needs of their patients. Dentists should have the option to contract for administrative support services and dentists should also be able to lease real or personal property in a manner that meets their individual business needs.

The legislature further finds that agreements between dentists and third parties should have appropriate safeguards in place to protect patients. A United States senate report from 2011 exposed systematic fraud and patient abuse with some of the corporate dental practice models. Additionally, the 2015 corporate practice committee report by the Washington state dental quality assurance commission raised concerns about nondentists asserting influence over dental treatment through employment contracts; production or profit incentives; daily or weekly quotas for number of patients treated or requirements for number of new patient visits; and ownership or control over the office space and equipment used in the dental practice. News media reports and lawsuits from other states provide evidence of influence by nondentists resulting in the overtreatment and inappropriate treatment of patients. It is the intent of the legislature to prevent such abuse in Washington state by establishing the parameters under which dentists can enter into contracts for support services or lease agreements.

**Sec.**  RCW 18.32.020 and 2011 c 336 s 477 are each amended to read as follows:

Subject to section 3 of this act, a person practices dentistry, within the meaning of this chapter, who (1) represents himself or herself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by any means or methods to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or take impressions of the teeth or jaw, or (3) owns, maintains, or operates an office for the practice of dentistry, or (4) engages in any of the practices included in the curricula of recognized and approved dental schools or colleges, or (5) professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

The fact that a person uses any dental degree, or designation, or any card, device, directory, poster, sign, or other media whereby he or she represents himself or herself to be a dentist, shall be prima facie evidence that such person is engaged in the practice of dentistry.

X-ray diagnosis as to the method of dental practice in which the diagnosis and examination is made of the normal and abnormal structures, parts, or functions of the human teeth, the alveolar process, maxilla, mandible or soft tissues adjacent thereto, is hereby declared to be the practice of dentistry. Any person other than a regularly licensed physician or surgeon who makes any diagnosis or interpretation or explanation, or attempts to diagnose or to make any interpretation or explanation of the registered shadow or shadows of any part of the human teeth, alveolar process, maxilla, mandible or soft tissues adjacent thereto by the use of X-ray is declared to be engaged in the practice of dentistry, medicine, or surgery.

The practice of dentistry includes the performance of any dental or oral and maxillofacial surgery. "Oral and maxillofacial surgery" means the specialty of dentistry that includes the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects of the hard and soft tissues of the oral and maxillofacial region.

NEW SECTION. **Sec.**  A new section is added to chapter 18.32 RCW to read as follows:

(1) A dentist or group practice of dentists may enter into an agreement with a third party for the provision of services in support of a dental practice office as long as all of the five standards in subsection (2) of this section are met.

(2) A third party who, pursuant to a management or other personal services agreement, provides services to a dentist or a group practice of such dentists does not maintain or operate an office for the practice of dentistry within the meaning of this section as long as all of the following five standards are met:

(a) The third party agreement must be set out in writing, signed by the parties, and cover all of the services the third party will provide to the dentist or the group practice of dentists for the term of the agreement;

(b) The third party agreement may not exceed a term that is reasonable and necessary and must have a duration of five years or less;

(c) The aggregate compensation paid to the third party over the term of the agreement must be set in advance, be consistent with fair market value in arm's-length transactions, and may not take into account the volume or value of any referrals or business otherwise generated between the parties;

(d) Patients of the dentist or the group practice of dentists must be fully informed of the agreement; and

(e) The third party agreement must not interfere, expressly or impliedly, or have the effect of interfering, with patient care or the dentist's independent judgment, including without limitation the following:

(i) By limiting or imposing requirements on the length of time the dentist spends with a patient or performing dental services, or otherwise placing conditions on the number of patients the dentist must treat in a certain period of time or the number of certain types of procedures the dentist must complete in a certain time period;

(ii) By limiting or imposing requirements on the dentist's decision regarding a course or alternative course of treatment for a patient or the manner in which a course of treatment is carried out by the dentist;

(iii) By limiting or imposing requirements on the manner in which the dentist uses dental equipment or materials for the provision of dental care;

(iv) By limiting or imposing requirements on the use of a laboratory or the materials, supplies, instruments, or equipment the dentist deems reasonably necessary to provide diagnoses and treatment consistent with the standard of care;

(v) By limiting or imposing requirements for the professional training the dentist deems reasonably necessary to properly serve the dentist's patients;

(vi) By limiting or imposing requirements on the dentist's referrals to another dentist specialist or any other practitioner the dentist determines is necessary;

(vii) By interfering with the dentist's right to access patient records at any time;

(viii) By interfering with the dentist's decision to refund any payment made by a patient for dental services performed by the dentist or staff;

(ix) By limiting or imposing requirements on the dental benefits accepted or the dentist's billing practices;

(x) By limiting or imposing requirements on the dentist's or the dental practice's advertising;

(xi) By limiting or interfering with the dentist's ability to supervise staff, including but not limited to hygienists, dental assistants, and office managers, or preventing the hiring or firing of such staff; or

(xii) By limiting or imposing requirements on communications with the dentist's patients.

(2) The definitions in this subsection apply throughout this section and RCW 18.32.655.

(a) "Arm's-length" means bona fide bargaining between well-informed parties to an agreement who are not otherwise in a position to generate business for the other party.

(b) "Third party" means any person, other than a bona fide employee of a dentist or a group practice of dentists, who has an agreement to perform services for, or on behalf of, the dentist or the group practice of dentists, including any person or affiliate that has a direct or indirect financial relationship with the third party.

(c) Compensation is considered "set in advance" only if the aggregate compensation over the term of the agreement is fixed, it does not include any percentage-based component, and it does not include a provision allowing a nondentist third party to be compensated with equity ownership in a dental practice.

(d) Compensation is considered "consistent with fair market value" only if it is consistent with the value in arm's-length transactions and it is included in a third party agreement as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for any other party to the agreement.

(3) In all proceedings under or pursuant to this chapter or chapter 18.130 RCW, the uniform disciplinary act, the burden of proof is on the party defending the third party agreement to show that compensation paid thereunder is set in advance and consistent with fair market value.

(4) A dentist or group practice of dentists may enter into an agreement with a third party to lease space or equipment necessary for the operation of their dental practice office as long as the standards in (a) and (b) of this subsection are met.

(a) Any management or other personal service agreement executed pursuant to this section is independent of any space or equipment lease agreement between the third party and the dentist or group practice of dentists.

(b) The third party is presumed to have been operating an office for the practice of dentistry within the meaning of RCW 18.32.020(1) or this section if the third party:

(i) Terminates a lease for space or equipment without the consent of the dentist or group practice of dentists within two years of the termination of the management or other personal service agreement; or

(ii) Enters into a new management or other personal service agreement or a new space or equipment lease agreement with a different dentist or group practice of dentists in the same location.

(c) The third party may rebut the presumption created by (b) of this subsection with clear and convincing evidence that the space or equipment lease agreement was terminated and the new agreement, if any, was executed for a permissible purpose.

**Sec.**  RCW 18.32.655 and 1994 sp.s. c 9 s 222 are each amended to read as follows:

The commission ((~~shall~~)):

(1) Shall require licensed dentists to keep and maintain a copy of each laboratory referral instruction, describing detailed services rendered, for a period to be determined by the commission but not more than three years, and may require the production of all such records for examination by the commission or its authorized representatives; ((~~and~~))

(2) Shall adopt reasonable rules requiring licensed dentists to make, maintain, and produce for examination by the commission or its authorized representatives such other records as may be reasonable and proper in the performance of its duties and enforcing the provisions of this chapter; and

(3) Relating only to a complaint, may, pursuant to RCW 18.130.050, subpoena an agreement between a dentist or group practice of dentists and a third party if the agreement is probative to the issue raised in the complaint and believed to be in violation of section 3 of this act.

NEW SECTION. **Sec.**  Any employee, independent contractor, or health care professional who reports, in good faith, to the department of health or to any agency or branch of state or local government, practices that may constitute the unlicensed practice of dentistry by a person who is a party to a management or other personal service agreement with a dentist licensed pursuant to this chapter or group practice licensed pursuant to this chapter is a whistleblower. The provisions of RCW 4.24.500 through 4.24.520, providing certain protections to persons who communicate to agencies and branches of federal, state, and local government, apply to these reports, and a person who has been subjected to reprisal or retaliatory action has the remedies provided under chapter 49.60 RCW and RCW 4.24.500 through 4.24.520. The identity of a whistleblower must remain confidential.

**Sec.**  RCW 18.32.091 and 1987 c 150 s 18 are each amended to read as follows:

Notwithstanding the provisions of chapter 18.100 RCW, no person, unless previously licensed to practice dentistry in this state, shall begin the practice of dentistry, or own, maintain, or operate an office for the practice of dentistry, without first applying to, and obtaining a license.

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