
SENATE BILL 5322

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

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

Read first time 01/20/17. Referred to Committee on Health Care.

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

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

6 NEW SECTION. **Sec. 1.** The legislature finds that Washington law
7 should allow dentists to determine, based on their individual
8 circumstances, which dental practice model would allow them to best
9 serve the needs of their patients. Dentists should have the option to
10 contract for administrative support services and dentists should also
11 be able to lease real or personal property in a manner that meets
12 their individual business needs.

13 The legislature further finds that agreements between dentists
14 and third parties should have appropriate safeguards in place to
15 protect patients. A United States senate report from 2011 exposed
16 systematic fraud and patient abuse with some of the corporate dental
17 practice models. Additionally, the 2015 corporate practice committee
18 report by the Washington state dental quality assurance commission
19 raised concerns about nondentists asserting influence over dental
20 treatment through employment contracts; production or profit
21 incentives; daily or weekly quotas for number of patients treated or

1 requirements for number of new patient visits; and ownership or
2 control over the office space and equipment used in the dental
3 practice. News media reports and lawsuits from other states provide
4 evidence of influence by nondentists resulting in the overtreatment
5 and inappropriate treatment of patients. It is the intent of the
6 legislature to prevent such abuse in Washington state by establishing
7 the parameters under which dentists can enter into contracts for
8 support services or lease agreements.

9 **Sec. 2.** RCW 18.32.020 and 2011 c 336 s 477 are each amended to
10 read as follows:

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

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

32 X-ray diagnosis as to the method of dental practice in which the
33 diagnosis and examination is made of the normal and abnormal
34 structures, parts, or functions of the human teeth, the alveolar
35 process, maxilla, mandible or soft tissues adjacent thereto, is
36 hereby declared to be the practice of dentistry. Any person other
37 than a regularly licensed physician or surgeon who makes any
38 diagnosis or interpretation or explanation, or attempts to diagnose
39 or to make any interpretation or explanation of the registered shadow

1 or shadows of any part of the human teeth, alveolar process, maxilla,
2 mandible or soft tissues adjacent thereto by the use of X-ray is
3 declared to be engaged in the practice of dentistry, medicine, or
4 surgery.

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

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 18.32
11 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **Sec. 4.** RCW 18.32.655 and 1994 sp.s. c 9 s 222 are each amended
9 to read as follows:

10 The commission (~~shall~~):

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

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

22 (3) Relating only to a complaint, may, pursuant to RCW
23 18.130.050, subpoena an agreement between a dentist or group practice
24 of dentists and a third party if the agreement is probative to the
25 issue raised in the complaint and believed to be in violation of
26 section 3 of this act.

27 NEW SECTION. **Sec. 5.** Any employee, independent contractor, or
28 health care professional who reports, in good faith, to the
29 department of health or to any agency or branch of state or local
30 government, practices that may constitute the unlicensed practice of
31 dentistry by a person who is a party to a management or other
32 personal service agreement with a dentist licensed pursuant to this
33 chapter or group practice licensed pursuant to this chapter is a
34 whistleblower. The provisions of RCW 4.24.500 through 4.24.520,
35 providing certain protections to persons who communicate to agencies
36 and branches of federal, state, and local government, apply to these
37 reports, and a person who has been subjected to reprisal or
38 retaliatory action has the remedies provided under chapter 49.60 RCW

1 and RCW 4.24.500 through 4.24.520. The identity of a whistleblower
2 must remain confidential.

3 **Sec. 6.** RCW 18.32.091 and 1987 c 150 s 18 are each amended to
4 read as follows:

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

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