

HOUSE BILL REPORT

HB 1441

As Reported by House Committee On:
Community Development, Housing & Tribal Affairs
Appropriations

Title: An act relating to dental health services in tribal settings.

Brief Description: Concerning dental health services in tribal settings.

Sponsors: Representatives Sawyer, Appleton, Gregerson, Robinson, S. Hunt, Reykdal, Fitzgibbon, Ormsby, Jinkins and Pollet.

Brief History:

Committee Activity:

Community Development, Housing & Tribal Affairs: 2/3/15, 1/18/16, 1/21/16 [DP];
Appropriations: 2/4/16, 2/9/16 [DPS].

Brief Summary of Substitute Bill

- Authorizes the services of a federally or tribally certified dental health aide therapist (DHAT) for tribal members within the practice settings of an Indian health program.
- Exempts authorized DHAT services from state licensing requirements related to dental practice.
- Requires the Department of Health to conduct a study on the outcomes of treatment by DHATs.

HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT, HOUSING & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 4 members: Representatives Ryu, Chair; Robinson, Vice Chair; Appleton and Sawyer.

Minority Report: Without recommendation. Signed by 3 members: Representatives Wilson, Ranking Minority Member; Zeiger, Assistant Ranking Minority Member; Hickel.

Staff: Sean Flynn (786-7124).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Dentistry Practice in Washington.

The state requires a license for any person to practice dentistry in the state. The Dental Quality Assurance Commission (Commission) administers the dentistry licensing program. Licensing requirements include graduation from an approved dental school and passing an examination approved by the Commission. The Commission also regulates the practice of licensed dentists. The unlawful practice of dentistry generally is a gross misdemeanor offense.

The state also requires a license or certification for a variety of providers who assist licensed dentists, including: dental hygienists; dental assistants; expanded function dental auxiliaries; and dental anesthesia assistants. These providers perform a variety of functions regulated by a professional commission or the Department of Health. Each practice requires certain specific education and competency requirements.

Dental Health Aide Program.

The Indian Health Service (IHS) is a federal agency responsible for providing federal health services to American Indians and Alaska Natives. The IHS is authorized under the Indian Health Care Improvement Act to develop and operate a Community Health Aide Program (CHAP) in Alaska that serves rural native communities. The CHAP establishes a certification process for community health aides who provide health care, health promotion, and disease prevention in rural Alaska Native communities.

In 2001 the IHS established the Dental Health Aide Program (DHAP) as part of the CHAP to address the shortage of licensed dentists in the remote locations where rural Native Alaska communities are located. The DHAP is a federal certification program, which authorizes certain dental practices within the rural Native Alaska communities served through the CHAP. The DHAP involves training and certification for dental health aides in four categories: primary dental health aides; expanded function dental health aides; dental health aide hygienists; and dental health aide therapists (DHAT).

A DHAT is certified through the DHAP to practice without the direct supervision of a licensed dentist for procedures such as oral exams, preventative dental services, simple restorations, stainless steel crowns, and x-rays. A DHAT may perform extractions and root canal procedures only after consultation with a licensed dentist who determines that the procedure is a medical emergency. The DHAT certification requires a high school diploma, graduation from a two-year educational program, and a 400-hour clinical preceptorship under the supervision of a dentist.

Expansion of DHAT Practice.

The Indian Health Care Improvement Act authorizes the IHS to establish a CHAP nationally. Such an expansion expressly excludes DHAT services from any expanded program in a state unless such services are authorized in accordance with state law.

Washington does not have a DHAT license. State law exempts dentistry licensing requirements for practice in the discharge of official duties of dentists in the United States federal services on federal reservations, including the Armed Forces, Coast Guard, Public Health Service, Veterans' Bureau, or Bureau of Indian Affairs.

Medicaid Participation.

The state medical assistance program, which provides health care for eligible low-income residents, is managed by the Health Care Authority (Authority) in coordination with the federal Medicaid program. The Authority determines eligibility and care provided in compliance with federal Medicaid standards. Medical costs reimbursable through Medicaid must be provided by a licensed practitioner. The Authority may attempt to amend the state medical program or seek a waiver from a federal requirement with approval from the Centers for Medicare and Medicaid Services.

Summary of Bill:

The DHAT practice is authorized and exempt from licensing requirements for a dentist, dental hygienist, dental assistants, and dental anesthesia assistants, under certain conditions. The DHAT must be certified by a federal CHAP or a federally recognized tribe that has adopted certification standards that meet or exceed the requirements of a CHAP.

The DHAT services must be performed in accordance with the certification standards and within a practice setting operated by an Indian health program or by an urban Indian organization. The services also must be performed in accordance with any written standing orders by a supervising dentist. The DHAT services are authorized for persons working under the direction of a DHAT training program that is certified by a CHAP or a tribe that has adopted the same or higher standards.

The Authority is directed to coordinate with the Centers for Medicare and Medicaid Services to make DHAT services eligible for federal funding up to 100 percent.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill addresses the oral health care crises in Indian country. Research supports the great need for health care services in Indian country. Resources are extremely scarce on many tribal reservations, particularly in rural areas. Historically, many private

dental practices would not accept IHS or Medicaid patients. Retention rates for dentists in Indian country is very low. Tribes started taking over health care management because of the lack of services available to tribal members outside of Indian country.

This bill allows tribes the option to create a DHAT practice. The federal law that requires state approval before a DHAT practice can be extended to a tribal program is a top down governing model that does not allow tribes to effectively address their own needs. Authorizing a DHAT practice will help maximize federal reimbursement money to serve the greatest number of tribal members.

Tribes have a strong relationship with the state in supporting tribal sovereignty and the ability of tribes to provide self-government improves services to its members. The state should not stand in the way of a tribe wanting to participate in a federally authorized program. Tribal communities have great health care needs. This bill is not about DHAT policy, but about the ability of tribes to access federal services for their own members.

(Opposed) There are better solutions to address the needs of dental health care in rural and tribal settings than creating a mid-level dentistry practice. Vacancies can be addressed with dentists in partnership with health care providers. Tribal dental care services do not always require dental treatment, but must incorporate oral health care and prevention that requires the incorporation of community development and education; focusing only on treatment resources does not fully address the nature and scope of the problems of oral health care.

Dentists receive extensive training in school before being licensed to practice. Certain dental procedures that are performed by a licensed dentist require advanced training. This training can greatly increase the services available for patients, especially for young children. Such services are not available in a DHAT practice.

(Other) The federal DHAT program in Alaska is working well and has been expanded since it was started. There are 32 DHATs practicing in Alaska. There have been no issues of malpractice in the 10 years since the DHAT program has operated.

Persons Testifying: (In support) Representative Sawyer, prime sponsor; Brian Cladoosby, Swinomish Tribe; Mel Tonasket, Colville Tribe; Ray Peters, Squaxin Tribe; and Meredith Parker, Makah Tribe.

(Opposed) Brad Tower, Washington State Dental Association; Yoni Ahdut, Washington State Dental Association; and Steve Geiermann, American Dental Association.

(Other) Mary Willard, Alaska Native Tribal Health Consortium.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Cody,

Fitzgibbon, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Robinson, Sawyer, Senn, Springer, Stokesbary, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 11 members: Representatives Chandler, Ranking Minority Member; Buys, Dent, Haler, Harris, MacEwen, Magendanz, Schmick, Sullivan, Taylor and Van Werven.

Minority Report: Without recommendation. Signed by 1 member: Representative Condotta.

Staff: Erik Cornellier (786-7116).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Community Development, Housing & Tribal Affairs:

The Appropriations Committee recommended that Dental Health Aide Therapist (DHAT) services may only be performed on a tribal member or someone otherwise eligible for services through the Indian Health Services (IHS), and the DHAT services must be performed on reservation lands.

The Appropriations Committee also recommended that the Department of Health complete a study by 2020 on the treatment outcomes of these DHAT practices.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Provisions in the Indian Health Care Improvement Act allow tribes to integrate DHATs into oral health teams. In developing the Indian Health Care Improvement Act, the national dental association prevented tribes from using IHS funds for DHATs unless the states authorize them. These are federal pass-through funds that go directly to the tribes. Legislation is needed or tribes will not get paid for DHAT services.

It is very odd for Washington to be in the position it is in today. Congress has abrogated its authority to determine whether states reimburse for Medicaid or not. Washington is standing in the way of tribes implementing a policy that they think is right for their own people by holding back Medicaid reimbursement.

One tribe has initiated mid-level services under its tribal authority. The Swinomish Tribe is operating with two grants to show that the program works right now.

The Affordable Care Act authorized this practice, and it is successful in Alaska where 45,000 patients have been seen with good outcomes. A double-blind study in Alaska found that DHATs provided the same quality care as dentists. It has also been effective in Minnesota.

This bill is a sovereignty bill. It is unfortunate that tribes have been put into the position of needing to request authority to use this IHS money. The tribes are best suited to determine what is best for their people, especially considering that the health indicators for tribes are worse than elsewhere.

The bill benefits tribal members and communities. It helps rural reservations. It is hard to bring dentists to the reservations because they are not urban. What tribes can do is have DHATs come to the reservations. It is more cost effective for the tribe. Long waiting lists make it difficult for dentists to do more specialized procedures. This is a win-win for the state and the tribes. The DHATs can be trained in two years, which allows tribes to develop their own workforces to serve their communities in one-third of the time of standard dental training.

The bill is fiscally conservative. When a tribal patient is seen in a tribal clinic, 100 percent of the cost is reimbursed by the federal government. If the same member does not have access to a tribal clinic and is seen by a private practice, the state must pay 50 percent of the cost. It is in the state's interest to increase capacity in tribal clinics.

In addition to members, tribal clinics serve members from other tribes. Oral disease among American Indian/Alaska Native communities has reached a crisis. There is a need to increase access. This is a proven and effective tool to increase oral health, and it should be available.

The bill demonstrates respect for tribal sovereignty and recognizes tribes as leaders in providing dental care. It is economically efficient because it increases access and lowers costs while maintaining quality. Tribal clinics get funding from the IHS, but they do not get adequate funding to provide care to nonmembers that live on the reservations. This bill allows the tribes to provide care to nonmembers. Tribes do not need the bill to use DHATs, but the bill is needed to receive IHS funding. This is important for tribes without many resources. Not every tribe has a casino. Wait times can be excruciatingly long, which increases the risk of long-term health problems.

The programs offered by the dentists are temporary solutions.

(Opposed) Dentists acknowledge the sovereignty of tribal communities on this issue, and they recognize the hard work to bring this forward. The state needs to look at this through the lens of economics. The Swinomish Tribe does not need legislation to move forward with dental therapists. The question becomes how to best spend limited health dollars. The federal government has given authority over how to reimburse for these services to the state. There is a disparity in how the money flows. It is a more appropriate use of limited dollars to have dental hygienists and assistants performing the procedures instead.

The dentists have a proposal for dental health coordinators and residency programs. There are existing providers in a position to provide the services necessary.

Persons Testifying: (In support) Representative Sawyer, prime sponsor; John Stephens, Swinomish Tribal Community of LaConner; Asa Washines, Yakima Nation; David Bean, Puyallup Tribe; Christina Peters, Northwest Indian Health Board; and Davor Gjurasic, Nisqually Indian Tribe, Port Gamble S'Klallam Tribe, and the Swinomish Tribal Community of Indians.

(Opposed) Trent House, Washington State Dental Association.

Persons Signed In To Testify But Not Testifying: None.