

HOUSE BILL 1292

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By: **Delegates West, Mautz, Cullison, Hayes, Hill, and Kelly**

Introduced and read first time: February 10, 2017

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners – Ownership, Management, or Operation of a**
3 **Dental Practice**

4 FOR the purpose of requiring a dental practice to be owned, managed, or operated by a
5 licensed dentist, subject to certain exceptions; authorizing, under certain
6 circumstances, an heir of a licensed dentist who was the owner of a dental practice
7 to serve as an owner of the dental practice for a certain time period; authorizing the
8 State Board of Dental Examiners to extend a certain time period under certain
9 circumstances; requiring that all patient care be provided by certain individuals and
10 in accordance with certain scopes of practice during the temporary ownership of a
11 dental practice by an heir; prohibiting the temporary ownership of a dental practice
12 by an heir from affecting the exercise of independent judgment by certain licensed
13 dentists; authorizing an unlicensed person to take certain actions; prohibiting a
14 licensed dentist from raising a certain defense in a certain action; repealing a certain
15 exemption from the requirements of the Maryland Dentistry Act; authorizing the
16 Board to take certain action against certain applicants and licensees for accepting or
17 tendering rebates or split fees; authorizing the Board to issue a cease and desist
18 order for certain violations; prohibiting certain persons from aiding or abetting the
19 unauthorized practice of dentistry; establishing certain penalties for aiding or
20 abetting the unauthorized practice of dentistry; altering certain penalties;
21 exempting certain persons from certain penalty provisions; repealing certain
22 references to certain places of imprisonment; establishing certain civil penalties;
23 requiring the Office of Oral Health in the Department of Health and Mental Hygiene
24 to include the exception provided for in a certain provision of this Act in a certain
25 report; repealing the requirement that the office include a certain exception in a
26 certain report; repealing the exemption for certain dental practices from the
27 requirement that a dental practice be owned, managed, or operated by a licensed
28 dentist; providing for the effective dates of this Act; altering a certain definition;
29 making stylistic changes; and generally relating to the ownership, management, and
30 operation of a dental practice.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Health – General
3 Section 13–2504
4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2016 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Health Occupations
8 Section 4–101(l), 4–102, 4–315(a)(33) and (34), 4–601, and 4–606
9 Annotated Code of Maryland
10 (2014 Replacement Volume and 2016 Supplement)

11 BY adding to
12 Article – Health Occupations
13 Section 4–103, 4–315(a)(35), and 4–321
14 Annotated Code of Maryland
15 (2014 Replacement Volume and 2016 Supplement)

16 BY repealing and reenacting, without amendments,
17 Article – Health Occupations
18 Section 4–301 and 4–602
19 Annotated Code of Maryland
20 (2014 Replacement Volume and 2016 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Health – General
23 Section 13–2504(b)
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2016 Supplement)
26 (As enacted by Section 1 of this Act)

27 BY repealing and reenacting, with amendments,
28 Article – Health Occupations
29 Section 4–103(d)(1)
30 Annotated Code of Maryland
31 (2014 Replacement Volume and 2016 Supplement)
32 (As enacted by Section 1 of this Act)

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
34 That the Laws of Maryland read as follows:

35 **Article – Health – General**

36 13–2504.

37 (a) (1) The Office of Oral Health shall conduct an annual evaluation of the
38 Program.

(2) The evaluation required under this subsection shall include:

(i) Data on any progress resulting from each grant awarded under this subtitle;

(ii) Data on any progress of the overall Program;

(iii) Data demonstrating any increase in the use of restorative dental care among underserved populations; and

(iv) Data from any statewide survey conducted by the Department that demonstrates any progress of the Program.

(b) The Department, in conjunction with the Office of Oral Health, shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly on or before November 1 of each year on:

(1) The results of the Program;

(2) Findings and recommendations for the Oral Health Program and any other oral health programs established under Title 18, Subtitle 8 of this article;

(3) The availability and accessibility of dentists throughout the State participating in the Maryland Medical Assistance Program;

(4) The outcomes that managed care organizations and dental managed care organizations under the Maryland Medical Assistance Program achieve concerning the utilization of targets required by the Five Year Oral Health Care Plan, including:

(i) Loss ratios that the managed care organizations and dental managed care organizations experience for providing dental services; and

(ii) Corrective action by managed care organizations and dental managed care organizations to achieve the utilization targets; [and]

(5) The allocation and use of funds authorized for dental services under the Maryland Medical Assistance Program; AND

(6) THE EXCEPTION PROVIDED FOR IN § 4–103(D)(1)(IV) OF THE HEALTH OCCUPATIONS ARTICLE.

Article – Health Occupations

4–101.

(l) (1) “Practice dentistry” means to:

[(1)] (I) Be [a manager, a proprietor, or a conductor of] **AN OWNER, A MANAGER,** or an operator in any place in which a dental service or dental operation is performed intraorally;

[(2)] (II) Perform or attempt to perform any intraoral dental service or intraoral dental operation;

[(3)] (III) Diagnose, treat, or attempt to diagnose or treat any disease, injury, malocclusion, or malposition of a tooth, gum, or jaw, or structures associated with a tooth, gum, or jaw if the service, operation, or procedure is included in the curricula of an accredited dental school or in an approved dental residency program of an accredited hospital or teaching institution;

[(4)] (IV) Perform or offer to perform dental laboratory work;

[(5)] (V) Place or adjust a dental appliance in a human mouth; or

[(6)] (VI) Administer anesthesia for the purposes of dentistry and not as a medical specialty.

(2) “PRACTICE DENTISTRY” INCLUDES:

(I) **PATIENT EVALUATION, DIAGNOSIS, AND DETERMINATION OF TREATMENT PLANS;**

(II) **DETERMINATION OF OR INFLUENCE ON TREATMENT OPTIONS, INCLUDING WHICH RESTORATIVE AND TREATMENT MATERIALS AND DIAGNOSTIC EQUIPMENT SHOULD BE USED AND THE SOURCES FOR OBTAINING THE MATERIALS AND EQUIPMENT;**

(III) **DETERMINATION AND ESTABLISHMENT OF PATIENT PROTOCOLS, STANDARDS, AND PRACTICE GUIDELINES; AND**

(IV) **ANY OTHER DECISION THAT AFFECTS PATIENT CARE AND TREATMENT.**

4–102.

(a) (1) Except as otherwise provided in this subsection, this title does not limit the right of an individual to practice a health occupation that the individual is authorized to practice under this article.

(2) The provisions of this title do not affect a physician while practicing medicine, unless the physician practices dentistry as a specialty.

(b) This title does not prohibit an educational program broadcast on radio or television by the Department or by the health department of a political subdivision of this State.

[(c) This title does not apply to a clinic maintained by a public school, a State institution, or charitable institution, or a business corporation, for its pupils, inmates, or employees if:

(1) The school or institution, or corporation does not advertise concerning dentistry; and

(2) Notwithstanding the provisions of this subsection:

(i) Each dental hygienist, dental assistant, dental technician, or other dental auxiliary employed by the clinic shall be subject to the provisions of this title; and

(ii) Each dentist employed by the clinic shall be licensed and shall be subject to the provisions of Subtitle 3 of this title.]

4-103.

(A) (1) SUBJECT TO SUBSECTIONS (B) AND (C) OF THIS SECTION AND EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A DENTAL PRACTICE SHALL BE OWNED, MANAGED, OR OPERATED ONLY BY A LICENSED DENTIST.

(2) THE OWNERSHIP, MANAGEMENT, OR OPERATION OF A DENTAL PRACTICE INCLUDES:

(I) THE HIRING, SUPERVISION, OR TERMINATION OF EMPLOYMENT OF A DENTIST, DENTAL HYGIENIST, OR DENTAL ASSISTANT WHO ASSISTS IN THE CARE AND TREATMENT OF DENTAL PATIENTS;

(II) DIRECT SUPERVISION OVER THE TRAINING OF A DENTAL HYGIENIST OR DENTAL ASSISTANT WHO ASSISTS IN THE CARE AND TREATMENT OF DENTAL PATIENTS;

(III) THE PREPARATION, OWNERSHIP, OR CONTROL OF PATIENT TREATMENT RECORDS; AND

(IV) THE ETHICAL SHARING OF INCOME, REVENUES, PROFITS, OR FEES AMONG DENTISTS WITHIN THE SAME DENTAL PRACTICE.

(B) (1) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, IF A LICENSED DENTIST WHO WAS THE OWNER OF A DENTAL PRACTICE DIES AND DID NOT PROVIDE FOR THE DISPOSITION OF THE DENTAL PRACTICE, AN HEIR TO THE LICENSED DENTIST MAY SERVE AS AN OWNER OF THE DENTAL PRACTICE, REGARDLESS OF WHETHER THE HEIR IS LICENSED TO PRACTICE DENTISTRY, FOR NO LONGER THAN 1 YEAR AFTER THE DEATH OF THE LICENSED DENTIST UNLESS THE BOARD EXTENDS THE TIME PERIOD UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(2) ON WRITTEN REQUEST AND GOOD CAUSE SHOWN BY THE HEIR OF THE LICENSED DENTIST, INCLUDING EVIDENCE OF A GOOD FAITH EFFORT TO SELL OR CLOSE THE DENTAL PRACTICE, THE BOARD, IN ITS SOLE DISCRETION, MAY EXTEND THE 1-YEAR PERIOD FOR UP TO AN ADDITIONAL 6 MONTHS TO ALLOW THE HEIR SUFFICIENT TIME TO SELL OR OTHERWISE DISPOSE OF THE DENTAL PRACTICE.

(3) DURING THE TEMPORARY OWNERSHIP OF A DENTAL PRACTICE BY AN HEIR UNDER THIS SUBSECTION, ALL PATIENT CARE SHALL BE PROVIDED BY AN APPROPRIATE INDIVIDUAL WHO IS LICENSED UNDER THIS TITLE AND IN ACCORDANCE WITH THE INDIVIDUAL'S SCOPE OF PRACTICE.

(4) THE TEMPORARY OWNERSHIP OF A DENTAL PRACTICE BY AN HEIR UNDER THIS SUBSECTION MAY NOT AFFECT THE EXERCISE OF THE INDEPENDENT JUDGMENT OF A LICENSED DENTIST WHO PROVIDES CARE TO PATIENTS OF THE DENTAL PRACTICE.

(C) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, AN UNLICENSED PERSON MAY:

(1) OWN OR LEASE REAL PROPERTY OR FURNISHINGS, EQUIPMENT, OR OTHER GOODS THAT ARE USED BY A DENTIST OR DENTAL PRACTICE;

(2) PROVIDE BOOKKEEPING, ACCOUNTING, AND TAX PREPARATION SERVICES;

(3) ADMINISTER AND PROCESS PAYROLL OF A DENTAL PRACTICE;

(4) INTERACT WITH PATIENTS AND THIRD PARTY PAYORS FOR THE BILLING AND COLLECTIONS FOR DENTAL SERVICES;

(5) CREATE AND PLACE ADVERTISING AND MARKETING, AS APPROVED BY A LICENSED DENTIST;

1 **(6) DETERMINE WHICH INFORMATION TECHNOLOGY TO ACQUIRE**
2 **AND ASSIST IN ITS ACQUISITION;**

3 **(7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (A) OF THIS**
4 **SECTION, PROVIDE HUMAN RESOURCE FUNCTIONS;**

5 **(8) PROVIDE GENERAL OFFICE MANAGEMENT, PROPERTY**
6 **MANAGEMENT, AND MAINTENANCE; AND**

7 **(9) ASSIST IN RISK MANAGEMENT, INCLUDING LEGAL AND**
8 **REGULATORY COMPLIANCE AND THE PROCESSING OF INSURANCE CLAIMS.**

9 **(D) (1) THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION DO**
10 **NOT APPLY TO:**

11 **(I) A CLINIC MAINTAINED BY:**

12 1. **A PUBLIC SCHOOL;**

13 2. **A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY**
14 **OR INSTITUTION;**

15 3. **A DENTAL OR DENTAL HYGIENE PROGRAM THAT IS**
16 **APPROVED BY THE COMMISSION ON DENTAL ACCREDITATION (CODA) FOR AN**
17 **INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN § 10–101 OF THE EDUCATION**
18 **ARTICLE; OR**

19 4. **A CHARITABLE ORGANIZATION, AS DEFINED IN §**
20 **6–101 OF THE BUSINESS REGULATION ARTICLE;**

21 **(II) A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY;**

22 **(III) A NONPROFIT ORGANIZATION THAT PROVIDES DENTAL**
23 **SERVICES AND IS:**

24 1. **A HEALTH CARE CENTER OR PROGRAM THAT OFFERS**
25 **DENTAL SERVICES:**

26 A. **FREE OF COST OR ON A SLIDING SCALE FEE**
27 **SCHEDULE; AND**

**B. WITHOUT REGARD TO AN INDIVIDUAL'S ABILITY TO
PAY; OR**

**2. A FEDERALLY QUALIFIED HEALTH CENTER OR A
FEDERALLY QUALIFIED HEALTH CENTER LOOK-ALIKE; OR**

**(IV) A DENTAL PRACTICE IN WHICH AT LEAST 75% OF THE
PATIENTS ON WHOM PROCEDURES ARE PERFORMED DURING THE CALENDAR YEAR
ARE MEDICAID-ELIGIBLE.**

**(2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS
SUBSECTION:**

**(I) EACH DENTAL HYGIENIST, DENTAL ASSISTANT, OR DENTAL
TECHNICIAN EMPLOYED BY AN ENTITY DESCRIBED IN PARAGRAPH (1) OF THIS
SUBSECTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS TITLE; AND**

**(II) EACH DENTIST EMPLOYED BY AN ENTITY DESCRIBED IN
PARAGRAPH (1) OF THIS SUBSECTION SHALL BE LICENSED AND SUBJECT TO THE
PROVISIONS OF SUBTITLE 3 OF THIS TITLE.**

**(E) IN AN ACTION BROUGHT BY THE BOARD AGAINST A LICENSED DENTIST,
THE LICENSED DENTIST MAY NOT RAISE AS A DEFENSE THAT A DUTY OR OBLIGATION
OF THE DENTIST UNDER THIS SECTION WAS DELEGATED OR ASSIGNED TO A THIRD
PARTY.**

4-301.

(a) (1) Except as otherwise provided in this title, an individual shall be
licensed by the Board to practice dentistry before the individual may practice dentistry on
a human being in this State.

(2) Except as otherwise provided in this title, an individual shall be
licensed by the Board to practice dental hygiene before the individual may practice dental
hygiene on a human being in this State.

(b) This section does not apply to:

(1) A student of dentistry while engaged in an educational program at an
approved school of dentistry;

(2) A student of dental hygiene while engaged in an approved educational
program in dental hygiene;

(3) A dentist while performing official duties in a federal dental service;

(4) An individual licensed to practice dentistry in any other state or a foreign country, while the individual:

(i) Makes a clinical demonstration before a dental society, dental convention, association of dentists, or dental college; or

(ii) Performs professional duties on a specific case for which the individual is called into this State; or

(5) A dental assistant, if the dental assistant:

(i) Subject to the rules and regulations adopted by the Board, performs only procedures that do not require the professional skills of a licensed dentist; and

(ii) Performs intraoral tasks only under the direct supervision of a licensed dentist who personally is present in the office area where the tasks are performed.

4–315.

(a) Subject to the hearing provisions of § 4–318 of this subtitle, the Board may deny a general license to practice dentistry, a limited license to practice dentistry, or a teacher's license to practice dentistry to any applicant, reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the applicant or licensee:

(33) Fails to comply with any Board order; [or]

(34) Willfully and without legal justification, fails to cooperate with a lawful investigation conducted by the Board; OR

(35) ACCEPTS OR TENDERS REBATES OR SPLIT FEES.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health Occupations

4–321.

IN ADDITION TO ANY OTHER PENALTIES OR DISCIPLINARY ACTION AUTHORIZED UNDER THIS TITLE, THE BOARD MAY ISSUE A CEASE AND DESIST ORDER FOR CONDUCT THAT:

(1) IS IN VIOLATION OF § 4-103, § 4-601, § 4-602, OR § 4-603 OF THIS TITLE OR § 4-301 OF THIS SUBTITLE;

(2) IS GROUNDS FOR DISCIPLINARY ACTION UNDER § 4-315(A) OF THIS SUBTITLE; OR

(3) VIOLATES ANY PROHIBITION IN SUBTITLE 4 OF THIS TITLE THAT RELATES TO DENTAL LABORATORY WORK.

4-601.

(a) Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice dentistry or dental hygiene on a human being in this State unless licensed by the Board.

(b) A person may not aid or abet THE unauthorized practice of DENTISTRY OR dental hygiene in this State.

4-602.

(a) (1) Except as otherwise provided in this section, unless authorized to practice dentistry under this title, a person may not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice dentistry in this State.

(2) Unless authorized to practice dental hygiene under this title, a person may not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice dental hygiene in this State.

(b) This title does not affect the right of a holder of a dental degree who does not directly or indirectly practice or attempt to practice dentistry in this State to use the degree or an abbreviation for the degree in connection with the name of the holder.

4-606.

(a) [A] EXCEPT FOR A PERSON WHOSE LICENSE HAS LAPSED FOR A PERIOD OF NOT MORE THAN 6 MONTHS, A person who practices or attempts to practice dentistry without a license in violation of § 4-601(a) of this subtitle, AIDS OR ABETS THE UNAUTHORIZED PRACTICE OF DENTISTRY IN VIOLATION OF § 4-601(B) OF THIS SUBTITLE, or represents to the public in violation of § 4-602 of this subtitle that the person is authorized to practice dentistry is guilty of a [misdemeanor] FELONY and on conviction is subject to:

(1) For a first offense, a fine not exceeding [\$2,000] \$5,000 or imprisonment [in jail] not exceeding [6 months] 1 YEAR; or

(2) For a subsequent offense, a fine not exceeding [\$6,000] **\$20,000 PER DAY** or imprisonment [in the State penitentiary] not exceeding [1 year] **5 YEARS**.

(b) **[A] EXCEPT FOR A PERSON WHOSE LICENSE HAS LAPSED FOR A PERIOD OF NOT MORE THAN 6 MONTHS,** A person who practices or attempts to practice dental hygiene without a license in violation of § 4–601(a) of this subtitle, aids or abets **THE** unauthorized practice of dental hygiene in violation of § 4–601(b) of this subtitle, or represents to the public in violation of § 4–602 of this subtitle that the person is authorized to practice dental hygiene is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

(c) A person who violates any provision of Subtitle 4 of this title, which relates to dental laboratory work, or who advertises a dental appliance in violation of § 4–503(c) of this title is guilty of a [misdemeanor] **FELONY** and on conviction is subject to a fine not exceeding \$2,000 **PER DAY** or imprisonment [in jail] not exceeding [6 months] **2 YEARS**.

(D) EXCEPT FOR A PERSON WHOSE LICENSE HAS LAPSED FOR A PERIOD OF NOT MORE THAN 6 MONTHS, A PERSON WHO VIOLATES § 4–601 OR § 4–602 OF THIS SUBTITLE IS SUBJECT TO A CIVIL FINE NOT EXCEEDING \$50,000 TO BE ASSESSED BY THE BOARD IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health – General

13–2504.

(b) The Department, in conjunction with the Office of Oral Health, shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly on or before November 1 of each year on:

(1) The results of the Program;

(2) Findings and recommendations for the Oral Health Program and any other oral health programs established under Title 18, Subtitle 8 of this article;

(3) The availability and accessibility of dentists throughout the State participating in the Maryland Medical Assistance Program;

(4) The outcomes that managed care organizations and dental managed care organizations under the Maryland Medical Assistance Program achieve concerning the utilization of targets required by the Five Year Oral Health Care Plan, including:

(i) Loss ratios that the managed care organizations and dental managed care organizations experience for providing dental services; and

(ii) Corrective action by managed care organizations and dental managed care organizations to achieve the utilization targets; **AND**

(5) The allocation and use of funds authorized for dental services under the Maryland Medical Assistance Program[; and

(6) The exception provided for in § 4–103(d)(1)(iv) of the Health Occupations Article].

Article – Health Occupations

4–103.

(d) (1) The requirements of subsection (a) of this section do not apply to:

(i) A clinic maintained by:

1. A public school;

2. A federal, State, or local government agency or institution;

3. A dental or dental hygiene program that is approved by the Commission on Dental Accreditation (CODA) for an institution of higher education, as defined in § 10–101 of the Education Article; or

4. A charitable organization, as defined in § 6–101 of the Business Regulation Article;

(ii) A federal, State, or local government agency; **OR**

(iii) A nonprofit organization that provides dental services and is:

1. A health care center or program that offers dental services:

A. Free of cost or on a sliding scale fee schedule; and

B. Without regard to an individual's ability to pay; or

2. A Federally Qualified Health Center or a Federally Qualified Health Center Look-Alike[; or

(iv) A dental practice in which at least 75% of the patients on whom procedures are performed during the calendar year are Medicaid-eligible].

1 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
2 effect July 1, 2018.

3 SECTION 5. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take
4 effect July 1, 2021.

5 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in
6 Sections 4 and 5 of this Act, this Act shall take effect July 1, 2017.