

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 855 Dental Services  
**SPONSOR(S):** McClure and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 302

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	16 Y, 0 N	Osborne	McElroy
2) Health & Human Services Committee		Osborne	Calamas

### SUMMARY ANALYSIS

The Board of Dentistry, within the Department of Health (DOH), regulates dental practice in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act. A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures. A dental hygienist provides education, preventive and delegated therapeutic dental services. There are approximately 17,193 dentists, 17,681 dental hygienists, and 8,371 dental radiographers with active licenses to practice in Florida. There are 41 out-of-state registered telehealth dentists.

Telehealth is the use of synchronous or asynchronous telecommunications technology by a health care practitioner to provide health care services. Current law sets the standard of care for telehealth providers at the same standard of care for health care practitioners providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care practitioner to deliver the services. Current law does not contain health care practitioner-specific regulations for the use of telehealth. Health care practitioners must adhere to the applicable standard of care when providing services through telehealth and are subject to disciplinary action if they fail to do so.

HB 855 revises existing standards for the practice of dentistry and establishes new requirements that specifically apply to providers using telehealth to provide dental services to patients.

Under current law, a dentist of record who is primarily responsible for all dental treatments received by the patient must be specified in the patient records of every dental patient. The bill establishes a separate provision restating this requirement in the context of telehealth.

The bill requires every dentist to provide each patient with the dentist's name, contact telephone number, after-hours contact information for emergencies, and, upon the patient's request, license information.

The bill also requires telehealth providers make available the name, telephone number, practice address, and the state license number for the dentist of record and any other dentist providing services to a patient before such services are rendered. The bill requires that an advertisement for certain dental services provided through telehealth to include a disclaimer.

The bill expands grounds for the denial of a dental license or disciplinary action against a dentist to include failure to conduct an in-person examination in certain circumstances and failure by an individual providing service through telehealth to provide patients with contact information or to designate a dentist of record.

The bill has a significant, negative fiscal impact on DOH, and no fiscal impact on local government.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Regulation of Dental Practice in Florida

The Board of Dentistry (BOD), within the Department of Health (DOH), regulates dental practice in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act.<sup>1</sup> A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures.<sup>2</sup> A dental hygienist provides education, preventive and delegated therapeutic dental services.<sup>3</sup>

There are currently 17,193 dentists, 17,681 dental hygienists, and 8,371 dental radiographers with active licenses to practice in Florida. There are 41 out-of-state registered telehealth dentists.<sup>4</sup>

##### *Dental Licensure*

Any person wishing to practice dentistry in this state must apply to the Department of Health (DOH) and meet specified requirements. Section 466.006, F.S., requires dentistry licensure applicants to sit for and pass the following licensure examinations:

- The National Board of Dental Examiners dental examiner (NBDE);
- A written examination on Florida laws and rules regulating the practice of dentistry; and
- A practical examination, which is the American Dental Licensing Examination (ADEX) developed by the American Board of Dental Examiners, Inc.<sup>5</sup>

To qualify to take the Florida dental licensure examination, an applicant must be 18 years of age or older, be a graduate of a dental school accredited by the American Dental Association or be a student in the final year of a program at an accredited institution, and have successfully completed the NBDE dental examination.

##### *Dental Practice*

Dentists must maintain professional liability insurance or provide proof of financial responsibility. If the dentist obtains professional liability insurance, the coverage must be at least \$100,000 per claim, with a minimum annual aggregate of at least \$300,000.<sup>6</sup> Alternatively, a dentist may maintain an unexpired, irrevocable letter of credit in the amount of \$100,000 per claim, with a minimum aggregate availability of credit of at least \$300,000.<sup>7</sup> The professional liability insurance must provide coverage for the actions of any dental hygienist supervised by the dentist.<sup>8</sup> However, a dentist may be exempt from maintaining professional liability insurance if he or she:<sup>9</sup>

- Practices exclusively for the federal government or the State of Florida or its agencies or subdivisions;

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<sup>1</sup> S. 466.004, F.S.

<sup>2</sup> S. 466.003(3), F.S.

<sup>3</sup> S. 466.003(4)-(5), F.S.

<sup>4</sup> See, Department of Health *License Verification* web search. Available at <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders> (last visited January 14, 2023).

<sup>5</sup> A passing score is valid for 365 days after the date the official examination results are published. A passing score on an examination obtained in another jurisdiction must be completed on or after October 1, 2011.

<sup>6</sup> Rule 64B5-17.011(1), F.A.C.

<sup>7</sup> Rule 64B5-17.011(2), F.A.C.

<sup>8</sup> Rule 64B5-17.011(4), F.A.C.

<sup>9</sup> Rule 64B5-17.011(3), F.A.C.

- Is not practicing in this state;
- Practices only in conjunction with his or her teaching duties at an accredited school of dentistry or in its main teaching hospitals; or
- Demonstrates to the BOD that he or she has no malpractice exposure in this state.

Current law requires that a dentist of record be established in the patient record for each dental patient. The dentist of record assumes primary responsibility for all dental treatment for the patient, regardless of whether the treatment is rendered by the dentist of record, or another dentist, dental hygienist, or dental assistant in conjunction with, at the direction or request of, or under the supervision of the dentist of record.<sup>10</sup>

The dentist of record is the dentist identified and noted in the patient record as the dentist of record, or who provides a specific treatment or service and is noted in the patient record as the dentist of record for that treatment or service.<sup>11</sup> For instances where a dentist of record is not identified in the patient's record, it is assumed that the dentist of record is the owner of the dental practice in which the patient is treated.<sup>12</sup>

By rule, every dentist is required to provide, either personally, through another licensed dentist, or through a reciprocal agreement with another agency, reasonable 24-hour emergency services for all patients under his or her continuing care.<sup>13</sup>

Every dentist licensed in Florida must post and keep conspicuously displayed his or her license in the office wherein she or he practices and in plain sight of patients.<sup>14</sup>

### *Dental Hygienists*

A dental hygienist provides education, preventive and delegated therapeutic dental services under varying levels of supervision by a licensed dentist.<sup>15</sup> Any person wishing to be licensed as a dental hygienist must apply to DOH and meet the following qualifications:<sup>16</sup>

- Be 18 years of age or older;
- Be a graduate of an accredited dental hygiene college or school;<sup>17</sup> and
- Obtain a passing score on the:
  - Dental Hygiene National Board Examination;
  - Dental Hygiene Licensing Examination developed by the American Board of Dental Examiners, Inc., which is graded by a Florida-licensed dentist or dental hygienist employed by DOH for such purpose; and
  - A written examination on Florida laws and rules regulating the practice of dental hygiene.

A dental hygienist is not required to maintain professional liability insurance and must be covered by supervising dentist's liability insurance.<sup>18</sup>

A supervising dentist may delegate certain tasks to a dental hygienist, such as removing calculus deposits, accretions, and stains from exposed surfaces of the teeth and from the gingival sulcus and

<sup>10</sup> S. 466.018, F.S.

<sup>11</sup> Rule 64B5-17.002, F.A.C.

<sup>12</sup> S. 466.018(1)-(2), F.S.; see also, rule 64B5-17.002, F.A.C.; see also, 466.0285, F.S., no person other than a licensed dentist, or an entity composed of dentists, may employ a dentist in the operation of a dental office.

<sup>13</sup> Rule 64B5-17.004, F.A.C.

<sup>14</sup> S. 466.016, F.S.

<sup>15</sup> S. 466.003(4)-(5), F.S.

<sup>16</sup> S. 466.007, F.S.

<sup>17</sup> If the school is not accredited, the applicant must have completed a minimum of 4 years of postsecondary dental education and received a dental school diploma which is comparable to a D.D.S. or D.M.

<sup>18</sup> *Supra*, note 8.

the task of performing root planning and curettage.<sup>19</sup> A dental hygienist may also expose dental X-ray films, apply topical preventive or prophylactic agents, and delegated remediable tasks.<sup>20</sup> Remediable tasks are intra-oral tasks which do not create an unalterable change in the oral cavity or contiguous structures, are reversible, and do not expose a risk to the patient, including but not limited to:

- Fabricating temporary crowns or bridges inter-orally;
- Selecting and pre-sizing orthodontic bands;
- Preparing a tooth service by applying conditioning agents for orthodontic appliances;
- Removing and re-cementing properly contoured and fitting loose bands that are not permanently attached to any appliance;
- Applying bleaching solution, activating light source, and monitoring and removing in-office bleaching solution;
- Placing or removing rubber dams;
- Making impressions for study casts which are not being made for the purpose of fabricating any intra-oral appliances, restorations, or orthodontic appliances;
- Taking impressions for passive appliances, occlusal guards, space maintainers, and protective mouth guards; and
- Cementing temporary crowns and bridges with temporary cement.

A dental hygienist may perform additional remediable tasks as delegated by the supervising dentist if they have received additional training in a pre-licensure course, other formal training, or on-the-job training.<sup>21</sup> To administer local anesthesia, a dental hygienist obtain certification which requires the dental hygienist completes an accredited course of 30 hours of didactic training and 30 hours of clinical training and is certified in basic or advanced cardiac life support. Once certified, the dental hygienist may only administer local anesthesia to a non-sedated, adult patient.<sup>22</sup>

Every dental hygienist licensed in Florida must post and keep conspicuously displayed his or her license in the office wherein she or he practices, in plain sight of patients.<sup>23</sup>

### *Dental Advertising*

Florida regulates dental advertising<sup>24</sup> to ensure that the public has access to information which provides a sufficient basis to make an informed selection of dentists and protect it from false or misleading advertisements.<sup>25</sup>

A licensed dentist's advertisements may not contain any false, fraudulent, misleading, or deceptive statement or claim or any statement or claim which:<sup>26</sup>

- Contains misrepresentations of fact;
- Is likely to mislead or deceive because, in context, it makes only a partial disclosure of relevant facts;
- Contains laudatory statements about the dentist or group of dentists;
- Is intended or is likely to create false, unjustified expectations of favorable results;
- Relates to the quality of dental services provided as compared to other available dental services;
- Is intended or is likely to appeal primarily to a layperson's fears;

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<sup>19</sup> S. 466.023, F.S.

<sup>20</sup> Ss. 466.023 and 466.024, F.S.

<sup>21</sup> See, ss. 466.023, 466.0235, and 466.024, F.S.; and Rule 64B5-16, F.A.C.

<sup>22</sup> S. 466.017(5), F.S.

<sup>23</sup> S. 466.016, F.S.

<sup>24</sup> Rule 64B5-4.002, F.A.C., defines advertising to mean any statements, oral or written, disseminated to or before the public or any portion thereof with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services. The provisions of this rule shall apply to media exposure of any nature regardless of whether it is in the form of paid advertising.

<sup>25</sup> S. 468.019, F.S.

<sup>26</sup> *Id.*

- Contains fee information without a disclaimer that such is a minimum fee only; or
- Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or to be deceived.

### Direct-To-Consumer Teeth Alignment

The direct-to-consumer teeth alignment business model consists of dental impressions being taken by the consumer using a dental impression kit provided by the aligner company. The impression is then reviewed by a dentist to create custom aligners, which are shipped back to the consumer for use. This model generally does not include an in-person examination by a licensed dentist or include direct supervision by a dentist when digital scanning is performed.<sup>27</sup>

### Telehealth

Telehealth is the delivery of health care services using information and communication technologies to exchange valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation.<sup>28</sup> Telehealth connects individuals and their health care providers when in-person care is not possible. Current law broadly defines telehealth as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:

- Assessment, diagnosis, consultation, treatment, and monitoring of a patient;
- Transfer of medical data;
- Patient and professional health-related education;
- Public health services; and
- Health administration.

Florida-licensed health care practitioners, registered out-of-state health practitioners, and those licensed under a multistate health care licensure compact of which Florida is a member, are authorized to use telehealth to deliver health care services to patients within the state according to the practitioners' respective scopes of practice. Providers treating Florida patients via telehealth must comply with the applicable practitioner scope of practice under Florida law; not the scope of practice of the state where the practitioner is physically located.<sup>29</sup>

Florida-licensed telehealth providers, as well as those licensed under a multistate health care licensure compact of which Florida is a member, include:<sup>30</sup>

- |                         |                                |                                 |
|-------------------------|--------------------------------|---------------------------------|
| • Behavioral Analyst    | • Occupational therapist       | • Clinical laboratory personnel |
| • Acupuncturist         | • Radiology technician         | • Respiratory therapist         |
| • Allopathic physician  | • Electrologist                | • Physical therapist            |
| • Osteopathic physician | • Orthotist                    | • Psychologist                  |
| • Chiropractor          | • Pedorthist                   | • Psychotherapist               |
| • Podiatrist            | • Prosthetist                  | • Dietician/Nutritionist        |
| • Optometrist           | • Medical physicist            | • Athletic trainer              |
| • Nurse                 | • Emergency Medical Technician | • Clinical social worker        |
| • Pharmacist            | • Paramedic                    | • Marriage and family therapist |
| • Dentist               | • Massage therapist            | • Mental health counselor       |
| • Dental hygienist      | • Optician                     |                                 |
| • Midwife               |                                |                                 |

<sup>27</sup> Department of Health, *Agency Bill Analysis for HB 855 (2024)*. On file with the Health and Human Services Committee.

<sup>28</sup> U.S. Department of Health and Human Services, *Report to Congress: E-Health and Telemedicine* (August 2016). Available at <https://aspe.hhs.gov/system/files/pdf/206751/TelemedicineE-HealthReport.pdf> (last visited January 14, 2024).

<sup>29</sup> S. 456.47, F.S.

<sup>30</sup> These are professionals licensed under s. 393.17; part III, ch. 401; ch. 457; ch. 458; ch. 459; ch. 460; ch. 461; ch. 463; ch. 464; ch. 465; ch. 466; ch. 467; part I, part III, part IV, part V, part X, part XIII, and part XIV, ch. 468; ch. 478; ch. 480; part II and part III, ch. 483; ch. 484; ch. 486; ch. 490; or ch. 491.

- Speech therapist
- Hearing aid specialist
- Genetic counselor

Out-of-state telehealth providers must register biennially with DOH or the applicable board to provide telehealth services, within the relevant scope of practice established by Florida law and rule, to patients in this state. To register or renew registration as an out-of-state telehealth provider, the health care professional must:

- Hold an active and unencumbered license, which is substantially similar to a license issued to a Florida practitioner in the same profession, in a U.S. state or jurisdiction and
- Not have been subject to licensure disciplinary action during the five years before submission of the registration application;<sup>31</sup>
- Not be subject to a pending licensure disciplinary investigation or action;
- Not have had license revoked in any state or jurisdiction;
- Designate a registered agent in this state for the service of process;
- Maintain professional liability coverage or financial responsibility, which covers services provided to patients not located in the provider's home state, in the same amount as required for Florida-licensed practitioners;<sup>32</sup> and
- Prominently display a link to the DOH website, described below, which provides public information on registered telehealth providers.<sup>33</sup>

### *Telehealth Standards of Practice*

A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient. However, the same standard of care applies regardless of physical location; current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care practitioner to deliver the services.<sup>34</sup>

Practitioners may perform a patient evaluation using telehealth. A practitioner using telehealth is not required to research a patient's medical history or conduct a physical examination of the patient before providing telehealth services to the patient if the telehealth provider is capable of conducting a patient evaluation in a manner consistent with the applicable standard of care sufficient to diagnose and treat the patient when using telehealth.

Current law does not contain health care practitioner-specific regulations for the use of telehealth. Health care practitioners must adhere to the existing standard of care when providing services through telehealth<sup>35</sup> and are subject to disciplinary action if they fail to do so.<sup>36</sup>

### **Effect of the Bill**

HB 855 revises existing standards for the practice of dentistry and establishes new requirements that specifically apply to providers using telehealth to provide dental services to patients.

### Dental Practice

<sup>31</sup> The bill requires DOH to consult the National Practitioner Data Bank to verify whether adverse information is available for the registrant.

<sup>32</sup> Florida law requires physicians, acupuncturists, chiropractic physicians, dentists, anesthesiologist assistants, advanced practice registered nurses, and licensed midwives to demonstrate \$100,000 per claim and an annual aggregate of \$300,000 of professional responsibility (see ss. 458.320 and 459.0085, F.S.; r. 64B1-12.001, F.A.C.; r. 64B2-17.009, F.A.C.; 64B5-17.0105, F.A.C.; rr. 64B8-31.006 and 64B15-7.006, F.A.C.; r. 64B9-4.002, F.A.C.; and r. 64B24-7.013, F.A.C.; respectively). Podiatric physicians must demonstrate professional responsibility in the amount of \$100,000 (see r. 64B18-14.0072, F.A.C.).

<sup>33</sup> S. 456.47(4), F.S.

<sup>34</sup> S. 456.47(2), F.S.

<sup>35</sup> S. 456.47(2), F.S.

<sup>36</sup> S. 456.47(4)(i), F.S.

The bill requires every dentist, including individuals or entities providing services through telehealth (telehealth provider), to provide each of his or her patients with the dentist's name, contact telephone number, after-hours contact information for emergencies, and, upon the patient's request, license information. A dentist who fails to provide each patient with the name, contact telephone number, after-hours contact information for emergencies, and, upon the patient's request, the license information of each dentist who is providing dental services, is subject to discipline.

Under current law, a dentist of record who is primarily responsible for all dental treatments received by the patient must be specified in the patient records of every dental patient.<sup>37</sup> The bill separately restates that this requirement applies to patients receiving dental services through telehealth, and makes the failure of a telehealth provider to designate a dentist of record grounds for discipline. A dentist providing in-person services is not subject to discipline for failing to designate a dentist of record.

The bill requires that any individual, partnership, corporation, or other entity that provides dental services through telehealth *make available* the name, telephone number, practice address, and the state license number for the dentist of record and any other dentist providing services to a patient before such services are rendered. This requirement applies exclusively to telehealth providers, and conflicts with the bill's requirement that all dentists, including telehealth providers, are required only to make available their license number *upon the patient's request*.

The bill also makes failure by the dentist of record to perform an in-person examination of the patient or obtain records from an in-person examination within the last six months and review such records prior to making an initial diagnosis, correction of a malposition of teeth, or initial use of an orthodontic appliance grounds for discipline. The bill does not, however, make this an affirmative requirement for dentists. This requirement would have the effect of eliminating direct-to-consumer alignment business models, unless such businesses are able to incorporate in-person visits that satisfy this requirement.

### Dental Advertising

The bill regulates advertisements for certain dental services provided via telehealth, including:

- The taking of an impression or the digital scanning<sup>38</sup> of the human tooth, teeth, or jaws by any means or method, directly or indirectly;
- Furnishing, supplying, constructing, reproducing, or repairing any prosthetic denture, bridge, or appliance or any other structure designed to be worn in the human mouth;
- Placing an appliance or a structure in the human mouth or adjusting or attempting to adjust the appliance or structure; and
- Correcting or attempting to correct malformations of teeth or jaws.

Advertisements for these services provided via telehealth must include a disclaimer that reads, in a clearly legible font and size:

“An in-person examination with a dentist licensed under chapter 466, Florida Statutes, is recommended before beginning telehealth treatment in order to prevent injury or harm.”

This requirement applies to advertisements intended to solicit patients including, but not limited to, business cards, circulars, pamphlets, newspapers, websites, and social media.

The provisions of the bill represent a significant departure from Florida's current policies regarding telehealth. Since telehealth was first recognized in statute in 2019,<sup>39</sup> Florida law has treated health care services as equivalent, regardless of whether they are rendered in person or via telehealth. By

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<sup>37</sup> S. 466.018, F.S.

<sup>38</sup> The bill defines “digital scanning” as the use of digital technology that creates a computer-generated replica of the hard and soft tissue of the oral cavity using enhanced digital photography, lasers, or other optical scanning devices.

<sup>39</sup> See, ch. 2019-137, L.O.F.

establishing requirements that apply exclusively to telehealth services, the bill creates a separate, more stringent, regulatory standard for services provided via telehealth.

The bill provides an effective date of July 1, 2024.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 466.003, F.S., relating to definitions.
- Section 2:** Amends s. 466.016, F.S., relating to license to be displayed.
- Section 3:** Amends s. 466.018, F.S., relating to dentist of record; patient records.
- Section 4:** Amends s. 466.019, F.S., relating to advertising by dentists
- Section 5:** Amends s. 466.028, F.S., relating to grounds for disciplinary action; action by the board.
- Section 6:** Provides an effective date of July 1, 2024.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

According to DOH, they will experience an increase in workload associated with additional complaints, investigations, and prosecutions due to the provisions of this bill. DOH estimates a need for an additional three full-time equivalent (FTE) positions in order to implement the provisions of the bill.<sup>40</sup> The total estimated annual FTE cost of \$386,117 consists of the following:<sup>41</sup>

- Salary and Benefits - \$338,435/Recurring
- Salary Rate – 237,580 Units of Rate/Recurring
- Expense category - \$26,625/Recurring + \$19,977/Non-Recurring
- Human Resources - \$1,080/Recurring

DOH will also incur non-recurring costs associated with rulemaking and IT system updates, which current budget authority is adequate to absorb.<sup>42</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Businesses operating under the direct-to-consumer teeth aligner business model may experience a significant negative economic impact due to the regulatory provisions of the bill.

**D. FISCAL COMMENTS:**

None.

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<sup>40</sup> *Supra*, note 27.

<sup>41</sup> *Supra*, note 27.

<sup>42</sup> *Supra*, note 27.



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

DOH and the Board of Dentistry have sufficient rulemaking authority to implement the bill's provisions.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES