

# HOUSE . . . . . No. 4239

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, November 8, 2021.

The committee on Consumer Protection and Professional Licensure to whom was referred the petition (accompanied by bill, House, No. 369) of Denise C. Garlick relative to establishing a remediation program for dentists dealing with illness, substance abuse or mental health issues, reports recommending that the accompanying bill (House, No. 4239) ought to pass.

For the committee,

TACKEY CHAN.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
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An Act establishing a dentist diversion program.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 112 of the General Laws is hereby amended by inserting after  
2 section 52G the following two sections:-

3           Section 52H. In sections 52H and 53I, the following words shall have the following  
4 meanings:

5           “Impairment”, the inability of a licensed healthcare provider to practice with reasonable  
6 skill and safety as a result of a substance use or other mental disorder, or physical illness or  
7 condition, including but not limited to those illnesses or conditions that would adversely affect  
8 cognitive, motor, or perceptive skills. Impairment is a functional classification which exists  
9 dynamically on a continuum of severity and can change over time rather than being a static  
10 phenomenon. Illness, per se, does not constitute impairment.

11           “Remediation Program”, a confidential program for licensed dental professionals whose  
12 ability to practice may be impaired due to illness, typically substance use or other mental health  
13 disorders. The program offers a means of recovery and rehabilitation without the loss of a license

14 by providing access to early identification, intervention, evaluation, monitoring, referral to  
15 appropriate intervention programs and treatment services, and earned advocacy, when  
16 appropriate, of licensees with potentially impairing illness, ideally prior to functional  
17 impairment.

18 “Continuing Care”, guidance, support, toxicology collection, and accountability through  
19 a formal monitoring contract concurrent with or following an evaluation and treatment process.

20 “Substantive Non-Compliance”, a pattern of non-compliance or dishonesty in continuing  
21 care monitoring or an episode of non-compliance which could place patients at risk.

22 “Peer Review Committee”, a committee of healthcare providers which has as its function  
23 the evaluation or improvement of the quality of health care rendered by providers of health care  
24 services, and the evaluation and assistance of health care providers impaired or allegedly  
25 impaired by reason of alcohol, drugs, physical disability, mental instability or otherwise.

26 Section 52I. (a) The board is hereby authorized and directed to select one or more entities  
27 to serve as designated remediation programs. A designated remediation program shall: (i) serve  
28 as a voluntary alternative to traditional disciplinary actions; (ii) establish criteria for the  
29 acceptance, denial, or termination of registered dentists and dental hygienists in the program; and  
30 (iii) establish an outreach program to identify registered dentists and dental hygienists who may  
31 have a substance use disorder and to provide education about the rehabilitation program. Any  
32 registered dentist or dental hygienist in Massachusetts may request to participate in the program.

33 (b) To be eligible for designation, a remediation program shall have demonstrable  
34 experience in the field of substance use disorder and employ a licensed mental health  
35 professional with experience in the treatment of substance use disorders. No employee or

36 volunteer member of the remediation program who is licensed to practice by the department of  
37 public health, division of occupational licensure or by the board of registration in dentistry shall  
38 have had any type of disciplinary or enforcement action taken against them by their respective  
39 licensing board, the United States Food and Drug Administration or the United States Drug  
40 Enforcement Administration during the 5 years preceding their appointment to the program. No  
41 member of the board shall be employed by or volunteer for the program.

42 (c) The remediation program shall have the following duties and responsibilities: (i) to  
43 evaluate registered dentists and dental hygienists who request to participate in the program  
44 regarding admission into the program; (ii) to agree to accept referrals from the board; (iii) to  
45 review and designate treatment facilities and assessment services to which participants may be  
46 referred; (iv) to receive and review information concerning a participant in the program; (v) to  
47 disclose to the board aggregate data and statistics on compliance based on ongoing recovery  
48 documentation; (vi) to provide each participant, through contracted agreements, with an  
49 individualized remediation plan according to guidelines developed through collaboration  
50 between the board and the remediation program with regards to requirements for supervision;  
51 (vii) to provide information to dentists or dental hygienists who request to participate in the  
52 program, and (viii) to establish an outreach program to identify registered dentists and dental  
53 hygienists who may have a substance use or other mental health disorder, and to provide  
54 education about the remediation program.

55 (d) In accordance with peer review law, proceedings, reports, and records of the  
56 remediation program are to be kept confidential pursuant to section 204 of chapter 111. Such  
57 records are not to be disclosed, are not subject to subpoena or discovery, and cannot be

58 introduced into evidence in any judicial or administrative proceeding, subject to paragraph (e)  
59 and (f).

60 (e) A registered dentist or dental hygienist who requests to participate in the remediation  
61 program shall agree to cooperate with the individualized remediation plan recommended by the  
62 remediation program. The remediation program may report to the board the name and license  
63 number of a registered dentist or dental hygienist that fails to comply with the provisions of an  
64 individualized remediation plan.

65 (f) After the remediation program, in its discretion, has determined that a registered  
66 dentist or dental hygienist has successfully completed an individualized remediation plan  
67 through the program, the board shall seal all records pertaining to the participation of the  
68 registered dentist or dental hygienist in the program. No record shall be sealed sooner than 5  
69 years from the participant's date of entry into the program. All board and remediation program  
70 records of a participant's involvement in the program shall be kept confidential and shall not be  
71 subject to discovery or subpoena in any civil, criminal, legislative or administrative proceeding  
72 without the prior written consent of the participant.