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**SENATE BILL 5322**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

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

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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