

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1319 Dental Health
SPONSOR(S): Health Quality Subcommittee, Robinson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Siples	McElroy
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Board of Dentistry (Board), 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.

Teledentistry is the use of telehealth systems or methodologies to provide and support dental care delivery, diagnosis, consultation, treatment, transfer of dental information, and education. At-home clear aligner systems, which gradually reposition teeth, employ teledentistry to develop treatment plans and remotely manage treatment.

Current law provides that taking impressions of the human teeth is the practice of dentistry; however, it is unclear whether a dentist who orders impression material for patients to use on themselves is violation of the practice act. CS/HB 1319 authorizes a dentist to order physical impression material for self-administration by a patient for the purpose of fabricating orthodontic appliances.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Board of Dentistry (Board), within the Department of Health (DOH), regulates dental practice in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act.¹ The Council on Dental Hygiene develops rules and policies for recommendations to the Board.² The Board must consider the rules and policy recommendations at its next regularly scheduled meeting. The Council on Dental Assisting makes recommendations to the Board on dental assisting.³

Practice of Dentistry

A person wishing to practice dentistry in this state must be a graduate of an accredited dental school and successfully complete the required licensing examinations.⁴ Dentists must also maintain professional liability insurance or provide proof of professional 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 \$300,000.⁵ The professional liability insurance must provide coverage for the actions of any dental hygienist supervised by the dentist.⁶

The scope of practice for a dentist includes:⁷

- Examining, diagnosing, treating, planning, and caring for conditions within the human oral cavity and its adjacent tissues and structures;
- Performing or attempting to perform any dental operation or oral-maxillofacial surgery;
- Taking of impressions of the human tooth, teeth, or jaws directly or indirectly and by any means or method;
- Supplying artificial substitutes for the natural teeth or furnishing, supplying, constructing, reproducing, or repairing any prosthetic denture, bridge, appliance, or any other structure designed to be worn in the human mouth except on the written work order of a duly licensed dentist;
- Placing appliance or structure in the human mouth or adjusting or attempting to adjust such appliance or structure;
- Delivering an appliance or structure to any person other than the dentist upon whose work order the work was performed;
- Professing to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure designed to be worn in the human mouth;
- Diagnosing, prescribing, or treating or professing to diagnose, prescribe, or treat disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws or oral-maxillofacial region;
- Extracting or attempting to extract human teeth;
- Correcting or attempting to correct malformations of teeth or of jaws; and
- Repairing or attempting to repair cavities in the human teeth.

Teledentistry

¹ Section 466.004, F.S.

² Section 466.004(2)(a), F.S.

³ Section 466.004(2)(b), F.S.

⁴ Section 466.006, F.S.

⁵ Rule 64B5-17.011(1), F.A.C. 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.

⁶ Rule 64B5-17.011(4), F.A.C.

⁷ Section 466.003(3), F.S.

Teledentistry is the use of electronic information, imaging, and communication technologies, including interactive audio, video, data communications as well as store and forward technologies, to provide and support dental care delivery, diagnosis, consultation, treatment, transfer of dental information, and education.⁸ According to the American Dental Association's policy on teledentistry, a patient has the right to expect, among other things:⁹

- That the dentist providing services using teledentistry is licensed in the state where the patient receives services, or is providing these services as otherwise authorized by the state dental board;
- The services provided through teledentistry will follow evidence-based practice guidelines as a means of ensuring patient safety, quality of care, and positive health outcomes;
- The services provided through teledentistry include care coordination as a part of a dental home;
- That the patient will be actively involved in treatment decisions, will be able to choose how they receive a covered service, including considerations for urgency, convenience, and satisfaction and without such penalties as higher deductibles, copayments, or coinsurance relative to that of in-person services.

Teledentistry has been shown to reduce the cost of care and increase efficiency through reduced travel time, shared professional staff, and fewer in-person visits.¹⁰ Teledentistry also improves access to care for patient who live in a rural area or where there is a lack of easy access to health care services.¹¹

Clear Aligners

Clear aligners are plastic orthodontic devices that, similar to traditional metal braces, apply pressure to gradually move and adjust teeth.¹² Clear aligners were introduced as an alternative to metal braces in 1998, when the federal Food and Drug Administration approved their use.¹³ Clear aligner therapy was initially introduced to treat minor irregularities in tooth position.¹⁴

Prior to initiating treatment, an orthodontist or dentist will examine the patient and perform impressions or digital scans of the teeth. Using the impressions or scans, a dentist or orthodontist creates a digital treatment plan to straighten the patient's teeth.¹⁵

In recent years, makers of clear aligners began marketing the systems directly to consumers for at-home use. A consumer may visit a retail location where a representative will make impressions or take scans of the teeth, or a consumer may choose to take impressions at home using a kit provided by the company.¹⁶ The impressions or scans are then provided to a dental professional using a teledentistry platform who develops a treatment plan and manage the clear alignment therapy remotely. There are no in-office visits with the dentist or orthodontist.¹⁷

Litigation

⁸ American Teledentistry Association, *Facts about Teledentistry*, available at <https://www.americanteledentistry.org/facts-about-teledentistry/> (last visited on February 1, 2020).

⁹ American Dental Association, *ADA Policy on Teledentistry*, (2015), available at <https://www.ada.org/en/about-the-ada/ada-positions-policies-and-statements/statement-on-teledentistry> (last visited February 1, 2020).

¹⁰ *Supra* note 8.

¹¹ *Id.*

¹² American Association of Orthodontists, *Orthodontic Treatment with Clear Aligners*, (June 13, 2018), available at <https://www.aaoinfo.org/blog/orthodontic-treatment-with-clear-aligners/> (last visited January 28, 2020).

¹³ T. Weir, "Clear Aligners in Orthodontic Treatment," *AUSTRALIAN DENTAL JOURNAL* 62, available at <https://onlinelibrary.wiley.com/doi/epdf/10.1111/adj.12480> (last visited January 28, 2020). The technology employed by aligners has existed since 1946.

¹⁴ *Id.*

¹⁵ Invisalign, *Frequently Asked Questions*, available at <https://www.invisalign.com/frequently-asked-questions> (last visited January 28, 2020). Invisalign is only available for use by dentists and orthodontists.

¹⁶ Dental.org, *Invisalign Alternatives: Find the Best Invisalign Competitor for You*, (last rev. Jan. 24, 2020), available at <https://www.dental.org/us/adult-braces/invisalign-alternatives/> (last visited February 1, 2020).

¹⁷ *Id.*

Dental boards in several states, as well as professional dental associations, have taken actions against clear aligner companies for the unlicensed practice of dentistry. General allegations include that the companies are conducting dental examinations and taking impressions, which fall within the scope of practice of a licensed dentist.¹⁸ No such action has been taken in Florida.

Effect of Proposed Changes

Current law provides that taking impressions of the human teeth is the practice of dentistry; however, it is unclear whether a dentist who orders impression material for patients to use on themselves is violation of the practice act. CS/HB 1319 authorizes a dentist to order physical impression material for self-administration by a patient solely for fabricating an orthodontic appliance.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 466.017, F.S., relating to prescription of drugs; anesthesia.

Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹⁸ See generally, David Burger, *New Jersey Dental Association Lodges Complaint against SmileDirect Club*, (Feb. 8, 2019), ADANews, available at <https://www.ada.org/en/publications/ada-news/2019-archive/february/new-jersey-dental-association-lodges-complaint-against-smiledirect-club> (last visited February 1, 2020); Kimber Solana, *Association Files Complaint with FTC, FDA against SmileDirect Club*, (July 12, 2019), ADANews, available at <https://www.ada.org/en/publications/ada-news/2019-archive/july/association-files-complaint-with-ftc-fda-against-smiledirect-club> (last visited February 1, 2020); Blake Farmer, *Fast Growing SmileDirect Club Faces Class Action Suit by Orthodontists*, (Sept. 25, 2019), available at <https://wpln.org/post/fast-growing-smiledirectclub-faces-class-action-suit-by-orthodontists/> (last visited February 1, 2020); Michael Carabash, *Class Actions Filed Against SmileDirect Club for their IPO*, (Nov. 5, 2019), available at <https://dentistlawyers.ca/class-action-lawsuits-filed-against-smiledirectclub-for-their-ipo/> (last visited February 1, 2020).

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2020, the Health Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment authorized a dentist to order physical impression material for self-administration by a patient solely for fabricating an orthodontic appliance.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.