

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 152

INTRODUCER: Senators Brandes and Perry

SUBJECT: Dental Therapy

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 152 authorizes the Department of Health (“DOH”) to issue a dental therapist license to an applicant who possesses a degree or certificate in dental therapy from an accredited program. The bill authorizes a licensed dental therapist to perform remediable tasks under the general supervision of a dentist. The bill provides a scope of practice for dental therapists and requires the Board of Dentistry (“BOD”) to appoint and establish members of the Council of Dental Therapy.

The bill also authorizes Medicaid to reimburse for dental services provided in a mobile dental unit owned by a health access setting.

The bill will have an indeterminate fiscal impact and provides an effective date of July 1, 2020.

II. Present Situation:

Regulation of Dental Practice in Florida

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

Any person wishing to practice dentistry in this state must apply to the DOH and meet specified requirements. Section 466.006, F.S., requires dentistry licensure applicants to sit for a national

¹ Section 466.004, F.S.

² Section 466.003(3), F.S.

³ Section 466.003(4)-(5), F.S.

exam, a state exam, and a practicum exam.⁴ 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 National Board of Dental Examiners (NBDE) dental examination.

Dentists must 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 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 The professional liability insurance must provide coverage for the actions of any dental hygienist supervised by the dentist.⁷

Health Professional Shortage Areas

The U.S. Department of Health and Human Services' Health Resources and Services Administration (HRSA) designates Health Professional Shortage Areas (HPSAs) according to criteria developed in accordance with section 332 of the Public Health Services Act. HPSA designations are used to identify areas and population groups within the United States that are experiencing a shortage of health care provider shortages in primary care, dental health, or mental health.⁸ The threshold for a dental HPSA is a population-to-provider ratio of at least 5,000:1.⁹

Medically Underserved Area

HRSA also designates Medically Underserved Areas (MUAs) and Medically Underserved Populations (MUPs). MUAs and MUPs identify geographic areas and populations with a lack of access to primary care services.¹⁰ MUAs have a shortage of primary care health services for residents within a geographic area such as a county, a group of neighboring counties, a group of urban census tracts, or a group of county or civil divisions.¹¹ MUPs are specific sub-groups of people living in a defined geographic area with a shortage of primary care health services who may face economic, cultural, or linguistic barriers to health care.¹² MUPs include, but are not limited to, those who are homeless, low-income, Medicaid-eligible, Native American, or migrant farmworkers.¹³

⁴ 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.

⁵ Rule 64B5-17.011(1), F.A.C.

⁶ Rule 64B5-17.011(2), F.A.C.

⁷ Rule 64B5-17.011(4), F.A.C.

⁸ Health Resources and Services Administration, *Health Professional Shortage Areas (HPSAs)*, available at <https://bhwh.hrsa.gov/shortage-designation/hpsas> (last visited Jan. 31, 2020).

⁹ Id.

¹⁰ Health Resources and Services Administration, *Medically Underserved Areas and Populations (MUA/Ps)*, <https://bhwh.hrsa.gov/shortage-designation/muap> (last visited Jan. 31, 2020).

¹¹ Id.

¹² Id.

¹³ Id.

Access to Dental Care and Dental Workforce in Florida

Nationally, there are 5,352 dental HSPAs, 296 of which are in Florida.¹⁴ The DOH reports that in 2017 - 18 fiscal year there were approximately 55.8 licensed dentists per 100,000 people in Florida; however, this ratio varies greatly across the state.¹⁵ Most dentists are disproportionately concentrated in the more populous areas of the state. Three counties, Dixie, Glades, and Lafayette, do not have any licensed dentists, while other counties have over 150 dentists per 100,000 residents.¹⁶

Lack of access to dental care can lead to poor oral health and poor overall health.¹⁷ Research has shown a link between poor oral health and diabetes, heart and lung disease, stroke, respiratory illnesses, and adverse birth outcomes including the delivery of pre-term and low birth weight infants.¹⁸

Dental Licensure Programs for Underserved Populations in Florida

The DOH may issue a permit to a nonprofit corporation chartered to provide dental care for indigent persons. A nonprofit corporation may apply for a permit to employ a non-Florida licensed dentist who is a graduate of an accredited dental school.¹⁹ The DOH also issues limited licenses to dentists whose practice is limited to providing services to the indigent or critical need populations within the state.²⁰ The DOH will waive the application and all licensure if the limited licensee applicant submits a notarized statement from the employer that he or she will not be receiving monetary compensation for services provided.

Health Access Licenses

A health access license allows out-of-state dentists who meet certain criteria to practice in a health access setting without the supervision of a Florida licensed dentist.²¹ A health access setting is a program or institution of the Department of Children and Families, the DOH, Department of Juvenile Justice, a nonprofit health center, a Head Start center, a federally-qualified health center (FQHC) or FQHC look-alike, a school-based prevention program, or a clinic operated by an accredited dental school or accredited dental hygiene program.²²

A holder of a health access dental license must apply for renewal of the license each biennium and provide a signed statement that she or he has complied with all continuing education

¹⁴ Health Resources and Services Administration, data.HPSA.gov, *Shortage Areas*, available at <https://data.hrsa.gov/topics/health-workforce/shortage-areas> (last visited Aug. 27, 2019).

¹⁵ Florida Department of Health, Florida CHARTS, *Total Licensed Florida Dentists*, <http://www.flhealthcharts.com/charts/OtherIndicators/NonVitalIndNoGrpDataViewer.aspx?cid=0326> (last visited Jan. 31, 2020).

¹⁶ Id.

¹⁷ Florida Department of Health, *Florida's Burden of Oral Disease Surveillance Report*, (Aug, 2016), p. 5, available at, <http://www.floridahealth.gov/programs-and-services/community-health/dental-health/reports/documents/floridas-burden-oral-disease-surveillance-report.pdf> (last visited Jan. 31, 2020).

¹⁸ Id.

¹⁹ Rule 64B5-7.006, F.A.C.

²⁰ See Section 456.015, F.S., and Rule 64B5-7.007, F.A.C.

²¹ Section 466.0067, F.S. The dental health access license is scheduled for repeal on January 1, 2020, unless saved from repeal by reenactment by the Legislature (s. 466.00673, F.S.).

²² Section 466.003(14), F.S. Such institutions or programs must report violations of the Dental Practice Act or standards of care to the Board of Dentistry.

requirements of an active dentist. The health access dental license will be renewed if the applicant:

- Submits documentation from the employer in the health access setting that the licensee has at all times pertinent remained an employee;
- Has not been convicted or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Has paid the appropriate renewal fee;
- Has not failed the Florida examination requirements since initially receiving the health access dental license or since the last renewal; and
- Has not been reported to the National Practitioner Data Bank, unless the applicant successfully appealed to have his or her name removed from the data bank.

A health access dental license will be revoked upon the termination of the licensee's employment from a qualifying health access setting, final agency action determining that a licensee has violated disciplinary grounds as provided in s. 466.028, F.S., or failure of the Florida dental licensure examination.

It is considered the unlicensed practice of dentistry if a licensee fails to limit his or her practice to a health access setting.²³

Dental Therapy

Dental therapists are midlevel dental providers, similar to physician assistants in medicine.²⁴ Dental therapists provide preventive and routine restorative care, such as filling cavities, placing temporary crowns, and extracting badly diseased or loose teeth.²⁵ Arizona, Connecticut, Minnesota, Maine, New Mexico, Nevada, and Vermont have authorized the practice of dental therapy, and dental therapists are authorized to practice in tribal areas of Alaska, Oregon, and Washington.²⁶

In 2015, the Commission on Dental Accreditation (CODA) established accreditation standards for dental therapy education programs.²⁷ There are no CODA-accredited dental therapy education programs. There are currently three dental therapy education programs in the United States, which are located in Minnesota and Alaska, and a fourth dental therapy education program is being developed in Vermont. The dental therapy education programs that currently exist are accredited by regional accreditation agencies or approved by state dental boards.

III. Effect of Proposed Changes:

Section 1 amends s. 409.906, F.S., to allow Medicaid to provide reimbursement for dental services provided by a mobile dental unit owned by, operated by, or having a contractual

²³ Section 466.00672(2), F.S.

²⁴ Pew Charitable Trusts, *5 Dental Therapy FAQs*, (April 21, 2016), available at <http://www.pewtrusts.org/en/research-and-analysis/q-and-a/2016/04/5-dental-therapy-faqs> (last visited Jan. 31, 2020).

²⁵ Id.

²⁶ Pew Charitable Trusts, *National Momentum Building for Midlevel Dental Providers*, <http://www.pewtrusts.org/en/research-and-analysis/analysis/2016/09/28/states-expand-the-use-of-dental-therapy> (last visited Jan. 31, 2020).

²⁷ Commission on Dental Accreditation, *Accreditation Standards for Dental Therapy Education Programs*, (eff. Feb. 6, 2015), available at <http://www.ada.org/~media/CODA/Files/dt.ashx> (last visited Jan. 31, 2020).

relationship with a health access setting or a similar setting or program that serves underserved populations that face serious barriers to accessing dental services. Examples include Early Head Start programs, homeless shelters, schools, and the Special Supplemental Nutrition Program for Women, Infants and Children.

Section 2 amends s. 466.001, F.S., to express legislative intent to ensure every dental therapist practicing in the state meets minimum requirements for safe practice, and that those dental therapists who fall below minimum competency or otherwise present a danger to the public shall be prohibited from practicing.

Section 3 amends s. 466.002, F.S., to provide that nothing in the Dental Practice Act (ch. 466, F.S.) shall apply to dental therapy students while performing regularly assigned work under the curriculum of schools, nor to instructors of dental therapy while performing regularly assigned instructional duties.

Section 4 amends s. 466.003, F.S., to add definitions for dental therapy and dental therapists, and expands the definition of ‘health access settings’ to include dental therapy programs.

Section 5 amends s. 466.004, F.S., to provide for the creation of the Council on Dental Therapy. Members of the council will be appointed by the chair of the board and consist of one board member to chair the council and three dental therapists actively engaged in the practice of dental therapy in Florida. The council must meet at least three times per year, and at the request of the board chair, a majority of the members, or the council chair. The council is tasked with rule and policy recommendations, which must be reviewed by the board. The board has authority to take final action on adopting recommendations made by the council.

Section 6 amends s. 466.006, F.S., to make dentists who are full-time faculty members of dental therapy schools eligible for what is considered “full-time practice” of dentists for purposes of state licensure.

Section 7 amends s. 466.0075, F.S., to provide that the board may require any person applying to take the dental therapy licensure exam to maintain medical liability insurance sufficient to cover any incident of harm to a patient during a clinical exam.

Section 8 amends s. 466.009, F.S., to allow applicants for a dental therapy license who fail one part of the practical or clinical exam for licensure to retake only that part in order to pass the exam, however if the applicant fails more than one part they must retake the entire exam.

Section 9 amends s. 466.011, F.S., to provide that anyone who satisfies all parts of the newly created s. 466.0225, F.S., pertaining to dental therapy, must be certified for licensure by the DOH.

Section 10 creates s. 466.0136, F.S., requiring all licensed dental therapists to complete at least 24 hours of continuing education (CE) in dental subjects approved by the board biennially. The bill specifies that CE programs must be programs that, in the opinion of the board, contribute directly to the dental education of the licensee. The bill allows individuals licensed as both a dental therapist and a dental hygienist to count one hour of CE toward the total annual CE

requirements for both professions. The bill gives the board rulemaking authority to enforce the provisions of this section, and also allows the board to excuse the requirement for those facing unusual circumstances, emergencies, or hardships.

Section 11 amends s. 466.0016, F.S., requiring licensed dental therapists to display a copy of their license in plain sight of patients at each office where they practice.

Section 12 amends s. 466.017, F.S., requiring the board to adopt rules which establish additional requirements relating to the use of general anesthesia or sedation for dental therapists who work with either. The bill also requires the board to adopt a mechanism to verify compliance with training and certification requirements. The bill requires any dental therapist who uses any form of anesthesia to obtain certification in either basic CPR or advanced cardiac life support as approved by the American Heart Association or American Red Cross, with recertification every two years. The bill provides that dental therapists working under the general supervision of a dentist may administer local anesthesia, including intraoral block anesthesia, soft tissue infiltration anesthesia, or both if they are properly certified. The bill also permits dental therapists to utilize x-ray machines if authorized by their supervising dentist to do so.

Section 13 amends s. 466.018, F.S., provides that a dentist of record shall be primarily responsible for treatment rendered by a dental therapist. The bill requires anyone other than the dentist of record, a dental hygienist, a dental therapist, or a dental assistant to note their initials in the patient record if they perform treatment on a patient.

Section 14 creates s. 466.0225, F.S., requiring any applicant for licensure as a dental therapist to take the appropriate licensure exams, verify an application for licensure by oath, and include two personal photographs with the application. The bill provides that in order to take the dental therapy exams and obtain licensure, an applicant must:

- The applicant must be at least 18 years old;
- Graduate from a CODA-accredited dental therapy school or program, or a program accredited by another entity recognized by the U.S. Department of Education;
- Successfully complete a dental therapy practical or clinical exam produced by the American Board of Dental Examiners (ADEX) within three attempts;
- Not have been disciplined by the Board with the exception of minor violations or citations;
- Not have been convicted, or pled nolo contendere to, a misdemeanor or felony related to the practice of dental therapy; and
- Successfully complete a written laws and rules exam on dental therapy.

The bill provides that an applicant who meets these requirements and successfully completes either the ADEX practical/clinical exams or exams in another state deemed comparable by the board must be licensed to practice dental therapy in Florida.

Section 15 creates s. 466.0227, F.S., providing legislative findings that licensing dental therapists would improve access to high-quality affordable oral health services, and would rapidly improve such access for low-income, uninsured, and underserved patients. To further this intent, the bill limits dental therapists to practicing in the following settings:

- A health access setting;

- A community health center;
- A military or veterans' hospital or clinic;
- A governmental or public health clinic;
- A school, Head Start program, or school-based prevention program;
- An oral health education institution;
- A hospital;
- A geographical area designated as a dental health professional shortage area by the federal government; or
- Any other clinic or practice setting if at least 50% of the patients are enrolled in Medicaid or lack dental insurance and report an annual income of less than 200% of the federal poverty level.

The bill provides that a dental therapist may provide the following services under the general supervision of a dentist:

- All services specified by CODA in its Dental Therapy Accreditation Standards;²⁸
- Evaluating radiographs;
- Placement of space maintainers;
- Pulpotomies on primary teeth;
- Dispensing and administering nonopioid analgesics, and;
- Oral evaluation of dental disease and forming of treatment plans if authorized by a supervising dentist and subject to any conditions in a collaborative agreement between the dentist and dental therapist.

The bill requires a dental therapist and supervising dentist to enter into a written collaborative agreement prior to performing any of the aforementioned services, and the agreement must include permissible practice settings, practice limitations and protocols, record maintenance procedures, emergency protocols, medication protocols, and supervision criteria. The bill requires supervising dentists to determine the number of hours a dental therapist must perform under direct or indirect supervision before practicing under general supervision. The bill provides that a supervising dentist must be licensed to practice in Florida and is responsible for all services authorized and performed by the dental therapist pursuant to a collaborative agreement. Finally, the bill allows a dental therapist to perform services prior to being seen by the supervising dentist if provided for in the collaborative agreement and if the patient is subsequently referred to a dentist for any additional services needed that exceed to the dental therapist's scope of practice.

Section 16 amends s. 466.026, F.S., to provide that the unlicensed practice of dental therapy, and offering to sell a dental therapy school or college degree to someone who was not granted such a degree, both constitute third-degree felonies. The bill also provides that using the name "dental therapist" or the initials, "D.T." or otherwise holding one's self out as an actively licensed dental therapist without proper licensure is a first-degree misdemeanor.

²⁸ See complete list of service required for CODA Dental Therapy Accreditation Standards Commission on Dental Accreditation, *Accreditation Standards for Dental Therapy Education Programs* (eff. Feb. 6, 2015), Copyright 2019, Standard 2 – Education Program, 2-12 p. 29 - 30 available at https://www.ada.org/en/~media/CODA/Files/dental_therapy_standards (last visited Aug. 27, 2019).

Section 17 amends s. 466.028, F.S., to provide that the following acts constitute grounds for denial of a dental therapy license or discipline of an existing dental therapy license:

- Having a license to practice dental therapy disciplined by another state or practice jurisdiction;
- Being convicted or found guilty of, or pleading nolo contendere to, a crime related to the practice of dental therapy;
- Aiding or abetting the unlicensed practice of dental therapy;
- Being unable to practice dental therapy with reasonable skill and safety by reason of illness, chemical impairment, or any mental or physical condition, and;
- Fraud, deceit, or misconduct in the practice of dental therapy.

Section 18 amends s. 466.0285, F.S., to prohibit anyone other than a licensed dentist from employing dental therapists in the operation of a dental office.

Section 19 requires that by July 1, 2023, the DOH, in consultation with the board and AHCA must submit, to the President of the Senate and the Speaker of the House of Representatives, a progress report which must include:

- The progress that has been made in Florida to implement dental therapy training programs, licensing, and Medicaid reimbursement;
- Data demonstrating the effects of dental therapy in Florida on:
 - Patient access to dental services;
 - The use of primary and preventative dental services in underserved regions and populations, including Medicaid;
 - Costs to dental providers, patients, insurers and the state; and
 - The quality and safety of dental services.
- Specific recommendations for any necessary legislative, administrative, or regulatory changes relating to dental therapy; and
- Any additional information the DOH deems appropriate.

A final report is required to be submitted to the Legislature three years after the first dental therapy license is issued.

Section 20 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The DOH anticipates an estimated revenue for the first biennium of licensure of approximately \$2.4 million, and an estimated revenue for the second biennium of \$2 million.²⁹

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will be an indeterminate fiscal impact on individuals who apply for licensure as dental therapists as they will need to pay application and licensure fees.

C. Government Sector Impact:

Estimated costs to the state for the first biennium of licensure are \$584,408, as shown below.³⁰

	RECURRING	NON-RECURRING
SALARY	\$205,745	
OPS	\$800	\$25,260
EXPENSE	\$54,646	\$22,145
CONTRACTED SERVICES	\$65,703 (Recurring Biannually)	
HUMAN RESOURCES	\$1,316	\$107
TOTAL	\$328,210	\$47,512

VI. Technical Deficiencies:

The bill incorrectly cites the statutory reference for the definitions of health access setting and school-based prevention programs. It should read s. 466.003(14), F.S., and s. 466.003(15), F.S., respectively.

²⁹ Florida Department of Health, 2020 Agency Legislative Bill Analysis, HB 649. October 14, 2019. On file with the Senate Committee on Children, Families and Elder Affairs.

³⁰ *Id.*

VII. Related Issues:

According to the DOH, the proposed language in the newly created s. 466.0225(1), F.S., is outdated as applicants for licensure with the DOH are no longer required to submit two photographs as part of the application process.³¹

The bill fails to define “minor violations” as cited in the newly created s. 466.0225, F.S.

The bill provides that a dental therapist may provide services to a patient prior to the patient being seen by a dentist if the collaborative agreement between dentist and dental therapist so allows. The DOH has expressed uncertainty over whether this may present a conflict with s. 466.003(10), F.S., which requires a licensed dentist to examine and diagnose a patient before another licensed professional provides services.

VIII. Statutes Affected:

This bill substantially amends sections 409.906, 466.001, 466.002, 466.003, 466.004, 466.006, 466.0075, 466.009, 466.011, 466.016, 466.017, 466.018, 466.026, 466.028, and 466.0285 of the Florida Statutes.

This bill creates sections 466.0136, 466.0225, and 466.0227 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³¹ *Id.*