

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 Health Policy

BILL: CS/SB 356

INTRODUCER: Banking and Insurance Committee and Senator Boyd

SUBJECT: Practice of Dentistry

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rossitto Vanwinkle</u>	<u>Brown</u>	<u>HP</u>	Favorable
2.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 356 requires dentists and any individual, partnership, corporation, or other entity that provides dental services through telehealth to make available the dentist's name, telephone number, after-hours contact information for emergencies, and upon request, licensure information.

The bill requires the dentist of record to remain primarily responsible for all dental treatment for any patient who is treated through telehealth, whether care is rendered by the dentist of record, another dentist, dental hygienist, or dental assistant.

The bill creates a definition for advertisement and requires that if dental services are provided through telehealth, an advertisement must include a specific disclaimer for each of the following services, if advertised:

- The taking of an impression or the digital scanning of the human tooth, teeth, or jaws, directly or indirectly and by any means or method;
- 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.

The bill sets supervisory standards for dental hygienists and dental assistants who take an impression or perform digital scanning of the human tooth, teeth, or jaws, directly or indirectly and by any means or method, for the purpose of the practice of dentistry, and provides for such

standards with respect to a dental laboratory technician who performs a digital scanning of the human tooth, teeth, or jaws in such circumstances.

The bill creates new disciplinary offenses that establish a standard that would require a dentist of record to perform an in-person examination of a patient or obtain records from an in-person examination within the last six months before the initial diagnosis and correction of a malposition of human teeth or initial use of an orthodontic appliance.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

The Practice of Dentistry

The Board of Dentistry (BOD) regulates the practice of dentistry 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

Dentists

The requirements for dental licensure in Florida are found in s. 466.006, F.S. An applicant must apply to the Department of Health (DOH) to take and pass the following examinations:

- The American Dental Licensing Examination (ADLEX);⁴ and
- An exam on Florida laws and rules relating to dentistry.

To take the ADLEX clinical examination, a dental applicant must be at least 18 years of age and must:

- Be a graduate from a dental school accredited by the American Dental Association's (ADA) Commission on Dental Accreditation (CODA) or any other dental accrediting entity recognized by the U.S. Department of Education (DOE); or
- Be a dental student in the final year of a program at an ADA-CODA-accredited dental school who has completed all the coursework necessary to prepare the student to perform the clinical and diagnostic procedures required to pass the examinations; and
- Have passed Parts I and II of the National Board Dental Examination (NBDE), administered by the Joint Commission on National Dental Examinations (JCNDE).⁵

¹ Section 466.004, F.S.

² Section 466.003(3), F.S.

³ Section 466.003(4) and (5), F.S.

⁴ Section 466.006, F.S.

⁵ Section 466.006(2), F.S. American Dental Association, Joint Commission on National Dental Examinations, *Upholding Quality Oral Care For All*, available at <https://jcnde.ada.org/> (last visited Mar. 16, 2023) The Joint Commission on National Dental Examinations (JCNDE) is the agency responsible for the development and administration of the National Board Dental Examinations (NBDE). This 16-member Commission includes representatives from dental schools, dental practice, state dental examining boards, dental hygiene, dental students, and the public.

If an applicant fails to pass the diagnostic skills examination in three attempts, the applicant is not eligible for reexamination unless she or he completes additional educational requirements established by the BOD.⁶

Dental Hygienist

The requirements for licensure as a dental hygienist are found in s. 466.007, F.S. An applicant must apply to the DOH to take the American Board of Dental Examiners' Dental Hygiene Examination (ADHLEX) and is entitled to licensure if he or she is 18 years of age or older and has:⁷

- Graduated from a dental hygiene college or school that is:
 - BOD-approved;
 - Accredited by the ADA-CODA or by any other dental accrediting entity recognized by the U.S. DOE;
- Passed the Florida Laws and Rules examination; and
- Passed the ADHLEX examination.

A dentist who is a graduate of an accredited dental college or school or a graduate of an unaccredited dental college or school, may also take the ADHLEX and obtain licensure as a dental hygienist if he or she meets certain additional criteria.⁸

License Display Requirements

Every dentist or 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. Any dentist or dental hygienist who practices at more than one location shall be required to display a copy of his or her license in each location where she or he practices.⁹

Dental Patient Records

Every dentist must maintain written dental records and medical history records on every patient which must justify the dentist's course of treatment for the patient. The records must include, but not be limited to:

- Patient history;
- Examination results;
- Test results; and,
- X rays, if taken.¹⁰

In a multidentist practice, the owner dentist(s) must maintain either the original or duplicates of all patient records, including dental charts, patient histories, examination and test results, study models, and X rays, of any patient treated by a dentist at the owner dentist's practice facility for four years from the date of the last patient's visit.¹¹ The owner dentist(s) of a multidentist

⁶ Section 466.006(5)(a)7., F.S.

⁷ Section 466.007(2), F.S.

⁸ See s. 466.007 (2)(b)1. and (3), F.S.

⁹ Section 466.016, F.S.

¹⁰ Section 466.018 (3), F.S.

¹¹ Section 466.018(5), F.S.

practice may be relieved of this responsibility if, upon request of the patient or the patient's legal representative, the dentist transfers custody of the records to another dentist, the patient, or the patient's legal representative and retains, in lieu of the records, a written statement, signed by the owner dentist, the person who received the records, and two witnesses, that lists the date, the records that were transferred and the persons to whom the records were transferred. The owner dentist(s) must provide reasonable access to duplicate records at cost.¹²

Dentist of Record

Section 466.018, F.S., requires that each dental patient shall have a dentist of record. The dentist of record must remain primarily responsible for all dental treatment on a patient regardless of whether the treatment is rendered by the dentist or by another dentist, dental hygienist, or dental assistant rendering such treatment in conjunction with, at the direction or request of, or under the supervision of such dentist of record. The dentist of record must be identified in the record of the patient. If treatment is rendered by a dentist other than the dentist of record or by a dental hygienist or assistant, the name or initials of such person must be placed in the record of the patient. In any disciplinary proceeding against a dentist, it is presumed as a matter of law that treatment was rendered by the dentist of record unless otherwise noted on the patient record.¹³

Delegation of Duties

A dentist may not delegate irremediable tasks to a dental hygienist or dental assistant, except as provided by law. A dentist may delegate remediable tasks to a dental hygienist or dental assistant when such tasks pose no risk to the patient. A dentist may only delegate remediable tasks so defined by law or BOD rule.¹⁴

The BOD designates by rule which tasks are remediable and delegable, except that the following are found by law to be remediable and delegable:

- Taking impressions for study casts but not for the purpose of fabricating any intraoral restorations or orthodontic appliance;
- Placing periodontal dressings;
- Removing periodontal or surgical dressings;
- Removing sutures;
- Placing or removing rubber dams;
- Placing or removing matrices;
- Placing or removing temporary restorations;
- Applying cavity liners, varnishes, or bases;
- Polishing amalgam restorations;
- Polishing clinical crowns of the teeth for the purpose of removing stains but not changing the existing contour of the tooth;
- Obtaining bacteriological cytological specimens not involving cutting of the tissue; and
- Administering local anesthesia.¹⁵

¹² Section 466.018(4), F.S.

¹³ Section 466.018,(1), F.S.

¹⁴ Section 466.024, (1), F.S.

¹⁵ *Id.*

All other remediable tasks must be performed under the direct, indirect, or general supervision of a dentist, after such additional training as required by BOD rule.¹⁶

A dentist may not delegate to anyone other than another licensed dentist:

- Any prescription of drugs or medications requiring the written order or prescription of a licensed dentist or physician; or
- Any diagnosis for treatment or treatment planning.¹⁷

According to the DOH, a direct-to-consumer teeth aligner business model currently exists for consumers. Dental impressions are being taken by the consumer using a dental impression kit mailed by the aligner company, or the consumer visits a location for a digital scan by a technician. The impression or image is then reviewed by a dentist to create custom aligners, which are shipped back to the consumer for use. This business model does not include an in-person examination by a licensed dentist or direct supervision by a licensed dentist when digital scanning is performed.¹⁸

Dental Advertising

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

- 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;
- 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.¹⁹

Telehealth

Section 456.47, F.S., defines the term "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. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

¹⁶ Section 466.024(7), F.S.

¹⁷ Section 466.024(8), F.S.

¹⁸ Florida Department of Health, *2023 Agency Legislative Bill Analysis, Senate Bill 356*, Jan. 25, 2023 (on file with the Senate Committee on Health Policy).

¹⁹ Section 466.019, F.S.

In a general sense, “synchronous” telehealth happens in live, real-time settings where the patient interacts with a provider, usually via phone or video. Providers and patients communicate directly, often resulting in a diagnosis, treatment plan, or prescription. Synchronous telehealth can include additional at-home devices such as a blood pressure or heart rate monitors, thermometers, oximeters, cameras, or scales to help the provider more accurately assess the patient’s health status.²⁰

“Asynchronous” telehealth, also known as “store-and-forward,” is often used for patient intake or follow-up care. For example, a patient sends a photo of a skin condition that is later reviewed by a dermatologist who recommends treatment.²¹

Section 456.47, F.S., also authorizes out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the DOH or the applicable board²² and meet certain eligibility requirements.²³ A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida without first becoming licensed by the state of Florida.

A telehealth provider may not use telehealth to prescribe a controlled substance listed in Schedule II²⁴ or s. 893.03, F.S., unless the controlled substance is prescribed for the following:

- The treatment of a psychiatric disorder;
- Inpatient treatment at a hospital licensed under ch. 395, F.S.;
- The treatment of a patient receiving hospice services as defined in s. 400.601, F.S.; or
- The treatment of a resident of a nursing home facility as defined in s. 400.021, F.S.²⁵

A telehealth provider must document in the patient’s medical record the health care services rendered using telehealth according to the same standard as used for in-person services. Medical records, including video, audio, electronic, or other records generated as a result of providing such services, are confidential pursuant to ss. 395.3025(4), and 456.057, F.S.²⁶

²⁰ TELEHEALTH.HHS.GOV, “Synchronous direct-to-consumer telehealth,” available at <https://telehealth.hhs.gov/providers/direct-to-consumer/synchronous-direct-to-consumer-telehealth/> (last visited Mar. 16, 2023).

²¹ TELEHEALTH.HHS.GOV, “Asynchronous direct-to-consumer telehealth,” available at <https://telehealth.hhs.gov/providers/direct-to-consumer/asynchronous-direct-to-consumer-telehealth/> (last visited Mar. 16, 2023).

²² Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within DOH or, in some cases, within DOH’s Division of Medical Quality Assurance (MQA).

²³ Section 456.47(4), F.S.

²⁴ Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous. Some examples of Schedule II drugs are: combination products with less than 15 milligrams of hydrocodone per dosage unit (Vicodin), cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), oxycodone (OxyContin), fentanyl, Dexedrine, Adderall, and Ritalin. United States Drug Enforcement Administration, Drug Scheduling, *Schedule II*, available at <https://www.dea.gov/drug-information/drug-scheduling> (last visited Mar. 16, 2023).

²⁵ Section 456.47(2)(c), F.S.

²⁶ Section 456.47(3), F.S.

The website of an out-of-state telehealth provider registered under s. 456.47, F.S., must prominently display a hyperlink to the DOH's website, and the DOH's website must publish a list of all out-of-state registrants and include the following information for each:

- Name;
- Health care occupation;
- Health care training and education, including completion dates and any certificates or degrees obtained;
- Out-of-state health care licenses, including license numbers;
- Florida telehealth provider registration number;
- Specialty, if any;
- Board certification, if any;
- Five-years of disciplinary history, including sanctions imposed and board actions;
- Medical malpractice insurance provider and policy limits, including whether the policy covers claims that arise in Florida; and
- The name and address of the registered agent designated for service of process in this state.²⁷

A health care professional may not register under s. 456.47, F.S., if his or her license to provide health care services is subject to a pending disciplinary investigation or action; or has been revoked in any state or jurisdiction. A health care professional registered under this subsection must notify the appropriate board, or the DOH if there is no board, of any restrictions placed on his or her license to practice, or any disciplinary action taken or pending against him or her, in any state or jurisdiction. The notification must be provided within five business days after the restriction is placed or disciplinary action is initiated or taken.²⁸

The applicable board, or the DOH if there is no board, may take disciplinary action against an out-of-state telehealth provider registered under s. 456.47, F.S., if the registrant:

- Fails to notify the applicable board, or the DOH if there is no board, of any adverse actions taken against his or her license;
- Has restrictions placed on, or disciplinary action taken against, his or her license in any state or jurisdiction;
- Violates any of the requirements of s. 456.47, F.S.; or
- Commits any act that constitutes grounds for disciplinary action under s. 456.072, F.S, or the applicable practice act for similarly licenses Florida providers.²⁹

Venue for civil or administrative actions initiated by the DOH, a board, or a patient who receives telehealth services from an out-of-state telehealth provider may be located in the patient's county of residence or in Leon County.³⁰ A health care professional who is not licensed to provide health care services in Florida, but who holds an active license to provide health care services in another state or jurisdiction, and who provides such services using telehealth to a patient located in Florida, is not subject to the registration requirement under s. 456.47, F.S., if the services are provided:

- In response to an emergency medical condition; or

²⁷ Section 456.47(4)(h), F.S.

²⁸ Section 456.47 (4)(d), F.S.

²⁹ Section 456.47(4)(i), F.S.

³⁰ Section 456.47(5), F.S.

- In consultation with a health care professional licensed Florida who has ultimate authority over the diagnosis and care of the patient.³¹

III. Effect of Proposed Changes:

SB 356 defines “digital scanning” for dentistry as the use of digital technology to create a computer-generated replica of the hard and soft tissue of the oral cavity using enhanced digital photography, lasers, or other optical scanning devices.

The bill amends s. 466.016, F.S. to require that every dentist must 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. Any individual, partnership, corporation, or other entity that provides dental services through telehealth must also provide its patients 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 provides dental services to the patient.

For any dental patient treated through telehealth, the bill requires that there must be a dentist of record as described in s. 466.018, F.S., who remains primarily responsible for all dental treatment on the patient regardless of whether the treatment is rendered by the dentist of record, another dentist, a dental hygienist, or dental assistant, in conjunction, or at the direction of, or under the supervision of, the dentist of record. A dentist of record for a telehealth patient is subject to all of the requirements S. 466.018, F.S., applicable to dentists of record.

The bill requires that any individual, partnership, corporation, or other entity that provides dental services through telehealth must also make available to the patient, before services are rendered, the name, the telephone number, practice address, and state license number for the dentist of record and any other dentist who will be providing dental services to the patient, and at any time requested by a patient.

SB 356 clarifies that s. 466.018, F.S., is not to be construed to assign any responsibility to a dentist of record for treatment rendered pursuant to a proper referral to another dentist who is not in the same practice with the dentist of record or to prohibit a patient from voluntarily selecting a new dentist without permission of the dentist of record.

SB 356 defines advertisement for s. 466.019, F.S., as a representation disseminated in any manner or by any means to solicit patients and includes, but is not limited to, business cards, circulars, pamphlets, newspapers, websites, and social media.

The bill amends s. 466.019, F.S., to require that an advertisement for dental services provided through 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” for each of the following dental services, if advertised:

³¹ Section 456.47(6), F.S.

- The taking of an impression or the digital scanning 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.

The bill amends s. 466.024, F.S., to require that only a licensed dentist, a dental hygienist under general supervision, or a dental assistant under direct supervision, may take an impression of the human tooth, teeth, or jaws, directly or indirectly, by any means or method, for the purpose of the practice of dentistry. The bill also amends the section to provide that only a licensed dentist, or a dental hygienist, dental assistant, or dental laboratory technician under general supervision may perform digital scanning of the human tooth, teeth, or jaws, directly or indirectly, by any means or method, for the purpose of the practice of dentistry.

SB 356 amends s. 466.028, F.S., to add the following additional grounds for the denial of a dental license or disciplinary action against a dentist:

- Failure by the dentist of record, before the initial diagnosis and correction of a malposition of human teeth or initial use of an orthodontic appliance, to perform an in-person examination of the patient or obtain records from an in-person examination within the last six months and to perform a review of the patient's most recent diagnostic digital or conventional radiographs or other equivalent bone imaging suitable for orthodontia;
- For dental services provided in-person or through telehealth by an individual, a partnership, a corporation, or any other entity, failing 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 to the patient; and
- For dental services provided through telehealth by an individual, a partnership, a corporation, or any other entity, failing to designate a dentist of record and make available, before the rendering of such services and upon the patient's request, the name, telephone number, practice address, and state license number for the dentist of record and any other dentist who will be involved in the provision of dental services to the patient through telehealth.

The bill makes a conforming amendment to s. 409.906, F.S., to reflect a numbering change in s. 466.024, F.S.

The bill provides an effective date of July 1, 2023.

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:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:³²

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DOH, the provisions of the bill may result in an increase in revenues for individual dentistry practices due to the creation of new disciplinary offenses that establish a standard that would require a dentist of record to perform an in-person examination of a patient or obtain records from an in-person examination within the last six months before the initial diagnosis and correction of a malposition of human teeth or initial use of an orthodontic appliance.

C. Government Sector Impact:

According to the DOH, the department will experience an increase in workload associated with complaints and investigations under the bill. The impact is indeterminate; therefore, the fiscal impact cannot be calculated at this time.

The DOH has also indicated it will incur nonrecurring costs for rulemaking, which current budget authority is adequate to absorb.

The department will also experience a nonrecurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Artificial Intelligence Virtual Customer Contact Agent, Continuing Education Tracking System, License Verification Search Site, and BOD website. Resources and budget authority are adequate to absorb.³³

VI. Technical Deficiencies:

None.

³² *Supra*, note 18.

³³ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 466.003, 466.016, 466.018, 466.019, 466.024, 466.028, and 409.906.

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

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

CS by Banking and Insurance Committee on March 22, 2023:

- Defines the term “dental laboratory technician;”
- Provides that only a licensed dentist, or a dental hygienist, dental assistant or dental laboratory technician under direct supervision may perform digital scanning of the human tooth, teeth, or jaws, directly or indirectly and by any means or method, for the purpose of the practice of dentistry; and
- Makes technical changes.

B. Amendments:

None.