

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 503 Practice of Dentistry

**SPONSOR(S):** Health Care Appropriations Subcommittee, Berfield

**TIED BILLS:** IDEN./SIM. BILLS: SB 356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	17 Y, 0 N	Osborne	McElroy
2) Health Care Appropriations Subcommittee	11 Y, 3 N, As CS	Aderibigbe	Clark
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The Board of Dentistry 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. A dental hygienist provides education, preventive and delegated therapeutic dental services. As of December 31, 2022, there were 18,238 licensed dentists, 18,335 licensed dental hygienists, 31,444 licensed dental radiographers, and 35 out-of-state registered telehealth dentists.

Telehealth is the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services. Current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners or health care providers providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services. Current law does not contain health care practitioner specific regulations for the use of telehealth. Health care practitioners must adhere to the applicable standard of care when providing services through telehealth and are subject to disciplinary action if they fail to do so.

CS/HB 503 revises current regulations for the practice of dentistry and establishes requirements for using telehealth to provide dental services to patients.

The bill requires every telehealth provider to have a dentist of record who remains primarily responsible for all dental treatment on the patient regardless of who rendered treatment. The bill requires telehealth providers to 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.

The bill requires that an advertisement for dental services provided through telehealth to include a disclaimer.

The bill expands grounds for the denial of a dental license or disciplinary action against a dentist for failure to conduct an in-person examination in certain circumstances; failure by an individual providing service through telehealth to provide patients with contact information; or to designate a dentist of record.

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

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

#### Regulation of Dental Practice in Florida

The Board of Dentistry regulates dental practice in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act.<sup>1</sup> A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures.<sup>2</sup> A dental hygienist provides education, preventive and delegated therapeutic dental services.<sup>3</sup> As of December 31, 2022, there were 18,238 licensed dentists, 18,335 licensed dental hygienists, 31,444 licensed dental radiographers, and 35 out-of-state registered telehealth dentists.<sup>4</sup>

#### Dentists

Any person wishing to practice dentistry in this state must apply to the Department of Health (DOH) and meet specified requirements. Section 466.006, F.S., requires dentistry licensure applicants to sit for and pass the following licensure examinations:

- The National Board of Dental Examiners dental examination (NBDE);
- A written examination on Florida laws and rules regulating the practice of dentistry; and
- A practical examination, which is the American Dental Licensing Examination developed by the American Board of Dental Examiners, Inc., and graded by a Florida-licensed dentist employed by DOH for such purpose.<sup>5</sup>

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 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.<sup>6</sup> 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.<sup>7</sup> The professional liability insurance must provide coverage for the actions of any dental hygienist supervised by the dentist.<sup>8</sup> However, a dentist may be exempt from maintaining professional liability insurance if he or she:<sup>9</sup>

- Practices exclusively for the federal government or the State of Florida or its agencies or subdivisions;
- Is not practicing in this state;
- Practices only in conjunction with his or her teaching duties at an accredited school of dentistry or in its main teaching hospitals; or
- Demonstrates to the Board of Dentistry that he or she has no malpractice exposure in this state.

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<sup>1</sup> Section 466.004, F.S.

<sup>2</sup> Section 466.003(3), F.S.

<sup>3</sup> Section 466.003(4)-(5), F.S.

<sup>4</sup> Department of Health Agency Bill Analysis of HB 503 (January 25, 2023).

<sup>5</sup> 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.

<sup>6</sup> Rule 64B5-17.011(1), F.A.C.

<sup>7</sup> Rule 64B5-17.011(2), F.A.C.

<sup>8</sup> Rule 64B5-17.011(4), F.A.C.

<sup>9</sup> Rule 64B5-17.011(3), F.A.C.

Every dentist 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.

### *Dental Hygienists*

Any person wishing to be licensed as a dental hygienist must apply to DOH and meet the following qualifications:<sup>10</sup>

- Be 18 years of age or older;
- Be a graduate of an accredited dental hygiene college or school;<sup>11</sup> and
- Obtain a passing score on the:
  - Dental Hygiene National Board Examination;
  - Dental Hygiene Licensing Examination developed by the American Board of Dental Examiners, Inc., which is graded by a Florida-licensed dentist or dental hygienist employed by DOH for such purpose; and
  - A written examination on Florida laws and rules regulating the practice of dental hygiene.

A dental hygienist is not required to maintain professional liability insurance and must be covered by supervising dentist's liability insurance.<sup>12</sup>

A supervising dentist may delegate certain tasks to a dental hygienist, such as removing calculus deposits, accretions, and stains from exposed surfaces of the teeth and from the gingival sulcus and the task of performing root planning and curettage.<sup>13</sup> A dental hygienist may also expose dental X-ray films, apply topical preventive or prophylactic agents, and delegated remediable tasks.<sup>14</sup> Remediable tasks are intra-oral tasks which do not create an unalterable change in the oral cavity or contiguous structures, are reversible, and do not expose a risk to the patient, including but not limited to:

- Fabricating temporary crowns or bridges inter-orally;
- Selecting and pre-sizing orthodontic bands;
- Preparing a tooth service by applying conditioning agents for orthodontic appliances;
- Removing and re-cementing properly contoured and fitting loose bands that are not permanently attached to any appliance;
- Applying bleaching solution, activating light source, and monitoring and removing in-office bleaching solution;
- Placing or removing rubber dams;
- Making impressions for study casts which are not being made for the purpose of fabricating any intra-oral appliances, restorations, or orthodontic appliances;
- Taking impressions for passive appliances, occlusal guards, space maintainers, and protective mouth guards; and
- Cementing temporary crowns and bridges with temporary cement.

A dental hygienist may perform the following remediable tasks, if the dental hygienist has received training in a pre-licensure course or through formal training:

- Polish restorations or clinical crowns which are not for the purpose of changing the existing contour of the tooth and may only use burnishers, slow-speed hand pieces, rubber cups, and bristle brushes;

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<sup>10</sup> Section 466.007, F.S.

<sup>11</sup> If the school is not accredited, the applicant must have completed a minimum of four years of postsecondary dental education and received a dental school diploma which is comparable to a D.D.S. or D.M.

<sup>12</sup> See *supra* note 8.

<sup>13</sup> Section 466.023, F.S.

<sup>14</sup> Sections 466.023 and 466.024, F.S.

- Apply topical fluorides that are approved by the American Dental Association or the U.S. Food and Drug Administration;
- Remove excess cement from dental restorations and appliances with non-mechanical hand instruments or ultrasonic scalers;
- Remove sutures;
- Place periodontal or surgical dressings;
- Pre-assess and chart suspected findings of the oral cavity; and
- Apply sealants.

A dental hygienist may perform the following remediable tasks if the dental hygienist has training in a pre-licensure course or on-the-job:

- Fabricating temporary crowns and bridges in a laboratory;
- Applying topical anesthetics and anti-inflammatory agents which are not applied by aerosol or jet spray;
- Taking or recording patients' blood pressure rate, pulse rate, respiration rate, case history and oral temperature;
- Retracting lips, cheeks and tongue;
- Irrigating and evacuating debris not to include endodontic irrigation;
- Placing and removing cotton rolls;
- Placing or removing temporary restorations with non-mechanical hand instruments only; and,
- Obtaining plaque specimens, which do not involve cutting of the tissue and which do not include taking endodontic cultures, to be examined under a microscope for educational purposes.

A dental hygienist may apply to be certified to administer local anesthesia under the direct supervision of a non-sedated, adult patient, if the dental hygienist completes an accredited course of 30 hours of didactic training and 30 hours of clinical training and is certified in basic or advanced cardiac life support.<sup>15</sup>

Every 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.

#### *Dentist of Record*

Current law requires each patient to have a dentist of record.<sup>16</sup> The dentist of record is primarily responsible for all dental treatment on such 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.<sup>17</sup> Rule 64B5-17.002, F.A.C., defines a dentist of record as a dentist who:

- Is identified and noted in the patient record as the dentist of record;
- Provides a specific treatment or service and is noted in the patient record as the dentist of record for that treatment or service;
- If there has been more than one provider of treatment, is the dentist who places the final restoration, does the surgical procedure, makes the diagnosis or finishes the service or procedure in question; or
- If the dentist of record is not identifiable, then the owner of the dental practice in which the patient was treated is the dentist of record.

Rule 64B5-17.004, F.A.C., requires every dentist to provide, either personally, through another licensed dentist, or through a reciprocal agreement with another agency, reasonable 24-hour emergency services for all patients under his or her continuing care.

<sup>15</sup> Section 466.017(5), F.S.

<sup>16</sup> Section 466.018, F.S.

<sup>17</sup> *Id.*

## Dental Advertising

Florida regulates dental advertising<sup>18</sup> to ensure that the public has access to information which provides a sufficient basis to make an informed selection of dentists and protect it from false or misleading advertisements.<sup>19</sup> A licensed dentist's advertisements may not contain any false, fraudulent, misleading, or deceptive statement or claim or any statement or claim which:<sup>20</sup>

- 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.

### Direct-To-Consumer Teeth Aligner

According to DOH, a direct-to-consumer teeth aligner business model currently exists for consumers.<sup>21</sup> The model consists of dental impressions either being taken by the consumer using a dental impression kit mailed by the aligner company or by the consumer visiting a location for a digital scan<sup>22</sup> 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 model does not include an in-person examination by a licensed dentist or include direct supervision by a dentist when digital scanning is performed.<sup>23</sup>

### Telehealth

Telehealth is not a type of health care service but rather is a mechanism for delivery of health care services. Health care professionals use telehealth as a platform to provide traditional health care services in a non-traditional manner. These services include, among others, preventative medicine and the treatment of chronic conditions.<sup>24</sup>

In 2019, the Legislature passed and the Governor signed CS/CS/HB 23, which established a framework for telehealth services in Florida law.<sup>25</sup> The act broadly defines 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.

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<sup>18</sup> Rule 64B5-4.002, F.A.C., defines advertising to mean any statements, oral or written, disseminated to or before the public or any portion thereof with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services. The provisions of this rule shall apply to media exposure of any nature regardless of whether it is in the form of paid advertising.

<sup>19</sup> Section 468.019, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Department of Health, Agency Bill Analysis of HB 503, (January 25, 2023).

<sup>22</sup> A digital scan is an optical impression by an intraoral scanner to optically measure the surface shape of the target teeth or gums directly in the patient's mouth.

<sup>23</sup> *Supra* note 21.

<sup>24</sup> U.S. Department of Health and Human Services, *Report to Congress: E-Health and Telemedicine*, (August 2016), available at <https://aspe.hhs.gov/system/files/pdf/206751/TelemedicineE-HealthReport.pdf> (last viewed April 1, 2023).

<sup>25</sup> Ch. 2019-137, L.O.F., codified at s. 456.47, F.S.

Telehealth does not include audio-only telephone calls, e-mail messages, or facsimile transmission under Florida law.<sup>26</sup>

Health care services may be provided via telehealth by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,<sup>27</sup> or a registered out-of-state-health care provider.<sup>28</sup>

Florida-licensed telehealth providers, as well as those licensed under a multistate health care licensure compact of which Florida is a member, must be one of the following health care practitioners.<sup>29</sup>

- Behavioral Analyst
- Acupuncturist
- Allopathic physician
- Osteopathic physician
- Chiropractor
- Podiatrist
- Optometrist
- Nurse
- Pharmacist
- Dentist
- Dental hygienist
- Midwife
- Speech therapist
- Occupational therapist
- Radiology technician
- Electrologist
- Orthotist
- Pedorthist
- Prosthetist
- Medical physicist
- Emergency Medical Technician
- Paramedic
- Massage therapist
- Optician
- Hearing aid specialist
- Clinical laboratory personnel
- Respiratory therapist
- Physical therapist
- Psychologist
- Psychotherapist
- Dietician/Nutritionist
- Athletic trainer
- Clinical social worker
- Marriage and family therapist
- Mental health counselor

Out-of-state telehealth providers must register biennially with DOH or the applicable board to provide telehealth services, within the relevant scope of practice established by Florida law and rule, to patients in this state. To register or renew registration as an out-of-state telehealth provider, the health care professional must:

- Hold an active and unencumbered license, which is substantially similar to a license issued to a Florida practitioner in the same profession, in a U.S. state or jurisdiction and
- Not have been subject to licensure disciplinary action during the five years before submission of the registration application;<sup>30</sup>
- Not be subject to a pending licensure disciplinary investigation or action;
- Not have had license revoked in any state or jurisdiction;
- Designate a registered agent in this state for the service of process;
- Maintain professional liability coverage or financial responsibility, which covers services provided to patients not located in the provider's home state, in the same amount as required for Florida-licensed practitioners;<sup>31</sup> and
- Prominently display a link to the DOH website, described below, which provides public information on registered telehealth providers.<sup>32</sup>

### *Standards of Practice*

<sup>26</sup> S. 456.47(1), F.S.

<sup>27</sup> Florida is a member of the Nurse Licensure Compact. See s. 464.0095, F.S.

<sup>28</sup> *Supra* note 22.

<sup>29</sup> These are professionals licensed under s. 393.17; part III, ch. 401; ch. 457; ch. 458; ch. 459; ch. 460; ch. 461; ch. 463; ch. 464; ch. 465; ch. 466; ch. 467; part I, part III, part IV, part V, part X, part XIII, and part XIV, ch. 468; ch. 478; ch. 480; part II and part III, ch. 483; ch. 484; ch. 486; ch. 490; or ch. 491.

<sup>30</sup> The bill requires DOH to consult the National Practitioner Data Bank to verify whether adverse information is available for the registrant.

<sup>31</sup> Florida law requires physicians, acupuncturists, chiropractic physicians, dentists, anesthesiologist assistants, advanced practice registered nurses, and licensed midwives to demonstrate \$100,000 per claim and an annual aggregate of \$300,000 of professional responsibility (see ss. 458.320 and 459.0085, F.S.; r. 64B1-12.001, F.A.C.; r. 64B2-17.009, F.A.C.; 64B5-17.0105, F.A.C.; rr. 64B8-31.006 and 64B15-7.006, F.A.C.; r. 64B9-4.002, F.A.C.; and r. 64B24-7.013, F.A.C.; respectively). Podiatric physicians must demonstrate professional responsibility in the amount of \$100,000 (see r. 64B18-14.0072, F.A.C.).

<sup>32</sup> S. 456.47(4), F.S.

Current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners or health care providers providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services. A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.<sup>33</sup>

Practitioners may perform a patient evaluation using telehealth. A practitioner using telehealth is not required to research a patient's medical history or conduct a physical examination of the patient before providing telehealth services to the patient if the telehealth provider is capable of conducting a patient evaluation in a manner consistent with the applicable standard of care sufficient to diagnose and treat the patient when using telehealth.

Current law does not contain health care practitioner specific regulations for the use of telehealth. Health care practitioners must adhere to the applicable standard of care when providing services through telehealth and are subject to disciplinary action if they fail to do so.

### **Effect of the Bill**

CS/HB 503 revises current regulations for the practice of dentistry and establishes requirements for using telehealth to provide dental services to patients.

The bill requires every dentist, including individuals or entities providing services through telehealth (telehealth provider), to 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.

The bill requires every telehealth provider to have a dentist of record 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.

The bill requires telehealth providers to 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.

The bill requires that an advertisement for dental services provided through telehealth 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:

- 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 expands the grounds for the denial of a dental license or disciplinary action against a dentist to include:

- 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, 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.
- For dental services provided through telehealth, 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 provides an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 466.003, F.S., relating to definitions.  
**Section 2:** Amends s. 466.016, F.S., relating to license to be displayed.  
**Section 3:** Amends s. 466.018, F.S., relating to dentist of record; patient records.  
**Section 4:** Amends s. 466.019, F.S., relating to advertising by dentists  
**Section 5:** Amends s. 466.028, F.S., relating to grounds for disciplinary action; action by the board.  
**Section 6:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate, negative fiscal impact on DOH which can be absorbed within current resources.<sup>34</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

According to DOH, requirements of the bill would eliminate certain direct-to-consumer teeth aligner business models.<sup>35</sup>

**D. FISCAL COMMENTS:**

None.

<sup>34</sup> *Supra* note 21.

<sup>35</sup> *Id.*



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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:

DOH and the Board of Dentistry have sufficient rulemaking authority to implement provisions of the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

DOH advises that s. 466.018(2), F.S., may need to be updated to reference the new subsection (6) in the bill. Specifically, to make clear if the dentist of record is not identified in the telehealth patient record, it shall be presumed as a matter of law that the dentist of record is the dentist-owner of the telehealth dental practice in which the patient was treated.<sup>36</sup>

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 12, 2023, the Health Care Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removes the prohibition for anyone other than a licensed dentist, a dental hygienist under general supervision, or a dental assistant under direct supervision, from taking a dental impression or performing dental digital scan.

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<sup>36</sup> *Id.*