

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 855 Dental Services
SPONSOR(S): Health & Human Services Committee, McClure and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 302

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 855 passed the House on February 22, 2024, and subsequently passed the Senate on March 4, 2024.

The Board of Dentistry, 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. A dental hygienist provides education, preventive and delegated therapeutic dental services. There are approximately 17,193 dentists, 17,681 dental hygienists, and 8,371 dental radiographers licensed to practice in Florida, and 41 out-of-state registered telehealth dentists.

Telehealth is the use of synchronous or asynchronous telecommunications technology by a health care practitioner to provide health care services. Current law sets the standard of care for telehealth providers as the same standard of care for health care practitioners providing in-person health care services, and does not contain health care practitioner-specific regulations for the use of telehealth. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care practitioner to deliver the services. 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.

The bill revises existing standards for the practice of dentistry and establishes new requirements that specifically apply to providers using telehealth. The provisions of the bill represent a significant departure from Florida's current policies regarding telehealth by establishing requirements that apply exclusively to telehealth services.

The bill requires every dentist to provide each patient with the dentist's name, contact telephone number, after-hours contact information for emergencies, and license information; failure to do so constitutes grounds for discipline. The bill also requires any partnership, corporation, or other business entity that advertises dental services to designate a dentist of record with the Board of Dentistry. Such entity is required to provide each patient with the name, contact phone number, after-hours emergency contact information, and, upon patient request, license information of the dentist of record.

The bill requires a dentist to perform an in-person examination on a patient, or review records from an in-person examination of the patient from the last 12 months, before the dentist makes an initial diagnosis and correction of a malposition of teeth, or the initial use of an orthodontic appliance. Failure to adhere to this requirement constitutes grounds for discipline. This requirement only effects dentists providing services via telehealth. The bill also requires advertisements for certain telehealth dental services to include a disclaimer.

The bill has a significant, negative fiscal impact on DOH, and no fiscal impact on local government.

The bill was approved by the Governor on May 29, 2024, ch. 2024-214, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Regulation of Dental Practice in Florida

The Board of Dentistry (BOD), within the Department of Health (DOH), 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

There are currently 17,193 dentists, 17,681 dental hygienists, and 8,371 dental radiographers with active licenses to practice in Florida. There are 41 out-of-state registered telehealth dentists.⁴

Dental Licensure

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 examinations:

- The National Board of Dental Examiners dental examiner (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 (ADEX) developed by the American Board of Dental Examiners, Inc.⁵

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.

Dental Practice

Dentists must maintain professional liability insurance or provide proof of financial 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 \$300,000.⁶ 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 \$300,000.⁷ The professional liability insurance must provide coverage for the actions of any dental hygienist supervised by the dentist.⁸ However, a dentist may be exempt from maintaining professional liability insurance if he or she:⁹

- Practices exclusively for the federal government or the State of Florida or its agencies or subdivisions;
- Is not practicing in this state;

¹ S. 466.004, F.S.

² S. 466.003(3), F.S.

³ S. 466.003(4)-(5), F.S.

⁴ See, Department of Health *License Verification* web search. Available at <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders> (last visited March 12, 2024).

⁵ 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.

⁶ Rule 64B5-17.011(1), F.A.C.

⁷ Rule 64B5-17.011(2), F.A.C.

⁸ Rule 64B5-17.011(4), F.A.C.

⁹ Rule 64B5-17.011(3), F.A.C.

- 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 BOD that he or she has no malpractice exposure in this state.

Current law requires that a dentist of record be established in the patient record for each dental patient. The dentist of record assumes primary responsibility for all dental treatment for the patient, regardless of whether the treatment is rendered by the dentist of record, or another dentist, dental hygienist, or dental assistant in conjunction with, at the direction or request of, or under the supervision of the dentist of record. For instances where a dentist of record is not identified in the patient's record, it is assumed that the dentist of record is the owner of the dental practice in which the patient is treated.¹⁰

By rule, every dentist is required 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.¹¹

Every dentist licensed in Florida must post and keep conspicuously displayed his or her license in the office wherein she or he practices and in plain sight of patients.¹²

Dental Advertising

Florida regulates dental advertising¹³ 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.¹⁴

A licensed dentist's advertisements may not contain any false, fraudulent, misleading, or deceptive statement or claim or any statement or claim which:¹⁵

- 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 Orthodontics

The direct-to-consumer orthodontics business model enables consumers to take their own dental impressions with a dental impression kit provided by the business. The impressions are reviewed by a dentist and used to create custom teeth aligners which are shipped to the consumer for use according

¹⁰ S. 466.018(1)-(2), F.S.; see also, rule 64B5-17.002, F.A.C.; see also, 466.0285, F.S., no person other than a licensed dentist, or an entity composed of dentists, may employ a dentist in the operation of a dental office.

¹¹ Rule 64B5-17.004, F.A.C.

¹² S. 466.016, F.S.

¹³ 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.

¹⁴ S. 468.019, F.S.

¹⁵ *Id.*

to the dentist's instructions. This model generally does not include an in-person examination by a licensed dentist or include direct supervision by a dentist when digital scanning is performed.¹⁶

Direct-to-consumer orthodontics have gained significant popularity over the course of the last decade. Consumer surveys indicate that direct-to-consumer orthodontics are perceived as a viable alternative to traditional orthodontic care, particularly for less complex cases.¹⁷ Convenience and lower costs are the primary reasons cited by consumers choosing direct-to-consumer orthodontics over in-person care.¹⁸ Consumer feedback has indicated mixed results from the use of direct-to-consumer orthodontics. One survey showed that the majority of users (87.5%) were satisfied with their direct-to-consumer orthodontic treatment, but roughly 6 percent had to visit an in-person dentist due to adverse effects.¹⁹

The growth of the direct-to-consumer orthodontics industry has caused significant controversy among dentists and orthodontists. Some dentists point to the lack of direct dentist-to-patient communication as a cause for concern over the safety of direct-to-consumer orthodontics. Additionally, orthodontic treatment without early clinical or radiographic evaluation, diagnosis, or treatment planning poses the risk of potentially neglecting underlying conditions which could result in temporary or permanent complications for the patient. There is evidence that the use of direct-to-consumer orthodontics can result in adverse outcomes; however, analysis is sparse and there appears to be no research analyzing the frequency of such outcomes compared to those of traditional, in-person orthodontics.²⁰

Telehealth

Telehealth is the delivery of health care services using information and communication technologies to exchange valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation.²¹ Telehealth connects individuals and their health care providers when in-person care is not possible. Current law 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.

Florida-licensed health care practitioners, registered out-of-state health practitioners, and those licensed under a multistate health care licensure compact of which Florida is a member, are authorized to use telehealth to deliver health care services to patients within the state according to the practitioners' respective scopes of practice. Providers treating Florida patients via telehealth must comply with the applicable practitioner scope of practice under Florida law; not the scope of practice of the state where the practitioner is physically located.²²

¹⁶ Department of Health, *Agency Bill Analysis for HB 855* (2024). On file with the Health and Human Services Committee.

¹⁷ Tabbaa, S., Nguyen, T., Toubouti, Y., & Saltaji, H. *Direct-to-consumer orthodontics: Exploring laypeople's perception of orthodontic treatment complexity* (2023). *The Journal of the American Dental Association*, 154:2. <https://doi.org/10.1016/j.adaj.2022.10.017>.

¹⁸ Wexler, A., Nagappan, A., Beswerchij, A., & Choi, R. *Direct-to-consumer orthodontics: surveying the user experience*. (2020). *The Journal of the American Dental Association*, 151:8. <https://doi.org/10.1016/j.adaj.2020.02.025>. See also, Bous, R., Apostolopoulos, K., & Valiathan, M. *When convenience trumps quality of care: A population-based survey on direct to consumer orthodontics* (2021). *American Journal of Orthodontics and Dentofacial Orthopedics*, 159:5. <https://doi.org/10.1016/j.ajodo.2020.10.025>.

¹⁹ Wexler, A., Nagappan, A., Beswerchij, A., & Choi, R. *Direct-to-consumer orthodontics: surveying the user experience*. (2020). *The Journal of the American Dental Association*, 151:8. <https://doi.org/10.1016/j.adaj.2020.02.025>.

²⁰ Belgal, P., Mhay, S., Patel, V., & Nalliah, R. *Adverse Events Related to Direct-To-Consumer Sequential Aligners—A Study of the MAUDE Database*. (2023). *Dentistry Journal*; 11(7):174. <https://doi.org/10.3390/dj11070174>

²¹ 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 visited March 12, 2024).

²² S. 456.47, F.S.

Florida-licensed telehealth providers, as well as those licensed under a multistate health care licensure compact of which Florida is a member, include:²³

- 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
- Genetic counselor

Out-of-state telehealth providers must register biennially with DOH or the applicable board to provide services via telehealth 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;²⁴
- 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;²⁵ and
- Prominently display a link to the DOH website, described below, which provides public information on registered telehealth providers.²⁶

Telehealth Standards of Practice

A patient receiving services via telehealth 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. However, the same standard of care applies regardless of physical location; current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners 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 practitioner to deliver the services.²⁷

²³ 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.

²⁴ The bill requires DOH to consult the National Practitioner Data Bank to verify whether adverse information is available for the registrant.

²⁵ 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.; rule 64B1-12.001, F.A.C.; rule 64B2-17.009, F.A.C.; rule 64B5-17.0105, F.A.C.; rules 64B8-31.006 and 64B15-7.006, F.A.C.; rule 64B9-4.002, F.A.C.; and rule 64B24-7.013, F.A.C.; respectively). Podiatric physicians must demonstrate professional responsibility in the amount of \$100,000 (see, rule 64B18-14.0072, F.A.C.).

²⁶ S. 456.47(4), F.S.

²⁷ S. 456.47(2), F.S.

Current law authorizes practitioners to 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 existing standard of care when providing services through telehealth²⁸ and are subject to disciplinary action if they fail to do so.²⁹

Effect of the Bill

The bill revises existing standards for the practice of dentistry and establishes new requirements that specifically apply to providers using telehealth to provide dental services to patients.

Dental Practice

The bill requires every dentist, including individuals or entities providing services through telehealth (telehealth provider), to provide each patient with the dentist's name, contact telephone number, after-hours contact information for emergencies, and license information. A dentist who fails to do so is subject to discipline.

The bill requires any partnership, corporation, or other business entity that advertises dental services to designate a dentist of record with the BOD. Such partnership, corporation, or business entity must provide each patient with the name, contact phone number, after-hours emergency contact information, and, upon patient request, license information of the dentist of record. The bill requires the designated dentist of record to have a full, active, and unencumbered license to practice dentistry, or be an out-of-state telehealth provider registered with DOH.

The bill requires a dentist to perform an in-person examination on a patient, or review records from an in-person examination of the patient from the last 12 months, before the dentist makes an initial diagnosis and correction of a malposition of teeth, or the initial use of an orthodontic appliance. Failure to adhere to this requirement constitutes grounds for discipline. This requirement would only impact dentists providing services via telehealth, and would have the effect of eliminating direct-to-consumer alignment business models, unless such businesses are able to incorporate in-person visits that satisfy this requirement.

Dental Advertising

The bill regulates advertisements for certain dental services provided via telehealth, including:

- The taking of an impression or the digital scanning³⁰ 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

²⁸ S. 456.47(2), F.S.

²⁹ S. 456.47(4)(i), F.S.

³⁰ The bill defines "digital scanning" as the use of digital technology that creates a computer-generated replica of the hard and soft tissue of the oral cavity using enhanced digital photography, lasers, or other optical scanning devices.

- Correcting or attempting to correct malformations of teeth or jaws.

Advertisements for these services provided via 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.”

This requirement applies to advertisements intended to solicit patients including, but not limited to, business cards, circulars, pamphlets, newspapers, websites, and social media.

The provisions of the bill represent a significant departure from Florida’s current policies regarding telehealth. Since telehealth was first recognized in statute in 2019,³¹ Florida law has treated health care services rendered in person or via telehealth as equivalent. By establishing requirements that apply exclusively to telehealth services, the bill creates a separate, more stringent, regulatory standard for services provided via telehealth.

The bill provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOH anticipates an increase in workload associated with additional complaints, investigations, and prosecutions due to the provisions of this bill. Current resources are adequate to absorb this increase in workload. DOH will also incur non-recurring costs associated with rulemaking and IT system updates, which current budget authority is adequate to absorb.³²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses operating under the direct-to-consumer teeth aligner business model may experience a significant negative economic impact due to the regulatory provisions of the bill.

³¹ See, ch. 2019-137, L.O.F.

³² *Supra*, note 16.

D. FISCAL COMMENTS:

None.