

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 683 Dentistry
SPONSOR(S): Health Quality Subcommittee; Perez
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	9 Y, 6 N, As CS	Siples	McElroy
2) Health Care Appropriations Subcommittee		Mielke	Pridgeon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The U.S. Department of Health and Human Services' Health Resources and Services Administration (HRSA) designates Health Professional Shortage Areas (HPSAs) to identify areas and population groups within the United States that are experiencing a shortage of health care providers. HPSAs identify shortages in primary care, dental health, or mental health. The threshold for a dental HPSA is a population-to-provider ratio of at least 5,000:1. 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.

Nationally, there are 5,866 dental HSPAs, 224 of which are in Florida. Additionally, there are 4,235 MAUs and MAPs in the U.S., 129 of which are in Florida. Currently, there are approximately 57 licensed dentists per 100,000 people in Florida; however, this ratio varies greatly across the state. 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.

CS/HB 683 requires the DOH to conduct a comprehensive study on the affordability, access, and delivery of dental care in Florida and submit a report of its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2018. The report must include policy proposals for improving affordability, access, and delivery of dental services in this state, and address implementation burdens and the sustainability of such proposals.

The bill will have a significant, nonrecurring negative fiscal impact on DOH. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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.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

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 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 developed by the American Board of Dental Examiners, Inc., and graded by a Florida-licensed dentist employed by DOH for such purpose.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 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 However, a dentist may be exempt from maintaining professional liability insurance if he or she.⁸

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

¹ Section 466.004, F.S.

² Section 466.003(3), F.S.

³ Section 466.003(4)-(5), F.S.

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 Rule 64B5-17.011(3), F.A.C.

Dental Hygienists

Any person wishing to be licensed as a dental hygienist must apply to DOH and meet the following qualifications:⁹

- Be 18 years of age or older;
- Be a graduate of an accredited dental hygiene college or school;¹⁰ 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.¹¹

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.¹² A dental hygienist may also expose dental X-ray films, apply topical preventive or prophylactic agents, and delegated remediable tasks.¹³ 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;
- Apply topical fluorides that are approved by the American Dental Association or the U.S. Food and Drug Administration;

⁹ Section 466.007, F.S.

¹⁰ If the school is not accredited, the applicant must have completed a minimum of 4 years of postsecondary dental education and received a dental school diploma which is comparable to a D.D.S. or D.M.

¹¹ See *supra* note 7.

¹² Section 466.023, F.S.

¹³ Sections 466.023 and 466.024, F.S.

- 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.¹⁴

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.¹⁵ The threshold for a dental HPSA is a population-to-provider ratio of at least 5,000:1.¹⁶

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.¹⁷ 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.¹⁸ 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.¹⁹ MUPs include, but are not limited to, those who are homeless, low-income, Medicaid-eligible, Native American, or migrant farmworkers.²⁰

¹⁴ Section 466.017(5), F.S.

¹⁵ Health Resources and Services Administration, *Health Professional Shortage Areas (HPSAs)*, available at <https://bhwh.hrsa.gov/shortage-designation/hpsas> (last visited January 18, 2018).

¹⁶ Id.

¹⁷ Health Resources and Services Administration, *Medically Underserved Areas and Populations (MUA/Ps)*, <https://bhwh.hrsa.gov/shortage-designation/muap> (last visited January 18, 2018).

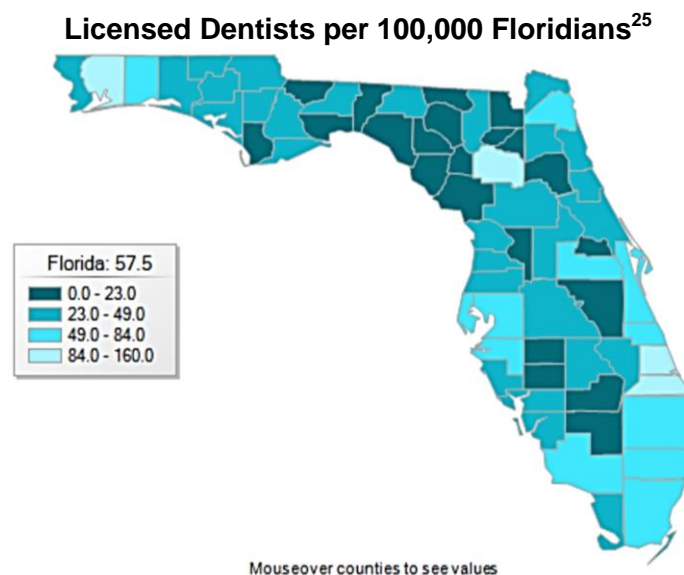
¹⁸ Id.

¹⁹ Id.

²⁰ Id.

Access to Dental Care and Dental Workforce in Florida

Nationally, there are 5,866 dental HSPAs, 224 of which are in Florida.²¹ Additionally, there are 4,235 MAUs and MAPs in the U.S., 129 of which are in Florida.²² Currently, there are approximately 57 licensed dentists per 100,000 people in Florida; however, this ratio varies greatly across the state.²³ 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.²⁴



Lack of access to dental care can lead to poor oral health and poor overall health.²⁶ 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.²⁷

Dental Licensure Programs for Underserved Populations in Florida

Dental Permits for Nonprofit Corporations

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.²⁸ To qualify for such a permit, the organization must submit an application containing:

- A certified copy of the nonprofit corporation's charter establishing that one of the purposes for the organization is one which is specified in s. 466.025, F.S., which includes providing dental care for indigent persons.

²¹ Health Resources and Services Administration, *HPSA Find Results*, <https://datawarehouse.hrsa.gov/tools/analyzers/HpsaFindResults.aspx> (last visited January 18, 2018).

²² Health Resources and Services Administration, *MAU Find Results*, <https://datawarehouse.hrsa.gov/tools/analyzers/MuaSearchResults.aspx> (last visited January 18, 2018).

²³ Florida Department of Health, Florida CHARTS, *Total Licensed Florida Dentists*, <http://www.flhealthcharts.com/charts/OtherIndicators/NonVitalIndNoGrpDataViewer.aspx?cid=0326> (last visited January 19, 2018).

²⁴ Id.

²⁵ Id.

²⁶ 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 January 20, 2018).

²⁷ Id.

²⁸ Rule 64B5-7.006, F.A.C.
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DATE: 2/5/2018

- Justification for the need to provide dental services by dentists who are not licensed in this state.
- A plan of operation which establishes that any non-licensed dentist will be practicing under the general supervision of a Florida-licensed dentist.
- Statistics that establish that only indigent patients have been treated or admission criteria that only indigent patients will be treated. A description of the physical plant, available equipment and resources which establish the minimum standards of dentistry are or will be practiced at the facility.
- Any other information pertinent to the application requested by the Board of Dentistry.
- For each non-Florida licensed dentist employed or sought to be employed:
 - The dentist's name and age;
 - Proof of the dentist's graduation from an accredited dental college or school;
 - The dentist's licensure status in other jurisdiction, including disciplinary action and pending disciplinary action; and
 - Proof of having completed Board-approved courses on HIV/AIDS and domestic violence, and proof of current CPR certification.
- The corporation must follow the rules established for employment of dental interns and residents for any such permit holder that will be employed by the corporation.
- The non-Florida licensed dentist is governed by the rules that govern the practice of dental interns and residents and may only be compensated by salary and pursuant to productivity.
- The non-profit corporation must inform the Board in the non-Florida licensed dentist leaves its employ, within 60 days of such occurrence.

Limited Licenses

DOH may issue a limited license to a dentist whose practice is limited to providing services to the indigent or critical need populations within the state. A limited license may be issued if the following requirements are met:²⁹

- Graduation from an accredited college of dentistry;
- Retired or intends to retire from the practice of dentistry and intends to practice only pursuant to the restrictions of the limited license.
- Has held a license to practice dentistry in any jurisdiction in the US for at least 10 years;
- Has not committed or is not under investigation for any act that would constitute a violation of ch. 466, F.S.
- Practices only in the employ of a public agency or non-profit agency or institute, and which provides professional liability coverage for acts or omissions of the limited licensee; and
- Complies with all continuing education requirements for active licenses.

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.³⁰ A health access setting is a program or institution of the Department of Children and Families, 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

²⁹ See Section 456.015, F.S., and Rule 64B5-7.007, F.A.C.

³⁰ 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.)

school or accredited dental hygiene program.³¹ To be granted a health access license, an applicant must:

- File a board-approved application and pay the required fees;
- Not have been convicted or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Submit proof of graduation from an accredited dental school;
- Submit documentation that she or he has completed, or will obtain prior to licensure, continuing education equivalent to this state's requirement for licensed dentists for the last full reporting biennium before applying for a health access dental license;
- Submit proof of successful completion of parts I and II of the dental examination by the National Board of Dental Examiners and a state or regional clinical dental licensing examination that the Board of Dentistry has determined effectively measure the applicant's ability to practice safely;
- Currently hold a valid, active dental license in good standing from another jurisdiction of the U.S., the District of Columbia, or a U.S. territory, which has not been revoked, suspended, restricted or otherwise disciplined;
- Have never had a licensed revoked in another U.S. state, the District of Columbia, or U.S. territory;
- Have never failed the dental examination required in this state, unless the applicant was reexamined and received a license to practice in this state;
- Have 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;
- Submit proof that he or she has engaged in the active, clinical practice of dentistry providing direct patient care for 5 years immediately preceding the date of application, or if the applicant has graduated from an accredited dental school within the preceding 5 years, submit proof of continuous clinical practice providing direct patient care since graduation; and
- Have passed an examination covering the laws and rules of the practice of dentistry in this state.

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 will all continuing education 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 engaged in sexual misconduct pursuant to s. 466.027, F.S.; or
- Failure of the Florida dental licensure examination.

³¹ 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.

It is considered the unlicensed practice of dentistry if a licensee fails to limit his or her practice to a health access setting.³²

Effect of Proposed Bill

CS/HB 683 requires the DOH to conduct a comprehensive study on the affordability, access, and delivery of dental care in Florida and submit a report of its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2018. The study must:

- Examine utilization data and delivery system gaps, including demographic and income disparities;
- Develop and evaluate policy proposals to address any identified barriers to care, expedience of care, and oral health outcomes for high-need and high-risk populations. Policy proposals must be peer-reviewed and address dental care for unserved or underserved populations; and
- Examine workforce policies that would authorize or increase mid-level dental providers such as expanded function dental assistants, community dental health coordinators, and dental therapists.

In the final report, DOH must address implementation burdens and the sustainability of each policy it recommends for improving affordability, access, and delivery of dental services in this state.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates a study on affordability, access, and delivery of dental care.

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOH will incur a significant, nonrecurring negative fiscal impact related to conducting the study and producing the report required under the provisions of the bill. The Public Health Dental Program estimates the study will cost \$500,000.³³ However, other studies of similar scope have been completed for approximately \$250,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³² Section 466.00672(2), F.S.

³³ Email correspondence with Edward Zapert, DMD, Dental Executive Director: February 1, 2018 (On file with the Health Care Appropriations Subcommittee).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2018, the Health Quality Subcommittee adopted a strike-all amendment, which did the following:

- Eliminated the Department of Health's authority to issue a license for the practice of dental therapy.
- Eliminated the scope of practice for the practice of dental therapy.
- Required the Department of Health to:
 - Conduct a comprehensive study on the affordability, access, and delivery of dental services in the state;
 - Develop and evaluate policy proposals to address any barriers to dental care; examine workforce policies, including the use of mid-level dental practitioners; and
 - Submit a final report on its findings to the Governor and Legislature by December 31, 2018.

The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.