

SESSION OF 2012

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2631**

As Agreed to March 28, 2012

Brief*

HB 2631 would make several changes and additions to the Dental Practice Act for the purpose of expanding dental service in the state, including targeting children who are dentally underserved, by creating an additional extended care permit (ECP) level of service of dental hygienists *via* creation of a new permit level (ECP III); encouraging additional capacity for Kansas residents in dental schools; establishing a volunteer license for retired dentists who choose to donate their services in certain settings; expanding the locations where such special volunteer license dentists and dental hygienists may provide free services and be exempt from liability under the Kansas Tort Claims Act; extending the length of time dentists may be employed to provide services to patients after the death or substantial disability of a dentist until the practice can be sold or closed; and directing the ECP III dental hygienist to notify the patient or the patient's legal guardian when the need for treatment by a dentist is indicated.

One provision in the bill—*i.e.*, the extension of the length of time dentists may be employed by a deceased or disabled dentist's business until the practice can be sold or closed—would be effective upon publication in the *Kansas Register*. All of the bill's remaining provisions would be effective July 1, 2012.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Extended Care Permit III for Dental Hygienists

The bill would add a third level of extended practice of dental hygiene to be offered by dental hygienists who meet the increased qualifications for the Extended Care Permit III (ECP III). The Dental Board would be authorized to issue an ECP III permit. An ECP III dental hygienist would not have prescribing authority.

The ECP III qualifications would include that the hygienist has performed 2,000 hours of dental hygiene care or has been an instructor at an accredited dental hygiene program for three of the past four academic years, completed at least three hours of continuing dental education related to the expanded scope of practice, and completed a course of study of 18 seat hours approved by the Dental Board, with some of the content specified in the bill.

Responsibilities of an ECP III

The ECP III dental hygienist would be required to:

- Show proof of professional liability insurance;
- Be sponsored by a dentist licensed in Kansas, as confirmed by a signed agreement stating the dentist will monitor the activities of the ECP III dental hygienist. A dentist would not be allowed to monitor more than five ECP III dental hygienists;
- Advise the patient and legal guardian that the services provided are palliative or preventive and are not comprehensive dental diagnosis and care;
- Provide a copy of the findings and report of treatment to the sponsoring dentist and any other medical supervisor at a participating organization where the ECP III dental hygienist may provide services;

- Notify the patient or the patient's parent or legal guardian of the need for the patient to be treated by a dentist, when a need for evaluation by dentist is apparent; and
- Receive payment only from the sponsoring dentist or the participating organization where the ECP III dental hygienist provides services.

ECP III Scope of Practice

The tasks and procedures an ECP III would be able to perform would be limited to those activities that can be performed by a hygienist under the ECP I or ECP II, plus additional tasks that include the following:

- Identification and removal of decay using hand instrumentation and placing a temporary filling;
- Services related to dentures, including adjustment and checking for sore spots;
- Smoothing of a sharp tooth with a slow speed dental handpiece;
- Use of a local anesthetic within certain limitations;
- Extraction of deciduous teeth within certain limitations; and
- Other duties delegated by the sponsoring dentist which are consistent with the Act.

Population Served by an ECP III

The population to whom ECP III services would be limited include the following children with consent of the parent or legal guardian:

- Those participating in residential and nonresidential centers for therapeutic services;
- All those in families who receive Family Preservation services;
- Those in the custody of the Secretary of Social and Rehabilitation Services or the Commissioner of the Juvenile Justice Authority and in an out-of-home placement residing in foster care homes;
- Those being served by runaway youth programs and homeless shelters; and
- Those birth to age five, those in public and private schools kindergarten through Grade 12, regardless of the time of year, and those participating in youth organizations, so long as the children who are dentally underserved are targeted. The term "dentally underserved" would be defined as a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the Secretary of Health and Environment pursuant to KSA 75-6120.

The population to be served by an ECP III dental hygienist also would include:

- Those persons, inmates, clients or patients at any state correctional institution, local health department or indigent health care clinic, and at any federally qualified health center or health center look-alike or a community health center that receives funding from Section 330 of the (federal) Health Center Consolidation Act;
- Those facility residents, clients or patients who are persons with developmental disabilities and those who are age 65 and older who live in a residential

center, an adult care home, subsidized housing, a hospital long-term care unit, or a state institution or who are served in a community senior service center, elderly nutrition program, or at the home of a homebound person who qualifies for the federal home and community based service (HCBS) waiver.

ECP II Educational Requirement Changes

The bill also would revise some requirements for the ECP II, to comport with the addition of the ECP III. The number of hours of dental hygiene care required to be performed by an ECP II would be reduced from 1,800 hours to 1,600 hours, and the number of hours of continuing dental education in special needs care required would change from at least six hours to at least three hours.

Possible Additional Dentistry Students

The bill would require the State Board of Regents to endeavor to add seats for Kansas residents at the University of Missouri-Kansas City School of Dentistry or other locations, with the requirement that these students provide services in underserved areas of Kansas for at least four years after graduation.

Special Volunteer Dental License

The bill would establish a special volunteer dental license for dentists who are retired from active practice and wish to donate their expertise for the dental care and treatment of indigent and underserved persons in Kansas. The bill sets forth stipulations related to this license, including that no payment of an application fee, license fee or renewal fee would be required and no continuing education would be required for issuance or renewal. A license could be issued

for part of or the entire fiscal year and renewable annually upon Board approval.

Licensure requirements would include completion of a special volunteer dental license application with documentation of dental school graduation and practice history, documentation that the dentist previously has been issued a full and unrestricted license to practice dentistry in a state of the United States and that the dentist has never been the subject of any disciplinary action in any jurisdiction, acknowledgment and documentation that the dentist's practice will only involve providing dental care to underserved and indigent persons in the state, and acknowledgment and documentation that such services will be provided without any payment or compensation.

Liability Exemption Under the Kansas Tort Claims Act

The bill would amend the definition of a "charitable health care provider" under the Kansas Tort Claims Act by expanding the locations where gratuitous services targeting, but not limited to, medically indigent persons may be provided by dentists and dental hygienists as follows:

- At the office of a dentist or dental hygienist and such care is delivered as part of a program organized by a not-for-profit organization and approved by the Secretary of Health and Environment; or
- As part of a charitable program organized by the dentist that has been approved by the Secretary of Health and Environment, upon showing that the dentist seeks to treat medically indigent patients on a gratuitous basis.

As a result of the definition change, dentists, including retired dentists, with a special volunteer dental license or a dental hygienist would be exempt from liability under the

Kansas Tort Claims Act when providing free services in a dental office or as part of a charitable program organized by a dentist.

Extension of Time for Sale of Closure of Dental Practice

Effective upon publication in the *Kansas Register*, the bill would allow the estate or agent for a deceased or substantially disabled dentist 18 months to employ dentists to provide service to patients until the practice can be sold or closed. Current law provides a time period of not more than one year. The Kansas Dental Board may extend the time in six-month increments for a period of not more than one additional year upon application showing good cause including, but not limited to, evidence of a good faith effort to sell or close the dental practice.

Conference Committee Action

The Conference Committee agreed to the Senate version of the bill with the following change: A technical change was made related to the date of repeal of the current version of KSA 65-1424. The bill made the changes to that statute effective on publication in the *Kansas Register*, and the Conference Committee agreed on an amendment to make the repeal of the current version effective on the same date.

Background

In January 2012, a roundtable discussion was held to discuss the dental workforce shortage issue and possible solutions to the problem. Three bills were discussed at that time: SB 132, SB 192, and HB 2280. The discussion participants indicated that they could agree to go forward with several provisions contained in SB 132, but they were not prepared to jointly support the other two bills. HB 2631 was

introduced after the roundtable discussion as a partial replacement for SB 132.

At the hearing on HB 2631 in the House Committee on Health and Human Services, supporting testimony was received from representatives of the Kansas Dental Association, Oral Health Kansas, LeadingAge Kansas, and the Bureau of Oral Health of the Kansas Department of Health and Environment. A number of Kansas dentists also testified in favor of the bill. A representative of the Kansas Dental Project offered neutral testimony, stating that, while the bill was a step forward, it would not address completely the dental workforce shortage issue.

The House Committee on Health and Human Services amended the bill to do the following:

- Revise the group to whom ECP III services could be provided to target the "dentally underserved."
- Add to the language of the advisory statement which an ECP III must give the patient and legal guardian, to include that the services may be temporary. The bill required the advisory statement to indicate the services were preventive only; the amendment provides the options of "temporary or preventive."
- Remove the authority of an ECP III to prescribe flouride, chlorhexidine, antibiotics and antifungal medications as directed by a standing order from a sponsoring dentist which was initially proposed would be eliminated.
- Add a definition of "dentally underserved."
- Change the training requirements for the ECP II.

Proponents of the bill testifying before the Senate Committee on Public Health and Welfare included

representatives of Kansas Advocates for Better Care and the Kansas Dental Association. A number of Kansas dentists also testified in favor of the bill. Written testimony in favor of the bill was provided by representatives of the Department of Health and Environment, Kansas Dental Hygienists' Association, Kansas Dental Project, LeadingAge Kansas, and Oral Health Kansas. No testimony opposing the bill was presented to the Senate Committee.

The Senate Committee on Public Health and Welfare amended the bill to change the notice provided by an ECP III dental hygienist to advise that the services rendered are "palliative" instead of temporary, to require the ECP III to notify a patient or the patient's parent or legal guardian when treatment by a dentist is needed, to allow additional time for the sale or close of a dental practice after the death or substantial disability of a dentist, and with the addition of this provision the effective date of the bill was changed to publication in the *Kansas Register*. All provisions of the bill not related to the sale or close of a dental practice would become effective on or after July 1, 2012. Technical amendments also were made.

According to the fiscal note on the original bill, the Kansas Dental Board indicates the amount of additional revenue generated by the new permit fees would be small. Currently, the Board assesses a one-time application fee of \$5 for each dental hygienist who applies for an ECP I or ECP II. To date, there are 52 licensed hygienists who hold an ECP I and 96 licensed hygienists who hold an ECP II. It is anticipated the same one-time application fee of \$5 would be required of those hygienists who qualify and apply for an ECP III. It is unknown how many licensed hygienists would seek an ECP III.

It is presumed the enactment of HB 2631 would have a fiscal effect on the Kansas Board of Regents from the provision requiring that additional seats be added for Kansans at the UMKC School of Dentistry. However, information from the Board was not available at the time the

fiscal note was prepared. A revised fiscal note will be sent upon receipt of data from the Board.

Both the Department of Education and the Department of Social and Rehabilitation Services indicate there would be no fiscal effect, respectively, for either agency.

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