

SENATE No. 536

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act making technical correction in a certain law relative to oral health.

PETITION OF:

NAME:

Harriette L. Chandler

DISTRICT/ADDRESS:

First Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT MAKING TECHNICAL CORRECTION IN A CERTAIN LAW RELATIVE TO ORAL HEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The third paragraph of section 51 of chapter 112 of the General Laws, inserted by the acts of
2 2008, is hereby amended by striking out the seventh sentence and inserting in place thereof the following
3 sentence:- Public health dental hygienists shall be directly reimbursed for services administered in a
4 public health setting by Medicaid or the commonwealth care health insurance program but, except as
5 required by Federal Medicaid law, shall not seek reimbursement from any other insurance or third party
6 payor.

Massachusetts House of Representatives
Bill Summary
2009-2010

Bill No: S 536

Title: An act making technical correction in a certain law relative to oral health.

Sponsor: Senator Harriette L. Chandler

Committee: Health Care Financing

Hearing Date: 4/15/09

Similar Matters:

Prior History: New bill.

Current Law: Current law, as enacted in Ch. 530 of the Acts of 2008 (An act to improve, promote, and protect the oral health of the Commonwealth), allows public health dental hygienists to practice in a public health setting without the supervision of a dentist. Dental hygienists must be directly reimbursed for services administered in a public health setting by MassHealth or the Commonwealth Care Health Insurance Program, but may not seek reimbursement from any other insurance or third party payer.

Summary: This bill would make a technical correction to the above law by allowing dental hygienists practicing in a public health setting to be reimbursed by a third party payer, if required by Federal Medicaid law.

JN

Testimony in SUPPORT of:

**S536 "Making Technical Correction in A Certain Law Relative to Oral Health"
(Sen. Chandler)**

April 15, 2009

Thank you Chairwoman Stanley, Chairman Moore, and members of the committee for the opportunity to testify in support of S. 536 "Making Technical Correction in A Certain Law Relative to Oral Health." My name is Katherine Pelullo and I am testifying on behalf of the Massachusetts Dental Hygienists' Association (MDHA). I ask you to move fast on favorably reporting this legislation, which makes a technical correction to the omnibus oral health care legislation that passed last session, in an effort to ensure that language regarding third party payors is in compliance with federal law.

As you know, the Legislature passed an oral health bill last session that will greatly improve access to oral health care throughout the Commonwealth. MDHA is extremely grateful to the Legislature, and this committee in particular, for all the work put into that legislation. The law, which takes effect today, exactly 90 days after the Governor signed it, will allow dental hygienists to see patients in public health settings, such as schools and nursing homes, without the direct or general supervision of a dentist. Massachusetts now joins 28 other states, including the rest of New England, in allowing dental hygienists to practice in public health settings. By treating patients in settings outside of the traditional dental office, dental hygienists will see patients who likely would not otherwise have access treatment.

This legislation will save the state much needed money and resources in the healthcare system. During oral health examinations, dental hygienists can detect signs of HIV, oral cancer, eating disorders, substance abuse, osteoporosis, and diabetes, allowing treatment for these diseases to begin at earlier stages. By catching diseases in their early stages, treatment can start sooner, saving the patient and the state money in the long-term, as well as increasing the likelihood of a positive outcome of the disease treatment itself.

This legislation was the byproduct of significant negotiation and compromise. One compromise that was required in order to secure the support of Massachusetts Dental Society was for us to drop our effort to allow dental hygienists to bill both MassHealth and third party payors. As you know, the legislation was principally filed to address the concerns of those on MassHealth who lacked access to either a dentist or a dental hygienist. With more than 50% of cities and towns in Massachusetts with no dentists accepting MassHealth eligible patients, and only 823 (16%) of the approximately 5,000 active licensed dentists in Massachusetts filing even one MassHealth dental claim in Fiscal Year 2006, we reluctantly agreed to language that allowed dental hygienists to bill only MassHealth.

However, we have always had concerns that language that expressly prohibits dental hygienists from billing third party payors will have an adverse impact on public health oral care. During negotiations on the language of the bill, we specifically voiced our

concerns about registered dental hygienists having to deny preventive care to individuals in nursing homes who may have private health insurance, but who would still have difficulty accessing preventive oral health care because they lack the mobility to travel to a private dentist office.

It was never our intention to deny access to care to anyone, but we felt that it was a compromise that needed to be made in order for the legislation to become law. We were therefore particularly pleased when Secretary Bigby and Senator Chandler, out of concerns that denying care to those with private insurance could be discriminatory and/or pose issues with federal law, chose to file technical correction language contained in S. 536.

The bill before you today will insert language stating that if the federal law requires that care be provided to those with private insurance, then these services will be provided to them.

We urge to move on this bill quickly in order to ensure that Massachusetts is in compliance with federal law, and also in spirit of the new law, which seeks to provide preventive oral health care in every public health setting.

Thank you again.



Real change for real people

Health Law Advocates
Fighting for Health Care Justice

COMMENTS RELATIVE TO

Senate Bill No. 536
An Act Making Technical Correction in a Certain Law Relative to Oral
Health

Before the

Joint Committee on Health Care Financing

April 15, 2009

Testimony of Health Care For All and Health Law Advocates
Regarding Senate Bill No. 536

By

Health Care For All (HCFA) and Health Law Advocates (HLA)

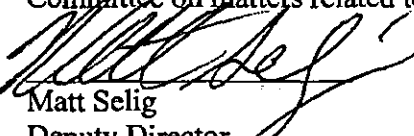
COMMENTS RELATIVE TO SENATE BILL NO. 536 – AN ACT MAKING
TECHNICAL CORRECTION TO A CERTAIN LAW RELATIVE TO ORAL HEALTH


BEFORE THE JOINT COMMITTEE ON HEALTH CARE FINANCING

Thank you for providing Health Care For All (HCFA) and Health Law Advocates (HLA) with the opportunity to present testimony on the proposed amendment to Chapter 530 of the Acts of 2008, An Act to Improve, Promote, and Protect the Oral Health of the Commonwealth. HLA is a non-profit law firm dedicated to ensuring health care access for Massachusetts residents. HCFA is an advocacy organization that seeks to create a consumer-centered health care system that provides comprehensive, affordable, accessible, culturally competent, high quality care and consumer education for everyone. We write to express our strong support of Senate Bill No. 536, the proposed technical amendment to Section 7 of Chapter 530. HCFA and HLA have long been leaders in the field working to improve access to oral health services for low-income children. We urge the Health Care Financing Committee to adopt this provision because we believe that it will ultimately serve to promote access of MassHealth-eligible children to important oral health services.

We support the proposed technical amendment and respectfully request that this bill be favorably and expeditiously reported out of committee. Senate Bill No. 536 clarifies that public health hygienists working in certain public health arenas may bill third party insurers when a patient has insurance coverage both through MassHealth and a third party insurer. The proposed change ensures that the Commonwealth will be eligible for federal financial participation for services provided to MassHealth-eligible individuals under Section 7 of Chapter 530.

Thank you for the opportunity to present the views of Health Care For All and Health Law Advocates. We look forward to continuing to work with the Health Care Financing Committee on matters related to oral health, and other matters as well.


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Oral Health Advocacy Taskforce

HEALTH CARE FOR ALL
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Steering Committee Members

American Academy of Pediatrics,
Massachusetts Chapter

Boston Public Health Commission
HIV Dental Program

Boston Public Health Commission
Office of Oral Health

Blue Cross Blue Shield of
Massachusetts

Boston University School of Dental
Medicine

Community Health Connections
Family Health Center

Denta Quest Ventures

Dental Service of Massachusetts

Dorchester House Multi-Service
Center

Ecu Health Care

The Forsyth Institute

Harvard University School of Dental
Medicine

Health Care For All

Health Law Advocates

The Lawrence Oral Health Initiative

Massachusetts Alliance for Families

Massachusetts Dental Hygienists
Association

Massachusetts Dental Society

Massachusetts Society for the
Prevention of Cruelty to Children

The Oral Health Foundation

Oral Health Initiative of North
Central Massachusetts

PACE, Inc.

Partners for a Healthier Community

Tobacco Free Massachusetts

Tufts University School of Dental
Medicine

The Oral Health Advocacy Taskforce is funded by
Dental Services of Massachusetts, The Health
Foundation of Central Massachusetts, Inc., and
Blue Cross Blue Shield of Massachusetts.

MEMORANDUM

To: Chairman Richard Moore and Chairwoman Harriett Stanley,
Joint Committee on Health Care Financing

From:

The Oral Health Advocacy Taskforce
The Massachusetts Dental Hygienists' Association
The Massachusetts Dental Society

Date: April 15, 2009

RE: Support for S. 536, An Act making technical correction in a certain
law relative to oral health

On behalf of the Massachusetts Dental Hygienists' Association, the
Massachusetts Dental Society, and the Oral Health Advocacy Taskforce, thank
you for your leadership and support of oral health issues. We are
tremendously grateful to the Legislature for your overwhelming support of
omnibus oral health legislation enacted last session, now Chapter 530 of the
Acts of 2008.

We write in support of Senate bill 536 and respectfully request that this bill is
favorably and expeditiously reported out of committee. Senate bill 536 is a
technical correction to Chapter 530 that ensures that services provided by
dental hygienists in public health settings are billed to third party insurers
before MassHealth, when patients are covered by MassHealth and third party
insurance. Without this correction, the Commonwealth may risk the loss of
federal matching dollars for those services.

Thank you for your consideration and please do not hesitate to contact us with
any questions or comments.

Myron Allukian, Jr., DDS, MPH
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Senator Richard Moore, Chair
Representative Harriet L Stanley, Chair
Health Care Financing Committee
State House
Boston, MA

Re: Revisions for S536-Technical
Corrections to the Oral
Health Law

April 15, 2009

Dear Co-Chairs of the Health Care Financing Committee

As the new oral health law now reads Chapter 112, Section 51, line 7,

Salaried public health dental hygienists who work for community health centers, local and state health departments, dental schools, and nursing homes would have to be paid directly by MassHealth and 3rd party payers such as Delta Dental can not be billed for services unless it is a mobile program certified/licensed by the state and then the employer may be reimbursed.

This makes no sense. It's against federal laws and regulations. It will create financially unstable programs as well as IRS and legal problems for salaried hygienists and their employers. It is also unfair for people with dental insurance and a restraint of trade.

In addition, the new law now reads (Sect 51, line 1), a public health hygienist can only do what is allowed in private practice. This disallows services previously allowed in nursing homes by the state dental board. This makes no sense and increases the access crisis.

Also, the new law also states (Sect 51, line 6) that all patients seen by a public health hygienist should be referred to a dentist within 90 days, creating another access problem, especially for the few safety net providers who exist. Only about 12% of licensed dentists in our state are active MassHealth providers with over \$10,000 a year in MasHealth services

The following are recommended:

Section 51, line 7

Public health dental hygienists or their employer shall be directly reimbursed for services rendered in a public health setting by Medicaid or the commonwealth care health insurance program or other third party payers.

Section 51, line 6

"Within 90 days" should be deleted. To tell everyone screened they must be examined within 90 days by a dentist is irresponsible. Different people have different needs and should be referred accordingly. This will put an additional unnecessary demand on safety net providers such as community health centers, extended care patients, public/non-profit programs and MassHealth private practitioners.

This also opens up the potential for conflicts and criticism with local dentists especially for those individuals who recently completed treatment or just saw their dentist and were told they were all right and didn't need treatment. This is not how public health programs operate, it's a waste of dollars, time and scarce dental providers.

Section 51, line 1 .

Now readsa public health hygienist may perform,.....any procedure...adopted by the board as a delegable procedure for dental hygienists "in private practice".. ..

This artificially limits what can be done in non-profit/public programs and especially in nursing homes and community health centers by public health hygienists using private practice as the standard. Previously, by regulation all dental hygienists could do denture adjustments in nursing homes. With this new law they can't do denture adjustments,

Usually in most states and traditionally in Massachusetts, public health hygienists do more in a community health center, local health department, non-profit or public program than in a private practice, just as public health nurses do. There was nothing in the law or regulations that says private practice should be the standard. It should be "at a minimum" if anything,

Recommendation

It should read .. by the board as a delegable procedure for dental hygienists in private practice at a minimum under general supervision

I hope the Committee will give these recommendations serious consideration. When the previous law was developed there was open discussion and hearings with all interested parties. That did not happen with the oral health law that passed in January, 2009.

If we are going to make a significant impact on the oral health crisis in our state, I urge you to adopt these corrections to the new oral health law. Thank you

Sincerely,



Myron Allukian Jr. DDS MPH
Former Director of Oral Health
Boston Public Health Commission

Past President
American Public Health Association

MASSACHUSETTS LEAGUE of COMMUNITY HEALTH CENTERS



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April 15, 2009

The Honorable Richard T. Moore, Chair
The Honorable Harriett L. Stanley, Chair
Joint Committee on Health Care Financing
State House, Rooms 111 and 236
Boston, MA 02133

Dear Chairman Moore and Chairwoman Stanley,

On behalf of the 52 health centers and the patients we are privileged to serve across the Commonwealth, I am writing to offer a suggested revision to Senate Bill (SB) 536, entitled "*An Act making technical correction in a certain law relative to oral health.*" Our proposed technical correction will avoid an unintended consequence of Chapter 530 of the Acts of 2008 and ensure community health centers, as well as other employers, will continue to receive direct reimbursement for the services of dental hygienists within their organization.

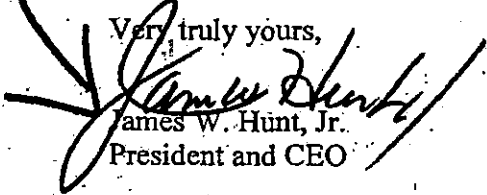
The Massachusetts League of Community Health Centers supports Senator Chandler's legislation and the efforts of the Department of Public Health to provide technical corrections to the law. In addition to this correction, we request the bill be amended to include "*or their employer*" after "*public health dental hygienists*" in order to ensure that health centers that currently employ dental hygienists will continue to receive direct reimbursement for the services. The existing law creates legal and IRS problems for public health dental hygienists employed by health centers and possibly other employers (e.g., dental schools, extended care facilities, school departments, local or state government).

Prior to passage of the omnibus oral health bill, we worked with the other proponents in support of the legislation, and advocated for this critical change. Unfortunately the change was not incorporated into the final bill, despite a collective agreement on the necessity for this correction. We have been working with DPH to correct this through regulation. However, because the change is substantive, it should more appropriately be done through legislation.

Again, we are asking for the inclusion of "or their employer" after Public health dental hygienists...in Section 51, line 7. We thank you in advance for your consideration and look forward to working with you during the remaining legislative session to ensure quality, dignity and access to health care coverage for all Massachusetts residents.

Please do not hesitate to contact me with any questions or concerns or Michael Curry, Legislative Affairs Director at the League, at 617-988-2262 or mcurry@massleague.org.

Very truly yours,


James W. Hunt, Jr.
President and CEO

AN ACT MAKING A TECHNICAL CORRECTION IN A CERTAIN LAW
RELATIVE TO ORAL HEALTH.

The third paragraph of section 51 of chapter 112 of the General Laws, inserted by the acts of 2008, is hereby amended by striking out the seventh sentence and inserting in place thereof the following sentence:- Public health dental hygienists shall be directly reimbursed for services administered in a public health setting by Medicaid or the commonwealth care health insurance program but, except as required by Federal Medicaid law, shall not seek reimbursement from any other insurance or third party payor.

SECTION 7. Section 51 of said chapter 112, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

A registered dental hygienist practicing as a public health dental hygienist may perform in a public health setting, without the supervision or direction of a dentist, any procedure or provide any service that is within the scope of his practice and that has been authorized and adopted by the board as a delegable procedure for dental hygienists in private practice under general supervision. A public health settings shall include, but not be limited to, the following: residences of the homebound; schools; nursing homes and long-term care facilities; clinics, hospitals, medical facilities, community health centers and mobile and portable dental health programs licensed or certified by the department of public health; Head Start programs; and other facilities or programs deemed appropriate by the department of public health. Before performing a procedure or providing a service under this paragraph, a public health dental hygienist shall enter into a written collaborative agreement with a local or state government agency or institution or with a licensed dentist who states that he shall be able to provide the appropriate level of communication and consultation with the dental hygienist to ensure patient health and safety. The board shall establish appropriate guidelines for this written collaborative agreement.

Public health dental hygienist shall also provide to each patient or to the patient's legal guardian, a consent form to be signed by the patient or legal guardian, which form shall be consistent with current department of public health policies, that describes services to be rendered, explains that the services are not a substitute for a dental examination by a dentist and informs the patient or legal guardian that the patient should obtain a dental examination by a dentist within 90 days. Public health dental hygienists shall be directly reimbursed for services administered in a public health setting by MassHealth or the commonwealth care health insurance program, but shall not seek reimbursement from any other insurance or third party payor. A public health dental hygienist shall not operate independently of a dentist, except for a dental hygienist working for a local or state government agency or institution or practicing in a mobile or portable prevention program licensed or certified by the department of public health. In such cases, the local or state government agency or institution, or mobile or portable prevention program licensed or certified by the department of public health may seek reimbursement from any other insurance or third party payor.