

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



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
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MassHealth


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Governor

TIMOTHY P. MURRAY
Lieutenant Governor

JUDYANN BIGBY, M.D.
Secretary

THOMAS R. DEHNER
Medicaid Director

Date: April 15, 2009

From: Thomas Dehner, Medicaid Director 

To: The Joint Committee on Health Care Financing

Re: Senate Bill 536, An Act Making Technical Correction in a Certain Law Relative to Oral Health

The Office of Medicaid would like to thank you for expediting the hearing process on this important legislation, and for allowing us the opportunity to submit the following written comments in support of Senate Bill 536, An Act Making Technical Correction in a Certain Law Relative to Oral Health. Below please find an analysis of the effects this bill will have on the provision of MassHealth services for our members. The Office of Medicaid hopes that you will take these comments into consideration as you deliberate on this proposed legislation.

If the Committee should desire any further information, or has any questions regarding these comments or other bills before the Committee, please contact John May at 617-573-1763. As always, the Office of Medicaid looks forward to working with the Committee and the Legislature on issues of concern to MassHealth members.

Comments on Senate Bill 536

In January, the legislature enacted and the Governor approved comprehensive oral health legislation to expand access to oral health services now known as Chapter 530 of the Acts of 2008. Senate Bill 536, filed by Senator Chandler, would make an important and necessary technical correction to this legislation, to align the third party payment obligations of public health dental hygienists with those of all other MassHealth providers.

By prohibiting public health dental hygienists from seeking third party payment, Section 7 of Chapter 530 contradicts federal Medicaid law that requires that MassHealth only make payment to providers of MassHealth services after all other responsible third parties, including insurers, make payment. MassHealth payments to any MassHealth providers that contravene federal law cannot qualify for federal matching funds. This legislation would remove this inadvertent contradiction. As a result, Senate Bill 536 would require billing of third party insurers in cases where a MassHealth member also has third party insurance, consistent with the federal provision that Medicaid be the payor of last resort.

We believe this is a non-controversial bill, given that various parties believed this provision was actually in the legislation that was enacted on the final day of the 2008 legislative year, and also because no one intended to cause the Commonwealth to sacrifice federal matching funding.

For these reasons, I respectfully urge you to report this legislation favorably.



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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)

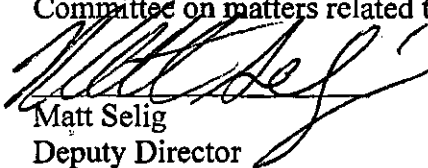
COMMENTS RELATIVE TO SENATE BILL NO. 536 – AN ACT MAKING
TECHNICAL CORRECTION TO A CERTAIN LAW RELATIVE TO ORAL HEALTH

BEFORE THE JOINT COMMITTEE ON HEALTH CARE FINANCING

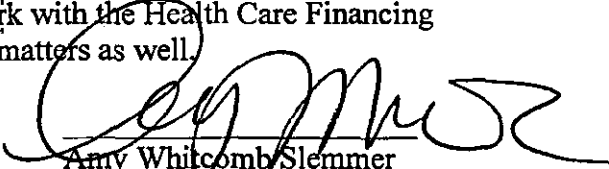
Thank you for providing Health Care For All (HCFA) and Health Law Advocates (HLA) with the opportunity to present testimony on the proposed amendment to Chapter 530 of the Acts of 2008, An Act to Improve, Promote, and Protect the Oral Health of the Commonwealth. HLA is a non-profit law firm dedicated 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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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.

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

Oral Health Advocacy Taskforce

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Massachusetts Society for the
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The Oral Health Foundation

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Central Massachusetts

PACE, Inc.

Partners for a Healthier Community

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Tufts University School of Dental
Medicine

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.