



October 6, 2014

Members of the Texas State Dental Board of Examiners,

I am writing on behalf of the Texas Public Policy Foundation (TPPF) to urge you to reject the proposed Rule 108.70, published September 5, 2014, in the *Texas Register*.

The rule is unnecessary and would unfairly burden thousands of licensed dentists in Texas who choose to contract with Dental Service Organizations (DSOs) for non-clinical administrative support services. This business model, which a growing number of dentists nationwide are adopting in order to streamline office administration and focus more time and energy on patient care, is the target of proposed Rule 108.70. If adopted, the rule would harm dentists who contract with DSOs by burdening them with punitive regulations while conferring an unfair advantage on non-DSO-supported dental practices.

A bill filed during the last legislative session, SB 151, would have imposed the kinds of regulations contemplated by the proposed Rule 108.70. At the time, the TPPF published a policy brief arguing against special regulations aimed at DSOs and dentists who contract with DSOs.¹ As the TPPF brief states, the Texas State Dental Board of Examiners (TSBDE) already has ample authority to regulate licensed dentists and investigate claims of Medicaid fraud. When widespread allegations of Medicaid orthodontia fraud surfaced in 2012, attention focused on DSOs as possible instigators. According to the interested parties behind SB 151, DSOs were improperly pressuring dentists to meet quotas for billing certain procedures and in some cases even encouraging them to commit Medicaid fraud. SB 151 was designed to stop this by imposing special regulations on DSOs and dentists who contract with DSOs.

However, these suspicions about DSOs are unfounded. Of the 98 cases TSBDE referred to the Attorney General since 2009, only two involved DSOs improperly influencing dentists. In addition, special regulations for DSOs are unnecessary. There is no question that TSBDE has the authority to regulate contractual arrangements between dentists and DSOs. Indeed, as the TPPF brief notes, "A sweeping regulatory approach to DSOs will do little to prevent Medicaid fraud, as the incentives to commit fraud—namely, to perform non-medically necessary orthodontic procedures, such as braces for cosmetic reasons—remain present regardless of whether or not a dentist chooses to contract with a DSO for non-clinical services."

Attempts to detect and prevent Medicaid fraud must instead focus on individual bad actors—not the DSO industry as a whole or duly licensed dentists who choose to contract with DSOs. Adopting proposed Rule 108.70 would do little to combat Medicaid fraud while restricting

¹ <http://www.texaspolicy.com/center/health-care/reports/state-regulation-dental-service-organizations-solution-search-problem>

access to dental care and driving up costs in Texas—a state already suffering from inadequate access to dental providers with one of the lowest rates of dentists per capita nationwide.

In addition, adopting the proposed rule will improperly involve the TSBDE in what should be a legislative decision. Lawmakers declined to pass SB 151 last session. If they see fit to revisit the issue and attempt to impose a regulatory regime on DSOs, they will have a chance to do so in the upcoming legislative session. Such a decision should be made by elected officials who are accountable to voters, not a regulatory body such as the TSBDE.

Sincerely,
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Texas Public Policy Foundation