S T A T E O F T E N N E S S E E
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Opinion No. 01-087

Clarification for Authority on HB-0704/SB-0304

Your questions concern certain provisions in a proposed Bill, HB-0704/SB-0304.[1]

QUESTIONS

1. Does the phrase "encourage parents to seek appropriate vision screening and dental screenings for their children" in section (b) of HB-0704/SB-0304 mean that a physician referral for such a screening would prevent unscreened children from enrolling in or attending an educational facility?[2]

2. Does Tennessee law permit physicians to refer children to a dentist?

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[1]Proposed HB-0704/SB-0304, as set forth in the most recently amended version, provides as follows:

(a) Upon registration or as early as is otherwise possible and appropriate, public schools, nursery schools, kindergartens, preschools or child care facilities are encouraged to make reasonable efforts to apprise parents of the health benefits of obtaining a vision screening and a dental screening for children.

(b) A health care professional is authorized to indicate the need for a vision screening or a dental screening on any report or form used in relationship to reporting immunization status for a child as required under this part. Public schools, nursery schools, kindergartens, preschools, or child care facilities receiving such forms or reports are authorized to encourage parents to seek appropriate vision screenings and dental screenings for their children.

(c) Vision screening, for purposes of this section, is a screening procedure recommended by a nationally recognized professional medical or health care organization, such as the American Academy of Pediatrics, the American Academy of Ophthalmology or the American Optometric Association, that is approved by the commissioner of health and performed by a person authorized to conduct such screenings under the provisions of Title 63 as part of the federal early periodic, screening, diagnosis and treatment program.

(d) Dental screening, for purposes of this section, is a screening procedure recommended by a nationally recognized professional medical or dental care organization, such as the American Dental Association, that is approved by the commissioner of health and performed by a person authorized to conduct such screenings under the provisions of Title 63, Chapter 5.

[2]For purposes of this opinion, the phrase "educational facilit[ies]" has been substituted for public schools, nursery schools, kindergartens, preschools, or child care facilities.

3. Does Tennessee law permit professional organizations or state approved community groups to provide dental/vision screening services to children?

OPINIONS

1. No. The phrasing in the proposed statute does not require mandatory dental and/or vision screenings. Thus, the failure to obtain such a screening would not prevent an unscreened child from entering or continuing to attend an educational facility.

2. Yes. Physicians may refer children to a dentist for a dental exam as long as the physician is not profiting from the referral.

3. Yes. It is not contrary to Tennessee law for professional organizations or state approved community groups to provide services such as vision/dental screenings as long as the organizations or groups are trained and/or certified to provide the screenings.

ANALYSIS

The proposed statute, which is intended to be codified as Tennessee Code Annotated § 49-6-5004, provides that, upon registration for school, or as early as possible, educational facilities are encouraged to apprise parents of the health benefits of obtaining both a visual and dental screening for children. The proposed statute further authorizes health care professionals to indicate the need for a visual and/or dental screening by noting that need on any report or form used to report the immunization status of the child. Upon receiving the report or form, the educational facility is authorized to encourage the parents to seek the appropriate screenings. The proposed statute also defines what comprises both a dental screening and a vision screening and further provides that both these screenings must be performed by a person authorized to perform such screenings under Title 63 of the Tennessee Code.

1. In order to interpret the phrase, "encourage parents to seek appropriate vision screening and dental screenings for their children," the statute as a whole must be read and interpreted. *Cohen v. Cohen*, 937 S.W.2d 823, 827 (Tenn.1996) ("[T]he legislature intended that every word used in a statute would have a purpose and would convey meaning"). Under the plain language of proposed Tennessee Code Annotated § 49-6-5004, a health care professional "is authorized" to indicate the need for a screening on the same form used to report immunizations. *See Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn.1994) ([L]egislative intent is derived from the plain language of the statute). Thus, the effect of the language is merely that the physician ***may*** inform the educational facility of the need for a screening. The statute does not require a physician to take such action, but permits a physician to do so if appropriate. The proposed statute then authorizes the educational facility that receives this information

to "encourage" the parents to seek such recommended screenings for their children. Neither of these provisions includes language indicating that the vision/dental screenings are mandatory.

Taking the proposed statute as a whole, it is apparent that it is in no way intended to prevent a child from enrolling in, or attending, any educational facility simply because that child has not received either a dental or vision screening. Moreover, although the proposed statute is found within Part 50 of Chapter 6 of Title 49, which is entitled "Immunization of School Children," it differs significantly from the other sections within that Part. The sections dealing strictly with immunizations use mandatory language such as "shall" to require that all children be immunized or risk exclusion from school unless the child falls under specific exemptions. *SAFECO Insurance Company of America v. State of Tennessee, Commissioner of Commerce and Insurance*, 840 S.W.2d 355, 357 (use of the word "shall" in a statute implies legislative intent to make action or inaction mandatory). In contrast, the proposed vision/dental screening statute uses no such language. The very absence of this language indicates that the screenings, while certainly an important interest, are not an interest so overriding that a child should be excluded from school if the screenings do not occur. Finally, another important distinction between the vision/dental screenings and the immunization requirements is that the failure of a child to receive a screening affects only the health of the unscreened child. The failure to get these screenings in no way poses a health risk to other children.

As such, the wording of proposed Tennessee Code Annotated § 49-6-5004, in no way acts as a bar that would prevent a child who did not receive a visual or dental screening from enrolling in, or continuing to attend, any educational facility. Instead, the statute acts only as a safeguard that would both encourage the dental and/or visual screening of school-age children and protect any health care professional or educational facility that recommends that such children be screened.

2. Although there is neither case law nor statutory authority directly on point, it is clear that the mere referral of a child to a dentist by a physician is permitted under Tennessee law. Under a somewhat analogous statute, Tennessee Code Annotated § 63-6-502, a physician's referral to another medical facility or medical professional is limited only if the referring physician has some commercial interest or is otherwise faced with a conflict of interest by the referral.[3] While § 63-6-502 does not discuss a referral to a non-medical facility, it is otherwise very similar to the scenario in which a physician would refer a patient to dentist. Thus, as long as the physician is not profiting in any way from the referral itself and does not have any other commercial interest in the referral, the referral does not violate Tennessee law. It is also apparent that the mere referral to a dentist by a physician would not qualify as practicing dentistry as defined by Tennessee Code Annotated § 63-5-108.

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[3]Pursuant to § 63-6-502, however, a physician still may refer a patient to a facility or another health care professional in which the physician has a commercial interest as long as that interest is disclosed to the patient and the patient has the option of choosing an alternate facility or health care professional. As such, even if the referring physician has a commercial interest in the dental referral, the referral may remain proper if the interest is disclosed and the patient may choose an alternate dental facility.

3. In describing what constitutes a dental and visual screening, the proposed statute references Title 63, which sets forth, among other things, the definitions and requirements for both dentists and optometrists. Thus, in order for a professional organization or community group to provide dental and/or visual screenings pursuant to the proposed statute, the person performing the actual screening must meet the requirements set forth under Title 63. So long as the requirements set forth by Title 63 are met, it is not improper for the professional organizations or state approved community groups to provide services such as vision and dental screenings. However, it is important to note that, by virtue of the proposed statute's reference to Title 63, individuals who are unlicensed are not authorized to conduct the dental or vision screenings.

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