



MEMORANDUM

February 24, 2017

TO: HEALTH CLIENTS

FROM: HOBBS, STRAUS, DEAN & WALKER

Geoff Strommer (by FME)

Re: ***Washington State DHAT Legislation***

On February 22, 2017, Governor Jay Inslee of Washington State signed into law Washington Substitute Senate Bill 5079, which authorizes dental health aide therapist (DHAT) services as part of on-reservation tribal health programs within Washington State. The new Washington law is not intended to authorize DHAT services generally throughout the State, but to provide DHATs as an option for tribal governments, who the Washington legislature declares are the best suited to determine what strategies “can effectively extend the ability of dental health professionals to provide care for children and others at risk of oral disease and increase access to oral health care for tribal members.”

DHATs are the primary oral health care professionals who provide basic clinical dental treatment and preventive services, and have long been part of the existing community health aide program in the Alaska Area of the Indian Health Service. DHATs in Alaska are considered to be federally certified providers, and the community health aide program in Alaska is authorized under Section 119 of the Indian Health Care Improvement Act (IHCIA), 25 U.S.C. § 1616*l*. When the IHCIA was reauthorized several years ago, Congress included language about nationalizing the program so that tribes and tribal organizations in the lower 48 states could also benefit from using health aides. The law provides authority to the Secretary of Health and Human Services to develop a national program, except that DHAT services are excluded from being covered by such a program. *Id.* § 1616*l*(d)(2)(B). That exclusion does not apply, however, when a tribe or tribal organization is “located in a State (other than Alaska) in which the use of dental health aide therapist services or midlevel dental health provider services is authorized under State law,” in which case the tribal DHATs can “supply such services in accordance with State law.”

Under the new Washington law, DHAT services must be provided by a person who is certified as a DHAT by a federal community health aide certification board (*i.e.*, the Alaska Community Health Aide Program Certification Board) or by a federally recognized tribe that has adopted certification standards that meet or exceed those of the federal certification board. The law also requires that all of the DHAT services be performed as part of an Indian health program within the boundaries of an Indian reservation, and be provided in accordance with the certification standards and pursuant to any applicable written standing orders by a supervising

dentist. The DHAT services may be provided to members of federally recognized tribes or anyone else who is “eligible for services under Indian health service criteria” pursuant to the IHCA.

The law signed by the Governor also specifically exempts DHATs from state licensure requirements applicable to other dental professionals, and notes that the Washington State legislature intends for services provided by DHATs to be subject to reimbursement from Washington’s Medicaid program. The law directs the Washington State Health Care Authority to coordinate with the Centers for Medicare and Medicaid Services to ensure that the Medicaid payments made by the State Medicaid program for DHAT services are eligible for reimbursement to the State by the federal government at 100% FMAP.

Washington is the first state to pass a law specifically authorizing DHATs for tribal health care programs, and the Washington law could serve as a model for other states in which tribal health programs are providing dental care. Outside of the DHAT program in Alaska and the new Washington law, Minnesota was the first state to authorize the licensure and practice of dental therapy (not specific to tribal programs) with a very limited scope of practice intended to help enhance access to basic dental care. The State of Maine has also enacted legislation authorizing dentists to hire dental therapists. Last year, the State of Oregon approved the “Oregon Tribes Dental Health Aide Therapist Pilot Project” submitted by the Northwest Portland Area Indian Health Board (NPAIHB). The Board’s pilot project, which is authorized through 2021, currently involves three pilot sites at which DHAT services will be provided through tribal health programs. While no DHATs are practicing at those sites just yet, several students are currently in DHAT training. We are aware that several other states are also considering similar pilot projects or possible DHAT legislation.

A copy of the Washington Substitute Senate Bill 5079 can be obtained here:
<http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/5079-S.PL.pdf#page=1>

If you have any questions or if we can provide additional information, please contact Geoff Strommer or Starla Roels at 503-242-1745, gstrommer@hobbsstrauss.com, sroels@hobbsstrauss.com.