

# DENTAL LEGAL UPDATE

## Texas Legislative Update: Budget Cuts & More

by Jeanine Lehman, Attorney

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**Budget:** The looming issue in the 2011 Texas legislature was the budget, including extensive budget cuts. These budget cuts affected many state agencies and programs. Expect a leaner staff at state agencies, as there have been many layoffs, and attendant reduced services. Also, expect a trend of contraction in Medicaid payments.

### Franchise Tax Exemption

**Extension:** In the 2011 special session of the Texas legislature in Senate Bill 1, Article 37, the \$1,000,000 exemption from the Texas franchise tax was extended for two years. This means that the franchise tax does not begin until an entity subject to the franchise tax has over \$1,000,000 in annual gross revenues. This extension goes through December 31, 2013. The franchise tax applies to various dental practice entities, including professional corporations, professional associations, and professional limited liability companies. (Without the extension, the franchise tax would have kicked in when annual gross revenues

exceeded \$600,000 beginning in January 2012.)

### Privacy – Health Records:

Effective on 9/1/2012, under House Bill 300, a number of new and extensive requirements for privacy of protected health information become law. These include, but are not limited, to training on federal & state

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*The \$1,000,000 exemption from the Texas franchise tax was extended for two years.*

### Survey: Future Issues

What topics would you like to see covered in future issues?

Possibilities:

- o **Dental Employment Contracts:** Planning Tools
- o **Dental Advertising Rules:** Pitfalls to Avoid
- o **Business Contracts 101**
- o **HIPAA Breaches of Patient Records:** Law's Impact - Embezzlement, Theft, Laptop Loss & More
- o **Case Studies**
- o Other – **Your Suggestions**

**Please call or email me to give your preference.**

Jeanine Lehman  
(512) 918-3435

[jeanine@jeanine.com](mailto:jeanine@jeanine.com)

***Texas has joined 16 other states that have enacted legislation to prevent caps on non-covered dental services.***



#### **Website Favorites**

Capital Area Dental Society:

[www.capitalareadental.org](http://www.capitalareadental.org)

Texas State Board of Dental Examiners:

[www.tsbde.state.tx.us](http://www.tsbde.state.tx.us)

Texas Comptroller of Public Accounts:

[www.window.state.tx.us](http://www.window.state.tx.us)

Law Offices of Jeanine Lehman P.C.:

[www.jeanine.com](http://www.jeanine.com)

#### **Legislative Update (cont.) --**

laws on protected health information for the practice's course of business, and applicable to the scope of the employee's employment, by employees within 60 days of hire and then at least every two years thereafter, to be confirmed by the employee's signed statement; delivery of a patient's electronic health record within 15 business days of request; consumer Internet website by the Texas Attorney General's office covering privacy rights for protected health information and reporting by the AG on complaint statistics; general prohibition on sale of protected health information; increased penalties for violation of state law; notice and authorization for electronic disclosure of protected health information; and formation of a task force to advise what should be done with protected health information held by covered entities (including dental practices) that cease to operate.

**Managed Care Contracts:** Texas has joined 16 other states that have enacted legislation to prevent caps on non-covered dental services. Senate Bill 554 amends the Texas Insurance Code for managed care contracts with dentists. The law provides that a contract between a dentist and an HMO or insurer may not limit the fee that the dentist may charge for a service that is not a covered service under the patient's health care plan, employee benefit plan or health insurance

policy. This law applies to new contracts and contract renewals on or after 9/1/2011. Examples of services to which this law could apply are teeth whitening and other cosmetic procedures.

**County Inmate Care:** House Bill 1566 amends the Texas Local Government Code so that the commissioners' court of a county may appoint, contract for, or employ licensed physicians, dentists, or other health care providers to provide health care services to inmates in the custody of the sheriff.

#### **El Paso Dental School**

**Feasibility Study:** House Bill 1020 authorizes a study on the need for and feasibility of establishing a dental school in El Paso as a component of the Texas Tech University Health Sciences Center. This study is to help address a shortage of dentists and dental hygienists in west Texas and the Rio Grande Valley.

#### **Electronic Prescribing Schedule II Drugs**

Electronic prescribing is becoming more common among many prescribers and pharmacists. In Texas before the newly passed law, prescribers were not allowed to electronically prescribe Schedule II controlled substances due to state law and previous federal regulations. Those federal regulations have since been changed to allow the electronic prescription of such controlled substances. Because electronic

prescribing technology is a critical prerequisite for adoption of electronic health records, steps needed to be taken to promote electronic prescribing. Beginning on 9/1/2011, Senate Bill 594 amends the Texas Health and Safety Code to provide that Schedule II controlled substances can be prescribed electronically.

**Staff Privileges and PPO Plans:** Effective 9/28/2011, under Senate Bill 7 from the 2011 Special Session of the Texas Legislature, a contract between a preferred provider organization (PPO) and an institutional provider (for example, a hospital) may not, as a condition of staff membership or privileges, require a physician or other practitioner to enter into a preferred provider contract. This change in the law will benefit dentists, such as oral surgeons. ■

### Texas Dental Board Meeting

At the 8/5/2011 board meeting of the Texas State Board of Dental Examiners, several interesting items were discussed during the public comment period.

#### **Dental Technician Board Representation; Chinese Lab Work**

A dental technician from Houston strongly recommended that the Board include a dental technician, noting that both dentists and dental hygienists are represented on the Dental Board, but not dental technicians. He also cautioned that there is a trend for dental lab work to be outsourced to China and that lead has been found in some Chinese outsourced lab work. [Dentists will want to check if their dental lab work is being sent offshore, including to China. In Ohio, there was a widely reported court case involving a patient who received a defective bridge with lead from China. That case led to reform of Ohio law. Ohio now requires a "Dental Restoration Point of Origin form" that labs are required to send to the

dentist when the dental lab prescription is received. That document provides details on subcontracting of lab work, including foreign country subcontracting, and becomes a part of the dental record of the patient.]

#### **Dental Therapists**

A representative of the Dental Hygiene Advisory Committee indicated that the committee is studying the use of dental therapists in other states. Dental therapists are midlevel providers.

#### **Expert Testimony by Dental Board Members**

Concern was expressed by members of the public, including dentists, about Dental Board members serving as expert witnesses in court cases (including malpractice cases). ■

**Past Issues of the Dental Legal Update are at [www.jeanine.com](http://www.jeanine.com) Enjoy them and forward them to colleagues.**

- ✓ **Internet "Coupons": Dental Practice Time Bombs**
- ✓ **Your Dental Office Lease: Watch the Terms**
- ✓ **Ownership Options for Your Dental Practice**
- ✓ **Financing Your Dental Practice: Tips & Terms**
- ✓ **Buying a Dental Practice: Deal Points**

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*To address future backlogs, DPS is extending the renewal period for controlled substances certificates from 60 to 90 days.*

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### **Texas DPS Backlog Controlled Substances Certificates**

The Texas Department of Public Safety is having problems with a large backlog of applications for renewal of controlled substances certificates. These certificates are needed (in addition to DEA controlled substances authorization) for dentists to be able to prescribe controlled substances and to operate at facilities, like hospitals and surgery centers.

On July 29, 2011, the Austin American-Statesman published an article detailing this problem. The article includes reference to a new computer system, phone problems and an office move as possible

reasons for the backlog and indicates that the backlog is likely to continue. Here is the link: <http://www.statesman.com/news/local/doctors-say-dps-backlog-in-getting-narcotics-credentials-1667608.html>

In response to the backlog, DPS issued a one month extension for certificates expiring on July 31, 2011.

To address future backlogs, DPS is also extending the renewal period from 60 to 90 days as described in the following link: [http://www.txdps.state.tx.us/director\\_staff/public\\_information/pr072911.pdf](http://www.txdps.state.tx.us/director_staff/public_information/pr072911.pdf)

Given the backlog, it is prudent to track that you have received the DPS renewal application in a

timely manner, to send in renewals as soon as you receive them, and to carefully track that the renewal has been granted. If you are hiring new associates and backlogs continue, their DPS controlled substances certificates may be delayed. ■

**Jeanine Lehman** is an Austin, TX attorney who practices health law and business law.

### **Speaking Requests**

For **Jeanine Lehman** and her colleagues to speak to professional and business groups on legal and practice management topics, please contact Jeanine Lehman at (512) 918-3435.

## About Our Firm ...

**Law Offices of Jeanine Lehman P.C.** is a Texas law firm headquartered in Austin with a state-wide health law practice, including representation of Texas dentists. Our health law practice is focused on business law, transactional aspects of individual and group practices, such as contracts and incorporations, office/facility leases, building purchases/condos, and build-to-suits, practice sales/purchases/buy-ins, employment agreements, financing, and consultation concerning the day-to-day legal concerns of running a health care practice. The firm is owned by Texas Attorney **Jeanine Lehman**. Jeanine has over 25 years experience as a Texas attorney. She has had one book and over 70 articles published. She speaks to professional and business groups concerning legal topics. Jeanine is blessed to have one dentist and three dental hygienists in her family. Contact us at (512) 918-3435, [jeanine@jeanine.com](mailto:jeanine@jeanine.com) or PO Box 202211, Austin, TX 78720, and visit our website at [www.jeanine.com](http://www.jeanine.com)