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SENATE BILL NO. 647

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Education and Health)
 (Patron Prior to Substitute—Senator Black)
 Senate Amendments in [] — February 6, 2014

A BILL to amend and reenact § 54.1-2722 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-326.4, relating to the Department of Medical Assistance Services; teledentistry pilot program.

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2722 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-326.4 as follows:

§ 32.1-326.4. *Teledentistry pilot program.*

A. For the purposes of this section and § 54.1-2722:

"Teledentistry " means the delivery of dental services through the use of interactive audio, video, or other electronic media used for the purpose of diagnosis, consultation, or treatment. Teledentistry does not include audio-only telephone, email, or facsimile transmission.

B. The Department of Medical Assistance Services shall establish a pilot program providing dental services to school-age children who are eligible to receive pediatric dental services through the Smiles for Children program. The pilot program shall be further limited to children in school divisions in which at least 50 percent of the elementary school students have not been examined by a dentist within the preceding 12 months or have no dental home of record. Dentists participating in the program shall provide supervision to licensed dental hygienists through teledentistry.

C. The Department shall seek approval from the Centers for Medicare and Medicaid Services for a waiver to amend the State Plan for Medical Assistance and the Family Access to Medical Insurance Security (FAMIS) Plan to provide coverage for the costs of services provided in accordance with this section and may promulgate any rule or regulation or make any coding, reimbursement, or plan modification it deems necessary to carry out the provisions of this section.

D. The Department shall enter into a memorandum of understanding with the Virginia Dental Association to establish protocols for the administration of the program. The Department, in consultation with stakeholders including the Virginia Dental Association, the Virginia Dental Hygienists' Association, the Virginia Association of School Nurses, the Mid-Atlantic Telehealth Association, and the Virginia Oral Health Coalition, shall develop metrics to be used to evaluate the plan.

§ 54.1-2722. *License; application; qualifications; practice of dental hygiene.*

A. No person shall practice dental hygiene unless he possesses a current, active, and valid license from the Board of Dentistry. The licensee shall have the right to practice dental hygiene in the Commonwealth for the period of his license as set by the Board, under the direction of any licensed dentist.

B. An application for such license shall be made to the Board in writing and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character, (ii) is a graduate of a dental hygiene program accredited by the Commission on Dental Accreditation and offered by an accredited institution of higher education, (iii) has passed the dental hygiene examination given by the Joint Commission on Dental Examinations, and (iv) has successfully completed a clinical examination acceptable to the Board.

C. The Board may grant a license to practice dental hygiene to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B; (ii) holds a current, unrestricted license to practice dental hygiene in another jurisdiction in the United States; (iii) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (iv) meets other qualifications as determined in regulations promulgated by the Board.

D. A licensed dental hygienist may, under the direction or general supervision of a licensed dentist and subject to the regulations of the Board, perform services that are educational, diagnostic, therapeutic, or preventive. These services shall not include the establishment of a final diagnosis or treatment plan for a dental patient. Pursuant to subsection V of § 54.1-3408, a licensed dental hygienist may administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine.

A dentist may also authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia. In its regulations, the Board of Dentistry shall establish the education and training requirements for dental hygienists to administer such controlled substances under a dentist's direction.

For the purposes of this section, "general supervision" means that a dentist has evaluated the patient

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60 and prescribed authorized services to be provided by a dental hygienist; however, the dentist need not be
61 present in the facility while the authorized services are being provided.

62 For the purposes of this section, "remote supervision" means that a public health dentist has regular,
63 periodic communications with a public health dental hygienist regarding patient treatment, but such
64 dentist may not have done an initial examination of the patients who are to be seen and treated by the
65 dental hygienist and may not be present with the dental hygienist when dental hygiene services are
66 being provided.

67 The Board shall provide for an inactive license for those dental hygienists who hold a current,
68 unrestricted license to practice in the Commonwealth at the time of application for an inactive license
69 and who do not wish to practice in Virginia. The Board shall promulgate such regulations as may be
70 necessary to carry out the provisions of this section, including requirements for remedial education to
71 activate a license.

72 E. Notwithstanding any provision of law, a dental hygienist employed by the Virginia Department of
73 Health who holds a license issued by the Board of Dentistry may provide educational and preventative
74 dental care in the Commonwealth under the remote supervision of a dentist employed by the Department
75 of Health. A dental hygienist providing such services shall practice pursuant to a protocol adopted by
76 the Commissioner of Health on September 23, 2010, having been developed jointly by (i) the medical
77 directors of the Cumberland Plateau, Southside, and Lenowisco Health Districts; (ii) dental hygienists
78 employed by the Department of Health; (iii) the Director of the Dental Health Division of the
79 Department of Health; (iv) one representative of the Virginia Dental Association; and (v) one
80 representative of the Virginia Dental Hygienists' Association. Such protocol shall be adopted by the
81 Board as regulations.

82 F. A report of services provided by dental hygienists pursuant to such protocol, including their
83 impact upon the oral health of the citizens of the Commonwealth, shall be prepared and submitted by
84 the Department of Health to the Virginia Secretary of Health and Human Resources annually. Nothing
85 in this section shall be construed to authorize or establish the independent practice of dental hygiene.

86 G. *Notwithstanding any provision of law, a licensed dental hygienist may provide services in the*
87 *Commonwealth under the supervision through teledentistry of a dentist pursuant to § 32.1-326.4.*

88 **2. That the provisions of the first enactment of this act shall expire July 1, [2016 2017] .**

89 **3. That the Department of Medical Assistance Services shall report, by November 1, 2016, to the**
90 **Secretary of Health and Human Services and the Chairmen of the House Appropriations and**
91 **Senate Finance Committees on the benefits, if any, of using teledentistry for the provision of**
92 **services required by this act.**

93 **[4. That the provisions of this act shall not become effective unless an appropriation effectuating**
94 **the purposes of this act is included in a general appropriation act passed in 2014 by the General**
95 **Assembly that becomes law.]**