STATE OF NEW YORK

4428

2023-2024 Regular Sessions

IN SENATE

February 8, 2023

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to licensing of a dental therapist and an advanced dental therapist; and to amend the social services law, in relation to Medicaid reimbursement for dental therapy services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The article heading of article 133 of the education law, as amended by chapter 390 of the laws of 2019, is amended to read as follows:

DENTISTRY, DENTAL HYGIENE, **DENTAL THERAPY, ADVANCED DENTAL THERAPY** AND REGISTERED DENTAL ASSISTING

§ 2. Section 6600 of the education law, as amended by chapter 390 of the laws of 2019, is amended to read as follows:

§ 6600. Introduction. This article applies to the professions of dentistry, dental hygiene, **dental therapy, advanced dental therapy** and registered dental assisting. The general provisions for all professions contained in article one hundred thirty of this title apply to this article.

§ 3. The education law is amended by adding eight new sections 6614, 6614-a, 6614-b, 6614-c, 6615, 6615-a, 6615-b and 6615-c to read as follows:

§ 6614. Definition of practice of dental therapy. 1. The practice of the profession of dental therapy is defined as the performance of dental services under the general supervision of a dentist within the parameters of a collaborative agreement, as provided in subdivision two of this section, which shall include: oral health instruction and disease prevention education, including nutritional counseling and dietary analysis; preliminary charting of the oral cavity; making radiographs; mechanical polishing; application of topical preventive or prophylactic

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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agents, including fluoride varnishes and pit and fissure sealants; pulp vitality testing; application of desensitizing medication or resin; fabrication of athletic mouthguards; placement of temporary restorations; fabrication of soft occlusal guards; tissue conditioning and soft reline; atraumatic restorative therapy; dressing changes; tooth reimplantation; administration of local anesthetic; administration of nitrous oxide. A licensed and registered dental therapist may perform the following services under indirect supervision: emergency palliative treatment of dental pain; the placement and removal of space maintainers; cavity preparation; restoration of primary and permanent teeth; placement of temporary crowns; preparation and placement of preformed crowns; pulpotomies on primary teeth; indirect and direct pulp capping on primary and permanent teeth; stabilization of reimplanted teeth; extractions of primary teeth; suture removal; brush biopsies; repair of defective prosthetic devices; and recementing of permanent crowns and any other function in the definition of the practice of dentistry as may be delegated by a licensed dentist in accordance with regulations promulgated by the commissioner. The practice of dental therapy may be conducted in the office of any licensed dentist or in any appropriately equipped school or public institution.

2. (a) Prior to performing any of the services authorized under this article, a dental therapist shall enter into a written collaborative management agreement with a licensed and registered dentist. Such collaborative arrangement shall not obviate or supersede any law or regulation which requires identified services to be performed under the personal supervision of a dentist. When dental therapist services are provided pursuant to a collaborative agreement, such dental therapists shall instruct individuals to visit a licensed dentist for comprehensive examination or treatment.

(b) A collaborating dentist is limited to entering into a collaborative agreement with no more than five dental therapists or advanced dental therapists at any one time. The agreement shall include: practice settings where services may be provided and the populations to be served; any limitations on the services that may be provided by the dental therapist, including the level of supervision required by the collaborating dentist; age and procedure-specific practice protocols, including case selection criteria, assessment guidelines, and imaging frequency; a procedure for creating and maintaining dental records for the patients that are treated by the dental therapist; a plan to manage medical emergencies in each practice setting where the dental therapist provides care; a quality assurance plan for monitoring care provided by the dental therapist, including patient care review, referral follow-up, and a quality assurance chart review; criteria relating to the provision of care to patients with specific medical conditions or complex medication histories, including requirements for consultation prior to the initiation of care; supervision criteria of dental assistants; a plan for the provision of clinical resources and referrals in situations which are beyond the capabilities of the dental therapist; and protocols for administering and dispensing analgesics, anti-inflammatories, and antibiotics, including the specific conditions and circumstances under which these medications are to be dispensed and administered.

(c) A collaborating dentist shall be licensed and practicing in New York state. The collaborating dentist shall accept responsibility for all services authorized and performed by the dental therapist pursuant to the management agreement.

(d) Collaborative dentist management agreements shall be signed and maintained by the collaborating dentist and the dental therapist. Agreements shall be reviewed, updated, and submitted to the board on an annual basis.

3. A dental therapist licensed under this article is limited to primarily practicing in settings that serve low-income, uninsured, and underserved patients or in a dental health professional shortage area as designated by the commissioner, including a health facility or agency that is reimbursed as a federally qualified health center as defined in 42 U.S.C. § 1395x(aa)(4) or a medically-underserved population as defined in 42 U.S.C. § 254b.

4. The commissioner shall promulgate regulations defining the functions a dental therapist may perform that are consistent with the training and qualifications for a license as a dental therapist.

5. As used in this section, "general supervision" shall mean the supervision of tasks or procedures that do not require the presence of a dentist in the office or on the premises at the time the tasks or procedures are being performed but require the tasks be performed with the prior knowledge and consent of such dentist. As used in this section, "indirect supervision" shall mean the dentist is in the office, authorizes the procedures and remains in the office while the procedures are being performed by allied dental personnel.

§ 6614-a. Requirements for a license as a dental therapist. To qualify for a license as a dental therapist, an applicant shall fulfill the following requirements:

1. Application: file an application with the department;

2. Education: have received an education, including high school graduation and a baccalaureate degree or master's degree from a dental therapy education program, in accordance with the commissioner's regulations;

3. Experience: have experience satisfactory to the board and in accordance with the commissioner's regulations;

4. Examination: pass an examination satisfactory to the board and in accordance with the commissioner's regulations;

5. Age: be at least eighteen years of age;

6. Citizenship or immigration status: be a United States citizen or a noncitizen lawfully admitted for permanent residence in the United States; provided, however, that the board of regents may grant a three year waiver for a noncitizen to practice in an area which has been designated a federal dental health professions shortage area, except that the board of regents may grant an additional extension not to exceed six years to a noncitizen to enable him or her to secure citizenship or permanent resident status, provided such status is being actively pursued;

7. Character: be of good moral character as determined by the department; and

8. Fees: pay a fee of one hundred fifteen dollars to the department for admission to a department conducted examination and for an initial license, a fee of fifty dollars for each reexamination, a fee of seventy dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of fifty dollars for each triennial registration period.

§ 6614-b. Practice of dental therapy and use of title "dental therapist". Only a person licensed under section sixty-six hundred fourteen-a of this article or exempt shall practice dental therapy or use the title "dental therapist".

§ 6614-c. Mandating continuing education for dental therapists. 1. (a) Each dental therapist licensed pursuant to sections sixty-six hundred fourteen and sixty-six hundred fourteen-a of this article and required to register triennially with the department to practice in this state shall comply with the provisions of the mandatory continuing education requirements, except as set forth in paragraphs (b) and (c) of this subdivision. Dental therapists who do not satisfy the mandatory continuing education requirements shall not practice until they have met such requirements and have been issued a registration or conditional registration certificate.

(b) Dental therapists shall be exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed. In accordance with the intent of this section, adjustments to the mandatory continuing education requirement may be granted by the department for reasons of health, certified by a physician, for extended active duty with the Armed Forces of the United States, or for other good cause acceptable to the department which may prevent compliance.

(c) A licensed dental therapist not engaged in the practice of dental therapy shall be exempt from the mandatory continuing education requirement upon the filing of a statement with the department declaring such status. Any licensee who returns to the practice of dental therapy during the triennial registration period shall notify the department prior to reentering the profession and shall meet such mandatory continuing education requirements as shall be prescribed by regulation of the commissioner.

2. During each triennial registration period an applicant for registration shall complete a minimum of twenty-four hours of acceptable formal continuing education including currently mandated child abuse reporting instruction and infection control training as approved by the department. Of these twenty-four hours a maximum of ten hours may be self-instructional coursework as approved by the department. A licensee who has not satisfied the mandatory continuing education requirements shall not be issued a triennial registration certificate by the department and shall not practice unless and until a conditional registration certificate is issued as provided in subdivision three of this section. The individual licensee shall determine the selection of courses or programs of study pursuant to subdivision four of this section.

3. The department, in its discretion, may issue a conditional registration to a licensee who fails to meet the continuing education requirements established in subdivision two of this section but who agrees to make up any deficiencies and take any additional education which the department may require. The fee for such a conditional registration shall be the same as, and in addition to, the fee for the triennial registration. The duration of such conditional registration shall be determined by the department. Any licensee who is notified of the denial of registration for failure to submit evidence, satisfactory to the department, of completion of required continuing education and who practices dental therapy without such registration, may be subject to disciplinary proceedings pursuant to section sixty-five hundred ten of this title.

4. As used in this section, "acceptable formal continuing education" shall mean formal programs of learning which contribute to professional practice and which meet the standards prescribed by regulations of the commissioner. To fulfill the mandatory continuing education requirement,

programs shall be taken from sponsors approved by the department, pursuant to the regulations of the commissioner.

5. The mandatory continuing education fee of thirty dollars shall be payable on or before the first day of each triennial registration period and shall be paid in addition to the triennial registration fee required by section sixty-six hundred fourteen-a of this article.

§ 6615. Definition of practice of advanced dental therapy. 1. The practice of the profession of advanced dental therapy is defined as the performance of dental services under the general supervision of a dentist within the parameters of a collaborative agreement as provided in subdivision two of this section which shall include: an oral evaluation and assessment of dental disease and the formulation of an individualized treatment plan authorized by the collaborating dentist; nonsurgical extractions of periodontally diseased permanent teeth with tooth mobility of +3 to +4 under general supervision if authorized in advance by the collaborating dentist, but shall not include extracting a tooth for any patient if the tooth is unerupted, impacted, fractured, or needs to be sectioned for removal; and the services and procedures described under subdivision one of section sixty-six hundred fourteen of this article. The practice of advanced dental therapy may be conducted in the office of any licensed dentist or in any appropriately equipped school or public institution.

2. Prior to performing any of the services authorized under this article, an advanced dental therapist shall enter into a written collaborative management agreement with a licensed and registered dentist pursuant to subdivision two of section sixty-six hundred fourteen. The collaborating dentist shall ensure that a dentist is available to the advanced dental therapist for timely consultation during treatment if needed and shall either provide or arrange with another dentist or specialist to provide the necessary treatment to any patient who requires more treatment than the advanced dental therapist is authorized to provide.

3. An advanced dental therapist licensed under this article is limited to primarily practicing in settings that serve low-income, uninsured, and underserved patients or in a dental health professional shortage area as designated by the commissioner.

4. The commissioner shall promulgate regulations defining the functions an advanced dental therapist may perform that are consistent with the training and qualifications for a license as an advanced dental therapist.

§ 6615-a. Requirements for a license as an advanced dental therapist. To qualify for a license as an advanced dental therapist, an applicant shall fulfill the following requirements:

1. Application: file an application with the department;

2. Education: have received an education, including high school graduation and a master's degree from a dental therapy education program, in accordance with the commissioner's regulations;

3. Experience: have experience satisfactory to the board and in accordance with the commissioner's regulations;

4. Examination: pass an examination satisfactory to the board and in accordance with the commissioner's regulations;

5. Age: be at least eighteen years of age;

6. Citizenship or immigration status: be a United States citizen or a noncitizen lawfully admitted for permanent residence in the United States; provided, however, that the board of regents may grant a three year waiver for a noncitizen to practice in an area which has been

designated a federal dental health professions shortage area, except that the board of regents may grant an additional extension not to exceed six years to a noncitizen to enable him or her to secure citizenship or permanent resident status, provided such status is being actively pursued;

7. Character: be of good moral character as determined by the department; and

8. Fees: pay a fee of one hundred fifteen dollars to the department for admission to a department conducted examination and for an initial license, a fee of fifty dollars for each reexamination, a fee of seventy dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of fifty dollars for each triennial registration period.

§ 6615-b. Practice of advanced dental therapy and use of the title "advanced dental therapist". Only a person licensed under section sixty-six hundred fifteen-a of this article or exempt shall practice advanced dental therapy or use the title "advanced dental therapist".

§ 6615-c. Mandatory continuing education for advanced dental therapists. 1. (a) Each advanced dental therapist, licensed pursuant to this article and required to register triennially with the department to practice in this state shall comply with the provisions of the mandatory continuing education requirements, except as set forth in paragraphs (b) and (c) of this subdivision. Advanced dental therapists who do not satisfy the mandatory continuing education requirements shall not practice until they have met such requirements and have been issued a registration or conditional registration certificate.

(b) Advanced dental therapists shall be exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed. In accordance with the intent of this section, adjustments to the mandatory continuing education requirement may be granted by the department for reasons of health, certified by a physician, for extended active duty with the Armed Forces of the United States, or for other good cause acceptable to the department which may prevent compliance.

(c) A licensed advanced dental therapist not engaged in the practice of advanced dental therapy shall be exempt from the mandatory continuing education requirement upon the filing of a statement with the department declaring such status. Any licensee who returns to the practice of dental therapy during the triennial registration period shall notify the department prior to reentering the profession and shall meet such mandatory continuing education requirements as shall be prescribed by regulation of the commissioner.

2. During each triennial registration period an applicant for registration shall complete a minimum of twenty-four hours of acceptable formal continuing education including currently mandated child abuse reporting instruction and infection control training as approved by the department. Of these twenty-four hours a maximum of ten hours may be self-instructional coursework as approved by the department. A licensee who has not satisfied the mandatory continuing education requirements shall not be issued a triennial registration certificate by the department and shall not practice unless and until a conditional registration certificate is issued as provided in subdivision three of this section. The individual licensee shall determine the selection of courses or programs of study pursuant to subdivision four of this section.

3. The department, in its discretion, may issue a conditional registration to a licensee who fails to meet the continuing education

requirements established in subdivision two of this section but who agrees to make up any deficiencies and take any additional education which the department may require. The fee for such a conditional registration shall be the same as, and in addition to, the fee for the triennial registration. The duration of such conditional registration shall be determined by the department. Any licensee who is notified of the denial of registration for failure to submit evidence, satisfactory to the department, of completion of required continuing education and who practices advanced dental therapy without such registration, may be subject to disciplinary proceedings pursuant to section sixty-five hundred ten of this title.

4. As used in this section, "acceptable formal continuing education" shall mean formal programs of learning which contribute to professional practice and which meet the standards prescribed by regulations of the commissioner. To fulfill the mandatory continuing education requirement, programs shall be taken from sponsors approved by the department, pursuant to the regulations of the commissioner.

5. The mandatory continuing education fee of thirty dollars shall be payable on or before the first day of each triennial registration period and shall be paid in addition to the triennial registration fee required by section sixty-six hundred fifteen-a of this article.

§ 4. Subdivision 2 of section 365-a of the social services law is amended by adding a new paragraph (kk) to read as follows:

(kk) care and services furnished by a licensed dental therapist pursuant to article one hundred thirty-three of the education law who is enrolled as a medicaid managed care provider;

§ 5. The commissioner of health is authorized to promulgate or adopt any rules or regulations necessary to implement the provisions of this act and any procedures, forms, or instructions necessary for such implementation may be adopted and issued on or after the effective date of this act. Notwithstanding any inconsistent provision of the state administrative procedure act or any other provision of law, rule or regulation, the commissioner of health and the superintendent of financial services and any appropriate council is authorized to adopt or amend or promulgate on an emergency basis any regulation he or she or such council determines necessary to implement any provision of this act on its effective date.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law.