**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA TELEDENTISTRY ACT” BY ADDING ARTICLE 5 TO CHAPTER 15, TITLE 40, SO AS TO REGULATE THE PRACTICE OF TELEDENTISTRY; TO AMEND SECTION 40‑15‑85, RELATING TO DEFINITIONS CONCERNING THE REGULATION BY THE BOARD OF DENTISTRY, SO AS TO PROVIDE A NECESSARY DEFINITION; TO AMEND SECTION 40‑15‑110, RELATING TO SPECIFIC EXEMPTIONS FOR REGULATION BY THE BOARD OF DENTISTRY, SO AS TO INCLUDE TAKING PHOTOGRAPHS FOR CERTAIN DENTAL RECORDS; AND TO AMEND SECTION 40‑15‑180, RELATING TO THE CONDUCT OF COMPLAINTS AGAINST LICENSEES OF THE BOARD OF DENTISTRY, SO AS TO PROVIDE LICENSEES MAY NOT BE REQUIRED TO SIGN AN AGREEMENT LIMITING THEIR ABILITY TO FILE COMPLAINTS OR PROVIDE INFORMATION FOR OFFICIAL BOARD INQUIRIES OR COMPLAINT INVESTIGATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “South Carolina Teledentistry Act”.

SECTION 2. Chapter 15, Title 40 of the 1976 Code is amended by adding:

“Article 5

Teledentistry

Section 40‑15‑610. (A) Teledentistry must:

(1) be consistent with standard of care for in‑person delivery, including synchronous and asynchronous methods; and

(2) not be used to expand the scope of practice or change permissible duties of dental auxiliaries.

(B) For purposes of this section:

(1) ‘Synchronous method’ means the use of telecommunications technology for a live, two‑way interaction between a:

(a) person, such as a patient, caregiver, or dental personnel; and

(b) licensed dentist.

(2) ‘Asynchronous method’ means the transmission of recorded health information through a secure electronic communications system to a practitioner, who uses the information to evaluate the condition of a patient or render permissible services to a patient outside of a real‑time or live interaction. Recorded health information may include clinically relevant patient radiographs, photographs, video, digital impressions, and photomicrographs.

Section 40‑15‑620. Dentists delivering dental services by means of teledentistry shall:

(1) hold an unrestricted license to practice dentistry in South Carolina; provided, however, a licensee need not reside in South Carolina so long as he has a valid, current South Carolina dental license; further, provided, that a licensee residing in South Carolina who intends to practice dentistry by means of teledentistry to treat or diagnose patients outside of South Carolina shall comply with other state licensing boards where the licensee holds a valid license to practice dentistry;

(2) be responsible for, and retain the authority for, ensuring the safety and quality of services provided to patients using teledentistry technologies and methods;

(3) provide patients with adequate knowledge of the nature and availability of local dental resources when clinically necessary;

(4) upon request of the patient, provide health records to the patient or a dentist of record in a timely manner in accordance with other applicable federal or state laws or regulations; and

(5) must have established written or electronic protocols for the practice of teledentistry that include:

(a) methods to ensure that patients are fully informed about services provided and the limitations through the use of teledentistry, including obtaining informed consent;

(b) safeguards to ensure compliance with all state and federal laws and regulations related to the privacy of health information;

(c) procedures for providing for the referral of patients requiring in‑person dental services by a licensed dentist in an area near the patient’s physical location;

(d) provisions for the use of appropriate encryption when transmitting patient health information via teledentistry; and

(e) any other provisions required by the South Carolina State Board of Dentistry.

Section 40‑15‑630. Dentists delivering dental services by means of teledentistry are prohibited from:

(1) Using teledentistry to initiate irreversible procedures unless the dentist has examined verified dental records from an in‑person patient exam conducted within the last twelve months.

(2) Initiating a dentist‑patient teledentistry relationship.

Section 40‑15‑640. A dentist using teledentistry may prescribe medications within a practice setting fully in compliance with this section and during an encounter in which threshold information necessary to make an accurate diagnosis has been obtained in a medical history interview conducted by the prescribing licensee; provided, however, that Schedule II and Schedule III prescriptions are not permitted except for those Schedule II and Schedule III medications specifically authorized by the board, which may include, but not be limited to, Schedule II‑nonnarcotic and Schedule III‑nonnarcotic medications; further, provided, that licensees prescribing controlled substances by means of telemedicine must comply with all relevant federal and state laws including, but not limited to, participation in the South Carolina Prescription Monitoring Program pursuant to Article 15, Chapter 53, Title 44.

Section 40‑15‑650. A dentist is prohibited from using teledentistry to delegate:

(1) an act to an individual who, by board order, is prohibited from performing the act;

(2) any of the following acts to a person not licensed as a dentist or dental hygienist:

(a) removing calculus, deposits, or accretions from the natural and restored surfaces of exposed human teeth and restorations in the human mouth;

(b) root planing or the smoothing and polishing of roughened root surfaces or exposed human teeth; or

(c) any other act the delegation of which prohibited by board rule; or

(3) any of the following acts to a person not licensed as a dentist:

(a) examination for diagnosis and treatment planning;

(b) surgical or cutting procedure on hard or soft tissue;

(c) taking an impression for a final restoration, appliance, or prosthesis;

(d) making an intraoral occlusal adjustment;

(e) direct pulp capping, pulpotomy, or any other endodontic procedure;

(f) final placement and intraoral adjustment of a fixed or removable appliance; or

(g) placement of any final restoration.

Section 40‑15‑660. (A) A dentist‑patient relationship exists if a licensed dentist:

(1) obtains or causes to be obtained a health and dental history from the patient;

(2) performs an appropriate examination of the patient:

(a) physically;

(b) through use of instrumentation and diagnostic equipment through which digital scans, photographs, images, and dental records are able to be transmitted electronically; or

(c) through use of face‑to‑face, interactive, two‑way, real‑time communications services in conjunction with store‑and‑forward technologies, when appropriate;

(3) provides information to a patient about services to be performed and limitations of performing those services; and

(4) initiates additional diagnostic tests to ensure the standard of care is met or makes referrals as needed.

(B) In teledentistry cases, an examination required in subsection (A)(2) is not required if the patient has been examined in person by a dentist licensed by the board within twelve months immediately preceding the initiation of teledentistry, and the patient dental records of the examination have been reviewed by the dentist providing teledentistry.

(C) Teledentistry must be initiated by the patient or the initial contact dentist who refers to another licensed dentist.

Section 40‑15‑670. Patients receiving dental services through teledentistry have the right to:

(1) speak or communicate with the dentist providing teledentistry services upon request; and

(2) expect:

(a) a dentist delivering, directing, or supervising services using teledentistry technologies is licensed in South Carolina;

(b) access to the licensure and State Board certification qualifications of the dentist or dental auxiliary who is providing the care before the visit;

(c) delivery of services through teledentistry technology will follow evidence‑based practice guidelines, to the degree they are available, to ensure patient safety, quality of care, and positive health outcomes;

(d) to be informed about the identity of the dentist providing treatment;

(e) relevant patient information will be collected prior to performing services using teledentistry technologies and methods including medical history, dental history, social history, and other relevant demographic and personal information;

(f) services provided using teledentistry technologies will be properly documented and the records and documentation collected will be provided to the patient upon request;

(g) services provided using teledentistry technologies and methods include care coordination as a part of a dental home and upon request of the patient;

(h) active involvement of the patient in treatment decisions and the ability to choose how to receive a covered service, including considerations for urgency, convenience, and satisfaction;

(i) the dentist shall determine the delivery of services using teledentistry technologies;

(j) all services are performed in accordance with applicable laws and regulations addressing the privacy and security of the private health of the patient; and

(k) no agreement can limit the ability of the patient or a practitioner to file a complaint with the State Board of Dentistry.”

SECTION 3. Section 40‑15‑85 of the 1976 Code is amended to read:

“Section 40‑15‑85. For purposes of this chapter:

(1) ‘Analgesia’ means the diminution or elimination of pain with full consciousness maintained by the patient.

(2) ‘Deep sedation’ means a drug‑induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining patients’ airways. Spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(3) ‘Direct supervision’ means that a dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and before the dismissal of the patient, evaluates the performance of the auxiliary. This requirement does not mandate that a dentist be present at all times, but he or she must be on the premises actually involved in supervision and control.

(4) ‘Enteral’ means a route of administration that includes any technique in which the agent is absorbed through the gastrointestinal tract or oral mucosa.

(5) ‘General anesthesia’ means a drug‑induced loss of consciousness during which patients are not aroused, even by painful stimulation. The ability to independently maintain ventilatory functions is often impaired. Patients often require assistance in maintaining patients’ airways; positive pressure ventilation may be required because of depressed spontaneous ventilation or drug‑induced depression of neuromuscular function. Cardiovascular function may be impaired.

(a) Because sedation and general anesthesia are on a continuum, it is not always possible to predict how an individual patient will respond. Hence, practitioners intending to produce a given level of sedation should be able to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended.

(b) For all levels of sedation, the practitioner must have the training, skills, drugs, and equipment to identify and manage such an occurrence until either assistance arrives or the patient returns to the intended level of sedation without airway or cardiovascular complications.

(6) ‘General supervision’ means that a licensed dentist or the South Carolina Department of Health and Environmental Control’s public health dentist has authorized the procedures to be performed but does not require that a dentist be present when the procedures are performed.

(7) ‘Inhalation’ means a route of administration in which a gaseous or volatile agent introduced into the lungs and whose primary effect is due to absorption through the interface of gas and blood.

(8) ‘Local anesthesia’ means the elimination of sensation, especially pain, in one part of the body by the topical application or regional as applies to dental, oral, or maxillofacial injection of a drug.

(9) ‘Minimal sedation’ means a minimally depressed level of consciousness, produced by a pharmacological method, that retains the patient’s ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive functions and coordination may be modestly impaired, ventilator and cardiovascular functions are unaffected.

(a) When the intent is minimal sedation for adults, the appropriate initial dosing of a single enteral drug is no more than the maximum recommended dose of a drug that can be prescribed for unmonitored home use.

(b) The use of preoperative sedatives for children under thirteen years of age before arrival in the dental office, except in extraordinary situations, must be avoided due to the risk of unobserved respiratory obstruction during transport by untrained individuals.

(c) Children under thirteen years of age may become moderately sedated despite the intended level of minimal sedation; should this occur, the guidelines for moderate sedation apply.

(d) For children under thirteen years of age, the board supports the American Dental Association’s stance that supports the use of the American Academy of Pediatrics/American Academy of Pediatric Dentistry’s ‘Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures’.

(e) Nitrous oxide, oxygen, or both, may be used in combination with a single enteral drug in minimal sedation.

(f) Nitrous oxide, oxygen, or both, when used in combination with a sedative agent may produce minimal, moderate, or deep sedation/general anesthesia.

(10) ‘Moderate sedation’ means a drug‑induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain patients’ airways, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(11) ‘Oral prophylaxis’ means the removal of any and all hard and soft deposits, accretions, toxins, and stain from any natural or restored surfaces of teeth or prosthetic devices by scaling and polishing as a preventive measure for the control of local irritational factors.

(12) ‘Parenteral’ means a route of administration in which the drug bypasses the gastrointestinal tract.

(13) ‘Teledentistry’ means the practice of dentistry using electronic communications, information technology, or other means between a licensee in one location and a patient in another location, with or without an intervening practitioner.

(14) ‘Titration’ means the administration of moderate or greater sedation. The term means administration of incremental doses of a drug until a desired effect is reached. Knowledge of each drug’s time of onset, peak response, and duration of action is essential to avoid oversedation. Although the concept of titration of a drug to effect is critical for patient safety, when the intent is moderate sedation, one must know whether the previous dose has taken full effect before administering an additional drug increment.

~~(14)~~(15) ‘Transdermal’ means a route of administration in which the drug is administered by patch or iontophoreis through skin.

~~(15)~~(16) ‘Transmucosal’ means a route of administration in which the drug is administered across mucosa such as intranasal, sublingual, or rectal.”

SECTION 4. Section 40‑15‑110(A) of the 1976 Code is amended to read:

“(A) Nothing in this chapter may be construed to prevent:

(1) the practice of medicine by a licensed physician or the administration of anesthesia by those persons qualified by law to do so;

(2) the performance of official duties by commissioned dental or medical officers of the United States Army, Navy, Air Force, Veterans’ Administration, or United States Public Health Service;

(3) a person from teaching or demonstrating dentistry or related procedures at a dental society meeting or at a dental convention or at an accredited dental college;

(4) a licensed dentist of another state or country from performing duties in connection with a specific case for which he is called into the State by a dentist licensed in this State;

(5) dental students from performing dental procedures under the supervision of instructors in any dental school in this State accredited by the commission;

(6) licensed dental hygienists or registered dental technicians from teaching in programs accredited by the Commission;

(7) a person from making roentgenograms or X‑ray exposures under the supervision of a licensed dentist or prevents persons licensed to practice dental hygiene from performing an intra‑oral dental hygiene procedure if it is performed under the direction and control of a licensed dentist present on the premises;

(8) a person from performing dental or orthodontic technological work if:

(a) the intra‑oral procedures relative to such work are performed by a licensed dentist;

(b) the work is performed by or under the direction and control of a licensed dentist on his premises, or by or under the direction and control of a registered dental or orthodontic technician present on the premises; however, orthodontic work performed under the direction and control of a registered orthodontic technician is limited to orthodontic technological work; and

(c) the work is performed pursuant to a properly executed work authorization, as provided for in this chapter, if the work is to be done by or under the direction and control of a registered dental or orthodontic technician~~.~~;

(9) a certified or qualified dental assistant or licensed dental hygienist from taking impressions for dental study casts under the direct supervision of a licensed dentist present on the premises;

(10) a person from taking photographs of the teeth and mouth for use by a dentist licensed in this State as one part of a complete dental record or medical record that includes all other information necessary for making an informed diagnosis or treatment plan for a patient; and

(11) a licensed dental hygienist employed within or contracted through the public health system from providing education and primary preventive care that is reversible. Primary preventive care and education are defined as promotion and protection of health to avoid the occurrence of disease through community, school, and individual measures or improvements in lifestyle. These services are to be performed under the direction of the Department of Health and Environmental Control State Dental Coordinator or the department’s designee but do not require that the director or a licensed dentist be present when any public health dental program services are provided. Public health dental program services include oral screenings using a Department of Health and Environmental Control approved screening system, oral prophylaxis, application of topical fluoride including varnish, and the application of dental sealants.”

SECTION 5. Section 40‑15‑180 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

“( ) A dentist, dental assistant, dental hygienist, patient, or patient guardian may not be required to sign an agreement that limits the ability of the signatory to file a complaint or provide information to the board pursuant to an official board inquiry or complaint investigation.”

SECTION 6. This act takes effect upon approval by the Governor

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