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HOUSE BILL 15-1309

BY REPRESENTATIVE(S) Ginal, Hamner, Kagan, Lebsock, Mitsch Bush, Moreno, Primavera, Ryden, Vigil, Williams, Young, Hullinghorst;
also SENATOR(S) Crowder, Aguilar, Donovan, Guzman, Heath, Jones, Kefalas, Newell, Todd.

CONCERNING THE PLACEMENT OF INTERIM THERAPEUTIC RESTORATIONS BY DENTAL HYGIENISTS, AND, IN CONNECTION THEREWITH, ENSURING MEDICAID AND CHILDREN'S BASIC HEALTH PLAN REIMBURSEMENT FOR SERVICES PROVIDED THROUGH THE USE OF TELEHEALTH RELATED TO INTERIM THERAPEUTIC RESTORATION PROCEDURES AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 12-35-103, **add** (10.5), (16), and (17) as follows:

12-35-103. Definitions - rules. As used in this article, unless the context otherwise requires:

(10.5) (a) "INTERIM THERAPEUTIC RESTORATION" OR "ITR" MEANS A DIRECT PROVISIONAL RESTORATION PLACED TO STABILIZE A TOOTH UNTIL

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

A LICENSED DENTIST CAN ASSESS THE NEED FOR FURTHER DEFINITIVE TREATMENT.

(b) (I) "INTERIM THERAPEUTIC RESTORATION" INVOLVES THE REMOVAL OF SOFT MATERIAL USING HAND INSTRUMENTATION, WITHOUT THE USE OF ROTARY INSTRUMENTATION, AND THE SUBSEQUENT PLACEMENT OF A GLASS IONOMER RESTORATION.

(II) THE BOARD MAY PROMULGATE RULES REGARDING THE USE OF NEW RESTORATIVE MATERIALS IN ADDITION TO THE MATERIALS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) THAT ARE APPROPRIATE TO THE INTERIM THERAPEUTIC RESTORATION PROCEDURE AS THEY BECOME AVAILABLE.

(c) "INTERIM THERAPEUTIC RESTORATION" INCLUDES PROTECTIVE RESTORATION FOR ADULTS DELIVERED IN ACCORDANCE WITH SECTION 12-35-128.5.

(16) "TELEHEALTH BY STORE-AND-FORWARD TRANSFER" MEANS AN ASYNCHRONOUS TRANSMISSION OF MEDICAL OR DENTAL INFORMATION TO BE REVIEWED BY A DENTIST AT A LATER TIME AT A DISTANT SITE WITHOUT THE PATIENT PRESENT IN REAL TIME.

(17) "TELEHEALTH SUPERVISION" MEANS INDIRECT SUPERVISION BY A DENTIST OF A DENTAL HYGIENIST PLACING AN ITR USING TELECOMMUNICATIONS SYSTEMS.

SECTION 2. In Colorado Revised Statutes, 12-35-125, **add** (1) (i) as follows:

12-35-125. What constitutes practicing supervised dental hygiene. (1) Unless licensed to practice dentistry, a person who performs any of the following tasks under the supervision of a licensed dentist is deemed to be practicing supervised dental hygiene:

(i) PLACES INTERIM THERAPEUTIC RESTORATIONS PURSUANT TO SECTION 12-35-128.5.

SECTION 3. In Colorado Revised Statutes, **add** 12-35-128.3 as follows:

12-35-128.3. Interim therapeutic restorations advisory committee - rules - repeal. (1) THERE IS HEREBY ESTABLISHED IN THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES THE INTERIM THERAPEUTIC RESTORATIONS ADVISORY COMMITTEE. THE COMMITTEE CONSISTS OF THE FOLLOWING SEVEN MEMBERS APPOINTED PURSUANT TO SUBSECTION (2) OF THIS SECTION:

(a) ONE REPRESENTATIVE FROM AN ACCREDITED DENTAL SCHOOL IN COLORADO;

(b) ONE DENTIST WITH A FACULTY APPOINTMENT AT AN ACCREDITED DENTAL SCHOOL IN COLORADO;

(c) ONE REPRESENTATIVE FROM AN ACCREDITED DENTAL HYGIENE SCHOOL IN COLORADO;

(d) ONE FACULTY MEMBER FROM AN ACCREDITED DENTAL HYGIENE SCHOOL IN COLORADO;

(e) ONE REPRESENTATIVE FROM A STATEWIDE ASSOCIATION OF DENTISTS;

(f) ONE REPRESENTATIVE FROM A STATEWIDE ASSOCIATION OF DENTAL HYGIENISTS; AND

(g) ONE REPRESENTATIVE FROM THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES OR HIS OR HER DESIGNEE.

(2) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE SHALL JOINTLY APPOINT ALL MEMBERS OF THE COMMITTEE WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE PRESIDENT AND THE SPEAKER SHALL ENSURE THAT AT LEAST ONE MEMBER OF THE COMMITTEE IS FROM A RURAL REGION OF THE STATE.

(3) THE COMMITTEE SHALL:

(a) HOLD ITS FIRST MEETING WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION;

(b) DEVELOP UNIFORM STANDARDS FOR CONSISTENT TRAINING FOR DENTAL HYGIENISTS PERFORMING INTERIM THERAPEUTIC RESTORATIONS; AND

(c) SUBMIT THE UNIFORM STANDARDS TO THE BOARD WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

(4) THE MEMBERS OF THE COMMITTEE SHALL SERVE WITHOUT COMPENSATION.

(5) THE DIVISION MAY ACCEPT GIFTS, GRANTS, AND DONATIONS FROM INDIVIDUALS, PRIVATE ORGANIZATIONS, AND FOUNDATIONS FOR THE PURPOSES OF THIS SECTION.

(6) THE BOARD MAY ADOPT RULES INCORPORATING THE UNIFORM STANDARDS DEVELOPED BY THE COMMITTEE.

(7) AFTER THE COMMITTEE SUBMITS THE UNIFORM STANDARDS TO THE BOARD, THE BOARD MAY REQUEST THAT THE COMMITTEE RECONVENE TO SUBMIT NEW UNIFORM STANDARDS.

(8) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2016.

SECTION 4. In Colorado Revised Statutes, **add** 12-35-128.5 as follows:

12-35-128.5. Interim therapeutic restorations by dental hygienists - permitting process - repeal. (1) UPON APPLICATION, ACCOMPANIED BY A FEE IN AN AMOUNT DETERMINED BY THE DIRECTOR, THE BOARD SHALL GRANT A PERMIT TO PLACE INTERIM THERAPEUTIC RESTORATIONS TO ANY DENTAL HYGIENIST APPLICANT WHO:

(a) HOLDS A LICENSE IN GOOD STANDING TO PRACTICE DENTAL HYGIENE IN COLORADO;

(b) HAS COMPLETED A COURSE DEVELOPED AT THE POST-SECONDARY EDUCATIONAL LEVEL THAT COMPLIES WITH THE UNIFORM STANDARDS DEVELOPED, AND RULES ADOPTED, PURSUANT TO SECTION 12-35-128.3. THE COURSE MUST BE OFFERED UNDER THE DIRECT SUPERVISION OF A MEMBER OF THE FACULTY OF A COLORADO DENTAL OR

DENTAL HYGIENE SCHOOL ACCREDITED BY THE COMMISSION ON DENTAL ACCREDITATION OR ITS SUCCESSOR AGENCY. ALL FACULTY RESPONSIBLE FOR CLINICAL EVALUATION OF STUDENTS MUST BE DENTISTS WITH A FACULTY APPOINTMENT AT AN ACCREDITED COLORADO DENTAL OR DENTAL HYGIENE SCHOOL.

(c) CARRIES CURRENT PROFESSIONAL LIABILITY INSURANCE IN THE AMOUNT SPECIFIED IN SECTION 12-35-141(2), C.R.S.; AND

(d) HAS COMPLETED THE FOLLOWING HOURS OF DENTAL HYGIENE PRACTICE AS EVIDENCED IN DOCUMENTATION REQUIRED BY THE BOARD:

(I) TWO THOUSAND HOURS OF SUPERVISED DENTAL HYGIENE PRACTICE AFTER INITIAL DENTAL HYGIENE LICENSURE;

(II) FOUR THOUSAND HOURS OF UNSUPERVISED DENTAL HYGIENE PRACTICE AFTER INITIAL DENTAL HYGIENE LICENSURE; OR

(III) A COMBINATION OF THE HOURS SPECIFIED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (d) AS DETERMINED BY THE BOARD BY RULE.

(2) THE BOARD MAY WAIVE THE REQUIREMENT IN PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION FOR A DENTAL HYGIENIST WHO PERFORMS INTERIM THERAPEUTIC RESTORATIONS EXCLUSIVELY UNDER THE DIRECT SUPERVISION OF A DENTIST.

(3) A DENTAL HYGIENIST SHALL NOT USE LOCAL ANESTHESIA FOR THE PURPOSE OF PLACING INTERIM THERAPEUTIC RESTORATIONS.

(4) (a) A DENTAL HYGIENIST MAY PLACE AN INTERIM THERAPEUTIC RESTORATION ONLY AFTER A DENTIST PROVIDES A DIAGNOSIS, TREATMENT PLAN, AND INSTRUCTION TO PERFORM THE PROCEDURE.

(b) IF AN INTERIM THERAPEUTIC RESTORATION IS AUTHORIZED BY A SUPERVISING DENTIST AT A LOCATION OTHER THAN THE DENTIST'S PRACTICE LOCATION, THE DENTAL HYGIENIST SHALL PROVIDE THE PATIENT OR THE PATIENT'S REPRESENTATIVE WITH WRITTEN NOTIFICATION THAT THE CARE WAS PROVIDED AT THE DIRECTION OF THE SUPERVISING DENTIST. THE DENTAL HYGIENIST SHALL INCLUDE IN THE WRITTEN NOTIFICATION THE

DENTIST'S NAME, PRACTICE LOCATION ADDRESS, AND TELEPHONE NUMBER.

(c) A DENTAL HYGIENIST WHO OBTAINS A DENTIST'S DIAGNOSIS, TREATMENT PLAN, AND INSTRUCTION TO PERFORM AN ITR UTILIZING TELEHEALTH BY STORE-AND-FORWARD TRANSFER SHALL NOTIFY THE PATIENT OF THE PATIENT'S RIGHT TO RECEIVE INTERACTIVE COMMUNICATION WITH THE DISTANT DENTIST UPON REQUEST. COMMUNICATION WITH THE DISTANT DENTIST MAY OCCUR EITHER AT THE TIME OF THE CONSULTATION OR WITHIN THIRTY DAYS AFTER THE DENTAL HYGIENIST NOTIFIES THE PATIENT OF THE RESULTS OF THE CONSULTATION.

(5) A DENTAL HYGIENIST WHO OBTAINS A PERMIT PURSUANT TO THIS SECTION MAY PLACE INTERIM THERAPEUTIC RESTORATIONS IN A DENTAL OFFICE SETTING UNDER THE DIRECT OR INDIRECT SUPERVISION OF A DENTIST OR THROUGH TELEHEALTH SUPERVISION FOR PURPOSES OF COMMUNICATION WITH THE DENTIST.

(6) A DENTIST SHALL NOT SUPERVISE MORE THAN FIVE DENTAL HYGIENISTS WHO PLACE INTERIM THERAPEUTIC RESTORATIONS UNDER TELEHEALTH SUPERVISION. A DENTIST WHO SUPERVISES A DENTAL HYGIENIST WHO PROVIDES INTERIM THERAPEUTIC RESTORATIONS UNDER TELEHEALTH SUPERVISION MUST HAVE A PHYSICAL PRACTICE LOCATION IN COLORADO FOR PURPOSES OF PATIENT REFERRAL FOR FOLLOW-UP CARE.

(7) A DENTAL HYGIENIST SHALL INFORM THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN, IN WRITING, AND REQUIRE THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN TO ACKNOWLEDGE BY SIGNATURE, THAT THE INTERIM THERAPEUTIC RESTORATION IS A TEMPORARY REPAIR TO THE TOOTH AND THAT APPROPRIATE FOLLOW-UP CARE WITH A DENTIST IS NECESSARY.

(8) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2021. PRIOR TO THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES SHALL REVIEW THE PERMITTING OF DENTAL HYGIENISTS TO PLACE INTERIM THERAPEUTIC RESTORATIONS AS PROVIDED IN SECTION 24-34-104, C.R.S.

SECTION 5. In Colorado Revised Statutes, **add** 12-35-128.7 as follows:

12-35-128.7. Interim therapeutic restorations - gifts, grants, and

donations - repeal. (1) THE DIVISION IS AUTHORIZED TO ACCEPT GIFTS, GRANTS, AND DONATIONS FROM INDIVIDUALS, PRIVATE ORGANIZATIONS, AND FOUNDATIONS TO IMPLEMENT THE PERMITTING OF DENTAL HYGIENISTS TO PLACE INTERIM THERAPEUTIC RESTORATIONS UNDER SECTION 12-35-128.5.

(2) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2016.

SECTION 6. In Colorado Revised Statutes, 12-35-129, **amend** (1) (ll) and (1) (mm); and **add** (1) (nn) as follows:

12-35-129. Grounds for disciplinary action. (1) The board may take disciplinary action against an applicant or licensee in accordance with section 12-35-129.1 for any of the following causes:

(ll) Administering moderate sedation or deep sedation/general anesthesia without a licensed dentist or other licensed health care professional qualified to administer the relevant level of sedation or anesthesia present in the operatory; ~~or~~

(mm) Failing to complete and maintain records of completing continuing education as required by section 12-35-139; OR

(nn) FAILING TO COMPLY WITH SECTION 12-35-128.5 REGARDING THE PLACEMENT OF INTERIM THERAPEUTIC RESTORATIONS.

SECTION 7. In Colorado Revised Statutes, 25.5-5-207, **add** (2) (d) as follows:

25.5-5-207. Adult dental benefit - adult dental fund - creation - legislative declaration. (2) (d) SUBJECT TO FEDERAL AUTHORIZATION AND FEDERAL FINANCIAL PARTICIPATION, ON OR AFTER JULY 1, 2016, THE DIAGNOSIS, DEVELOPMENT OF A TREATMENT PLAN, INSTRUCTION TO PERFORM AN INTERIM THERAPEUTIC RESTORATION PROCEDURE, OR SUPERVISION OF A DENTAL HYGIENIST PERFORMING AN INTERIM THERAPEUTIC RESTORATION PROCEDURE MAY BE PROVIDED THROUGH TELEHEALTH, INCLUDING STORE-AND-FORWARD TRANSFER, IN ACCORDANCE WITH SECTION 25.5-5-321.5.

SECTION 8. In Colorado Revised Statutes, **add** 25.5-5-321.5 as

follows:

25.5-5-321.5. Telehealth - interim therapeutic restorations - reimbursement - definitions. (1) SUBJECT TO FEDERAL AUTHORIZATION AND FEDERAL FINANCIAL PARTICIPATION, ON OR AFTER JULY 1, 2016, IN-PERSON CONTACT BETWEEN A HEALTH CARE PROVIDER AND A RECIPIENT IS NOT REQUIRED UNDER THE STATE'S MEDICAL ASSISTANCE PROGRAM FOR THE DIAGNOSIS, DEVELOPMENT OF A TREATMENT PLAN, INSTRUCTION TO PERFORM AN INTERIM THERAPEUTIC RESTORATION PROCEDURE, OR SUPERVISION OF A DENTAL HYGIENIST PERFORMING AN INTERIM THERAPEUTIC RESTORATION PROCEDURE. A HEALTH CARE PROVIDER MAY PROVIDE THESE SERVICES THROUGH TELEHEALTH, INCLUDING STORE-AND-FORWARD TRANSFER, AND IS ENTITLED TO REIMBURSEMENT FOR THE DELIVERY OF THOSE SERVICES VIA TELEHEALTH TO THE EXTENT THE SERVICES ARE OTHERWISE ELIGIBLE FOR REIMBURSEMENT UNDER THE PROGRAM WHEN PROVIDED IN PERSON. THE SERVICES ARE SUBJECT TO THE REIMBURSEMENT POLICIES DEVELOPED PURSUANT TO THE STATE MEDICAL ASSISTANCE PROGRAM.

(2) AS USED IN THIS SECTION:

(a) "INTERIM THERAPEUTIC RESTORATION" HAS THE SAME MEANING AS SET FORTH IN SECTION 12-35-103 (10.5), C.R.S.

(b) "STORE-AND-FORWARD TRANSFER" MEANS A TELEHEALTH BY STORE-AND-FORWARD TRANSFER, AS DEFINED IN SECTION 12-35-103 (16), C.R.S.

SECTION 9. In Colorado Revised Statutes, **add** 25.5-8-109.5 as follows:

25.5-8-109.5. Telehealth - interim therapeutic restorations - reimbursement - definitions. (1) SUBJECT TO FEDERAL AUTHORIZATION AND FINANCIAL PARTICIPATION, ON OR AFTER JULY 1, 2016, IN-PERSON CONTACT BETWEEN A HEALTH CARE PROVIDER AND AN ENROLLEE IS NOT REQUIRED UNDER THE CHILDREN'S BASIC HEALTH PLAN FOR THE DIAGNOSIS, DEVELOPMENT OF A TREATMENT PLAN, INSTRUCTION TO PERFORM AN INTERIM THERAPEUTIC RESTORATION PROCEDURE, OR SUPERVISION OF A DENTAL HYGIENIST PERFORMING AN INTERIM THERAPEUTIC RESTORATION PROCEDURE. A HEALTH CARE PROVIDER MAY PROVIDE THESE SERVICES

THROUGH TELEHEALTH, INCLUDING STORE-AND-FORWARD TRANSFER, AND IS ENTITLED TO REIMBURSEMENT FOR THE DELIVERY OF THOSE SERVICES VIA TELEHEALTH TO THE EXTENT THE SERVICES ARE OTHERWISE ELIGIBLE FOR REIMBURSEMENT UNDER THE PLAN. THE SERVICES ARE SUBJECT TO THE REIMBURSEMENT POLICIES DEVELOPED PURSUANT TO THE CHILDREN'S BASIC HEALTH PLAN.

(2) AS USED IN THIS SECTION:

(a) "INTERIM THERAPEUTIC RESTORATION" HAS THE SAME MEANING AS SET FORTH IN SECTION 12-35-103 (10.5), C.R.S.

(b) "STORE-AND-FORWARD TRANSFER" MEANS A TELEHEALTH BY STORE-AND-FORWARD TRANSFER, AS DEFINED IN SECTION 12-35-103 (16), C.R.S.

SECTION 10. In Colorado Revised Statutes, 24-34-104, **add** (52.5) (d) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (52.5) The following agencies, functions, or both, terminate on September 1, 2021:

(d) THE PERMITTING OF DENTAL HYGIENISTS TO PLACE INTERIM THERAPEUTIC RESTORATIONS PURSUANT TO SECTION 12-35-128.5, C.R.S.

SECTION 11. Appropriation. (1) For the 2015-16 state fiscal year, \$37,940 is appropriated to the department of regulatory agencies. This appropriation is from the division of professions and occupations cash fund created in section 24-34-105 (2) (b) (I), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$30,514 for use by the division of professions and occupations for personal services; and

(b) \$7,426 for the purchase of legal services.

(2) For the 2015-16 state fiscal year, \$7,426 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of regulatory agencies under paragraph (b)

of subsection (1) of this section. To implement this act, the department of law may use this appropriation to provide legal services for the department of regulatory agencies.

(3) For the 2015-16 state fiscal year, \$11,648 is appropriated to the department of health care policy and financing. This appropriation consists of \$10,815 from the general fund that is subject to the "(M)" notation as defined in the general appropriation act for the same fiscal year, \$759 from the hospital provider fee cash fund created in section 25.5-4-402.3 (4), C.R.S., and \$74 from the children's basic health plan trust fund created in section 25.5-8-105 (1), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$6,300 from the general fund for medicaid management information system maintenance and projects;

(b) \$5,205, which consists of \$4,515 from the general fund and \$690 from the hospital provider fee cash fund, for medical service premiums; and

(c) \$143, which consists of \$74 from the children's basic health plan trust fund and \$69 from the hospital provider fee cash fund, for children's basic health plan medical and dental costs.

(4) For the 2015-16 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$25,958 federal funds to implement this act. The appropriation in subsection (3) of this section is based on the assumption that the department will receive this amount of federal funds to be used as follows:

(a) \$18,900 for medicaid management information system maintenance and projects;

(b) \$6,012 for medical service premiums; and

(c) \$1,046 for children's basic health plan medical and dental costs.

SECTION 12. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August

5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Bill L. Cadman
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO