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**SUBSTITUTE SENATE BILL 5759**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Cleveland, Rivers, Conway, Bailey, Wilson, L., Short, and Keiser)

AN ACT Relating to the use of remote technology in corrective lens prescriptions; adding a new chapter to Title 18 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  This act may be known and cited as the consumer protection in eye care act.

NEW SECTION. **Sec.**  INTENT. (1) The legislature recognizes the importance of allowing licensed practitioners to use their professional judgment, based on their education, training, and expertise, to determine the appropriate use of current and future technologies to enhance patient care. Guidelines for providing health care services through remote technology have been addressed by the medical community, and the legislature intends to complement and clarify those guidelines with respect to using remote technology to provide prescriptions for corrective lenses.

(2) The legislature also recognizes that health care consumers, including eye health care consumers, can benefit from developments in technology that offer advantages such as increased convenience or increased speed in delivery of services. However, the legislature recognizes that health care consumers can be misled or harmed by the use of developments in technology that are not properly supervised by qualified providers.

(3) The legislature recognizes that the use of technology that permits a consumer to submit data to an entity for the purposes of obtaining a prescription for corrective lenses may fail to detect serious eye health issues resulting in permanent vision loss if the patient is not also receiving comprehensive eye care according to standard of care.

(4) Therefore, the legislature concludes that consumers should be protected from improper or unsupervised use of technology for purposes of obtaining a prescription for corrective lenses, without unduly restricting the development and implementation of technology and without unduly restricting licensed practitioners from using such technology where appropriate.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Contact lens" means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect. Contact lens includes, but is not limited to, cosmetic, therapeutic, and corrective lenses that are a federally regulated medical device.

(2) "Corrective lenses" means any lenses, including lenses in spectacles and contact lenses, that are manufactured in accordance with the specific terms of a valid prescription for an individual patient for the purpose of correcting the patient's refractive or binocular error.

(3) "Department" means the department of health.

(4) "Diagnostic information and data" mean any and all information and data, including but not limited to photographs and scans, generated by or through the use of any remote technology.

(5) "Patient-practitioner relationship" means the relationship between a provider of medical services, the practitioner, and a receiver of medical services, the patient, based on mutual understanding of their shared responsibility for the patient's health care.

(6) "Prescription" means the written or electronic directive from a qualified provider for corrective lenses and consists of the refractive power as well as contact lens parameters in the case of contact lens prescriptions.

(7) "Qualified provider" means a physician licensed under chapter 18.71 RCW or an osteopathic physician licensed under chapter 18.57 RCW practicing ophthalmology, or a person licensed under chapter 18.53 RCW to practice optometry.

(8) "Remote qualified provider" means any qualified provider who is not physically present at the time of the examination.

(9) "Remote technology" means any automated equipment or testing device and any application designed to be used on or with a phone, computer, or internet-based device that is used without the physical presence and participation of a qualified provider that generates data for purposes of determining an individual's refractive error. Remote technology does not include the use of telemedicine as defined in RCW 48.43.735 for purposes other than determining an individual's refractive error.

(10) "Spectacles" means any device worn by an individual that has one or more lenses through which the wearer looks. Spectacles are commonly known and referred to as glasses, and may include cosmetic or corrective lenses.

(11) "Standard of care" means those standards developed and defined by the American academy of ophthalmology preferred practice pattern "Comprehensive Adult Medical Eye Evaluation" (Appendix 1).

(12) "Standard of care for contact lenses" means the frequency of eye examinations as recommended for contact lens wearers in the American academy of ophthalmology publication "Refractive Errors & Refractive Surgery Preferred Practice Pattern" (Appendix 2).

NEW SECTION. **Sec.**  USE OF REMOTE TECHNOLOGY FOR CORRECTIVE LENS PRESCRIPTIONS. A qualified provider may prepare a prescription for corrective lenses intended to correct an individual's refractive error by remote technology if:

(1) The prescribing qualified provider is held to the same standard of care applicable to qualified providers providing corrective lens prescriptions in traditional in-person clinical settings;

(2) A patient-practitioner relationship is clearly established by the qualified provider agreeing to provide a corrective lens prescription, whether or not there was an in-person encounter between the parties. The parameters of the patient-practitioner relationship for the use of remote technology must mirror those that would be expected for similar in-person encounters to provide corrective lens prescriptions;

(3) The remote technology is only offered to patients who meet appropriate screening criteria. A review of the patient's medical and ocular history that meets standard of care is required to determine who may or may not be safely treated with refraction without a concurrent comprehensive eye exam. Patients must also be informed that a refraction alone, whether utilizing remote technology or in person, does not substitute for a comprehensive eye exam;

(4) Continuity of care is maintained. Continuity of care requires but is not limited to:

(a) A qualified provider addressing an adverse event that occurs as a result of the prescription written by the qualified provider by:

(i) Being available to address the patient's vision or medical condition directly, either in-person or remotely, if it is possible to address the adverse event remotely;

(ii) Having an agreement with another qualified provider or licensed medical provider who is available to address the patient's vision or medical condition, either in-person or remotely; or

(iii) Referring the patient to a qualified provider or licensed medical provider who is capable of addressing the patient's condition;

(b) Retaining patient exam documentation for a minimum of ten years and retaining communication between the remote qualified provider who evaluated the patient and prescribed corrective lenses and any applicable providers as they normally would in an in-person setting; and

(5) When prescribing for contact lenses, the examination of the eyes is performed within the contact lens prescription expiration date either remotely by a qualified provider, if technology allows, or by a qualified provider in person at a frequency that is within the standard of care for contact lenses, because there is a greater risk of harm to patients with the use of remote technologies for prescribing contact lenses. This would assure that contact lens wearers do not exceed two years without an examination of the eyes per the contact lens standard of care. The components of the eye examination, if done remotely, must be to the same evaluation and standard of care the qualified provider would typically do in an in-person setting for the same condition. If the eye examination is performed by someone other than the prescribing qualified provider, the prescribing qualified provider must obtain written, faxed, or electronically communicated affirmative verification of the results of that eye examination from the provider who performed the examination. The absence of receipt of affirmative verification within any specified time period cannot be used as presumed affirmative verification.

NEW SECTION. **Sec.**  REMOTE TECHNOLOGY STANDARDS FOR USE. It is unlawful for any person to offer or otherwise make available to consumers in this state remote technology under this chapter without fully complying with the following:

(1) The remote technology must be approved by the United States food and drug administration when applicable;

(2) The remote technology must be designed and operated in a manner that provides any accommodation required by the Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. when applicable;

(3) The remote technology, when used for the collection and transmission of diagnostic information and data, must gather and transmit any protected health information in compliance with the federal health insurance portability and accountability act of 1996 and related regulations;

(4) The remote technology, when used for the collection and transmission of diagnostic information and data, may only transmit the diagnostic information and data to a qualified provider, their staff, or another licensed health care provider for the purposes of collaboration in providing care to the patient. When diagnostic information and data are collected and transmitted through remote technology, that information must be read and interpreted by a qualified provider in order to release a corrective lens prescription to the patient or other entity; and

(5) The owner, lessee, or operator of the remote technology must maintain liability insurance in an amount reasonably sufficient to cover claims which may be made by individuals diagnosed or treated based on information and data by the automated equipment, including but not limited to photographs and scans.

NEW SECTION. **Sec.**  ENFORCEMENT. (1) The relevant disciplinary authority for the qualified provider shall review any written complaint alleging a violation, or attempted violation, of this chapter or rules adopted pursuant to this chapter, and conduct an investigation.

(2) If the disciplinary authority finds that a person has violated or attempted to violate this chapter, it may:

(a) Upon the first violation or attempted violation that did not result in significant harm to an individual's health, issue a written warning; or

(b) In all other cases, impose a civil penalty of not less than one thousand dollars and not more than ten thousand dollars for each violation.

(3) At the request of the department, the attorney general may file a civil action seeking an injunction or other appropriate relief to enforce this chapter and the rules adopted pursuant to this chapter.

(4) For the purposes of this section, "disciplinary authority" means the same as in RCW 18.130.020.

NEW SECTION. **Sec.**  RULE MAKING. The department shall adopt any rules necessary to implement this chapter.

NEW SECTION. **Sec.**  Sections 2 through 7 of this act constitute a new chapter in Title 18 RCW.

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