

ESSB 5759 - H COMM AMD
By Committee on Appropriations

ADOPTED 03/05/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as the
4 consumer protection in eye care act.

5 NEW SECTION. **Sec. 2.** INTENT. (1) The legislature recognizes the
6 importance of allowing licensed practitioners to use their
7 professional judgment, based on their education, training, and
8 expertise, to determine the appropriate use of current and future
9 technologies to enhance patient care. Guidelines for providing health
10 care services through remote technology have been addressed by the
11 medical community, and the legislature intends to complement and
12 clarify those guidelines with respect to using remote technology to
13 provide prescriptions for corrective lenses.

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

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

27 (4) Therefore, the legislature concludes that consumers should be
28 protected from improper or unsupervised use of technology for
29 purposes of obtaining a prescription for corrective lenses, without
30 unduly restricting the development and implementation of technology

1 and without unduly restricting licensed practitioners from using such
2 technology where appropriate.

3 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

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

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

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

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

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

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

29 (7) "Qualified provider" means a physician licensed under chapter
30 18.71 RCW or an osteopathic physician licensed under chapter 18.57
31 RCW practicing ophthalmology, or a person licensed under chapter
32 18.53 RCW to practice optometry.

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

35 (9) "Remote technology" means any automated equipment or testing
36 device and any application designed to be used on or with a phone,
37 computer, or internet-based device that is used without the physical
38 presence and participation of a qualified provider that generates
39 data for purposes of determining an individual's refractive error.

1 Remote technology does not include the use of telemedicine as defined
2 in RCW 48.43.735 for purposes other than determining an individual's
3 refractive error.

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

8 (11) "Standard of care" means those standards developed and
9 defined by the American academy of ophthalmology preferred practice
10 pattern "Comprehensive Adult Medical Eye Evaluation" (Appendix 1), as
11 the preferred practice pattern existed on the effective date of this
12 act.

13 (12) "Standard of care for contact lenses" means the frequency of
14 eye examinations as recommended for contact lens wearers in the
15 American academy of ophthalmology publication "Refractive Errors &
16 Refractive Surgery Preferred Practice Pattern" (Appendix 2), as the
17 preferred practice pattern existed on the effective date of this act.

18 NEW SECTION. **Sec. 4.** USE OF REMOTE TECHNOLOGY FOR CORRECTIVE
19 LENS PRESCRIPTIONS. A qualified provider may prepare a prescription
20 for corrective lenses intended to correct an individual's refractive
21 error by remote technology if:

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

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

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

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

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

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

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

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

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

19 (5) When prescribing for contact lenses, the examination of the
20 eyes is performed in accordance with the standard of care and
21 standard of care for contact lenses. The components of the eye
22 examination, if done remotely, must be to the same evaluation and
23 standard of care the qualified provider would typically do in an in-
24 person setting for the same condition. If the eye examination is
25 performed by someone other than the prescribing qualified provider,
26 the prescribing qualified provider must obtain written, faxed, or
27 electronically communicated affirmative verification of the results
28 of that eye examination from the provider who performed the
29 examination. The absence of receipt of affirmative verification
30 within any specified time period cannot be used as presumed
31 affirmative verification.

32 NEW SECTION. **Sec. 5.** REMOTE TECHNOLOGY STANDARDS FOR USE. It is
33 unlawful for any person to offer or otherwise make available to
34 consumers in this state remote technology under this chapter without
35 fully complying with the following:

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

38 (2) The remote technology must be designed and operated in a
39 manner that provides any accommodation required by the Americans with

1 disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. when
2 applicable;

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

8 (4) The remote technology, when used for the collection and
9 transmission of diagnostic information and data, may only transmit
10 the diagnostic information and data to a qualified provider, their
11 staff, contracted support staff, or another licensed health care
12 provider for the purposes of collaboration in providing care to the
13 patient. When diagnostic information and data are collected and
14 transmitted through remote technology, that information must be read
15 and interpreted by a qualified provider in order to release a
16 corrective lens prescription to the patient or other entity.
17 Contracted support staff must comply with all requirements of this
18 chapter. Contract support staff and the supervising provider retain
19 personal and professional responsibility for any violation of this
20 chapter by the contracted support staff; and

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

26 NEW SECTION. **Sec. 6.** ENFORCEMENT. (1) The relevant disciplinary
27 authority for the qualified provider shall review any written
28 complaint alleging a violation, or attempted violation, of this
29 chapter or rules adopted pursuant to this chapter, and conduct an
30 investigation.

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

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

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

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

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

7 NEW SECTION. **Sec. 7.** RULE MAKING. The department shall adopt
8 any rules necessary to implement this chapter.

9 NEW SECTION. **Sec. 8.** Sections 2 through 7 of this act
10 constitute a new chapter in Title 18 RCW."

11 Correct the title.

EFFECT: Specifies that the standards of care referenced in the
bill are the preferred practice patterns as they exist on the
effective date of the bill.

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