

HOUSE BILL REPORT

ESSB 5759

As Reported by House Committee On:
Health Care & Wellness
Appropriations

Title: An act relating to the use of remote technology in corrective lens prescriptions.

Brief Description: Increasing opportunities for the use of remote technology in corrective lens prescriptions.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Cleveland, Rivers, Conway, Bailey, Wilson, L., Short and Keiser).

Brief History:

Committee Activity:

Health Care & Wellness: 2/25/20, 2/26/20 [DP];

Appropriations: 2/29/20 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Establishes standards for the preparation of corrective lenses using remote technology relating to the standard of care, the patient-practitioner relationship, screening criteria, and continuity of care.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 15 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers, Chopp, Davis, DeBolt, Harris, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Staff: Chris Blake (786-7392).

Background:

An ophthalmologist is a licensed physician or osteopathic physician who specializes in the care of the eyes and visual system. Ophthalmologists are subject to the same licensing

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requirements for other physicians and osteopathic physicians, including graduation from an accredited medical school, completion of post-graduate training, and passage of an examination.

Optometry consists of the examination of the human eye, the examination and ascertaining of any defects of the human vision system, and the analysis of the process of vision. In order to be licensed as an optometrist, a person must graduate from an accredited school of optometry and pass an examination.

Ophthalmologists and optometrists are authorized to prescribe corrective lenses. If requested by the patient, the prescriber must determine the appropriateness of contact lens wear at the time of an eye examination and, if the patient has no contraindications, note that contact lenses are acceptable. A prescription for corrective lenses may not expire sooner than two years from its issuance, unless the prescriber finds that a shorter time is warranted because of the patient's ocular health. If the patient decides to obtain contact lenses from a different practitioner, then a follow-up evaluation must be performed within six months of the initial prescription or else the portion of the prescription authorizing contact lenses will be deemed void.

Summary of Bill:

Optometrists, physicians practicing ophthalmology, and osteopathic physicians practicing ophthalmology, referred to as "qualified providers," may prepare a prescription for corrective lenses for the correction of a patient's refractive error using remote technology. To use remote technology for a prescription for corrective lenses, a patient-practitioner relationship must be clearly established. The parameters of the patient-practitioner relationship must be identical to those for similar in-person encounters. The remote technology may only be offered to patients who meet appropriate screening criteria which requires a review of the patient's medical and ocular history to determine whether or not a comprehensive eye examination is required. A patient must also be informed that a refraction test alone does not substitute for a comprehensive eye examination. In addition, continuity of care must be maintained to address adverse events resulting from the prescription through the qualified provider's availability, an agreement with another qualified provider, or referral to another medical provider who is capable of addressing the patient's condition.

A prescribing qualified provider using remote technology must meet the same standard of care that applies to providing corrective lenses in an in-person clinical setting. The standard of care for corrective lenses is the preferred practice pattern contained in "Comprehensive Adult Medical Eye Evaluation" adopted by the American Academy of Ophthalmology. If the prescription relates to contact lenses, the standard of care also includes the frequency of eye examinations recommended for contact lens wearers in "Refractive Errors and Refractive Surgery Preferred Practice Pattern" adopted by the American Academy of Ophthalmology.

It is unlawful to use remote technology to prepare a prescription for corrective lenses unless certain conditions are met. The remote technology must be approved by the federal Food and Drug Administration and compliant with the federal Americans with Disabilities Act and the

Health Insurance Portability and Accountability Act. The remote technology may only transmit data to qualified providers, their staff, or other health care providers who are collaborating to provide care to a patient. The owner or operator of the remote technology must maintain a reasonable level of liability insurance.

Complaints against a qualified provider for alleged violations of the remote technology standards may be filed with the relevant disciplining authority. A written warning must be issued for the first violation or attempted violation if it did not result in significant harm to a person's health. Other violations are subject to a civil penalty of at least \$1,000 and no more than \$10,000. The Department of Health may request that the Attorney General seek enforcement of the standards through injunctive relief.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 24, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill has been worked on for several years and has the support of both ophthalmologists and optometrists, as well as telemedicine providers and medical providers. The bill will protect people who choose to use online vision screening platforms. The bill has common sense guidelines, such as maintaining the doctor-patient relationship, continuity of care, and ensuring that remote technology meets federal Food and Drug Administration guidelines. Remote technology should meet the same standards of care that a patient would receive in an in-office setting. This bill will improve patient safety and uphold the standard of care in the changing landscape of technology. This bill provides appropriate regulation of these services and ensures that the existing standard of care is maintained while allowing residents to access these eye care technologies. There have been cases in which patients have received telehealth services, but were not screened properly; the services did not meet the standard of care, which resulted in significant vision loss that could have been avoided had the patients been seen by an actual doctor or properly screened.

(Opposed) None.

Persons Testifying: Mike Burgess and Nick Jankowski, Optometric Physicians of Washington; and Nick Schilligo, 1-800-Contacts.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority

Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Linda Merelle (786-7092).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The Appropriations Committee clarified that the standard of care referenced in the bill was the same as the preferred practice patterns as they exist on the effective date of the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill sets in place common-sense guidelines and assures consumer access. The standard of care should be the same as in an office visit. The estimated number of complaints stated in the fiscal note far exceeds the actual number of complaints.

(Opposed) None.

Persons Testifying: Mike Burgess, Optometric Physicians of Washington; and Brent Ludeman, 1-800 Contacts.

Persons Signed In To Testify But Not Testifying: None.