

SENATE BILL REPORT

ESSB 5759

As Amended by House, March 5, 2020

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 & Long Term Care: 2/13/19, 2/05/20 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/17/20, 47-0.

Passed House: 3/05/20, 97-0.

<p style="text-align: center;">Brief Summary of Engrossed First Substitute Bill</p> <ul style="list-style-type: none">• Imposes requirements and standards relating to remote technology used to conduct eye examinations.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5759 be substituted therefor, and the substitute bill do pass.

Signed by Senators Cleveland, Chair; Randall, Vice Chair; Conway, Dhingra, Frockt, Keiser and Rivers.

Minority Report: Do not pass.

Signed by Senator Becker.

Minority Report: That it be referred without recommendation.

Signed by Senators O'Ban, Ranking Member; Muzzall and Van De Wege.

Staff: Greg Attanasio (786-7410)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 requirements as 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.

Some online services advertise web-based eye exams to issue a prescription for corrective eyewear. The online services indicate customers take a web-based exam on their computer or phone and data from that exam is evaluated by an ophthalmologist licensed in the customer's state of residence before a prescription is issued.

Summary of Engrossed First Substitute Bill: A licensed ophthalmologist or optometrist may use remote technology to prepare a prescription for corrective lenses if:

- the provider is held to the same standard of care applicable in an in-person clinical setting;
- a patient-practitioner relationship is established similar to the relationship established in an in-person clinical setting;
- the remote technology is only offered to patients who meet appropriate screening criteria;
- continuity of care is maintained by having an established process for addressing an adverse event resulting from the prescription and proper communication between the patient and provider is maintained; and
- when prescribing contact lenses, the examination is performed in accordance with the standard of care and standard of care for contact lenses. The components of the examination must meet the same standard of care whether done in person or remotely.

It is unlawful for any person to make available remote technology for the purpose of obtaining a corrective lenses prescription unless:

- the technology is approved by the U.S. Food and Drug Administration when necessary;
- the technology is designed to comply with the federal Americans with Disabilities Act;
- the collection and transmission of the data complies with the federal Health Insurance Portability and Accountability Act;
- the data collected is read and interpreted by a licensed ophthalmologist or optometrist; and
- the operator of the remote technology maintains proper liability insurance.

The relevant disciplinary authority must review and address any written complaint concerning the use of remote technology in accordance with the Uniform Disciplinary Act. At the request of the Department of Health, the Attorney General's Office may seek an injunction or other civil remedies to enforce any violation of this act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* PRO: Remote eye examinations cannot always detect eye health issues. All examinations, whether in-person or conducted remotely, should be held to the same standards. Effective remote examinations are possible, but they should be conducted safely. Reasonable safeguards should be put into place to protect patients. The bill is meant to allow telemedicine when appropriate.

CON: Access to care is a big challenge, particularly for specialty care. Restrictions on telemedicine greatly impact more isolated communities by creating barriers to care. The bill is counterproductive to Washington's goal of expanding use of telemedicine. Online vision testing is not meant to be a replacement to in-person examinations, and guidelines already exist to protect patient safety.

OTHER: The Washington Retail Association is reviewing the bill and will provide comments.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; Dr. Suzanne Zamberlan, Optometric Physicians of Washington; Dr. Michael Sirrott, Optometric Physicians of Washington; Mike Burgess, Optometric Physicians of Washington; Mark Maraman, Optometric Physicians of Washington; Nicholas Jankowski, Optometric Physicians of Washington.

CON: Kelsi Hamilton, Washington Rural Healthcare Association; Cliff Webster, Washington Academy of Eye Physicians and Surgeons; Roman Daniels-Brown, Washington State Medical Association; Michael Leong, Sea Mar Community Health Centers; Mike Hoover, Tech Net; Nick Schilligo, 1-800 Contacts; Arielle Kane, Progressive Policy Institute; David Hall, Transplant Recipients International Organization.

OTHER: Mark Johnson, Washington Retail.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- 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.