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ENGROSSED 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)

READ FIRST TIME 02/06/20.

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

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

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

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

16 (2) The legislature also recognizes that health care consumers,  
17 including eye health care consumers, can benefit from developments in  
18 technology that offer advantages such as increased convenience or  
19 increased speed in delivery of services. However, the legislature  
20 recognizes that health care consumers can be misled or harmed by the

1 use of developments in technology that are not properly supervised by  
2 qualified providers.

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

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

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

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

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

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

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

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

37 (6) "Prescription" means the written or electronic directive from  
38 a qualified provider for corrective lenses and consists of the

1 refractive power as well as contact lens parameters in the case of  
2 contact lens prescriptions.

3 (7) "Qualified provider" means a physician licensed under chapter  
4 18.71 RCW or an osteopathic physician licensed under chapter 18.57  
5 RCW practicing ophthalmology, or a person licensed under chapter  
6 18.53 RCW to practice optometry.

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

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

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

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

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

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

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

36 (2) A patient-practitioner relationship is clearly established by  
37 the qualified provider agreeing to provide a corrective lens  
38 prescription, whether or not there was an in-person encounter between  
39 the parties. The parameters of the patient-practitioner relationship

1 for the use of remote technology must mirror those that would be  
2 expected for similar in-person encounters to provide corrective lens  
3 prescriptions;

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

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

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

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

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

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

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

29 (5) When prescribing for contact lenses, the examination of the  
30 eyes is performed in accordance with the standard of care and  
31 standard of care for contact lenses. The components of the eye  
32 examination, if done remotely, must be to the same evaluation and  
33 standard of care the qualified provider would typically do in an in-  
34 person setting for the same condition. If the eye examination is  
35 performed by someone other than the prescribing qualified provider,  
36 the prescribing qualified provider must obtain written, faxed, or  
37 electronically communicated affirmative verification of the results  
38 of that eye examination from the provider who performed the  
39 examination. The absence of receipt of affirmative verification

1 within any specified time period cannot be used as presumed  
2 affirmative verification.

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

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

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

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

18 (4) The remote technology, when used for the collection and  
19 transmission of diagnostic information and data, may only transmit  
20 the diagnostic information and data to a qualified provider, their  
21 staff, contracted support staff, or another licensed health care  
22 provider for the purposes of collaboration in providing care to the  
23 patient. When diagnostic information and data are collected and  
24 transmitted through remote technology, that information must be read  
25 and interpreted by a qualified provider in order to release a  
26 corrective lens prescription to the patient or other entity.  
27 Contracted support staff must comply with all requirements of this  
28 chapter. Contract support staff and the supervising provider retain  
29 personal and professional responsibility for any violation of this  
30 chapter by the contracted support staff; and

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

36 NEW SECTION. **Sec. 6.** ENFORCEMENT. (1) The relevant disciplinary  
37 authority for the qualified provider shall review any written  
38 complaint alleging a violation, or attempted violation, of this

1 chapter or rules adopted pursuant to this chapter, and conduct an  
2 investigation.

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

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

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

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

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

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

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

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