

Telehealth Model Language – General Concepts and Decision Points

Background

Advancements in technology offer opportunities for improved access to care at a lower cost. At the same time, boards of optometry have an obligation to ensure quality standards are met and the public is protected.

	Recommended Policy	Impact
Definitions	<p>Telehealth – broad definition</p> <ul style="list-style-type: none"> Practice of health care using electronic communications, information technology or other means between a licensee in one location, and a patient in another location with or without an intervening healthcare provider. Includes telemedicine, telepractice, teleophthalmology, etc. 	
Establishing patient-provider relationship	<p>Relationship begins when the patient seeks assistance from an optometrist and the optometrist agrees to undertake diagnosis and treatment</p> <ul style="list-style-type: none"> Internet/online questionnaire qualifies Supervised technician qualifies Initial in-person physical exam not required <p>Provider is required to:</p> <ul style="list-style-type: none"> Validating and authenticating location of the patient Disclosing and validating the licensing credentials of the clinician Obtain appropriate consents 	Provides most flexibility for patients
Consent Issues	<p>Require informed consent regarding use of telemedicine technologies, including delivery methods and limitations</p> <ul style="list-style-type: none"> Patient agrees that provider determines whether or not condition being diagnosed and/or treated is appropriate for telemedicine encounter Hold harmless clause for information lost due to technical failures 	
Live Video (Real Time)	<p>Acceptable</p> <ul style="list-style-type: none"> High resolution video/camera Secure encryption Multi-factor authentication 	
Store and Forward (Asynchronous)	<p>Acceptable</p> <ul style="list-style-type: none"> High resolution video/camera Secure encryption Multi-factor authentication 	
Remote Monitoring	<p>With potential restrictions:</p> <ul style="list-style-type: none"> Limited clinical conditions 	

	<ul style="list-style-type: none"> • Limited monitoring devices • Limited information collection • FDA approved devices only 	
Supervision of Technicians/Assistants	Documentation of training programs for any technician who is capturing clinical images	
E-Mail/Phone	Acceptable only in conjunction with some other type of system Direct to patient eye and vision health related application, including online vision test must comply with standard of care	
Licensure	<ul style="list-style-type: none"> • Provider must be licensed in the jurisdiction where the patient is located. • Practice of optometry begins where the patient is located at the time telemedicine technologies are used • No separate license or certificate related to telehealth: such a separate license could allow an out-of-state provider to render services via telemedicine in a state where they are not located or have a full license 	
Location of Services	No geographical restrictions Practitioner must be licensed in the same jurisdiction of the patient	Uniform access to care, across rural and urban areas
Online Services	Prescriptions limited selectively Disclosures, including: <ul style="list-style-type: none"> • Specific services provided • Contact information for provider • Licensure and qualifications of provider • Appropriate uses and limitations of the site • Uses and response times for communications • Financial interests, other than fees charged, in any information, products, or services 	
Prescribing	Consider measures to limit medication formularies for telehealth exams (no opioids) Appropriate clinical considerations documented	
Practice Standards	<ul style="list-style-type: none"> • Same standard of care as an in-person exam • Same scope of practice as an in-person exam • Require adoption of practice standards, including documentation and diagnosis prior to providing treatment • Online questionnaire alone is not acceptable standard of care • Provider remuneration or treatment recommendations should not be based on prescription, referral, or utilization of telehealth technologies • Local Referrals: urgent care, emergency services, facilitate continuity of care 	
Medical Records	Patient record from telehealth exam should be available to both provider and patient, and be consistent with established laws and regulations governing patient healthcare records. <ul style="list-style-type: none"> • Patients' relevant health history must be collected as part of the provision of eye and 	

vision telehealth services

Privacy of Patient Data

Protect patient confidentiality

- Requirement for express patient consent to forward patient-identifiable information to a third party
- Ensure HIPAA compliance
- Inform patients that asynchronous telehealth involves their health information traveling by electronic means

Private Payers

Require same reimbursement as in-person exam for same services

Prohibit payers from restricting use of telehealth to specific companies

Crossing State Lines

Practitioner must be licensed in the state the patient resides

Disclaimer

Not intended to establish legal, medical or other standard of care

Does not replace or supersede local, state, or federal laws

ALABAMA BOARD OF OPTOMETRY

CHAPTER 630-X-13

PRACTICE OF OPTOMETRY THROUGH TELEMEDICINE

630-X-13-.01 Definitions: (1) Distant Site Provider. A provider of optometric services through telemedicine from a site other than the patient's then current location. A distant site provider shall hold an active Alabama optometry license as set out in §34-22-20 and §34-22-21 of the Code of Ala. 1975.

(2) Emergency. A situation or condition where failure to provide immediate treatment poses a threat of loss of sight to a person. For the purposes hereof, routine visual care shall not be an emergency.

(3) Established Treatment Site. A location where a patient shall present to seek optometric care (through telemedicine). An established treatment site shall have an optometrist licensed by the Alabama Board of Optometry present on site during the provision of any telemedicine to a patient, and there must exist between said optometrist and patient an optometrist-patient relationship. There shall be sufficient equipment and technology present at any established treatment site to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. A patient's home is not considered an established treatment site.

(4) Face-to-face Visit. An evaluation or appointment for treatment at which both the provider and patient are at the same physical location, or where the patient is at an established treatment site and the provider is a distant site provider.

(5) In-person Evaluation. A patient evaluation conducted by a provider who is at the same physical location as the location of the client.

(6) Provider. As used in this chapter the term "provider" shall mean an optometrist holding an active license to practice optometry granted by the Alabama Board of Optometry in accordance with §34-22-20 and §34-22-21 of the Code of Ala. 1975.

(7) Telemedicine. As used in these regulations, a health service that is delivered by a licensed optometrist acting within the scope of his or her license and that requires the use of telecommunications technology other than telephone or facsimile. Telecommunications technology as used herein shall include, but not be limited to:

(a) compressed digital interactive video, audio, or data transmission;

(b) clinical data transmission using computer imaging by way of still image capture and store and forward;

(c) other technology that facilitates access to health care services or optometric specialty services.

History: Author, Dr. Fred Wallace; Filed March 13, 2015

630-X-13-.02 Optometric Telemedicine.

(1) The provision of optometric diagnosis, treatment, or other services to a patient through telemedicine at an established treatment site may be used for all patient visits, including initial evaluations to establish an optometrist-patient relationship between a provider and a patient.

(2) A distant site provider who provides telemedicine services to a patient that is not present at an established treatment site shall ensure that a proper provider-patient relationship is established, which shall include at least the following:

(a) Having had at least one face-to-face meeting, either in person, or at an established treatment site via telecommunications technology as set out in 630 x 13.01 (7);

(b) Confirming the identity of the person requesting treatment by establishing that the person requesting the treatment is in fact whom he or she claims to be.

(3) Evaluation, treatment, and consultation recommendations made via telemedicine, including, but not limited to the issuance of prescriptions, shall be held to the same standards of practice as those in traditional in-person clinical settings. The provision of optometric diagnosis, treatment, or other services through telemedicine shall comply with the requirements of the Alabama Code, this chapter, and these regulations. Failure to comply with such requirements shall be considered a failure to meet standard of care as required by 630-X-12-.06 herein.

(4) Distant site providers shall obtain an adequate and complete medical history for the patient before providing treatment and shall document the medical history in the patient record.

History: Author, Dr. Fred Wallace; Filed March 13, 2015

630-X-13-.03 On-Site Optometrists. A provider may delegate tasks and activities at an established treatment site to an assistant who is properly trained, supervised, and directed. There shall be, however, an Alabama-licensed optometrist present and available to assist with the provision of care at any established treatment site during the provision of optometric telemedicine.

History: Author, Dr. Fred Wallace; Filed March 13, 2015

630-X-13-.04 Security Measures For Electronic Mail. Adequate measures shall be taken to ensure the security of all patient communications through electronic mail, and that said information remains confidential. Electronic mail includes any type-written communication that is transferred via the internet, telephone or cable line, or cellular telephone service, but shall not include facsimile, or "fax" communications. Providers of optometric telemedicine shall, prior to providing optometric telemedicine services, establish and adopt written policies and procedures to ensure the security of patient communications, recordings, and records transferred by electronic mail. Policies shall be evaluated periodically so that they remain up-to-date. The written policies and procedures for such security measures for electronic mail shall address all of the following:

- (1) Confidentiality and integrity of patient-identifiable information;
- (2) The identity—by position or title—of health care personnel who will process or otherwise have access to information sent by electronic mail;
- (3) Hours of operation and availability of the provider and distant site provider;
- (4) Types of transaction which shall be permitted electronically;
- (5) The type of information to be included in the communication, such as patient name, identification number, and type of transaction;
- (6) How and when electronic mail will be archived and retrieved;
- (7) Mechanisms for the oversight of the processing, handling, storage, and archival of electronic mail.

History: Author, Dr. Fred Wallace; Filed March 13, 2015

630-X-13-.05 Communication In Patient Records. All relevant provider-patient electronic communications, including recordings and electronic mail shall be stored and filed in or with the patient's record in addition to any other storage methods.

History: Author, Dr. Fred Wallace; Filed March 13, 2015

630-X-13-.06 Alternative Forms Of Communication. All patients who are served through optometric telemedicine shall be informed of alternative forms of contacting their provider for urgent matters. Conventional telephone numbers used by a provider for traditional on-site optometry shall be sufficient.

History: Author, Dr. Fred Wallace; Filed March 13, 2015

630-X-13-.07 Patient Records.

(1) Patient records shall be maintained for all telemedicine services. The provider or distant site provider shall maintain the records created at any site where treatment or evaluation is provided.

(2) Patient records shall include copies of all relevant patient-related electronic communications, including relevant provider-patient email, prescriptions, laboratory and rest results, evaluations and consultation, records of past care, medical histories, and instructions. If possible, telemedicine encounters that are recorded electronically shall also be included in the patient record. Where means of storage will not allow for the storage of electronically recorded encounters with or in the patient record, the patient record shall include a notation or entry that the recording exists and the location and means of storage of such recording.

History: Author, Dr. Fred Wallace; Filed March 13, 2015

630-X-13-.08 Emergency Telemedicine.

(1) An optometrist who is licensed by another state to practice optometry, but who is not licensed in the state of Alabama pursuant to §§ 34-22-20 or 34-22-21, who utilizes telemedicine to provide optometric services in the state of Alabama from a distant site outside of the state of Alabama during a state of emergency is not subject to the requirements of this article. For the purposes of this section 13.08(1), a state of emergency means a natural or man-made disaster for which the Governor of the State of Alabama has declared or proclaimed a state of emergency or where the President of the United States has declared a disaster in accordance with the Disaster Relief and Emergency Assistance Act of 1988 as amended. For the exemption contained in this section to apply, the patient receiving telemedicine services from the distant site must be located within the geographical boundaries established in the governor's declaration of a state of emergency or the president's disaster declaration.

(2) A provider who is contacted in an emergency shall not be subject to the notice and security provisions of this article. The provisions of this section 13.08(2) shall not apply to any non-emergency optometric services provided to the patient as a continuation of treatment initiated in the emergency or for a different condition or issue which arises later. For the purposes of this section 13.08(2), an emergency shall have the meaning and definition set out in section 13.01(2) above.

History: Author, Dr. Fred Wallace; Filed March 13, 2015

ARKANSAS STATE BOARD OF OPTOMETRY

RULES AND REGULATIONS

CHAPTER 1, ARTICLE XIV – Tele Optometry

Requirement for all services provided by optometrists using Tele Optometry:

For purposes of this regulation, a proper optometrist/patient relationship, at a minimum requires that:

1. For the purposes of this regulation, a proper optometrist – patient relationship is deemed to exist in the following situations:
 - a. Performs a history and an “in person” physical examination of the patient adequate to establish a diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided, OR
 - b. When treatment is provided in consultation with, or upon referral by, another optometrist who has an ongoing relationship with the patient, and who has agreed to supervise the patient’s treatment, including follow up care and the use of any prescribed medications.
 - c. On-call or cross-coverage situations arranged by the patient’s treating optometrist
 - d. The optometrist personally knows the patient and the patient’s general health status through an “ongoing” personal or professional relationship
2. Appropriate follow-up be provided or arranged, when necessary, at medically necessary intervals.
3. An optometrist/patient relationship must be established before the delivery of service via Tele Optometry. A patient completing an optometric history online and forwarding it to an optometrist is not sufficient to establish the relationship, nor does it qualify as store-and-forward technology.
4. The following requirements apply to all services provided by optometrists using Tele Optometry:
 - a. The practice of Optometry via Tele Optometry shall be held to the same standards of care as traditional in-person encounters.
 - b. The optometrist must obtain a detailed explanation of the patient’s complaint from the patient or the patient’s treating optometrist
 - c. If a decision is made to provide treatment, the optometrist must agree to accept responsibility for the care of the patient.
 - d. If follow-up care is indicated, the optometrist must agree to provide or arrange for such follow-up care.
 - e. An optometrist using Tele Optometry may NOT issue a prescription for any controlled substances defined as any scheduled medication under schedules II through V unless the optometrist has seen the patient for an in-person exam ore unless a relationship exists through consultation or referral/ on-call

or cross-coverage situations; or through an ongoing personal or professional relationship.

- f. The optometrist must keep a documented patient record
- g. At the patient's request, the optometrist must make available to the patient as electronic or hardcopy version of the patient's optometric record documenting the encounter. Additionally, unless the patient declines to consent, the optometrist must forward a copy of the record of the encounter to the patient's regular treating optometrist if that optometrist is not the same one delivering the service via Tele Optometry.
- h. Services must be delivered in a transparent manner, including providing access to information identifying the optometrist in advance of the encounter, with licensure and board certifications, as well as patient financial responsibilities.
- i. If the patient, at the recommendation of the optometrist, needs to be seen in person for their current optometric issue, the optometrist must arrange to see the patient in person or direct the patient to their regular treating optometrist or other appropriate provider if the patient does not have a treating optometrist. Such recommendation shall be documented in the patient's optometric record
- j. Optometrists who deliver services through Tele Optometry must establish protocols for referrals for emergency services.
- k. All optometrists providing care via Tele Optometry to a patient located within the State of Arkansas shall be licensed to practice optometry in the State of Arkansas.

California Telehealth Regulation

§2290.5. TELEHEALTH; PATIENT CONSENT; HOSPITAL PRIVILEGES AND APPROVAL OF CREDENTIALS FOR PROVIDERS OF TELEHEALTH SERVICES

(a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

(c) Nothing in this section shall preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

(g) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(h) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, “telehealth” shall include “telemedicine” as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

Added Stats 2011 ch 547 § 4 (AB 415), effective January 1, 2012.

Amended by Stats. 2014, Ch. 404, Sec. 1. Effective September 18,

30-12 Guidelines for the Appropriate Use of Telehealth Technologies in the Practice of Optometry (Adopted August 10, 2016; Amended February 7, 2019)

Purpose: To provide guidance regarding the appropriate use of telehealth technologies in the practice of optometry.

Policy: The State Board of Optometry (“Board”) has adopted the following guidelines for providers utilizing telehealth technologies in the delivery of patient care.

1) Introduction

The advancements and continued development of medical and communications technology offer opportunities for improving the delivery and accessibility of health care, particularly in the area of telehealth, which includes the practice of optometry using electronic communication, information technology or other means of interaction between a healthcare provider in one location and a patient in another location with or without an intervening healthcare provider.¹ The State Board of Optometry (“Board”) recognizes that using telehealth technologies in the delivery of optometric services offers potential benefits in the provision of optometric care.

The Board is committed to assuring patient access to the convenience and benefits afforded by telehealth technologies, while promoting the responsible practice of optometry by providers. The Board has developed guidelines to educate licensees as to the appropriate use of telehealth technologies in the delivery of medical services directly to patients. These guidelines do not set a standard of care, do not alter generally accepted standards of optometric practice, the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law. It is the expectation of the Board that providers of optometric care, electronically or otherwise, maintain the highest degree of professionalism and the generally standards of optometric practice.

This policy does not apply to the use of telehealth technologies when solely providing consulting services to another provider who maintains the primary provider-patient relationship with the patient, the subject of the consultation.

¹ See *Center for Telehealth and eHealth Law (Ctel)*, <http://ctel.org/>

Definitions

For the purpose of this policy, the following terms are defined as:

- a. "TELEHEALTH"
 - (1) "Telehealth" means a mode of delivery of health care services through telecommunications systems, including information, electronic, and communication technologies, to facilitate the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a person's health care while the person is located at an originating site and the provider is located at a distant site. The term includes synchronous interactions and store-and-forward transfers.
 - (2) "Telehealth" includes the delivery of medical services and any diagnosis, consultation, or treatment using interactive audio, interactive video, or interactive data communication.
 - (3) This policy defines "telehealth" for purposes of compliance with the Optometric Practice Act. Telehealth may be defined differently in different statutory contexts, including but not limited to, insurance requirements or reimbursement.
 - (4) Nothing in this policy authorizes optometrists to deliver services outside their scope of practice or limits the delivery of health services by other licensed professionals, within the professional's scope of practice, using advanced technology, including, but not limited to, interactive audio, interactive video, or interactive data communication.
- b. "TELEHEALTH TECHNOLOGIES" means technologies and devices enabling secure electronic communications and information exchange between a licensee in one location and a patient in another location with or without an intervening healthcare provider.
- c. "DISTANT SITE" means a site at which a provider is located while providing optometric services by means of telehealth.
- d. "ORIGINATING SITE" means a site at which a patient is located at the time optometric services are provided to him or her by means of telehealth.
- e. "STORE-AND-FORWARD TRANSFER" means the electronic transfer of a patient's medical information or an interaction between providers that occurs between an originating site and distant sites when the patient is not present.
- f. "SYNCHRONOUS INTERACTION" means a real-time interaction between a patient located at the originating site and a provider located at a distant site.
- g. "PROVIDER" means a licensee regulated by the State Board of Optometry.
- h. "PROVIDER-PATIENT RELATIONSHIP" means the relationship as defined in Board Policy 30-11.

Guidelines

- i. Licensure
Providers, who evaluate, treat or prescribe through telehealth technologies are practicing optometry. The practice of optometry occurs where the patient is located at the time telehealth technologies are used. Therefore, a provider must be licensed to practice optometry in the state of Colorado in order to evaluate or treat patients located in Colorado utilizing telehealth technologies or otherwise.
- j. Establishment of a Provider-Patient Relationship
Where an existing provider-patient relationship is not present, a provider must take appropriate steps to establish a provider-patient relationship consistent with the guidelines identified in Board Policy 30-11. Provider-patient relationships may be established using telehealth technologies so long as the relationship is established in conformance with generally accepted standards of practice.
- k. Evaluation and Treatment of the Patient
An appropriate medical evaluation and review of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided should be performed prior to providing treatment, including issuing prescriptions, electronically or otherwise. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (encounter in person) settings. Treatment, including issuing a prescription based solely on an online questionnaire, does not constitute an acceptable standard of care.
- l. Informed Consent
Appropriate informed consent should be obtained for a telehealth encounter including those elements required by law and generally accepted standards of practice.
- m. Continuity of Care
Optometrists should adhere to generally accepted standards of optometric practice as it relates to continuity and coordination of care.
- n. Referrals for Emergency Services
An emergency plan should be provided by the provider to the patient when the care provided using telehealth technologies indicates that a referral to an acute care facility or Emergency Department for treatment is necessary for the safety of the patient.
- o. Medical Records
The medical record should include, if applicable, copies of all patient-related electronic communications, including patient-provider communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with an encounter involving telehealth technologies should also be filed in the medical record. The patient record established during the use of telehealth technologies must be accessible and documented for both the provider and the patient, consistent with all established laws and regulations governing patient healthcare records.

- p. Privacy and Security of Patient Records & Exchange of Information
Providers should meet or exceed applicable federal and state legal requirements of medical/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy, confidentiality, security, and medical record retention rules.

Written policies and procedures should be maintained at the same standard as traditional in-person encounters for documentation, maintenance, and transmission of the records of the encounter using telehealth technologies.

- q. Disclosures and Functionality for Providing Online Services
Disclosures and advertising should be made in accordance with state and federal law.

- r. Prescribing
Prescribing medications and/or medical devices, in-person or via telehealth technologies, is at the professional discretion of the provider. The indication, appropriateness, and safety considerations for each telehealth visit prescription must be evaluated by the provider in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an encounter in person. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, providers may exercise their judgment and prescribe medications as part of telehealth encounters.

- s. Parity of Professional and Ethical Standards
There should be parity of ethical and professional standards applied to all aspects of a provider's practice.

A provider's professional discretion as to the diagnoses, scope of care, or treatment should not be limited or influenced by non-clinical considerations of telehealth technologies, and provider remuneration or treatment recommendations should not be materially based on the delivery of patient-desired outcomes (i.e. a prescription or referral) or the utilization of telehealth technologies.

40 - Discipline

40-1 Guidelines Pertaining to Confidential Letters of Concern (Adopted August 2008; Amended May 23, 2014)

Purpose: To clarify the basis for this type of dismissal, when the Optometry Board may reopen such case and designation of a specific retention period for these types of cases.

It is the policy of the Board that complaints dismissed with Confidential Letters of Concern are not dismissed as being without merit but rather are dismissed due to no reasonable cause to warrant further action at that time. Cases that are dismissed with a Confidential Letter of Concern will be retained in the Board's files for a period of five years.

The Board may reopen a case that was dismissed with a Confidential Letter of Concern in the face of a change in circumstances. Such a change in circumstances would include but not be limited to:

- discovery of new evidence supporting the underlying charges

201 KAR 5:055. Telehealth.

RELATES TO: KRS 320.300, 320.390

STATUTORY AUTHORITY: KRS 320.390(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.390(2) requires the Board of Optometric Examiners to promulgate administrative regulations to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of optometric services and in the provision of continuing education. This administrative regulation establishes requirements for the use of telehealth services.

Section 1. Definitions. (1) "Contact lens prescription" is defined by KRS 367.680(3).

(2) "Eye examination" means an examination that meets the requirements for a complete eye examination established in 201 KAR 5:040, Section 7(1).

(3) "Face to face" means in person and not via telehealth.

(4) "Licensed health care professional" means an optometrist licensed pursuant to KRS Chapter 320, or a physician or osteopath licensed under KRS 311.550(12).

(5) "Optometrist" means an individual licensed by the Kentucky Board of Optometric Examiners to engage in the practice of optometry.

(6) "Patient" means the person receiving services or items from an optometrist or a physician.

(7) "Physician" is defined by KRS 311.550(12).

(8) "Practice of optometry" is defined by KRS 320.210(2).

(9) "Prescription" means an order for a pharmaceutical agent, or any other therapy within the scope of practice of an optometrist or a physician.

(10) "Prescription for eyewear" means a written prescription for visual aid glasses or a contact lens prescription after a complete eye examination is performed by an optometrist or physician.

(11) "Telehealth" is defined by KRS 320.390(3).

(12) "Telehealth provider" means an optometrist licensed pursuant to KRS Chapter 320 who performs a telehealth consultation.

(13) "Telepractice" means the practice of optometry that is provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.

(14) "Visual aid glasses" is defined by KRS 320.210(4).

Section 2. Patient Identity, Communication and Informed Consent Requirements. (1) An optometrist-patient relationship shall not commence via telehealth.

(2) An initial, in-person meeting for the optometrist and patient who will prospectively utilize telehealth shall occur in order to evaluate whether the potential or current patient is a candidate to receive services via telehealth.

(3) An optometrist who uses telehealth to deliver vision or eye care services shall at the initial, face-to-face meeting with the patient:

(a) Verify the identity of the patient;

(b) Establish a medical history and permanent record for the patient;

(c) Obtain alternative means of contacting the patient other than electronically such as by the use of a telephone number or mailing address;

(d) Provide to the patient alternative means of contacting the optometrist other than electronically such as by the use of a telephone number or mailing address;

(e) Provide contact methods of alternative communication the optometrist shall use for

emergency purposes such as an emergency on call telephone number;

(f) Document if the patient has the necessary knowledge and skills to benefit from the type of telepractice provided by the optometrist; and

(g) Inform the patient in writing and document acknowledgement of the risk and limitations of:

1. The use of technology in the use of telepractice;
2. The potential breach of confidentiality of information or inadvertent access of protected health information due to technology in telepractice;
3. The potential disruption of technology in the use of telepractice;
4. When and how the optometrist will respond to routine electronic messages;
5. The circumstances in which the optometrist will use alternative communications for emergency purposes;
6. Others who may have access to patient communications with the optometrist;
7. How communications shall be directed to a specific optometrist;
8. How the optometrist stores electronic communications from the patient; and
9. Whether the optometrist may elect to discontinue the provision of services through telehealth.

Section 3. Jurisdictional Considerations. A licensed health care professional providing eye and vision services via telehealth shall be licensed by the Kentucky Board of Optometric Examiners or the Kentucky Board of Medical Licensure if services are provided:

- (1) To a person physically located in Kentucky; or
- (2) By a person who is physically located in Kentucky.

Section 4. Representation of Services and Code of Conduct. (1) A telehealth provider shall not engage in false, misleading, or deceptive advertising. A person shall not advertise an eye examination unless the requirements of 201 KAR 5:040, Section 7(1) are met. A person shall not purport to write a prescription for eyewear solely by using an autorefractor or other automated testing device.

(2) Treatment and consultation recommendations made in an online setting, including a prescription or a prescription for eyewear via electronic means, shall be held to the same standards of appropriate practice as those in traditional practice, face-to-face settings. Treatment, including issuing a prescription for eyewear based solely on an online autorefraction, shall not constitute an acceptable practice or standard of care.

(3) Prescriptions for controlled substances shall not be made via telehealth.

(4) A telehealth provider shall:

- (a) Not split fees in accordance with KRS 320.300(3);
- (b) Shall maintain a medical record of a service or item provided to a patient via telepractice;
- (c) Document the patient's presenting problem, purpose, or diagnosis and include which services were provided by telepractice;
- (d) Use secure communications with each patient including encrypted text messages, via email or secure Web site and not use personal identifying information in non-secure communications; and
- (e) Dispense visual aids only in accordance with KRS 320.300(1).

Section 5. Utilization of Telehealth in Provision of Continuing Education. Credit for telehealth educational presentations shall be granted in accordance with 201 KAR 5:030, Section 2. Educational hours obtained through telehealth shall be considered as part of the credit hours granted in accordance with 201 KAR 5:030, Section 6(1).

Section 6. This administrative regulation shall not be construed as giving jurisdiction over physicians licensed under KRS Chapter 311 to the Kentucky Board of Optometric Examiners. (41 Ky.R. 672; 1040; 1308; eff. 11-19-2014.)

SENATE BILL 402

J2, J1

0lr1855
CF HB 448

By: **Senators Kagan and Lam**

Introduced and read first time: January 27, 2020

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Practitioners – Telehealth**

3 FOR the purpose of authorizing certain health care practitioners to establish a
4 practitioner–patient relationship through certain telehealth interactions under
5 certain circumstances; requiring a health care practitioner providing telehealth
6 services to be held to certain standards of practice; requiring a health care
7 practitioner to perform a certain clinical evaluation before providing certain
8 treatment or issuing a prescription through telehealth; providing that a health care
9 practitioner who prescribes a controlled dangerous substance through telehealth is
10 subject to certain laws; requiring a health care practitioner to document certain
11 information in a patient’s medical record using certain documentation standards;
12 providing that certain laws regarding confidentiality and a patient’s right to health
13 information apply to telehealth interactions in a certain manner; requiring a health
14 care practitioner performing services through telehealth to be licensed in the State
15 under certain circumstances; authorizing health occupations boards to adopt certain
16 regulations; defining certain terms; and generally relating to telehealth and health
17 care practitioners.

18 BY adding to

19 Article – Health Occupations

20 Section 1–1001 through 1–1006 to be under the new subtitle “Subtitle 10.
21 Telehealth”

22 Annotated Code of Maryland

23 (2014 Replacement Volume and 2019 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

25 That the Laws of Maryland read as follows:

26 **Article – Health Occupations**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SUBTITLE 10. TELEHEALTH.

1-1001.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ASYNCHRONOUS TELEHEALTH INTERACTION" MEANS AN EXCHANGE OF INFORMATION BETWEEN A PATIENT AND A HEALTH CARE PRACTITIONER THAT DOES NOT OCCUR IN REAL TIME, INCLUDING THE SECURE COLLECTION AND TRANSMISSION OF A PATIENT'S MEDICAL INFORMATION, CLINICAL DATA, CLINICAL IMAGES, LABORATORY RESULTS, AND SELF-REPORTED MEDICAL HISTORY.

(C) "HEALTH CARE PRACTITIONER" MEANS AN INDIVIDUAL WHO IS LICENSED UNDER THIS ARTICLE.

(D) "SYNCHRONOUS TELEHEALTH INTERACTION" MEANS AN EXCHANGE OF INFORMATION BETWEEN A PATIENT AND A HEALTH CARE PRACTITIONER THAT OCCURS IN REAL TIME.

(E) (1) "TELEHEALTH" MEANS A MODE OF DELIVERING HEALTH CARE SERVICES THROUGH THE USE OF TELECOMMUNICATIONS TECHNOLOGIES BY A HEALTH CARE PRACTITIONER TO A PATIENT AT A DIFFERENT PHYSICAL LOCATION THAN THE HEALTH CARE PRACTITIONER.

(2) "TELEHEALTH" INCLUDES SYNCHRONOUS AND ASYNCHRONOUS INTERACTIONS.

(3) "TELEHEALTH" DOES NOT INCLUDE THE PROVISION OF HEALTH CARE SERVICES SOLELY THROUGH AUDIO-ONLY CALLS, E-MAIL MESSAGES, OR FACSIMILE TRANSMISSIONS.

1-1002.

A HEALTH CARE PRACTITIONER MAY ESTABLISH A PRACTITIONER-PATIENT RELATIONSHIP THROUGH EITHER A SYNCHRONOUS TELEHEALTH INTERACTION OR AN ASYNCHRONOUS TELEHEALTH INTERACTION, IF THE HEALTH CARE PRACTITIONER:

(1) VERIFIES THE IDENTITY OF THE PATIENT RECEIVING HEALTH CARE SERVICES THROUGH TELEHEALTH;

(2) DISCLOSES TO THE PATIENT THE HEALTH CARE PRACTITIONER'S

1 NAME, CONTACT INFORMATION, AND THE TYPE OF HEALTH OCCUPATION LICENSE
2 HELD BY THE HEALTH CARE PRACTITIONER; AND

3 (3) OBTAINS ORAL OR WRITTEN CONSENT FROM THE PATIENT OR
4 FROM THE PATIENT'S PARENT OR GUARDIAN IF STATE LAW REQUIRES THE CONSENT
5 OF A PARENT OR GUARDIAN.

6 1-1003.

7 (A) A HEALTH CARE PRACTITIONER PROVIDING TELEHEALTH SERVICES
8 SHALL BE HELD TO THE SAME STANDARDS OF PRACTICE THAT ARE APPLICABLE TO
9 IN-PERSON HEALTH CARE SETTINGS.

10 (B) (1) A HEALTH CARE PRACTITIONER SHALL PERFORM A CLINICAL
11 EVALUATION THAT IS APPROPRIATE FOR THE PATIENT AND THE CONDITION WITH
12 WHICH THE PATIENT PRESENTS BEFORE PROVIDING TREATMENT OR ISSUING A
13 PRESCRIPTION THROUGH TELEHEALTH.

14 (2) A HEALTH CARE PRACTITIONER MAY USE A SYNCHRONOUS
15 TELEHEALTH INTERACTION OR AN ASYNCHRONOUS TELEHEALTH INTERACTION TO
16 PERFORM THE CLINICAL EVALUATION REQUIRED UNDER PARAGRAPH (1) OF THIS
17 SUBSECTION.

18 (C) A HEALTH CARE PRACTITIONER WHO THROUGH TELEHEALTH
19 PRESCRIBES A CONTROLLED DANGEROUS SUBSTANCE, AS DEFINED IN § 5-101 OF
20 THE CRIMINAL LAW ARTICLE, IS SUBJECT TO ANY APPLICABLE REGULATION,
21 LIMITATION, AND PROHIBITION IN FEDERAL AND STATE LAW RELATING TO THE
22 PRESCRIPTION OF CONTROLLED DANGEROUS SUBSTANCES.

23 1-1004.

24 (A) A HEALTH CARE PRACTITIONER SHALL DOCUMENT IN A PATIENT'S
25 MEDICAL RECORD THE HEALTH CARE SERVICES PROVIDED THROUGH TELEHEALTH
26 TO THE PATIENT ACCORDING TO THE SAME DOCUMENTATION STANDARDS USED FOR
27 IN-PERSON HEALTH CARE SERVICES.

28 (B) ALL LAWS REGARDING THE CONFIDENTIALITY OF HEALTH
29 INFORMATION AND A PATIENT'S RIGHT TO THE PATIENT'S HEALTH INFORMATION
30 APPLY TO TELEHEALTH INTERACTIONS IN THE SAME MANNER AS THE LAWS APPLY
31 TO IN-PERSON HEALTH CARE INTERACTIONS.

32 1-1005.

1 **A HEALTH CARE PRACTITIONER PROVIDING HEALTH CARE SERVICES**
2 **THROUGH TELEHEALTH MUST BE LICENSED IN THE STATE IF THE HEALTH CARE**
3 **SERVICES ARE BEING PROVIDED TO A PATIENT LOCATED IN THE STATE.**

4 **1-1006.**

5 **(A) A HEALTH OCCUPATIONS BOARD MAY ADOPT REGULATIONS TO**
6 **IMPLEMENT THIS SUBTITLE.**

7 **(B) REGULATIONS ADOPTED BY A HEALTH OCCUPATIONS BOARD UNDER**
8 **SUBSECTION (A) OF THIS SECTION:**

9 **(1) MAY NOT ESTABLISH A SEPARATE STANDARD OF CARE FOR**
10 **TELEHEALTH; AND**

11 **(2) SHALL ALLOW FOR THE ESTABLISHMENT OF A**
12 **PRACTITIONER-PATIENT RELATIONSHIP THROUGH A SYNCHRONOUS TELEHEALTH**
13 **INTERACTION OR AN ASYNCHRONOUS TELEHEALTH INTERACTION PROVIDED BY A**
14 **HEALTH CARE PRACTITIONER WHO IS COMPLYING WITH THE HEALTH CARE**
15 **PRACTITIONER'S STANDARD OF CARE.**

16 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July**
17 **1, 2020.**

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

PART 55A
EYE CARE CONSUMER PROTECTION

333.5551 Eye care consumer protection law; meanings of words and phrases.

Sec. 5551. (1) This part may be referred to as the "eye care consumer protection law".

(2) As used in this part, the words and phrases defined in sections 5553 to 5557 have the meanings ascribed to them in those sections.

(3) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5553 Definitions; C to E.

Sec. 5553. (1) "Contact lens" means a lens placed directly on the surface of the eye, regardless of whether it is intended to correct a visual defect. Contact lens includes, but is not limited to, a cosmetic, therapeutic, or corrective lens.

(2) "Department" means the department of licensing and regulatory affairs.

(3) "Diagnostic contact lens" means a contact lens used to determine a proper contact lens fit.

(4) "Examination and evaluation", for the purpose of writing a valid prescription, means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated refracting device or other automated testing device.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5555 Definitions; L to S.

Sec. 5555. (1) "Licensee" means any of the following:

(a) A physician who is licensed or otherwise authorized to engage in the practice of medicine under part 170 and who specializes in eye care.

(b) A physician who is licensed or otherwise authorized to engage in the practice of osteopathic medicine and surgery under part 175 and who specializes in eye care.

(c) An optometrist who is licensed or otherwise authorized to engage in the practice of optometry under part 174.

(2) "Spectacles" means an optical instrument or device worn or used by an individual that has 1 or more lenses designed to correct or enhance vision to address the visual needs of the individual wearer and commonly known as glasses, including spectacles that may be adjusted by the wearer to achieve different types or levels of visual correction or enhancement.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5557 Definitions; V.

Sec. 5557. "Valid prescription" means 1 of the following, as applicable:

(a) For a contact lens, a written or electronic order by a licensee who has conducted an examination and evaluation of a patient and has determined a satisfactory fit for the contact lens based on an analysis of the physiological compatibility of the lens on the cornea and the physical fit and refractive functionality of the lens on the patient's eye. To be a valid prescription under this subdivision, it must include at least all of the following information:

(i) A statement that the prescription is for a contact lens.

(ii) The contact lens type or brand name, or for a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of the equivalent or similar brand.

(iii) All specifications necessary to order and fabricate the contact lens, including power, material, base curve or appropriate designation, and diameter, if applicable.

(iv) The quantity of contact lenses to be dispensed.

(v) The number of refills.

(vi) Specific wearing instructions and contact lens disposal parameters, if any.

(vii) The patient's name.

(viii) The date of the examination and evaluation.

(ix) The date the prescription is originated.

(x) The prescribing licensee's name, address, and telephone number.

(xi) The prescribing licensee's written or electronic signature, or other form of authentication.

(xii) An expiration date of not less than 1 year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient.

(b) For spectacles, a written or electronic order by a licensee who has examined and evaluated a patient. To be a valid prescription under this subdivision, it must include at least all of the following information:

(i) A statement that the prescription is for spectacles.

(ii) As applicable and as specified for each eye, the lens power including the spherical power, cylindrical power including axis, prism, and power of the multifocal addition.

(iii) Any special requirements, the omission of which would, in the opinion of the prescribing licensee, adversely affect the vision or ocular health of the patient. As used in this subparagraph, "special requirements" includes, but is not limited to, type of lens design, lens material, tint, or lens treatments.

(iv) The patient's name.

(v) The date of the examination and evaluation.

(vi) The date the prescription is originated.

(vii) The prescribing licensee's name, address, and telephone number.

(viii) The prescribing licensee's written or electronic signature, or other form of authentication.

(ix) An expiration date of not less than 1 year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5559 Spectacles and contact lenses as medical devices; exceptions.

Sec. 5559. (1) Except as otherwise provided in subsection (2), spectacles and contact lenses are medical devices and are subject to the requirements of this part for the protection of consumers.

(2) This part does not apply to any of the following:

(a) A diagnostic contact lens that is used by a licensee during an examination and evaluation.

(b) An optical instrument or device that is not intended to correct or enhance vision.

(c) An optical instrument or device that is not made, designed, or sold specifically for a particular individual.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5561 Prohibited acts; "supervision" defined.

Sec. 5561. (1) A person shall not do any of the following:

(a) Employ objective or subjective physical means to determine the accommodative or refractive condition or range of power of vision or muscular equilibrium of the human eye unless that activity is performed by a licensee or under the supervision of a licensee.

(b) Prescribe spectacles or contact lenses based on a determination described in subdivision (a) unless that activity is performed by a licensee.

(c) Dispense, give, or sell spectacles or contact lenses unless dispensed, given, or sold pursuant to a valid prescription.

(d) Use an automated refractor or other automated testing device to generate objective refractive data unless that use is by a licensee or under the supervision of a licensee.

(2) As used in this section, "supervision" means that term as defined in section 16109.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5563 Administration and enforcement of part; rules.

Sec. 5563. (1) Except as otherwise provided in this part, the administration and enforcement of this part is the responsibility of the department.

(2) The department may promulgate rules under the administrative procedures act of 1969 that it determines necessary to implement, administer, and enforce this part.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5565 Allegation of violation; writing; review by department; hearing, oaths, and testimony; authority of department to proceed under MCL 333.5567; initiation of investigation.

Sec. 5565. (1) A person or governmental entity that believes that a violation of this part or a rule promulgated under this part has occurred or has been attempted may make an allegation of that fact to the department in writing.

(2) If, upon reviewing an allegation under subsection (1), the department determines there is a reasonable basis to believe the existence of a violation or attempted violation of this part or a rule promulgated under this

part, the department shall investigate.

(3) The department may hold hearings, administer oaths, and order testimony to be taken at a hearing or by deposition conducted pursuant to the administrative procedures act of 1969.

(4) The department may proceed under section 5567 if it determines that a violation of this part or a rule promulgated under this part has occurred.

(5) This section does not require the department to wait until harm to human health has occurred to initiate an investigation under this section.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5567 Order to cease and desist; hearing; costs; referral of case for further enforcement; action under MCL 333.5569 or 333.5571.

Sec. 5567. (1) After a determination as described in section 5565(4), the department may order a person to cease and desist from a violation of this part or a rule promulgated under this part.

(2) A person ordered to cease and desist under this section is entitled to a hearing before the department if a written request for a hearing is filed within 30 days after the effective date of the order.

(3) The department may assess costs related to the investigation of a violation of this part or rules promulgated under this part. The department may issue an order for costs assessed under this subsection after a hearing held in compliance with the administrative procedures act of 1969.

(4) The department may refer a case for further enforcement action under section 5569 or 5571 against a person that fails to comply with a cease and desist order that is not contested or that is upheld following a hearing.

(5) The department is not required to issue a cease and desist order before taking action under section 5569 or 5571.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5569 Civil action; filing; injunction or other relief; civil fine; costs; attorney fees.

Sec. 5569. (1) The department may file a civil action in a court of competent jurisdiction seeking an injunction or other appropriate relief to enforce this part or a rule promulgated under this part.

(2) In an action under subsection (1), the court may impose on a person that violates or attempts to violate this part or a rule promulgated under this part a civil fine of not less than \$5,000.00 for each violation or attempted violation. The court may also award costs of an investigation and attorney fees from a person that violates or attempts to violate this part or a rule promulgated under this part.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5571 Violation of part, rule, or order as misdemeanor; fine; costs; attorney fees.

Sec. 5571. A person that violates this part or a rule promulgated under this part or violates a cease and desist order issued under this part is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not less than \$5,000.00 or more than \$25,000.00, or both. If successful in obtaining a conviction, the agency prosecuting the case is entitled to actual costs and attorney fees from the defendant.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

SENATE BILL No. 853

SENATE BILL No. 853

March 6, 2014, Introduced by Senators JONES, HUNE, MARLEAU, SCHUITMAKER, BIEDA, ROBERTSON, HOPGOOD, JANSEN, HILDENBRAND, ANANICH, SMITH, BOOHER, EMMONS, KOWALL, GREEN, WARREN, ROCCA, MEEKHOF, YOUNG, MOOLENAAR, HANSEN, JOHNSON, BRANDENBURG and PAPPAGEORGE and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding part 55A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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PART 55A

EYE CARE CONSUMER PROTECTION

SEC. 5551. (1) THIS PART MAY BE REFERRED TO AS THE "EYE CARE CONSUMER PROTECTION LAW".

(2) AS USED IN THIS PART, THE WORDS AND PHRASES DEFINED IN SECTIONS 5553 TO 5557 HAVE THE MEANINGS ASCRIBED TO THEM IN THOSE SECTIONS.

(3) IN ADDITION, ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND PRINCIPLES OF CONSTRUCTION APPLICABLE TO ALL ARTICLES IN THIS CODE.

SENATE BILL No. 853

1 SEC. 5553. (1) "CONTACT LENS" MEANS A LENS PLACED DIRECTLY ON
2 THE SURFACE OF THE EYE, REGARDLESS OF WHETHER IT IS INTENDED TO
3 CORRECT A VISUAL DEFECT. CONTACT LENS INCLUDES, BUT IS NOT LIMITED
4 TO, A COSMETIC, THERAPEUTIC, OR CORRECTIVE LENS.

5 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF LICENSING AND
6 REGULATORY AFFAIRS.

7 (3) "DIAGNOSTIC CONTACT LENS" MEANS A CONTACT LENS USED TO
8 DETERMINE A PROPER CONTACT LENS FIT.

9 (4) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

10 (5) "EXAMINATION AND EVALUATION", FOR THE PURPOSE OF WRITING A
11 VALID PRESCRIPTION, MEANS AN ASSESSMENT OF THE OCULAR HEALTH AND
12 VISUAL STATUS OF A PATIENT THAT DOES NOT CONSIST SOLELY OF
13 OBJECTIVE REFRACTIVE DATA OR INFORMATION GENERATED BY AN AUTOMATED
14 REFRACTING DEVICE OR OTHER AUTOMATED TESTING DEVICE.

15 SEC. 5555. (1) "LICENSEE" MEANS ANY OF THE FOLLOWING:

16 (A) A PHYSICIAN WHO IS LICENSED OR OTHERWISE AUTHORIZED TO
17 ENGAGE IN THE PRACTICE OF MEDICINE UNDER PART 170 AND WHO
18 SPECIALIZES IN EYE CARE.

19 (B) A PHYSICIAN WHO IS LICENSED OR OTHERWISE AUTHORIZED TO
20 ENGAGE IN THE PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY UNDER
21 PART 175 AND WHO SPECIALIZES IN EYE CARE.

22 (C) AN OPTOMETRIST WHO IS LICENSED OR OTHERWISE AUTHORIZED TO
23 ENGAGE IN THE PRACTICE OF OPTOMETRY UNDER PART 174.

24 (2) "SPECTACLES" MEANS AN OPTICAL INSTRUMENT OR DEVICE WORN OR
25 USED BY AN INDIVIDUAL THAT HAS 1 OR MORE LENSES DESIGNED TO CORRECT
26 OR ENHANCE VISION TO ADDRESS THE VISUAL NEEDS OF THE INDIVIDUAL
27 WEARER AND COMMONLY KNOWN AS GLASSES, INCLUDING SPECTACLES THAT MAY

1 BE ADJUSTED BY THE WEARER TO ACHIEVE DIFFERENT TYPES OR LEVELS OF
2 VISUAL CORRECTION OR ENHANCEMENT.

3 SEC. 5557. "VALID PRESCRIPTION" MEANS 1 OF THE FOLLOWING, AS
4 APPLICABLE;

5 (A) FOR A CONTACT LENS, A WRITTEN OR ELECTRONIC ORDER BY A
6 LICENSEE WHO HAS CONDUCTED AN EXAMINATION AND EVALUATION OF A
7 PATIENT AND HAS DETERMINED A SATISFACTORY FIT FOR THE CONTACT LENS
8 BASED ON AN ANALYSIS OF THE PHYSIOLOGICAL COMPATIBILITY OF THE LENS
9 ON THE CORNEA AND THE PHYSICAL FIT AND REFRACTIVE FUNCTIONALITY OF
10 THE LENS ON THE PATIENT'S EYE. TO BE A VALID PRESCRIPTION UNDER
11 THIS SUBDIVISION, IT MUST INCLUDE AT LEAST ALL OF THE FOLLOWING
12 INFORMATION:

13 (i) A STATEMENT THAT THE PRESCRIPTION IS FOR A CONTACT LENS.

14 (ii) THE CONTACT LENS TYPE OR BRAND NAME, OR FOR A PRIVATE
15 LABEL CONTACT LENS, THE NAME OF THE MANUFACTURER, TRADE NAME OF THE
16 PRIVATE LABEL BRAND, AND, IF APPLICABLE, TRADE NAME OF THE
17 EQUIVALENT OR SIMILAR BRAND.

18 (iii) ALL SPECIFICATIONS NECESSARY TO ORDER AND FABRICATE THE
19 CONTACT LENS, INCLUDING POWER, MATERIAL, BASE CURVE OR APPROPRIATE
20 DESIGNATION, AND DIAMETER, IF APPLICABLE.

21 (iv) THE QUANTITY OF CONTACT LENSES TO BE DISPENSED.

22 (v) THE NUMBER OF REFILLS.

23 (vi) SPECIFIC WEARING INSTRUCTIONS AND CONTACT LENS DISPOSAL
24 PARAMETERS, IF ANY.

25 (vii) THE PATIENT'S NAME.

26 (viii) THE DATE OF THE EXAMINATION AND EVALUATION.

27 (ix) THE DATE THE PRESCRIPTION IS ORIGINATED.

1 (x) THE PRESCRIBING LICENSEE'S NAME, ADDRESS, AND TELEPHONE
2 NUMBER.

3 (xi) THE PRESCRIBING LICENSEE'S WRITTEN OR ELECTRONIC
4 SIGNATURE, OR OTHER FORM OF AUTHENTICATION.

5 (xii) AN EXPIRATION DATE OF NOT LESS THAN 1 YEAR FROM THE DATE
6 OF THE EXAMINATION AND EVALUATION OR A STATEMENT OF THE REASONS WHY
7 A SHORTER TIME IS APPROPRIATE BASED ON THE MEDICAL NEEDS OF THE
8 PATIENT.

9 (B) FOR SPECTACLES, A WRITTEN OR ELECTRONIC ORDER BY A
10 LICENSEE WHO HAS EXAMINED AND EVALUATED A PATIENT. TO BE A VALID
11 PRESCRIPTION UNDER THIS SUBDIVISION, IT MUST INCLUDE AT LEAST ALL
12 OF THE FOLLOWING INFORMATION:

13 (i) A STATEMENT THAT THE PRESCRIPTION IS FOR SPECTACLES.

14 (ii) AS APPLICABLE AND AS SPECIFIED FOR EACH EYE, THE LENS
15 POWER INCLUDING THE SPHERICAL POWER, CYLINDRICAL POWER INCLUDING
16 AXIS, PRISM, AND POWER OF THE MULTIFOCAL ADDITION.

17 (iii) ANY SPECIAL REQUIREMENTS, THE OMISSION OF WHICH WOULD, IN
18 THE OPINION OF THE PRESCRIBING LICENSEE, ADVERSELY AFFECT THE
19 VISION OR OCULAR HEALTH OF THE PATIENT. AS USED IN THIS
20 SUBPARAGRAPH, "SPECIAL REQUIREMENTS" INCLUDES, BUT IS NOT LIMITED
21 TO TYPE OF LENS DESIGN, LENS MATERIAL, STRENGTH, OR LENS TREATMENTS

1 (x) THE PRESCRIBING LICENSEE'S NAME, ADDRESS, AND TELEPHONE
2 NUMBER.

3 (xi) THE PRESCRIBING LICENSEE'S WRITTEN OR ELECTRONIC
4 SIGNATURE, OR OTHER FORM OF AUTHENTICATION.

5 (xii) AN EXPIRATION DATE OF NOT LESS THAN 1 YEAR FROM THE DATE
6 OF THE EXAMINATION AND EVALUATION OR A STATEMENT OF THE REASONS WHY
7 A SHORTER TIME IS APPROPRIATE BASED ON THE MEDICAL NEEDS OF THE
8 PATIENT.

9 (B) FOR SPECTACLES, A WRITTEN OR ELECTRONIC ORDER BY A
10 LICENSEE WHO HAS EXAMINED AND EVALUATED A PATIENT. TO BE A VALID
11 PRESCRIPTION UNDER THIS SUBDIVISION, IT MUST INCLUDE AT LEAST ALL
12 OF THE FOLLOWING INFORMATION:

13 (i) A STATEMENT THAT THE PRESCRIPTION IS FOR SPECTACLES.

14 (ii) AS APPLICABLE AND AS SPECIFIED FOR EACH EYE, THE LENS
15 POWER INCLUDING THE SPHERICAL POWER, CYLINDRICAL POWER INCLUDING
16 AXIS, PRISM, AND POWER OF THE MULTIFOCAL ADDITION.

17 (iii) ANY SPECIAL REQUIREMENTS, THE OMISSION OF WHICH WOULD, IN
18 THE OPINION OF THE PRESCRIBING LICENSEE, ADVERSELY AFFECT THE
19 VISION OR OCULAR HEALTH OF THE PATIENT. AS USED IN THIS
20 SUBPARAGRAPH, "SPECIAL REQUIREMENTS" INCLUDES, BUT IS NOT LIMITED
21 TO, TYPE OF LENS DESIGN, LENS MATERIAL, TINT, OR LENS TREATMENTS.

22 (iv) THE PATIENT'S NAME.

23 (v) THE DATE OF THE EXAMINATION AND EVALUATION.

24 (vi) THE DATE THE PRESCRIPTION IS ORIGINATED.

25 (vii) THE PRESCRIBING LICENSEE'S NAME, ADDRESS, AND TELEPHONE
26 NUMBER.

27 (viii) THE PRESCRIBING LICENSEE'S WRITTEN OR ELECTRONIC

1 SIGNATURE, OR OTHER FORM OF AUTHENTICATION.

2 (ix) AN EXPIRATION DATE OF NOT LESS THAN 1 YEAR FROM THE DATE
3 OF THE EXAMINATION AND EVALUATION OR A STATEMENT OF THE REASONS WHY
4 A SHORTER TIME IS APPROPRIATE BASED ON THE MEDICAL NEEDS OF THE
5 PATIENT.

6 SEC. 5559. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2),
7 SPECTACLES AND CONTACT LENSES ARE MEDICAL DEVICES AND ARE SUBJECT
8 TO THE REQUIREMENTS OF THIS PART FOR THE PROTECTION OF CONSUMERS.

9 (2) THIS PART DOES NOT APPLY TO ANY OF THE FOLLOWING:

10 (A) A DIAGNOSTIC CONTACT LENS THAT IS USED BY A LICENSEE
11 DURING AN EXAMINATION AND EVALUATION.

12 (B) AN OPTICAL INSTRUMENT OR DEVICE THAT IS NOT INTENDED TO
13 CORRECT OR ENHANCE VISION.

14 (C) AN OPTICAL INSTRUMENT OR DEVICE THAT IS SOLD WITHOUT
15 CONSIDERATION OF THE VISUAL STATUS OF THE INDIVIDUAL WHO WILL USE
16 THE OPTICAL INSTRUMENT OR DEVICE.

17 SEC. 5561. A PERSON SHALL NOT DO ANY OF THE FOLLOWING:

18 (A) EMPLOY OBJECTIVE OR SUBJECTIVE PHYSICAL MEANS TO DETERMINE
19 THE ACCOMMODATIVE OR REFRACTIVE CONDITION OR RANGE OF POWER OF
20 VISION OR MUSCULAR EQUILIBRIUM OF THE HUMAN EYE OR PRESCRIBE
21 SPECTACLES OR CONTACT LENSES BASED ON THAT DETERMINATION UNLESS
22 THAT ACTIVITY IS PERFORMED BY A LICENSEE.

23 (B) DISPENSE, GIVE, OR SELL SPECTACLES OR CONTACT LENSES
24 UNLESS DISPENSED, GIVEN, OR SOLD PURSUANT TO A VALID PRESCRIPTION.

25 (C) USE AN AUTOMATED REFRACTOR OR OTHER AUTOMATED TESTING
26 DEVICE TO GENERATE OBJECTIVE REFRACTIVE DATA UNLESS THAT USE IS
27 UNDER THE SUPERVISION OF A LICENSEE. AS USED IN THIS SUBDIVISION.

1 "SUPERVISION" MEANS THAT TERM AS DEFINED IN SECTION 16109.

2 SEC. 5563. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS PART, THE
3 ADMINISTRATION AND ENFORCEMENT OF THIS PART IS THE RESPONSIBILITY
4 OF THE DEPARTMENT.

5 (2) THE DEPARTMENT MAY PROMULGATE RULES UNDER THE
6 ADMINISTRATIVE PROCEDURES ACT OF 1969 THAT IT DETERMINES NECESSARY
7 TO IMPLEMENT, ADMINISTER, AND ENFORCE THIS PART.

8 SEC. 5565. (1) A PERSON OR GOVERNMENTAL ENTITY THAT BELIEVES
9 THAT A VIOLATION OF THIS PART OR A RULE PROMULGATED UNDER THIS PART
10 HAS OCCURRED OR HAS BEEN ATTEMPTED MAY MAKE AN ALLEGATION OF THAT
11 FACT TO THE DEPARTMENT IN WRITING.

12 (2) IF, UPON REVIEWING AN ALLEGATION UNDER SUBSECTION (1), THE
13 DEPARTMENT DETERMINES THERE IS A REASONABLE BASIS TO BELIEVE THE
14 EXISTENCE OF A VIOLATION OR ATTEMPTED VIOLATION OF THIS PART OR A
15 RULE PROMULGATED UNDER THIS PART, THE DEPARTMENT SHALL INVESTIGATE.

16 (3) THE DEPARTMENT MAY HOLD HEARINGS, ADMINISTER OATHS, AND
17 ORDER TESTIMONY TO BE TAKEN AT A HEARING OR BY DEPOSITION CONDUCTED
18 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969 AND SHALL
19 REPORT ITS FINDINGS TO THE DIRECTOR.

20 (4) THE DIRECTOR MAY PROCEED UNDER SECTION 5567 IF HE OR SHE
21 DETERMINES THAT A VIOLATION OF THIS PART OR A RULE PROMULGATED
22 UNDER THIS PART HAS OCCURRED.

23 (5) THIS SECTION DOES NOT REQUIRE THE DEPARTMENT TO WAIT UNTIL
24 HARM TO HUMAN HEALTH HAS OCCURRED TO INITIATE AN INVESTIGATION
25 UNDER THIS SECTION.

26 SEC. 5567. (1) THE DIRECTOR, UPON FINDING AFTER NOTICE AND AN
27 OPPORTUNITY FOR A HEARING THAT A PERSON HAS VIOLATED OR ATTEMPTED

1 TO VIOLATE THIS PART OR A RULE PROMULGATED UNDER THIS PART, MAY
2 IMPOSE AN ADMINISTRATIVE FINE OF NOT MORE THAN \$1,000.00 FOR EACH
3 VIOLATION OR ATTEMPTED VIOLATION. IF THE DIRECTOR FINDS THAT A
4 VIOLATION OR ATTEMPTED VIOLATION DID NOT RESULT IN SIGNIFICANT HARM
5 TO HUMAN HEALTH, THE DIRECTOR MAY ISSUE A WARNING INSTEAD OF
6 IMPOSING AN ADMINISTRATIVE FINE.

7 (2) THE DIRECTOR SHALL ADVISE THE ATTORNEY GENERAL OF THE
8 FAILURE OF A PERSON TO PAY AN ADMINISTRATIVE FINE IMPOSED UNDER
9 THIS SECTION. THE ATTORNEY GENERAL MAY BRING AN ACTION IN A COURT
10 OF COMPETENT JURISDICTION FOR THE FAILURE TO PAY AN ADMINISTRATIVE
11 FINE IMPOSED UNDER THIS SECTION.

12 (3) AT THE REQUEST OF THE DIRECTOR, THE ATTORNEY GENERAL MAY
13 FILE A CIVIL ACTION SEEKING AN INJUNCTION OR OTHER APPROPRIATE
14 RELIEF IN THE NAME OF THE PEOPLE OF THIS STATE TO ENFORCE THIS PART
15 AND THE RULES PROMULGATED UNDER THIS PART. THE COURT MAY IMPOSE ON
16 A PERSON WHO VIOLATES OR ATTEMPTS TO VIOLATE THIS PART OR A RULE
17 PROMULGATED UNDER THIS PART A CIVIL FINE OF NOT MORE THAN \$5,000.00
18 FOR EACH VIOLATION OR ATTEMPTED VIOLATION AND MAY ORDER ADDITIONAL
19 EQUITABLE OR INJUNCTIVE RELIEF TO ENSURE COMPLIANCE WITH THIS PART.
20 IN ADDITION, THE ATTORNEY GENERAL MAY BRING AN ACTION IN CIRCUIT
21 COURT TO RECOVER THE REASONABLE COSTS OF THE INVESTIGATION FROM A
22 PERSON WHO VIOLATED OR ATTEMPTED TO VIOLATE THIS PART OR A RULE
23 PROMULGATED UNDER THIS PART.

Title 45.
Subtitle 1.
Chapter 1.
Article 6. (New)
Telemedicine and
Telehealth
§§1-6 -
C.45:1-61 to
45:1-66
§7 - C.30:4D-6k
§8 - C.26:2S-29
§9 – C.52:14-17.29w
§10 – C.52:14-17.46.6h
§11 - Note

(CORRECTED COPY)

P.L.2017, CHAPTER 117, approved July 21, 2017
Senate Substitute for Senate Committee Substitute for
Senate, Nos. 291 SCS, 652, and 1954

1 **AN ACT** authorizing the provision of health care services through
2 telemedicine and telehealth, and supplementing various parts of
3 the statutory law.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. As used in P.L. , c. (C.) (pending before the
9 Legislature as this bill):

10 “Asynchronous store-and-forward” means the acquisition and
11 transmission of images, diagnostics, data, and medical information
12 either to, or from, an originating site or to, or from, the health care
13 provider at a distant site, which allows for the patient to be
14 evaluated without being physically present.

15 “Cross-coverage service provider” means a health care provider,
16 acting within the scope of a valid license or certification issued
17 pursuant to Title 45 of the Revised Statutes, who engages in a
18 remote medical evaluation of a patient, without in-person contact, at
19 the request of another health care provider who has established a
20 proper provider-patient relationship with the patient.

21 “Distant site” means a site at which a health care provider, acting
22 within the scope of a valid license or certification issued pursuant to
23 Title 45 of the Revised Statutes, is located while providing health
24 care services by means of telemedicine or telehealth.

25 “Health care provider” means an individual who provides a
26 health care service to a patient, and includes, but is not limited to,
27 licensed physician, nurse, nurse practitioner, psychologist,
28 psychiatrist, psychoanalyst, clinical social worker, physician
29 assistant, professional counselor, respiratory therapist, speech
30 pathologist, audiologist, optometrist, or any other health care

1 professional acting within the scope of a valid license or
2 certification issued pursuant to Title 45 of the Revised Statutes.

3 “On-call provider” means a licensed or certified health care
4 provider who is available, where necessary, to physically attend to
5 the urgent and follow-up needs of a patient for whom the provider
6 has temporarily assumed responsibility, as designated by the
7 patient’s primary care provider or other health care provider of
8 record.

9 “Originating site” means a site at which a patient is located at the
10 time that health care services are provided to the patient by means
11 of telemedicine or telehealth.

12 “Telehealth” means the use of information and communications
13 technologies, including telephones, remote patient monitoring
14 devices, or other electronic means, to support clinical health care,
15 provider consultation, patient and professional health-related
16 education, public health, health administration, and other services in
17 accordance with the provisions of P.L. , c. (C.) (pending
18 before the Legislature as this bill).

19 “Telemedicine” means the delivery of a health care service using
20 electronic communications, information technology, or other
21 electronic or technological means to bridge the gap between a
22 health care provider who is located at a distant site and a patient
23 who is located at an originating site, either with or without the
24 assistance of an intervening health care provider, and in accordance
25 with the provisions of P.L. , c. (C.) (pending before the
26 Legislature as this bill). “Telemedicine” does not include the use,
27 in isolation, of audio-only telephone conversation, electronic mail,
28 instant messaging, phone text, or facsimile transmission.

29 “Telemedicine or telehealth organization” means a corporation,
30 sole proprietorship, partnership, or limited liability company that is
31 organized for the primary purpose of administering services in the
32 furtherance of telemedicine or telehealth.

33

34 2. a. Unless specifically prohibited or limited by federal or
35 State law, a health care provider who establishes a proper provider-
36 patient relationship with a patient may remotely provide health care
37 services to a patient through the use of telemedicine. A health care
38 provider may also engage in telehealth as may be necessary to
39 support and facilitate the provision of health care services to
40 patients.

41 b. Any health care provider who uses telemedicine or engages
42 in telehealth while providing health care services to a patient, shall:
43 (1) be validly licensed, certified, or registered, pursuant to Title 45
44 of the Revised Statutes, to provide such services in the State of New
45 Jersey; (2) remain subject to regulation by the appropriate New
46 Jersey State licensing board or other New Jersey State professional
47 regulatory entity; (3) act in compliance with existing requirements
48 regarding the maintenance of liability insurance; and (4) remain

1 subject to New Jersey jurisdiction if either the patient or the
2 provider is located in New Jersey at the time services are provided.

3 c. (1) Telemedicine services shall be provided using
4 interactive, real-time, two-way communication technologies.

5 (2) A health care provider engaging in telemedicine or
6 telehealth may use asynchronous store-and-forward technology to
7 allow for the electronic transmission of images, diagnostics, data,
8 and medical information; except that the health care provider may
9 use interactive, real-time, two-way audio in combination with
10 asynchronous store-and-forward technology, without video
11 capabilities, if, after accessing and reviewing the patient's medical
12 records, the provider determines that the provider is able to meet the
13 same standard of care as if the health care services were being
14 provided in person.

15 (3) The identity, professional credentials, and contact
16 information of a health care provider providing telemedicine or
17 telehealth services shall be made available to the patient during and
18 after the provision of services. The contact information shall enable
19 the patient to contact the health care provider, or a substitute health
20 care provider authorized to act on behalf of the provider who
21 provided services, for at least 72 hours following the provision of
22 services.

23 (4) A health care provider engaging in telemedicine or
24 telehealth shall review the medical history and any medical records
25 provided by the patient. For an initial encounter with the patient,
26 the provider shall review the patient's medical history and medical
27 records prior to initiating contact with the patient, as required
28 pursuant to paragraph (3) of subsection a. of section 3 of P.L. , c.
29 (C.) (pending before the Legislature as this bill). In the case of
30 a subsequent telemedicine or telehealth encounter conducted
31 pursuant to an ongoing provider-patient relationship, the provider
32 may review the information prior to initiating contact with the
33 patient or contemporaneously with the telemedicine or telehealth
34 encounter.

35 (5) Following the provision of services using telemedicine or
36 telehealth, the patient's medical information shall be made available
37 to the patient upon the patient's request, and, with the patient's
38 affirmative consent, forwarded directly to the patient's primary care
39 provider or health care provider of record, or, upon request by the
40 patient, to other health care providers. For patients without a
41 primary care provider or other health care provider of record, the
42 health care provider engaging in telemedicine or telehealth may
43 advise the patient to contact a primary care provider, and, upon
44 request by the patient, assist the patient with locating a primary care
45 provider or other in-person medical assistance that, to the extent
46 possible, is located within reasonable proximity to the patient. The
47 health care provider engaging in telemedicine or telehealth shall
48 also refer the patient to appropriate follow up care where necessary,

1 including making appropriate referrals for emergency or
2 complimentary care, if needed. Consent may be oral, written, or
3 digital in nature, provided that the chosen method of consent is
4 deemed appropriate under the standard of care.

5 d. (1) Any health care provider providing health care services
6 using telemedicine or telehealth shall be subject to the same
7 standard of care or practice standards as are applicable to in-person
8 settings. If telemedicine or telehealth services would not be
9 consistent with this standard of care, the health care provider shall
10 direct the patient to seek in-person care.

11 (2) Diagnosis, treatment, and consultation recommendations,
12 including discussions regarding the risk and benefits of the patient's
13 treatment options, which are made through the use of telemedicine
14 or telehealth, including the issuance of a prescription based on a
15 telemedicine or telehealth encounter, shall be held to the same
16 standard of care or practice standards as are applicable to in-person
17 settings. Unless the provider has established a proper provider-
18 patient relationship with the patient, a provider shall not issue a
19 prescription to a patient based solely on the responses provided in
20 an online questionnaire.

21 e. The prescription of Schedule II controlled dangerous
22 substances through the use of telemedicine or telehealth shall be
23 authorized only after an initial in-person examination of the patient,
24 as provided by regulation, and a subsequent in-person visit with the
25 patient shall be required every three months for the duration of time
26 that the patient is being prescribed the Schedule II controlled
27 dangerous substance. However, the provisions of this subsection
28 shall not apply, and the in-person examination or review of a patient
29 shall not be required, when a health care provider is prescribing a
30 stimulant which is a Schedule II controlled dangerous substance for
31 use by a minor patient under the age of 18, provided that the health
32 care provider is using interactive, real-time, two-way audio and
33 video technologies when treating the patient and the health care
34 provider has first obtained written consent for the waiver of these
35 in-person examination requirements from the minor patient's parent
36 or guardian.

37 f. A mental health screener, screening service, or screening
38 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-
39 27.1 et seq.):

40 (1) shall not be required to obtain a separate authorization in
41 order to engage in telemedicine or telehealth for mental health
42 screening purposes; and

43 (2) shall not be required to request and obtain a waiver from
44 existing regulations, prior to engaging in telemedicine or telehealth.

45 g. A health care provider who engages in telemedicine or
46 telehealth, as authorized by P.L. , c. (C.) (pending before
47 the Legislature as this bill), shall maintain a complete record of the
48 patient's care, and shall comply with all applicable State and federal

1 statutes and regulations for recordkeeping, confidentiality, and
2 disclosure of the patient's medical record.

3 h. A health care provider shall not be subject to any
4 professional disciplinary action under Title 45 of the Revised
5 Statutes solely on the basis that the provider engaged in
6 telemedicine or telehealth pursuant to P.L. , c. (C.)
7 (pending before the Legislature as this bill).

8 i. (1) In accordance with the "Administrative Procedure Act,"
9 P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other
10 entities that, pursuant to Title 45 of the Revised Statutes, are
11 responsible for the licensure, certification, or registration of health
12 care providers in the State, shall each adopt rules and regulations
13 that are applicable to the health care providers under their
14 respective jurisdictions, as may be necessary to implement the
15 provisions of this section and facilitate the provision of
16 telemedicine and telehealth services. Such rules and regulations
17 shall, at a minimum:

18 (a) include best practices for the professional engagement in
19 telemedicine and telehealth;

20 (b) ensure that the services patients receive using telemedicine
21 or telehealth are appropriate, medically necessary, and meet current
22 quality of care standards;

23 (c) include measures to prevent fraud and abuse in connection
24 with the use of telemedicine and telehealth, including requirements
25 concerning the filing of claims and maintaining appropriate records
26 of services provided; and

27 (d) provide substantially similar metrics for evaluating quality
28 of care and patient outcomes in connection with services provided
29 using telemedicine and telehealth as currently apply to services
30 provided in person.

31 (2) In no case shall the rules and regulations adopted pursuant to
32 paragraph (1) of this subsection require a provider to conduct an
33 initial in-person visit with the patient as a condition of providing
34 services using telemedicine or telehealth.

35 (3) The failure of any licensing board to adopt rules and
36 regulations pursuant to this subsection shall not have the effect of
37 delaying the implementation of this act, and shall not prevent health
38 care providers from engaging in telemedicine or telehealth in
39 accordance with the provisions of this act and the practice act
40 applicable to the provider's professional licensure, certification, or
41 registration.

42

43 3. a. Any health care provider who engages in telemedicine or
44 telehealth shall ensure that a proper provider-patient relationship is
45 established. The establishment of a proper provider-patient
46 relationship shall include, but shall not be limited to:

47 (1) properly identifying the patient using, at a minimum, the
48 patient's name, date of birth, phone number, and address. When

- 1 properly identifying the patient, the provider may additionally use
- 2 the patient's assigned identification number, social security number,
- 3 photo, health insurance policy number, or other appropriate patient
- 4 identifier associated directly with the patient;
- 5 (2) disclosing and validating the provider's identity and
- 6 credentials, such as the provider's license, title, and, if applicable,
- 7 specialty and board certifications;
- 8 (3) prior to initiating contact with a patient in an initial
- 9 encounter for the purpose of providing services to the patient using
- 10 telemedicine or telehealth, reviewing the patient's medical history
- 11 and any available medical records; and
- 12 (4) prior to initiating contact with a patient for the purpose of
- 13 providing services to the patient using telemedicine or telehealth,
- 14 determining whether the provider will be able to provide the same
- 15 standard of care using telemedicine or telehealth as would be
- 16 provided if the services were provided in person. The provider
- 17 shall make this determination prior to each unique patient
- 18 encounter.
- 19 b. Telemedicine or telehealth may be practiced without a
- 20 proper provider-patient relationship, as defined in subsection a. of
- 21 this section, in the following circumstances:
- 22 (1) during informal consultations performed by a health care
- 23 provider outside the context of a contractual relationship, or on an
- 24 irregular or infrequent basis, without the expectation or exchange of
- 25 direct or indirect compensation;
- 26 (2) during episodic consultations by a medical specialist located
- 27 in another jurisdiction who provides consultation services, upon
- 28 request, to a properly licensed or certified health care provider in
- 29 this State;
- 30 (3) when a health care provider furnishes medical assistance in
- 31 response to an emergency or disaster, provided that there is no
- 32 charge for the medical assistance; or
- 33 (4) when a substitute health care provider, who is acting on
- 34 behalf of an absent health care provider in the same specialty,
- 35 provides health care services on an on-call or cross-coverage basis,
- 36 provided that the absent health care provider has designated the
- 37 substitute provider as an on-call provider or cross-coverage service
- 38 provider.
- 39
- 40 4. a. Each telemedicine or telehealth organization operating in
- 41 the State shall annually register with the Department of Health.
- 42 b. Each telemedicine or telehealth organization operating in the
- 43 State shall submit an annual report to the Department of Health in a
- 44 manner as determined by the commissioner. The annual report
- 45 shall include de-identified encounter data including, but not limited
- 46 to: the total number of telemedicine and telehealth encounters
- 47 conducted; the type of technology utilized to provide services using
- 48 telemedicine or telehealth; the category of medical condition for

1 which services were sought; the geographic region of the patient
2 and the provider; the patient's age and sex; and any prescriptions
3 issued. The commissioner may require the reporting of any
4 additional information as the commissioner deems necessary and
5 appropriate, subject to all applicable State and federal laws, rules,
6 and regulations for recordkeeping and privacy. Commencing six
7 months after the effective date of P.L. , c. (C.) (pending
8 before the Legislature as this bill), telemedicine and telehealth
9 organizations shall include in the annual report, for each
10 telemedicine or telehealth encounter: the patient's race and
11 ethnicity; the diagnostic codes; the evaluation management codes;
12 and the source of payment for the encounter.

13 c. The Department of Health shall compile the information
14 provided in the reports submitted by telemedicine and telehealth
15 organizations pursuant to subsection b. of this section to generate
16 Statewide data concerning telemedicine and telehealth services
17 provided in the State. The department shall annually share the
18 Statewide data with the Department of Human Services, the
19 Department of Banking and Insurance, the Telemedicine and
20 Telehealth Review Commission established pursuant to section 5 of
21 P.L. , c. (C.) (pending before the Legislature as this bill),
22 State boards and other entities that, under Title 45 of the Revised
23 Statutes, are responsible for the professional licensure, certification,
24 or registration of health care providers in the State who provide
25 health care services using telemedicine or telehealth pursuant to
26 P.L. , c. (C.) (pending before the Legislature as this bill),
27 and the Legislature pursuant section 2 of P.L.1991, c.164 (C.52:14-
28 19.1). The department shall also transmit a report to the Legislature
29 and the Telemedicine and Telehealth Review Commission that
30 includes: an analysis of each rule and regulation adopted pursuant
31 to subsection i. of section 2 of P.L. , c. (C.) (pending
32 before the Legislature as this bill) by a State board or other entity
33 responsible for the professional licensure, certification, or
34 registration of health care providers in the State who provide health
35 care services using telemedicine or telehealth; and an assessment of
36 the effect that telemedicine and telehealth is having on health care
37 delivery, health care outcomes, population health, and in-person
38 health care services provided in facility-based and office-based
39 settings.

40 d. A telemedicine or telehealth organization that fails to
41 register with the Department of Health pursuant to subsection a. of
42 this section or that fails to submit the annual report required
43 pursuant to subsection b. of this section shall be liable to such
44 disciplinary actions as the Commissioner of Health may prescribe
45 by regulation.

46
47 5. a. Six months after the effective date of P.L. , c. (C.)
48 (pending before the Legislature as this bill), there shall be

1 established in the Department of Health the Telemedicine and
2 Telehealth Review Commission, which shall review the information
3 reported by telemedicine and telehealth organizations pursuant to
4 subsection b. of section 4 of P.L. , c. (C.) (pending before
5 the Legislature as this bill) and make recommendations for such
6 executive, legislative, regulatory, administrative, and other actions
7 as may be necessary and appropriate to promote and improve the
8 quality, efficiency, and effectiveness of telemedicine and telehealth
9 services provided in this State.

10 b. The commission shall consist of seven members, as follows:
11 the Commissioner of Health, or a designee, who shall serve ex
12 officio, and six public members, with two members each to be
13 appointed by the Governor, the Senate President, and the Speaker of
14 the General Assembly. The public members shall be health care
15 professionals with a background in the provision of health care
16 services using telemedicine and telehealth. The public members
17 shall serve at the pleasure of the appointing authority, and vacancies
18 in the membership shall be filled in the same manner as the original
19 appointments.

20 c. Members of the commission shall serve without
21 compensation but may be reimbursed for necessary travel expenses
22 incurred in the performance of their duties within the limits of funds
23 made available for that purpose.

24 d. The members shall select a chairperson and a vice
25 chairperson from among the members. The chairperson may
26 appoint a secretary, who need not be a member of the commission.
27 The Department of Health shall provide staff and administrative
28 support to the commission.

29 e. The commission shall meet at least twice a year and at such
30 other times as the chairperson may require. The commission shall
31 be entitled to call to its assistance and avail itself of the services of
32 the employees of any State, county, or municipal department, board,
33 bureau, commission, or agency as it may require and as may be
34 available for its purposes.

35 f. The commission shall report its findings and
36 recommendations to the Governor, the Commissioner of Health, the
37 State boards or other entities that, pursuant to Title 45 of the
38 Revised Statutes, are responsible for the licensure, certification, or
39 registration of health care providers in the State who provide health
40 care services using telemedicine or telehealth pursuant to P.L. , c.
41 (C.) (pending before the Legislature as this bill), and, pursuant
42 to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature no
43 later than two years after the date the commission first meets. The
44 commission shall expire upon submission of its report.

45
46 6. If any provision of P.L. , c. (C.) (pending before the
47 Legislature as this bill) or its application to any person or
48 circumstance is held to be invalid, the invalidity shall not affect any

1 other provision or application of P.L. , c. (C.) (pending
2 before the Legislature as this bill) which can be given effect without
3 the invalid provision or application, and, to this end, the provisions
4 of P.L. , c. (C.) (pending before the Legislature as this bill)
5 are severable.
6

7 7. a. The State Medicaid and NJ FamilyCare programs shall
8 provide coverage and payment for health care services delivered to
9 a benefits recipient through telemedicine or telehealth, on the same
10 basis as, and at a provider reimbursement rate that does not exceed
11 the provider reimbursement rate that is applicable, when the
12 services are delivered through in-person contact and consultation in
13 New Jersey. Reimbursement payments under this section may be
14 provided either to the individual practitioner who delivered the
15 reimbursable services, or to the agency, facility, or organization that
16 employs the individual practitioner who delivered the reimbursable
17 services, as appropriate.

18 b. The State Medicaid and NJ FamilyCare programs may limit
19 coverage to services that are delivered by participating health care
20 providers, but may not charge any deductible, copayment, or
21 coinsurance for a health care service, delivered through
22 telemedicine or telehealth, in an amount that exceeds the deductible,
23 copayment, or coinsurance amount that is applicable to an in-person
24 consultation.

25 c. Nothing in this section shall be construed to:

26 (1) prohibit the State Medicaid or NJ FamilyCare programs
27 from providing coverage for only those services that are medically
28 necessary, subject to the terms and conditions of the recipient's
29 benefits plan; or

30 (2) allow the State Medicaid or NJ FamilyCare programs to
31 require a benefits recipient to use telemedicine or telehealth in lieu
32 of obtaining an in-person service from a participating health care
33 provider.

34 d. The Commissioner of Human Services, in consultation with
35 the Commissioner of Children and Families, shall apply for such
36 State plan amendments or waivers as may be necessary to
37 implement the provisions of this section and to secure federal
38 financial participation for State expenditures under the federal
39 Medicaid program and Children's Health Insurance Program.

40 e. As used in this section:

41 "Benefits recipient" or "recipient" means a person who is
42 eligible for, and who is receiving, hospital or medical benefits under
43 the State Medicaid program established pursuant to P.L.1968, c.413
44 (C.30:4D-1 et seq.), or under the NJ FamilyCare program
45 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as
46 appropriate.

47 "Participating health care provider" means a licensed or certified
48 health care provider who is registered to provide health care

1 services to benefits recipients under the State Medicaid or NJ
2 FamilyCare programs, as appropriate.

3 “Telehealth” means the same as that term is defined by section 1
4 of P.L. , c. (C.) (pending before the Legislature as this
5 bill).

6 “Telemedicine” means the same as that term is defined by
7 section 1 of P.L. , c. (C.) (pending before the Legislature
8 as this bill).

9
10 8. a. A carrier that offers a health benefits plan in this State
11 shall provide coverage and payment for health care services
12 delivered to a covered person through telemedicine or telehealth, on
13 the same basis as, and at a provider reimbursement rate that does
14 not exceed the provider reimbursement rate that is applicable, when
15 the services are delivered through in-person contact and
16 consultation in New Jersey. Reimbursement payments under this
17 section may be provided either to the individual practitioner who
18 delivered the reimbursable services, or to the agency, facility, or
19 organization that employs the individual practitioner who delivered
20 the reimbursable services, as appropriate.

21 b. A carrier may limit coverage to services that are delivered
22 by health care providers in the health benefits plan’s network, but
23 may not charge any deductible, copayment, or coinsurance for a
24 health care service, delivered through telemedicine or telehealth, in
25 an amount that exceeds the deductible, copayment, or coinsurance
26 amount that is applicable to an in-person consultation.

27 c. Nothing in this section shall be construed to:

28 (1) prohibit a carrier from providing coverage for only those
29 services that are medically necessary, subject to the terms and
30 conditions of the covered person’s health benefits plan; or

31 (2) allow a carrier to require a covered person to use
32 telemedicine or telehealth in lieu of receiving an in-person service
33 from an in-network provider.

34 d. The Commissioner of Banking and Insurance shall adopt
35 rules and regulations, pursuant to the “Administrative Procedure
36 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
37 provisions of this section.

38 e. As used in this section:

39 “Carrier” means the same as that term is defined by section 2 of
40 P.L.1997, c.192 (C.26:2S-2).

41 “Covered person” means the same as that term is defined by
42 section 2 of P.L.1997, c.192 (C.26:2S-2).

43 “Health benefits plan” means the same as that term is defined by
44 section 2 of P.L.1997, c.192 (C.26:2S-2).

45 “Telehealth” means the same as that term is defined by section 1
46 of P.L. , c. (C.) (pending before the Legislature as this
47 bill).

1 “Telemedicine” means the same as that term is defined by
2 section 1 of P.L. , c. (C.) (pending before the Legislature
3 as this bill).

4
5 9. a. The State Health Benefits Commission shall ensure that
6 every contract purchased thereby, which provides hospital and
7 medical expense benefits, additionally provides coverage and
8 payment for health care services delivered to a covered person
9 through telemedicine or telehealth, on the same basis as, and at a
10 provider reimbursement rate that does not exceed the provider
11 reimbursement rate that is applicable, when the services are
12 delivered through in-person contact and consultation in New Jersey.
13 Reimbursement payments under this section may be provided either
14 to the individual practitioner who delivered the reimbursable
15 services, or to the agency, facility, or organization that employs the
16 individual practitioner who delivered the reimbursable services, as
17 appropriate.

18 b. A health benefits contract purchased by the State Health
19 Benefits Commission may limit coverage to services that are
20 delivered by health care providers in the health benefits plan’s
21 network, but may not charge any deductible, copayment, or
22 coinsurance for a health care service, delivered through
23 telemedicine or telehealth, in an amount that exceeds the deductible,
24 copayment, or coinsurance amount that is applicable to an in-person
25 consultation.

26 c. Nothing in this section shall be construed to:

27 (1) prohibit a health benefits contract from providing coverage
28 for only those services that are medically necessary, subject to the
29 terms and conditions of the covered person’s health benefits plan;
30 or

31 (2) allow the State Health Benefits Commission, or a contract
32 purchased thereby, to require a covered person to use telemedicine
33 or telehealth in lieu of receiving an in-person service from an in-
34 network provider.

35 d. The State Health Benefits Commission shall adopt rules and
36 regulations, pursuant to the “Administrative Procedure Act,”
37 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions
38 of this section.

39 e. As used in this section:

40 “Telehealth” means the same as that term is defined by section 1
41 of P.L. , c. (C.) (pending before the Legislature as this
42 bill).

43 “Telemedicine” means the same as that term is defined by
44 section 1 of P.L. , c. (C.) (pending before the Legislature
45 as this bill).

46
47 10. a. The School Employees’ Health Benefits Commission
48 shall ensure that every contract purchased thereby, which provides

1 hospital and medical expense benefits, additionally provides
2 coverage and payment for health care services delivered to a
3 covered person through telemedicine or telehealth, on the same
4 basis as, and at a provider reimbursement rate that does not exceed
5 the provider reimbursement rate that is applicable, when the
6 services are delivered through in-person contact and consultation in
7 New Jersey. Reimbursement payments under this section may be
8 provided either to the individual practitioner who delivered the
9 reimbursable services, or to the agency, facility, or organization that
10 employs the individual practitioner who delivered the reimbursable
11 services, as appropriate.

12 b. A health benefits contract purchased by the State Health
13 Benefits Commission may limit coverage to services that are
14 delivered by health care providers in the health benefits plan's
15 network, but may not charge any deductible, copayment, or
16 coinsurance for a health care service, delivered through
17 telemedicine or telehealth, in an amount that exceeds the deductible,
18 copayment, or coinsurance amount that is applicable to an in-person
19 consultation.

20 c. Nothing in this section shall be construed to:

21 (1) prohibit a health benefits contract from providing coverage
22 for only those services that are medically necessary, subject to the
23 terms and conditions of the covered person's health benefits plan;
24 or

25 (2) allow the School Employees' Health Benefits Commission,
26 or a contract purchased thereby, to require a covered person to use
27 telemedicine or telehealth in lieu of receiving an in-person service
28 from an in-network provider.

29 d. The School Employees' Health Benefits Commission shall
30 adopt rules and regulations, pursuant to the "Administrative
31 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement
32 the provisions of this section.

33 e. As used in this section:

34 "Telehealth" means the same as that term is defined by section 1
35 of P.L. , c. (C.) (pending before the Legislature as this
36 bill).

37 "Telemedicine" means the same as that term is defined by
38 section 1 of P.L. , c. (C.) (pending before the Legislature
39 as this bill).

40

41 11. This act shall take effect immediately, and section 5 of this
42 act shall expire upon submission of the commission's report.

43

44

45

STATEMENT

46

47 This Senate floor substitute authorizes health care providers,
48 including, but not limited to, licensed physicians, nurses, nurse

1 practitioners, psychologists, psychiatrists, psychoanalysts, clinical
2 social workers, physician assistants, professional counselors,
3 respiratory therapists, speech pathologists, audiologists, and
4 optometrists, to remotely provide health care services to patients
5 through the use of telemedicine and telehealth.

6 “Telehealth” is defined to mean the use of information and
7 communications technologies, including telephones, remote patient
8 monitoring devices, or other electronic means, to support clinical
9 health care, provider consultation, patient and professional health-
10 related education, public health, health administration, and other
11 services as described in regulation.

12 “Telemedicine” is defined to mean means the delivery of a health
13 care service using electronic communications, information
14 technology, or other electronic or technological means to bridge the
15 gap between a health care provider who is located at a distant site
16 and a patient who is located at an originating site, either with or
17 without the assistance of an intervening health care provider.
18 “Telemedicine” would not include the use, in isolation, of audio-
19 only telephone conversation, electronic mail, instant messaging,
20 phone text, or facsimile transmission.

21 Specifically, a health care provider will be permitted to remotely
22 provide health care services to a patient through the use of
23 telemedicine, and will be permitted to engage in telehealth as may
24 be necessary to support and facilitate the provision of health care
25 services to patients.

26 The substitute bill requires any health care provider who uses
27 telemedicine or engages in telehealth while providing health care
28 services to a patient to: (1) be validly licensed, certified, or
29 registered to provide such services in the State of New Jersey; (2)
30 remain subject to regulation by the appropriate New Jersey State
31 licensing board or professional regulatory entity; (3) act in
32 compliance with existing requirements regarding the maintenance
33 of liability insurance; and (4) remain subject to New Jersey
34 jurisdiction if either the patient or the provider is located in New
35 Jersey at the time services are provided.

36 The bill requires telemedicine services to be provided using
37 interactive, real-time, two-way communication technologies. A
38 health care provider engaging in telemedicine or telehealth may use
39 asynchronous store-and-forward technology to allow for the
40 electronic transmission of images, diagnostics, data, and medical
41 information; except that the health care provider may use
42 interactive, real-time, two-way audio in combination with
43 asynchronous store-and-forward technology, without video
44 capabilities, if, after accessing and reviewing the patient’s medical
45 records, the provider determines that the provider is able to meet the
46 same standard of care as if the health care services were being
47 provided in person. The provider’s identity, professional
48 credentials, and contact information are to be made available to the

1 patient during and after the provision of services. The substitute
2 bill requires the contact information to enable the patient to contact
3 the health care provider, or a substitute health care provider
4 authorized to act on the provider's behalf, for at least 72 hours
5 following the provision of services.

6 A health care provider engaging in telemedicine or telehealth
7 will be required to review the medical history and any medical
8 records provided by the patient. In the case of an initial encounter
9 with the patient, the provider is to conduct the review before
10 initiating contact with the patient; in the case of a subsequent
11 encounter pursuant to an ongoing provider-patient relationship, the
12 provider may conduct the review prior to initiating contact or
13 contemporaneously with the telemedicine or telehealth encounter.

14 Health care providers who engage in telemedicine or telehealth
15 will be required to maintain a complete record of the patient's care
16 and comply with all applicable State and federal statutes and
17 regulations for recordkeeping, confidentiality, and disclosure of the
18 patient's medical record. Health care providers will not be subject
19 to any professional disciplinary action under Title 45 of the Revised
20 Statutes solely on the basis that the provider engaged in
21 telemedicine or telehealth pursuant to the substitute bill.

22 Following the provision of services using telemedicine or
23 telehealth, the patient's medical information is to be made available
24 to the patient upon the patient's request, and, with the patient's
25 affirmative consent, forwarded directly to the patient's primary care
26 provider or health care provider of record, or, upon request by the
27 patient, to other health care providers. For patients without a
28 primary care provider or other health care provider of record, the
29 health care provider engaging in telemedicine or telehealth may
30 advise the patient to contact a primary care provider, and, upon
31 request by the patient, may assist the patient with locating a primary
32 care provider or other in-person medical assistance that, to the
33 extent possible, is located within reasonable proximity to the
34 patient. The health care provider engaging in telemedicine or
35 telehealth will also be required to refer the patient to appropriate
36 follow up care where necessary, including making appropriate
37 referrals for emergency or complimentary care, if needed. The
38 patient's consent may be oral, written, or digital in nature, provided
39 it is appropriate under the standard of care.

40 Health care providers providing health care services using
41 telemedicine or telehealth will be subject to the same standard of
42 care or practice standards as are applicable to in-person settings. If
43 telemedicine services would not be consistent with this standard of
44 care, the health care provider is to direct the patient to seek in-
45 person care. Similarly, diagnosis, treatment, and consultation
46 recommendations made through the use of telemedicine or
47 telehealth, including the issuance of a prescription based on a
48 telemedicine encounter, are to be held to the same standard of care

1 or practice standards as are applicable to in-person settings. A
2 provider may not issue a prescription to a patient based solely on
3 the responses provided in an online questionnaire, unless the
4 provider has established a proper provider-patient relationship with
5 the patient.

6 Schedule II controlled dangerous substances may be prescribed
7 through the use of telemedicine only after the provider conducts an
8 initial in-person examination of the patient. Subsequent in-person
9 visits with the patient will be required every three months for the
10 duration of time that the patient is being prescribed the Schedule II
11 controlled dangerous substance. However, these restrictions do not
12 apply when a health care provider is prescribing a stimulant which
13 is a Schedule II controlled dangerous substance for use by a minor
14 patient under the age of 18, provided that the health care provider is
15 using interactive, real-time, two-way audio and video technologies
16 when treating the patient, and the provider has first obtained written
17 consent for the waiver of these in-person examination requirements
18 from the minor patient's parent or guardian.

19 The substitute bill provides that mental health screeners,
20 screening services, and screening psychiatrists subject to the
21 provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.) will not be
22 required to obtain a separate authorization in order to engage in
23 telemedicine or telehealth for mental health screening purposes, and
24 will not be required to request and obtain a waiver from existing
25 regulations prior to engaging in telemedicine or telehealth.

26 Professional licensing and certification boards will be required to
27 adopt rules and regulations, which will be applicable to the health
28 care providers under their respective jurisdictions, in order to
29 implement the provisions of the bill and facilitate the provision of
30 telemedicine and telehealth services. The rules and regulations are
31 to, at a minimum: include best practices for the professional
32 engagement in telemedicine and telehealth; ensure that the services
33 patients receive using telemedicine or telehealth are appropriate,
34 medically necessary, and meet current quality of care standards;
35 include measures to prevent fraud and abuse in connection with the
36 use of telemedicine and telehealth, including requirements
37 concerning the filing of claims and maintaining appropriate records
38 of services provided; and provide substantially similar metrics for
39 evaluating quality of care and patient outcomes in connection with
40 services provided using telemedicine and telehealth as currently
41 apply to services provided in person. The rules and regulations may
42 not include any provision requiring an initial in-person visit with a
43 patient before providing services using telemedicine or telehealth.

44 In order to engage in telemedicine or telehealth, a health care
45 provider will be required to establish a proper patient-provider
46 relationship with the patient. Establishing this relationship
47 includes, but is not be limited to: (1) properly identifying the patient
48 using certain patient identifiers, including, at a minimum, the

1 patient's name, date of birth, phone number, address, and social
2 security number, whenever possible; (2) disclosing and validating
3 the provider's identity and credentials; (3) prior to initiating contact
4 with a patient during an initial encounter, reviewing the patient's
5 medical history and any available medical records; and (4) prior to
6 initiating contact with the patient, determining whether the provider
7 will be able to provide the appropriate standard of care using
8 telemedicine and telehealth as would be provided in an inpatient
9 setting.

10 Telemedicine may be practiced without establishing a proper
11 provider-patient relationship during informal consultations without
12 compensation; during episodic consultations by a medical specialist
13 located in another jurisdiction; when a health care provider
14 furnishes medical assistance in response to an emergency or
15 disaster, provided that there is no charge for the medical assistance;
16 and when a substitute health care provider acting on behalf of an
17 absent health care provider in the same specialty provides health
18 care services on an on-call or cross-coverage basis, provided that
19 the absent health care provider has designated the substitute
20 provider as an on-call provider or cross-coverage service provider.

21 The substitute bill requires each telemedicine or telehealth
22 organization operating in the State to annually register with the
23 Department of Health (DOH) and to submit an annual report to
24 DOH in a manner as determined by the commissioner. A
25 telemedicine or telehealth organization that fails to register or that
26 fails to submit the annual report will be subject to disciplinary
27 action.

28 The annual report submitted by each telemedicine and telehealth
29 organization is to include de-identified encounter data setting forth
30 the total number of telemedicine encounters conducted; the type of
31 technology utilized to provide services using telemedicine or
32 telehealth; the category of medical condition for which services
33 were sought; the geographic region of the patient and the provider;
34 the patient's age and sex; and any prescriptions issued. The
35 commissioner may require the reporting of any additional
36 information as the commissioner deems necessary and appropriate,
37 subject to all applicable State and federal laws, rules, and
38 regulations for recordkeeping and privacy. Commencing six
39 months after the effective date of the bill, the annual report
40 submitted by telemedicine and telehealth organizations is to
41 additionally, include, for each telemedicine or telehealth encounter:
42 the patient's race and ethnicity; the diagnostic code; the encounter
43 management code; and the source of payment for the encounter.
44 DOH will be required to share the reported information with the
45 Legislature, the Department of Human Services, the Department of
46 Banking and Insurance, the Telemedicine and Telehealth Review
47 Commission established under the bill, and the appropriate boards

1 and entities that license or certify professionals who provide health
2 care services in the State using telemedicine or telehealth.

3 Additionally, DOH will be required to compile the reported
4 information to generate Statewide data concerning telemedicine and
5 telehealth services provided in New Jersey, and report the Statewide
6 data to the Legislature and the Telemedicine and Telehealth Review
7 Commission on an annual basis. The report is to include an
8 analysis of each rule and regulation adopted by State boards and
9 entities responsible for the licensure or certification of health care
10 providers using telemedicine and telehealth, and an assessment of
11 the effect that the provision of health care services using
12 telemedicine and telehealth is having in New Jersey on health care
13 delivery, health care outcomes, population health, and in-person
14 health care services provided in facility-based and office-based
15 settings.

16 Six months after the effective date of the substitute bill, the
17 Telemedicine and Telehealth Review Commission will be
18 established in DOH. The commission will be required to review the
19 information reported by telemedicine and telehealth organizations
20 and make recommendations for such executive, legislative,
21 regulatory, administrative, and other actions as may be necessary
22 and appropriate to promote and improve the quality, efficiency, and
23 effectiveness of telemedicine and telehealth services provided in
24 New Jersey. The commission will consist of seven members: the
25 Commissioner of Health, or a designee, who will serve ex officio,
26 and six public members, with two members each to be appointed by
27 the Governor, the Senate President, and the Speaker of the General
28 Assembly. The public members are to be health care professionals
29 with a background in the provision of health care services using
30 telemedicine and telehealth. The public members will serve at the
31 pleasure of the appointing authority, and vacancies in the
32 membership shall be filled in the same manner as the original
33 appointments. Members of the commission will serve without
34 compensation but may be reimbursed for necessary travel expenses
35 incurred in the performance of their duties within the limits of funds
36 made available for that purpose. The commission will meet at least
37 twice a year and at such other times as the chairperson may require.
38 The commission will be entitled to call to its assistance and avail
39 itself of the services of the employees of any State, county, or
40 municipal department, board, bureau, commission, or agency as it
41 may require and as may be available for its purposes. The
42 commission will be required to report its findings and
43 recommendations to the Governor, the Commissioner of Health, the
44 State boards or other entities which are responsible for the
45 licensure, certification, or registration of health care providers in
46 the State who provide health care services using telemedicine or
47 telehealth, and the Legislature no later than two years after the date

1 the commission first meets, and will expire upon submission of the
2 report.

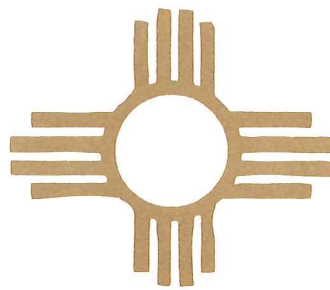
3 The substitute bill specifies that Medicaid, NJ FamilyCare, and
4 certain health insurance providers, including the carriers of health
5 benefits plans, the State Health Benefits Commission, and the
6 School Employees' Health Benefits Commission, are each to
7 provide coverage and payment for services provided through
8 telemedicine and telehealth on the same basis as, and at a provider
9 reimbursement rate that does not exceed the provider
10 reimbursement rate that is applicable, when the services are
11 delivered in-person in New Jersey. Reimbursement payments may
12 be made to the individual practitioner who delivered the
13 reimbursable services, or to the telemedicine or telehealth
14 organization that employs the practitioner.

15 Each such carrier or insurance provider will be authorized to
16 charge a deductible, copayment, or coinsurance for a health care
17 service delivered through telemedicine or telehealth, provided that
18 the amount charged does not exceed the charge for an in-person
19 consultation. Where applicable, each carrier or insurance provider
20 will be limited in its ability to impose annual or lifetime dollar
21 maximum amounts on the coverage of services provided through
22 telemedicine. Nothing in the substitute bill will prohibit a carrier or
23 other insurance provider from providing coverage only for services
24 deemed to be medically necessary, and nothing will allow a carrier
25 or other insurance provider to coerce a covered person to use
26 telehealth or telemedicine in lieu of receiving an in-person service.

27

28

29 _____
30 Authorizes health care providers to engage in telemedicine and
telehealth.



The Legislature
of the
State of New Mexico

54th Legislature, 1st Session

LAWS 2019

CHAPTER 15

HOUSE BILL 242, as amended

Introduced by

REPRESENTATIVE DOREEN Y. GALLEGOS



CHAPTER 15

AN ACT

RELATING TO HEALTH CARE; LIMITING PRESCRIBING POWER FOR CONTACT LENSES AND SPECTACLES; PROVIDING FOR CRIMINAL PENALTIES AND CIVIL REMEDY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. CONTACT LENSES--SPECTACLES--LIMITATIONS ON PRESCRIPTIONS--CRIMINAL PENALTY--CIVIL REMEDY--EXCEPTIONS.--

A. Unless the person is licensed pursuant to the Optometry Act, the Medical Practice Act or the Osteopathic Medicine Act, a person shall not:

(1) perform an eye examination on an individual physically located in the state at the time of the eye examination; or

(2) write a prescription for contact lenses or spectacles.

B. A person shall not write a prescription for contact lenses or spectacles unless an eye examination is performed before writing the prescription. The prescription shall take into consideration any medical findings and any refractive error determined during the eye examination.

C. A person who violates a provision of this section is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. The board of optometry, the New Mexico medical

1 board, the board of osteopathic medicine or any other person
2 potentially aggrieved by a violation of this section may
3 bring a suit in a court of competent jurisdiction to enjoin a
4 violation of a provision of this section.

5 E. Nothing in this section shall be construed to
6 prohibit:

7 (1) a health care provider from using
8 telehealth in accordance with the provisions of the New
9 Mexico Telehealth Act for ocular diseases;

10 (2) a vision screening performed in a school
11 by a nurse, physician assistant, osteopathic physician
12 assistant or another provider otherwise authorized pursuant
13 to state law;

14 (3) an optician from completing a
15 prescription for spectacles or contact lenses in accordance
16 with the provisions of the Optometry Act;

17 (4) a technician from providing an eye care
18 screening program at a health fair, not-for-profit event,
19 not-for-profit public vision van service, public health event
20 or other similar event;

21 (5) a physician assistant licensed pursuant
22 to the Medical Practice Act, or an osteopathic physician
23 assistant licensed pursuant to the Osteopathic Medicine Act,
24 working under the supervision of an ophthalmologist licensed
25 pursuant to the Medical Practice Act or the Osteopathic

1 Medicine Act, from performing an eye examination on an
2 individual physically located in the state at the time of the
3 eye examination; or

4 (6) a vision screening performed by another
5 provider otherwise authorized pursuant to state law.

6 F. As used in this section:

7 (1) "autorefractor" means any electronic
8 computer or automated testing device used remotely, in person
9 or through any other communication interface to provide an
10 objective or subjective measurement of an individual's
11 refractive error;

12 (2) "contact lens" means any lens placed
13 directly on the surface of the eye, regardless of whether or
14 not it is intended to correct a visual defect, including any
15 cosmetic, therapeutic or corrective lens;

16 (3) "eye examination" means an in-person
17 assessment at a physician's office or an optometrist's
18 office, in a hospital setting or in a hospital health system
19 setting that:

20 (a) is performed in accordance with the
21 applicable standard of care;

22 (b) consists of an assessment of the
23 ocular health and visual status of an individual;

24 (c) does not consist of solely
25 objective or subjective refractive data or information

1 generated by an automated testing device, including an
2 autorefractor or kiosk, in order to establish a medical
3 diagnosis or for the determination of refractive error; and

4 (d) is performed on an individual who
5 is physically located in this state at the time of the
6 assessment;

7 (4) "kiosk" means any automatic or
8 electronic equipment, application or computer software
9 designed to be used on a telephone, teleconference device,
10 computer, virtual reality device or internet-based device
11 that can be used remotely, in person or through any other
12 communication interface to conduct an eye examination or
13 determine refractive error;

14 (5) "prescription" means an optometrist's or
15 ophthalmologist's handwritten or electronic order for
16 spectacle lenses or contact lenses based on an eye
17 examination that corrects refractive error; and

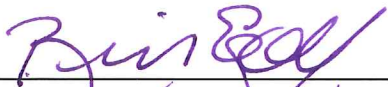
18 (6) "spectacles" means an optical instrument
19 or device worn or used by an individual that has one or more
20 lenses designed to correct or enhance vision addressing the
21 visual needs of the individual wearer, commonly known as
22 "glasses" or "eyeglasses", including spectacles that may be
23 adjusted by the wearer to achieve different types of visual
24 correction or enhancement. "Spectacles" does not mean:

25 (a) an optical instrument or device

1 that is not intended to correct or enhance vision or that
2 does not require consideration of the visual status of the
3 individual who will use the optical instrument or device; or

4 (b) eyewear that is sold without a
5 prescription. _____


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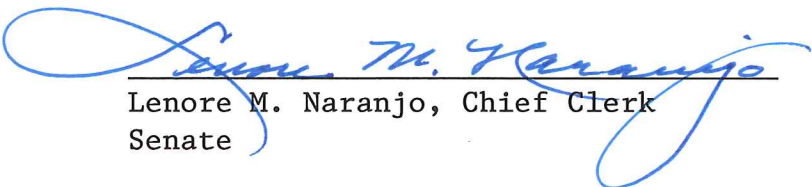
Brian Egolf, Speaker
House of Representatives



Lisa M. Ortiz McCutcheon, Chief Clerk
House of Representatives

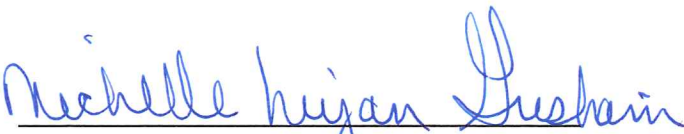


Howie C. Morales, President
Senate



Lenore M. Naranjo, Chief Clerk
Senate

Approved by me this 4th day of February, 2019



Michelle Lujan Grisham, Governor
State of New Mexico

POLICY STATEMENT REGARDING ONLINE REFRACTIONS

The Ohio Vision Professionals Board's first and foremost charge is protection of the public's health and wellness. The Board recognizes that online refractive technology has potential as a visual screening and refractive device in a medical setting or as an online visual screening program. However, the Board does not support the use of online questionnaires to give a glasses or contact lens prescription, without an immediate, accompanying physical examination of ocular health by an Ohio licensed optometrist.

One company is currently on the internet advising they are launching these services. Their policy states; "No one under 18, over 40, or with specific medical conditions such as diabetes, hypertension, known eye diseases, will qualify to receive a prescription." However, **the use of online questionnaires is inadequate to establish the patient's age and medical/ocular history.** The patient record established by the online eye questionnaire should be consistent with existing laws and regulations governing patient health care records. Age and location of the patient must be verified by acceptable means of identification. Records of past care, with laboratory and test results, are necessary to establish pre-existing medical conditions. We would expect that medical history be verified with a dated copy of a completed physical examination and ocular history be verified with a dated copy of a completed eye examination.

The risk with all telemedicine is substandard professional services. With the promise to save people the commute, the wait, the time, and the money, **standards of care can be significantly compromised.** It is expected that all optometrists who provide telemedicine place the welfare and health of the patients first. An online eye refraction shall not be given after an online questionnaire, unless a dated copy of a recent eye health examination (within 6 months) is part of the patient's record.

Telemedicine is the way of the future and the Board agrees that it is a powerful tool in medical practice, but not a separate form of medicine. We would expect that optometrists who provide eye care, whether in-person or via telemedicine, comply with **acceptable, appropriate, and professional standards of care.** While we support technology, increased access to care, and patient choice, we do not support the use of online questionnaire to give prescriptions without an accompanying, ocular health exam. This does not adhere to current standards of care and therefore represents a compromise to the health and safety of the public.

1. Glasses prescriptions: It is the well-established and accepted standard of care that a refraction is not to be independent from an ocular health exam. This is vital for the detection of eye diseases that result in permanent vision loss as well as serious systemic diseases. Many times those diseases first present themselves in a change in the quality of vision. Therefore, **we do not support the use of any company to give a prescription apart from the ocular health exam.**

2. Contact lens prescriptions: Under the Fairness to Contact Lens Consumers Act, the expiration date of a contact lens prescription must be specified based on the medical judgment of the prescriber, **with respect to the ocular health of the patient.** This important component of the prescription can be determined only with the use of a slit lamp. Skype interactions, a self-photo, and a web cam photo are not a substitute for this binocular microscope examination, which gives a stereoscopic, highly magnified view of ocular structures. Only a slit lamp examination can detect the presence of corneal neovascularization and infiltrates below the corneal epithelium; both indicate that ocular health is compromised by the use of contact lenses. Additional testing, such as corneal topography, may be necessary to determine whether contact lens wear is causing corneal pathology. Neither a prior contact lens prescription nor a close-up photo of the patient's eyes can confirm ocular health for established contact lens wearers.

Telemedicine is the way of the future and we support technology as a powerful tool in health care. However, The Ohio Vision Professionals Board agrees that there are too many unanswered questions regarding this technology, as well as serious concerns for liability and risk involved. **Therefore, we do not advocate participation by Ohio licensed optometrists in these practices. You should notify the Board if you become aware of online refractions being conducted in the State of Ohio.**

POLICY STATEMENT REGARDING ONLINE REFRACTIONS

Please refer to the following excerpts from our Laws, Rules and Policies:

4725.19 Disciplinary actions.

(9) Departing from or failing to conform to acceptable and prevailing standards of care in the practice of optometry as followed by similar practitioners under the same or similar circumstances, regardless of whether actual injury to a patient is established;

(15) Soliciting patients from door to door or establishing temporary offices, in which case the board shall suspend all certificates held by the optometrist;

4725.01 Optometry definitions.

As used in this chapter:

(A)(1) The "practice of optometry" means the application of optical principles, through technical methods and devices, in the examination of human eyes for the purpose of ascertaining departures from the normal, measuring their functional powers, adapting optical accessories for the aid thereof, and detecting ocular abnormalities that may be evidence of disease, pathology, or injury.

4725-5-16 Display of name and office requirements.

An optometrist has the responsibility to establish and maintain a safe and hygienic office adequately equipped to provide full optometric services within the scope of the licensure of the practitioner. The board requires the following minimum equipment needed to provide a full scope examination which shall include, but not be limited to, tonometer, slit lamp, and instrumentation to examine the retina and to perform visual fields. All optometric examination locations shall be equipped with adequate hand washing facilities on location for use by optometrists and patients.

Senate Bill 129

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Health Care)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows licensed optometrist to engage in practice of telemedicine. Defines "telemedicine."
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to eye care; creating new provisions; amending ORS 683.010 and 683.180; and declaring an
3 emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 683.010 to**
6 **683.310.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "Eye examination" means an assessment of a patient's ocular health and visual sta-
9 tus, including but not limited to objective refractive data or information generated by an
10 automated testing device, such as an autorefractor, that is used to establish a medical di-
11 agnosis or to determine a refractive error.

12 (b) "Telemedicine" means the use of electronic and telecommunication technologies, in-
13 cluding self-administered technology, used to deliver ocular health care to a patient.

14 (2) A licensed optometrist may engage in the practice of telemedicine if:

15 (a) The licensed optometrist has an established patient-provider relationship with the
16 patient that includes an in-person eye examination prior to engaging in the practice of tele-
17 medicine with the patient;

18 (b) The licensed optometrist obtains and records the patient's medical history and pre-
19 vious prescription for corrective glasses or contact lenses, and records the length of time
20 since the patient's most recent in-person eye examination;

21 (c) The patient is at least 18 years of age;

22 (d) The technology used in the practice of telemedicine complies with the Americans with
23 Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and the Health Insurance Portability and
24 Availability Act privacy regulations, 45 C.F.R. parts 160 and 164; and

25 (e) The diagnostic information collected during the practice of telemedicine is reviewed
26 by a physician licensed under ORS chapter 677 who specializes in ocular health care.

27 (3) Telemedicine technology may not be used for a patient's initial prescription for cor-
28 rective contact lenses.

29 (4) The Oregon Board of Optometry, in consultation with the Oregon Medical Board, may
30 adopt rules related to the practice of telemedicine.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 **SECTION 3.** ORS 683.010 is amended to read:

2 683.010. As used in ORS 683.010 to 683.310, unless the context requires otherwise:

3 [(1) “Board” means the Oregon Board of Optometry.]

4 (1) **“Licensed optometrist” means an optometrist licensed under ORS 683.010 to 683.340.**

5 (2) “Optometric nontopical formulary” means the list of nontopical pharmaceutical agents for
6 the treatment of diseases of the human eye and the protocols for their usage adopted by the Council
7 on Optometric Nontopical Formulary under ORS 683.240 (2).

8 (3) “Practice of optometry” means the use of any means other than invasive or laser surgery,
9 or the prescription of Schedule I and II drugs or pharmaceutical agents that are not on the
10 optometric nontopical formulary, for diagnosis and treatment in the human eye, for the measurement
11 or assistance of the powers or range of human vision or the determination of the accommodative
12 and refractive states of the human eye or the scope of its functions in general or the adaptation of
13 lenses or frames for the aid thereof, subject to the limitations of ORS 683.040. “Practice of
14 optometry” includes the prescription of Schedule II hydrocodone-combination drugs for the purposes
15 listed in this subsection **and the use of telemedicine as defined in section 2 of this 2019 Act.**

16 (4) “Trial frames” or “test lenses” means any frame or lens used in testing the eye which is not
17 sold and not for sale.

18 **SECTION 4.** ORS 683.180 is amended to read:

19 683.180. A person may not:

20 (1) Sell or barter, or offer to sell or barter, any license issued by the [board] **Oregon Board of**
21 **Optometry.**

22 (2) Purchase or procure by barter any such license with intent to use it as evidence of the
23 holder’s qualification to practice optometry.

24 (3) Alter the license with fraudulent intent in any material regard.

25 (4) Use or attempt to use any such license which has been purchased, fraudulently issued,
26 counterfeited or materially altered as a valid license.

27 (5) Practice optometry under a false or assumed name.

28 (6) Willfully make any false statement in a material regard in an application for an examination
29 before the board or for a license.

30 (7) Practice optometry in this state without having at the time of so doing a valid unrevoked
31 license as an optometrist.

32 (8) Advertise or represent, by displaying a sign or otherwise, to be an optometrist without hav-
33 ing at the time of so doing a valid unrevoked license from the board.

34 (9) Dispense or sell an ophthalmic contact lens without having obtained a valid, unexpired pre-
35 scription from the person to whom the contact lens is dispensed or sold. As used in this subsection,
36 “ophthalmic contact lens” means a contact lens with or without refractive power, including a plano
37 lens or a cosmetic lens.

38 **SECTION 5. (1) Section 2 of this 2019 Act and the amendments to ORS 683.010 and 683.180**
39 **by sections 3 and 4 of this 2019 Act become operative on January 1, 2020.**

40 **(2) The Oregon Board of Optometry may take any action before the operative date spec-**
41 **ified in subsection (1) of this section that is necessary to enable the board to exercise, on**
42 **and after the operative date specified in subsection (1) of this section, all of the duties,**
43 **functions and powers conferred on the board by section 2 of this 2019 Act and the amend-**
44 **ments to ORS 683.010 and 683.180 by sections 3 and 4 of this 2019 Act.**

45 **SECTION 6. This 2019 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
2 **on its passage.**

3

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

—————
A N A C T

RELATING TO HEALTH AND SAFETY – THE CONSUMER PROTECTION IN EYE CARE
ACT

Introduced By: Representatives Jacquard, Vella-Wilkinson, Hearn, Ackerman, and
Azzinaro

Date Introduced: March 01, 2017

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 94

4 THE CONSUMER PROTECTION IN EYE CARE ACT

5 **23-94-1. Short title.**

6 This act shall be known and may be cited as the "Consumer Protection in Eye Care Act."

7 **23-94-2. Definitions.**

8 (a) As used in this chapter:

9 (1) "Automated computer program" means automated equipment or application designed
10 to be used on a telephone, a computer, or an Internet accessible device that can be used either in
11 person or remotely to conduct an eye assessment.

12 (2) "Contact lens" means any lens placed directly on the surface of the eye, regardless of
13 whether or not it is intended to correct a visual defect. Contact lenses are medical devices and
14 include, but are not limited to, any cosmetic, therapeutic, or corrective lenses.

15 (3) "Delegate" means a person tasked by a provider to assist in the examination of the
16 eyes and adnexa or in the development of a prescription for spectacles and/or contact lenses as
17 part of a provider's utilization of an automated computer program or other eye examination
18 equipment.

- 1 (4) "Department" means the Rhode Island department of health.
- 2 (5) "Dispense" means the act of furnishing spectacles or contact lenses to a patient.
- 3 (6) "Established treatment site" means a location where a patient shall seek care where
4 there is a provider present and sufficient technology and equipment to allow for an adequate
5 physical evaluation as appropriate for the patient's presenting complaint, and requires a provider-
6 in-person patient relationship.
- 7 (7) "Eye examination" means a physical assessment of the ocular health and visual or
8 refractive status of a patient that does not consist solely of objective refractive data or information
9 generated by an automated testing device, including an autorefractor, in order to establish a
10 medical or refractive diagnosis or for the correction of vision disorders.
- 11 (8) "Eye examination equipment" means computerized or manual medical devices used to
12 measure refractive status and or ocular health of the patient, including, but not limited to, Internet
13 based or local computer programs, automated examination equipment, manual examination
14 equipment, cameras, scanning lasers, automated refracting devices, non-contact or contact
15 tonometers.
- 16 (9) "In-person evaluation" means a patient evaluation conducted by a provider who is at
17 the same physical location as the location of the patient.
- 18 (10) "Prescription" means a provider's handwritten or electronic order for glasses or
19 contact lenses based on an eye examination.
- 20 (11) "Provider" is a health care professional licensed under chapters 35.1 or 37 of title 5.
- 21 (12) "Spectacles" means an optical instrument or device worn or used by an individual
22 that has one or more lenses designed to correct or enhance vision addressing the visual needs of
23 the individual wearer, commonly known as glasses or eyeglasses, including spectacles that may
24 be adjusted by the wearer to achieve different types or levels of visual correction or enhancement.
25 Spectacles does not include an optical instrument or device that is not intended to correct or
26 enhance vision or sold without consideration of the visual status of the individual who will use
27 the optical instrument or device.
- 28 (13) "Supervision" means overseeing the utilization of a delegated automated computer
29 program or other eye examination equipment shall be provided by a provider. The utilization of
30 an automated computer program or other eye examination equipment by a delegate may be
31 performed if the examination has been delegated and the delegating provider provides appropriate
32 on-site supervision and the delegate has met necessary training requirements.

33 **23-94-3. Purpose.**

- 34 (a) The purpose of this chapter is to provide for the development, establishment, and

1 enforcement of standards:

2 (1) To ensure and protect quality eye care for individuals receiving eye care in the state;

3 and

4 (2) For the encouragement of quality maintenance and improvement in all aspects of eye
5 care delivered to individuals in the state.

6 **23-94-4. Dispensing; prescriptions.**

7 (a) Except as provided for by §5-35.1-10, no person may dispense contact lenses or
8 spectacles in this state to a patient without a valid prescription from a provider.

9 (b) A valid prescription for spectacles or contact lenses:

10 (1) Shall contain an expiration date of not less than one year from the date of the eye
11 examination by the provider or a statement by the provider of the reasons why a shorter time is
12 appropriate based on the medical needs of the patient.

13 (2) Shall not be made based solely on information about the human eye generated by an
14 automated computer program.

15 (3) Shall take into consideration any medical findings and any refractive error discovered
16 during the eye examination.

17 (4) Shall consider all contact lenses used in the determination of a contact lens
18 prescription to be diagnostic lenses.

19 (c) After the diagnostic period and the contact lenses have been adequately fitted and the
20 patient is released from immediate follow-up care by persons licensed and regulated by the
21 department, the prescribing provider shall, at no cost, provide a prescription in writing for
22 replacement contact lenses. A person shall not dispense or adapt contact lenses or spectacles
23 without first receiving authorization to do so by a written prescription, except when authorized
24 orally by a provider. Patients who comply with such fitting and follow-up requirements as may be
25 established by the prescribing provider may obtain replacement contact lenses until the expiration
26 date listed on the prescription from a person who may lawfully dispense contact lenses under this
27 chapter.

28 (d) No replacement contact lenses may be sold or dispensed in this state except pursuant
29 to a prescription which:

30 (1) Conforms to state and federal regulations governing such forms and includes the
31 name, address, and state licensure number of a prescribing practitioner;

32 (2) Explicitly states an expiration date of not more than twelve (12) months from the date
33 of the last prescribing contact lens examination;

34 (3) Explicitly states the number of refills;

1 (4) Explicitly states that it is for contact lenses and indicates the lens brand name and
2 type, including all specifications necessary for the ordering or fabrication of lenses; and

3 (5) Is kept on file by the person selling or dispensing the replacement contact lenses for at
4 least twenty-four (24) months after the prescription is filled.

5 (e) Anyone who fills a prescription bears the full responsibility of the accuracy of the
6 contact lenses or spectacles provided under the prescription.

7 (f) At no time, without the direction of a prescriber, shall any changes or substitutions be
8 made in the brand or type of lenses the prescription calls for with the exceptions of tint change if
9 requested by the patient. However, if a prescription specifies "only" a specific color or tinted lens,
10 those instructions shall be observed.

11 (g) All sales of and prescriptions for contact lenses in this state shall conform to the
12 federal Fairness to Contact Lens Consumers Act, Pub. L. 108-164, 15 U.S.C.A. Section 7601 et
13 seq. The provisions of this chapter shall be construed in aid of and in conformity with said federal
14 act. Civil proceedings to enforce the provisions of this chapter may be brought by any board
15 created under the department of health or by any other interested person through injunction or
16 other appropriate remedy.

17 **23-94-5. Emergent technologies.**

18 (a) No person shall operate an automated computer program or other eye examination
19 equipment to conduct an eye assessment or to generate a prescription for contact lenses or
20 spectacles, unless:

21 (1) Diagnostic information and data, including photographs and scans, gathered by the
22 automated computer program are read and interpreted by a provider;

23 (2) The provider who reads and interprets the diagnostic information and data, including
24 photographs and scans, gathered by the automated computer program and/or delegate, has an
25 established doctor-patient relationship with the patient, and has performed at least one in-person
26 evaluation of the patient that includes the state mandated required elements for an eye
27 examination as provided for in §5-35.1-16 and the rules and regulations promulgated by the
28 department thereunder, at an established treatment site;

29 (3) The provider can verify the identity of the patient requesting treatment via the
30 automated computer program or other eye examination equipment;

31 (4) The automated computer program or other eye examination equipment is approved by
32 the federal Food and Drug Administration for the intended use;

33 (5) The automated computer program or other eye examination equipment is designed
34 and operated in a manner that provides any applicable accommodation required by the federal

1 Americans with Disabilities Act of 1990, codified at 42 U.S.C. 12101 et seq., as amended:

2 (6) The automated computer program or other eye examination equipment is used for the
3 collection and transmission of information and data, including photographs and scans, gathers and
4 transmits protected health information in compliance with the federal Health Insurance Portability
5 and Accountability Act of 1996, Pub. L. 104-191, codified at 42 U.S.C. 300(gg), 29 U.S.C. 1181
6 et seq., and 42 USC 1320(d) et seq.;

7 (7) The procedure for which the automated computer program or other eye examination
8 equipment is used has a recognized current procedural terminology code maintained by the
9 American Medical Association;

10 (8) The automated computer program or other eye examination equipment prominently
11 displays the name, state license number and physical location of the provider who will read and
12 interpret the diagnostic information and data, including photographs and scans as well as non-
13 urgent and emergency contact information of said provider;

14 (9) The owner or lessee of the automated computer program or other eye examination
15 equipment maintains liability insurance in an amount adequate to cover claims made by
16 individuals diagnosed or treated based on information and data, including photographs and scans,
17 generated by the service and/or automated computer program; and

18 (10) There is simultaneous interaction between the provider via direct two-way
19 communication with the delegate at all times, whereby the provider shall be immediately
20 available to respond promptly to any question or problem that may arise as a result of the service
21 being provided and shall be immediately available to respond promptly to any question or
22 problem that may arise as a result of the service being provided.

23 **23-94-6. Delegation; written protocol; supervision; training.**

24 (a) Prior to delegating the performance of eye care services, including, but not limited to,
25 refractive eye care services, the provider shall perform an in-person initial evaluation of the
26 patient. The delegating provider is responsible for ensuring the delegate performing the service
27 has demonstrated sufficient proficiency for the services to be provided. Prior to performing the
28 services, the delegating provider shall inform the patient about the training and qualifications of
29 who will perform the services.

30 (b) A provider may delegate the performance of eye care services though use of a written
31 protocol. The written protocol shall be reviewed annually by the provider and the delegate and
32 updated as necessary, be provided to the department or to any patient upon request, and provide:

33 (1) Identification of the device being used to perform the service and its inherent
34 limitations;

1 (2) Description of appropriate care and proper follow up, including a plan to ensure that
2 the service meets nationally recognized standards of care;

3 (3) A quality assurance plan for ongoing management of the patient; and

4 (4) A method for maintaining medical records for the service provided.

5 (c) A delegate may only perform those services delegated by and under the supervision of
6 a provider. Supervision requires that the provider have direct two-way communication with the
7 delegate at all times, and the provider shall be immediately available to respond promptly to any
8 question or problem that may arise as a result of the service being provided.

9 (d) A provider who delegates performance of eye care services shall provide, upon
10 request by the department, documentation of a delegate's completion of appropriate training in the
11 safe and effective use of all components and capabilities of an automated computer program; and
12 for each service being provided, it is the responsibility of the delegating provider to ensure that
13 the delegate is appropriately trained in the indications, appropriate use, accurate data collection,
14 and contraindications involved in the service being provided.

15 **23-94-7. Informed consent.**

16 (a) It is the responsibility of the provider prior to performing remotely administered eye
17 care services, including, but not limited to, vision correction services, to clearly inform the patient
18 as to the indications and limitations of the technology to be used as well as alternative evaluation
19 and treatment options. This information shall be provided, in writing, to the patient and an
20 acknowledgement of receipt, signed by the patient, shall be maintained by the provider for a
21 period of two (2) years, and a copy shall be provided to the patient prior to the services being
22 rendered.

23 **23-94-8. Age minimum.**

24 No person shall operate an automated computer program or attempt to provide remote
25 vision correction services, or to conduct an eye assessment to generate a spectacle or contact lens
26 prescription for anyone under the age of eighteen (18) years old.

27 **23-94-9. Standard of care.**

28 Evaluation, treatment, and consultation recommendations made by a provider utilizing an
29 automated computer program, including issuing a prescription via electronic means, shall be held
30 to the same standards of appropriate practice as those in traditional in-person clinical settings.

31 **23-94-10. Violations; penalty; private right of action.**

32 (a) Any person who believes a violation of this chapter or the rules and regulation
33 adopted pursuant thereto has occurred or been attempted may file a complaint with the
34 department in writing. If, upon reviewing the complaint, the department determines there is a

1 reasonable basis to believe a violation or attempted violation has occurred, the department shall
2 investigate. The department may, on its own initiative or otherwise, initiate an investigation if it
3 has a reasonable basis to believe a violation of the act or the rules and regulations has occurred or
4 been attempted. Nothing in this chapter shall be deemed to require the department wait until
5 human harm has occurred to initiate an investigation of a violation of this chapter. As part of the
6 investigation under this section, the department may hold hearings, administer oaths, and take
7 testimony in person or by deposition. Such hearings shall be conducted pursuant to the
8 administrative procedure act, chapter 35 of title 42. The findings of the investigation and any
9 hearings held pursuant to the investigation shall be in writing.

10 (b) If, as a result of an investigation pursuant to this section the department finds that a
11 person has violated or attempted to violate this chapter, it may impose a civil penalty of not more
12 than ten thousand dollars (\$10,000) for each violation. If the department finds that a violation or
13 attempted violation occurred and did not result in significant harm to human health, the
14 department may issue a warning instead of imposing a civil penalty. Any civil penalty imposed
15 pursuant to this section may be collected as provided in such section. At the request of the
16 department, the attorney general may file a civil action seeking an injunction or other appropriate
17 relief to enforce this chapter and the rules and regulations adopted and promulgated thereunder.

18 (c) In addition to any remedies under this chapter, the rules and regulation adopted
19 thereunder, or other provisions of state or federal law, a person adversely affected by a violation
20 of this chapter may bring action for injunctive relief and, upon prevailing, in addition to such
21 injunctive relief, shall recover monetary damages of no more than one thousand dollars (\$1,000)
22 for each day found to be in violation plus attorneys' fees and costs.

23 **23-94-11. Rules and regulations.**

24 The department, in consultation with the boards established by §§5-35.1-13 and 5-37-1.1,
25 may adopt and promulgate reasonable rules and regulations to carry out the provisions of this
26 chapter.

27 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY – THE CONSUMER PROTECTION IN EYE CARE
ACT

1 This act would provide for consumer protection in eye care services by developing
2 standards and enforcement protocols related to the utilization of emergent technologies in the
3 provision of eye care services, as well as for the delegation of eye care services by providers.

4 This act would take effect upon passage.

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LC001882
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Tennessee Optometry Telehealth – Statutes

T. C. A. § 56-7-1002

§ 56-7-1002. Healthcare services delivered through telehealth encounter

(a) As used in this section:

(1) “Health insurance entity” has the same meaning as defined in § 56-7-109 and includes managed care organizations participating in the medical assistance program under title 71, chapter 5;

(2) “Healthcare services” has the same meaning as defined in § 56-61-102;

(3) “Healthcare services provider” means an individual acting within the scope of a valid license issued pursuant to title 63 or any state-contracted crisis service provider employed by a facility licensed under title 33;

(4) “Qualified site” means the office of a healthcare services provider, a hospital licensed under title 68, a facility recognized as a rural health clinic under federal Medicare regulations, a federally qualified health center, any facility licensed under title 33, or any other location deemed acceptable by the health insurance entity;

(5) “Store-and-forward telemedicine services”:

(A) Means the use of asynchronous computer-based communications between a patient and healthcare services provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients; and

(B) Includes the transferring of medical data from one (1) site to another through the use of a camera or similar device that records or stores an image that is sent or forwarded via telecommunication to another site for consultation;

(6) “Telehealth”:

(A) Means the use of real-time, interactive audio, video telecommunications or electronic technology, or store-and-forward telemedicine services by a healthcare services provider to deliver healthcare services to a patient within the scope of practice of the healthcare services provider when:

(i) Such provider is at a qualified site other than the site where the patient is located; and

(ii) The patient is at a qualified site, at a school clinic staffed by a healthcare services provider and equipped to engage in the telecommunications described in this section, or at a public elementary or secondary school staffed by a healthcare services provider and equipped to engage in the telecommunications described in this section; and

(B) Does not include:

(i) An audio-only conversation;

(ii) An electronic mail message; or

(iii) A facsimile transmission; and

(7) “Telehealth provider” means a healthcare services provider engaged in the delivery of healthcare services through telehealth.

(b) Healthcare services provided through a telehealth encounter shall comply with state licensure requirements promulgated by the appropriate licensure boards. Telehealth providers shall be held to the same standard of care as healthcare services providers providing the same healthcare service through in-person encounters.

(c) A telehealth provider who seeks to contract with or who has contracted with a health

insurance entity to participate in the health insurance entity's network shall be subject to the same requirements and contractual terms as a healthcare services provider in the health insurance entity's network.

(d) Subject to subsection (c), a health insurance entity:

(1) Shall provide coverage under a health insurance policy or contract for covered healthcare services delivered through telehealth;

(2) Shall reimburse a healthcare services provider for the diagnosis, consultation, and treatment of an insured patient for a healthcare service covered under a health insurance policy or contract that is provided through telehealth without any distinction or consideration of the geographic location or any federal, state, or local designation, or classification of the geographic area where the patient is located;

(3) Shall not exclude from coverage a healthcare service solely because it is provided through telehealth and is not provided through an in-person encounter between a healthcare services provider and a patient; and

(4) Shall reimburse healthcare services providers who are out-of-network for telehealth care services under the same reimbursement policies applicable to other out-of-network healthcare services providers.

(e) A health insurance entity shall provide coverage for healthcare services provided during a telehealth encounter in a manner that is consistent with what the health insurance policy or contract provides for in-person encounters for the same service, and shall reimburse for healthcare services provided during a telehealth encounter without distinction or consideration of the geographic location, or any federal, state, or local designation or classification of the geographic area where the patient is located.

(f) Nothing in this section shall require a health insurance entity to pay total reimbursement for a telehealth encounter, including the use of telehealth equipment, in an amount that exceeds the amount that would be paid for the same service provided by a healthcare services provider in an in-person encounter.

(g) Any provisions not stipulated by this section shall be governed by the terms and conditions of the health insurance contract.

(h) Nothing in this section shall apply to accident-only, specified disease, hospital indemnity, plans described in § 1251 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended and § 2301 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, as amended (both in 42 U.S.C. § 18011), plans described in the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.), Medicare supplement, disability income, long-term care, or other limited benefit hospital insurance policies.

T. C. A. § 63-1-155

§ 63-1-155. Healthcare provider; telehealth or telemedicine; healthcare provider-patient relationship; standard of professional practice; application

(a) For the purposes of this section:

(1) "Healthcare provider" means:

(A) Any provider licensed under this title who is authorized to diagnose and treat humans; or

(B) Any state-contracted crisis service provider employed by a facility licensed under

title 33; and

(2) "Telehealth," or "telemedicine," means, notwithstanding any restriction imposed by § 56-7-1002, the use of real-time audio, video, or other electronic media and telecommunications technologies that enable interaction between the healthcare provider and the patient, or also store-and-forward telemedicine services, as defined by § 56-7-1002(a), for the purpose of diagnosis, consultation, or treatment of a patient in another location where there may be no in-person exchange.

(b) For the purposes of this section, a healthcare provider-patient relationship with respect to telemedicine or telehealth is created by mutual consent and mutual communication, except in an emergency, between the patient and the provider. The consent by the patient may be expressed or implied consent; however, the provider-patient relationship is not created simply by the receipt of patient health information by a provider unless a prior provider-patient relationship exists. The duties and obligations created by the relationship do not arise until the healthcare provider:

(1) Affirmatively undertakes to diagnose and treat the patient; or

(2) Affirmatively participates in the diagnosis and treatment.

(c)(1)(A) A healthcare provider who delivers services through the use of telehealth shall be held to the same standard of professional practice as a similar licensee of the same practice area or specialty that is providing the same healthcare services through in-person encounters, and nothing in this section is intended to create any new standards of care.

(B) Notwithstanding subdivision (c)(1)(A), telehealth services shall be provided in compliance with the guidelines created pursuant to part 4 of this chapter.

(2) The board or licensing entity governing any healthcare provider covered by this section shall not establish a more restrictive standard of professional practice for the practice of telehealth than that specifically authorized by the provider's practice act or other specifically applicable statute, including this chapter or title 53, chapter 10 or 11.

(3) This section shall not apply to pain management clinics, as defined in § 63-1-301, and chronic nonmalignant pain treatment.

(d) Sections 63-6-231 and 63-6-214(b)(21) shall not apply to the practice of telemedicine under this section.

(e) This section shall not apply to or restrict the requirements of § 63-6-241.

(f) Section 63-6-204(a) shall also apply to telemedicine.

(g)(1) Except as provided in subdivision (g)(2), to practice under this section a healthcare provider shall be licensed to practice in this state under this title.

(2) A physician shall be licensed to practice under chapter 6 or 9 of this title in order to practice telemedicine pursuant to § 63-6-209(b), except as otherwise authorized by law or rule.

§ 54.1-2400.01:2. Ophthalmic prescription defined; who may provide ophthalmic prescriptions

A. As used in this section:

"Contact lens" means any lens that is placed directly on the surface of the eye, whether or not the lens is intended to correct a visual defect, including any cosmetic, therapeutic, or corrective contact lens.

"Ophthalmic prescription" means a handwritten or electronic order of a provider that includes (i) in the case of contact lenses, all information required by the Fairness to Contact Lens Consumers Act, 15 U.S.C. §§ 7601 et seq., (ii) in the case of prescription eyeglasses, all information required by the Ophthalmic Practice Rule, also known as the Eyeglass Rule, 16 C.F.R. Part 456, and (iii) necessary and appropriate information for the dispensing of prescription eyeglasses or contact lenses for a patient, including the provider's name, physical address at which the provider practices, and telephone number.

"Provider" means an ophthalmologist licensed by the Board of Medicine pursuant to Chapter 29 (§ 54.1-2900 et seq.) or an optometrist licensed by the Board of Optometry pursuant to Chapter 32 (§ 54.1-3200 et seq.).

B. For the purpose of a provider prescribing spectacles, eyeglasses, lenses, or contact lenses to a patient, a provider shall establish a bona fide provider-patient relationship by an examination (i) in person, (ii) through face-to-face interactive, two-way, real-time communication, or (iii) store-and-forward technologies when all of the following conditions are met: (a) the provider obtains an updated medical history at the time of prescribing; (b) the provider makes a diagnosis at the time of prescribing; (c) the provider conforms to the standard of care expected of in-person care as appropriate to the patient's age and presenting condition, including when the standard of care requires the use of diagnostic testing and performance of a physical examination, which may be carried out through the use of peripheral devices appropriate to the patient's condition; (d) the ophthalmic prescription is not determined solely by use of an online questionnaire; (e) the provider is actively licensed in the Commonwealth and authorized to prescribe; and (f) upon request, the prescriber provides patient records in a timely manner in accordance with the provisions of § 32.1-127.1:03 and all other state and federal laws and regulations.

C. The requirements of this section shall not apply to (i) the sale of eyeglasses not designed to correct or enhance vision by addressing the visual needs of the individual wearer and that may be known as over-the-counter eyeglasses or readers or (ii) a licensed optician providing services in accordance with § 54.1-1509.

D. The provisions of this section shall not apply to ophthalmic prescriptions written prior to July 1, 2017.

2017, cc. 169, 184.

The chapters of the acts of assembly referenced in the historical citation at the end of this section

may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Lisa,

Here are Provisions of the optometry law which dictate that the provision of any optometric care must be controlled by an OD, MD, or DO having controlling interest in the provision of care without interference for non-health care licensed entities.

The executive director of the state board has indicated that these provisions apply to care prescribed by telehealth entities.

§ 54.1-3205.1. Supervision by unlicensed persons prohibited.

No optometrist shall be directly or indirectly supervised within the scope of the practice of optometry by any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not a Virginia-licensed optometrist or physician. No officer, employee, or agent of a commercial or mercantile establishment, who is not a Virginia-licensed optometrist or physician, shall directly or indirectly control, dictate, or influence the professional judgment, including but not limited to the level or type of care or services rendered, of the practice of optometry by a licensed optometrist.

1990, c. 307.

§ 54.1-3205. Practicing in a commercial or mercantile establishment.

A. It shall be unlawful for any optometrist to practice his profession as a lessee of or in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice optometry as a lessee of or in the commercial or mercantile establishment.

B. No licensed optometrist shall practice optometry as an employee, directly or indirectly, of a commercial or mercantile establishment, unless such commercial or mercantile establishment was employing a full-time licensed optometrist in its established place of business on June 21, 1938.

C. For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities.

D. For the purposes of this section, an optometrist shall be deemed to be practicing in a commercial or mercantile establishment if he practices, whether directly or indirectly, as an officer, employee, lessee or agent of any person or entity in any location that provides direct access to or from a commercial or mercantile establishment. Direct access includes any entrance or exit, except an entrance or exit closed to the public and used solely for emergency egress pursuant to applicable state and local building and fire safety codes, that prohibits a person from exiting the building or structure occupied by such practice or establishment (i) onto an exterior sidewalk or public way or (ii) into a common area that is not under the control of either the optometry practice or the commercial or mercantile establishment, such as into the common areas of an enclosed shopping mall. For the purposes of this section, neither an optometric practice nor an ophthalmologic practice which sells eyeglasses or contact lenses ancillary to its practice shall be deemed a commercial or mercantile establishment. Further, any entity that is engaged in the sale of eyeglasses or contact lenses, the majority of the beneficial ownership of which is owned by an ophthalmologic practice and/or one or more

ophthalmologists, shall not be deemed a commercial or mercantile establishment.

E. This section shall not be construed to prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by an optometrist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them.

Code 1950, §§ 54-388, 54-397.1; 1968, c. 505; 1976, c. 758; 1977, c. 161; 1979, c. 39; 1988, c. 765; 2005, cc. [711](#), [720](#).

[Section](#)
[Print PDF email](#)

§ 54.1-3204. Prohibited acts.

It shall be unlawful for any person:

1. To practice optometry in this Commonwealth without holding a license issued by the Board. Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of the law.
2. To impersonate a licensed optometrist of like or different name.
3. To buy or sell or fraudulently obtain a diploma or license.
4. To do any act for which if he were an optometrist his license could be revoked as provided by this chapter.
5. To possess any trial lenses, trial frames, graduated test cards, appliances or instruments used in the practice of optometry, self-testing devices or eyeglass vending machines for the purpose of fitting or prescribing glasses in the practice of optometry, unless he is or unless he regularly employs on the premises a licensed optometrist or a licensed physician.
6. To publish or cause to be published in any manner an advertisement that is false, deceptive or misleading, contains a claim of professional superiority or violates regulations of the Board governing advertising by optometrists.
7. To sell, provide, furnish, supply or duplicate eyeglasses, or lenses for the correction of vision without the prescription of a licensed physician or licensed optometrist, unless he is the holder of a license to practice optometry or a license to practice medicine under the laws of this Commonwealth.
8. To sell or dispense contact lenses, including plano or cosmetic lenses, without holding a license issued by the Board. This subdivision shall not apply to a licensed optician operating or working in a retail establishment, when selling or dispensing contact lenses, including plano or cosmetic lenses, upon the valid written prescription of an individual licensed to practice medicine or osteopathy, or a licensed optometrist.
9. To dispense, administer, or sell an ophthalmic device containing Schedule III, IV, or VI controlled substances or an over-the-counter medication without holding a license issued by the Board, including TPA certification. An "ophthalmic device" shall mean any device, as defined in the Drug Control Act (§ [54.1-3400](#) et seq.) customarily used primarily for ophthalmic purposes, including an ophthalmic device classified by the United States Food and Drug Administration as a drug. Nothing in this subsection shall preclude a pharmacist from dispensing an ophthalmic device, as defined in this subsection, upon the written and valid prescription of an optometrist, providing the

patient is then advised by the pharmacist to return for follow-up care to the optometrist prescribing the ophthalmic device.

The provisions of this section shall be enforced in accordance with this chapter and § [54.1-2506](#).

Code 1950, § 54-396; 1976, c. 758; 1977, c. 161; 1979, c. 39; 1988, c. 765; 2009, cc. [353](#), [761](#).

I hope this is helpful in defining the limitations on outside influence and professional responsibility of the licensed healthcare providers.

Sincerely,

Fred Goldberg, OD

ORIGINAL HOUSE
BILL NO. HB0164

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2017 GENERAL SESSION

AN ACT relating to professions and occupations; allowing licensure boards to promulgate rules related to telemedicine/telehealth as specified; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 9-2-117(a) by creating a new paragraph (ix) and 33-1-303(a) by creating a new paragraph (iv) are amended to read:

9-2-117. Office of rural health created; duties.

(a) The office of rural health is created within the department of health. The office shall:

(ix) As required by W.S. 33-1-303(a)(iv) and in collaboration with the state health officer and the state chief information officer or their designees, collaborate with professional and occupational licensure boards concerning the promulgation of rules and definitions related to the practice of telemedicine/telehealth and the use of telemedicine/telehealth technologies.

33-1-303. Powers of licensure boards.

(a) Except as otherwise specifically provided by statute, a board authorized to establish examination, inspection, permit or license fees for any profession or occupation regulated under this title or under W.S. 11-25-105, 21-2-802 or 23-2-414 may:

(iv) Adopt rules and regulations allowing the practice of telemedicine/telehealth and the use of telemedicine/telehealth technologies within an applicable

ORIGINAL HOUSE
BILL NO. HB0164

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2017 GENERAL SESSION

profession or occupation consistent with the profession's or occupation's duties and obligations. For purposes of this paragraph, telemedicine/telehealth shall be defined within each promulgated rule in a manner applicable to the individual profession or occupation and in a manner which facilitates the development and promotion of uniform, system wide standards for the practice of telemedicine/telehealth and the use of telemedicine/telehealth technologies. Any board promulgating rules under this paragraph shall first confer with the office of rural health for the purpose of promoting the goals established by W.S. 9-2-117(a)(vi) through (viii).

ORIGINAL HOUSE
BILL NO. HB0164

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2017 GENERAL SESSION

Section 2. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk

TITLE 24 REGULATED PROFESSIONS AND OCCUPATIONS DELAWARE ADMINISTRATIVE CODE

Telehealth

9.1 Telehealth is the use of electronic communications to provide and deliver a host of health-related information and health-care services, including optometry-related information and services, over large and small distances. Telehealth encompasses a variety of health care and health promotion activities, including education, advice, reminders, interventions, and monitoring of interventions.

9.2 The Optometrist or Optometry Intern (referred to as "licensee" for the purpose of this Board Rule) who provides treatment through telehealth shall meet the following requirements:

9.2.1 Location of patient during treatment through telehealth

9.2.1.1 The licensee shall have an active Delaware license in good standing to practice telehealth in the state of Delaware.

9.2.1.2 Licensees understand that this rule does not provide licensees with authority to practice telehealth in service to clients located in any jurisdiction other than Delaware, and licensees bear responsibility for complying with laws, rules, or policies for the practice of telehealth set forth by other jurisdictional boards of optometry.

9.2.1.3 Licensees practicing telehealth shall comply with all of these rules of professional conduct and with requirements incurred in state and federal statutes relevant to the practice of optometry.

9.2.2 Informed consent

9.2.2.1 Before services are provided through telehealth, the licensee shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient. At minimum, the informed consent shall inform the patient and document acknowledgment of the risk and limitations of:

9.2.2.1.1 The use of electronic communications in the provision of care;

9.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and

9.2.2.1.3 The potential disruption of electronic communication in the use of telehealth.

9.2.3 Confidentiality: The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.

9.2.4 Competence and scope of practice The licensee shall be responsible for determining and documenting that telehealth is an appropriate level of care for the patient.

9.2.4.2 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to on-site care.

9.2.4.3 The licensee shall limit the practice of telehealth to the area of competence in which proficiency has been gained through education, training, and experience.

9.2.4.4 All evaluations, including initial evaluations, examination and refraction, and re-evaluations and scheduled discharges shall be performed face to face and not through telehealth or internet.

9.2.4.5 The licensee shall document in the file or record which services were provided by telehealth.

TITLE 14
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY

SERIES 12
OPTOMETRIC TELEHEALTH PRACTICE

§14-12-1. General.

1.1. Scope -- This legislative rule establishes requirements for telehealth registration and telehealth practice.

1.2. Authority -- W. Va. Code §30-8-1., *et seq.*, W. Va. Code, §30-8a-1, *et. seq.* and W Va. Code 30-1-26.

1.3. Filing Date --

1.4. Effective Date --

1.5. Sunset Provision: This rule shall terminate and have no further force or effect on August 1, 2028.

§14-12-2. Definitions.

2.1. “Board” means the West Virginia Board of Optometry.

2.2. “Established patient” means a patient who has received professional services, face-to-face, from the optometrist, or optometrist of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

2.3. “Interstate telehealth services” means the provision of telehealth services to a patient located in West Virginia by a health care practitioner located in any other state or commonwealth of the United States.

2.4. “Optometrist” means an individual licensed to practice optometry in West Virginia under §30-8-1, *et seq.* or in any other state or commonwealth of the United States.

2.5. “Registration” means an authorization to practice optometry regulated by §30-8-1 *et. seq.* of this code and this rule for the limited purpose of providing interstate telehealth services within the registrant’s scope of practice.

2.6. “Registrant” means an individual who holds a valid telehealth registration from the Board.

2.7. “Store-and-forward technologies” means the asynchronous computer-based communication of medical data or images from an originating location in West Virginia to a registered optometrist at another site for diagnostic purposes.

2.8. “Telehealth services” means the use of synchronous or asynchronous telecommunications technology or audio only telephone call by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include internet questionnaires, e-mail messages, or facsimile transmissions.

§14-12-3. Requirements for Optometric Telemedicine.

3.1. The practice of optometry occurs where the patient is located at the time the telehealth services are provided.

3.2. The optometrist who registers to practice interstate telehealth shall be:

3.2.1. Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to an administrative complaint; and

3.2.2. Registered as an interstate telehealth practitioner with the West Virginia Board of Optometry holding a valid registration.

3.3. No person shall deliver optometric telehealth services unless a bona fide optometrist-patient relationship is established. A bona fide optometrist-patient relationship shall exist if the optometrist has:

3.3.1. obtained or caused to be obtained and reviewed a health and ocular history of the patient;

3.3.2. performed or caused to be performed and reviewed appropriate examination of the patient, either physically through use of instrumentation and diagnostic equipment by which digital scans, photographs, images and records able to be transmitted electronically, or through use of face-to-face interactive two-way real-time communications services, store-and-forward technologies, or through audio only calls or conversations that occur in real time;

3.3.3. provided information to the patient about the services to be performed; and

3.3.4. initiated additional diagnostic tests or referrals as needed.

3.3.5. In cases in which an optometrist is providing telehealth, the examination required by section 3.3.2 of this rule shall not be required if the patient has been examined in person by an optometrist licensed by the Board within the 12 months prior to the initiation of telehealth and the patient's records of such examination have been reviewed by the optometrist providing telehealth.

3.4. The standard of care for providing optometric care in the State of West Virginia via telehealth services by a registrant or licensed optometrist shall be the same as for in-person care.

3.5. A telehealth provider's selection of telemedicine technologies for a patient encounter must permit the provider to meet the standard of care for the patient's particular health issue and presentation. Treatment, including issuing a prescription, based solely on an online questionnaire, does not conform to the standard of care.

3.6. Nothing in this rule requires a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion determines that an in-person encounter is required.

3.7. A registrant shall not prescribe any controlled substance listed in Schedule II of the Uniform Controlled Substance Act via interstate telehealth services.

3.8. A provider of telehealth services shall ensure that the patient or patient's guardian is aware of the provider's identity, location, and license or registration number.

3.9. The provider of telehealth services shall provide to the patient or guardian a clear mechanism to:

3.9.1. access, supplement, and amend contact information and health information;

3.9.2. register complaints with the Board; and

3.9.3. provide consent for the use of telehealth.

3.10. All consent and required notification shall occur prior to initiating any services.

3.11. Patient medical records must meet the same requirements as in-person records including, but not limited to:

3.10.1. record retention;

3.10.2. informed consent;

3.10.3. accessibility to both the licensee or registrant and the patient or legal guardian; and

3.10.4. be consistent with all established laws and administrative regulations governing patient healthcare records, but not limited to, HIPAA.

§14-12-4. Registration and Renewal.

4.1. To provide optometric care in the State of West Virginia via interstate telehealth services, an individual not otherwise licensed by the Board must first apply for and obtain registration with the Board using the application materials provided by the Board and paying fees equal to the initial in-state optometry license application and annual licensing fees. The annual renewal fees for a registrant shall be equal to the annual renewal fees for an in-state optometry license renewal as set forth by the Board's rules and fees established by the Board. The annual renewal and expiration dates shall equal the annual renewal and expiration dates of in-state licenses as set forth by the Board.

4.2. By registering to provide interstate telehealth services to patients in this state, a registrant is subject to all laws, rules, and regulations regarding the practice of optometry in this state, including the state judicial system and all professional conduct rules and standards incorporated into the Optometry Practice Act, W. Va. Code, §30-8-1, *et. seq.*, and all legislative rules and jurisdiction of the West Virginia Board of Optometry including the Board's complaint, investigation, and hearing process.

4.3. To obtain registration with the Board, an individual must be a licensed optometrist in good standing in all other states in which he or she is licensed and not currently under investigation or subject to an administrative complaint.

4.4. A registrant shall immediately notify the Board of any restrictions placed on the individual's license to practice in any state or jurisdiction.

4.5. A registration with the Board does not authorize an optometrist to practice from a physical location within the State of West Virginia without first obtaining appropriate licensure.

4.6. A person currently licensed to practice optometry in this state is not subject to registration but shall practice telehealth in accordance with the provisions of W.Va. Code, §30-1-26, W.Va. Code, §30-8-1, *et. seq.* and the rules promulgated thereunder.

§14-12-5. Restrictions.

5.1. Nothing in this section shall be construed to invalidate §30-8A-3 or to permit use of any automated refractor or other automated or remote testing device to generate refractive data unless that use is under direct, in-person supervision of a licensee in the same physical location as the patient.

KANSAS PROPOSED TELEMEDICINE REGULATION

OPTOMETRY TELEMEDICINE GUIDANCE

This guidance document is intended for both Kansas optometrists and patients with regard to telemedicine and the practice of optometry. Telemedicine is a rapidly developing area of health care which offers opportunities for enhancing the patient-doctor relationship.

As the patient-doctor relationship is the foundation to good health care, the Board advises both the public and optometrists to be mindful of statutory requirements and challenges inherent when utilizing this new technology. Telemedicine is a tool and does not alter the scope of practice, nor standard of care, of licensed optometrists who practice optometry via telemedicine within the state nor to those optometrists located outside of the state who diagnose and treat via telemedicine patients located within this state. Failure to conform to the scope of practice and standard of care, whether rendered in person or via telemedicine, may subject the licensee to investigation and discipline by the Board.

TELEMEDICINE DEFINITIONS

The establishment of the optometrist and patient relationship is the same whether face to face or in a telemedicine environment. Telemedicine is a tool to be improved upon while assuring existing standards of care are met. Kansas Statute 40-2,211 et seq. defines the establishment of a provider-patient relationship through an examination.

40-2,211. Same; definitions. (a) For purposes of Kansas telemedicine act:

(1) "Distant site" means a site at which a healthcare provider is located while providing healthcare services by means of telemedicine.

(2) "Healthcare provider" means a physician, licensed physician assistant, licensed advanced practice registered nurse or person licensed, registered, certified or otherwise authorized to practice by the behavioral sciences regulatory board.

(3) "Originating site" means a site at which a patient is located at the time healthcare services are provided by means of telemedicine.

(4) "Physician" means a person licensed to practice medicine and surgery by the state board of healing arts.

(5) "Telemedicine," including "telehealth," means the delivery of healthcare services or consultations while the patient is at an originating site and the healthcare provider is at a distant site. Telemedicine shall be provided by means of real-time two-way interactive audio, visual, or audio-visual communications, including the application of secure video conferencing or store-and-forward technology to provide or support healthcare delivery, that facilitate the assessment, diagnosis, consultation, treatment, education and care management of a patient's healthcare. "Telemedicine" does not include communication between:

(A) Healthcare providers that consist solely of a telephone voice-only conversation, email or facsimile transmission; or

(B) a physician and a patient that consists solely of an email or facsimile transmission.

(b) This section shall take effect on and after January 1, 2019.

History: L. 2018, ch. 98, § 2; July 1.

Other relevant Kansas statutes:

40-2,212. Same; confidentiality

40-2,213. Same; application of; coverage parity established

40-2,214. Prescribing of drugs via telemedicine

40-2,215. Abortions delivered via telemedicine not authorized

40-2,216. Same; nonseverability clause

BEST PRACTICES FOR OPTOMETRIC TELEMEDICINE

The practice of optometry is defined in Article 15 of Chapter 65 of Kansas Statutes which were created by the state's elected representatives and who also review and modify them periodically. The mission of the Board of Optometry is to protect the public through effective licensure and enforcement of both the state's statutes and Board's rules and regulations governing the practice of optometry so as to reasonably ensure a standard of competent and ethical practice.

To provide guidance for both the public and the optometrist, the following best practices in optometric telemedicine, collected by the Minnesota Board of Optometry, are being utilized. The following information is presented to enhance the patient-doctor telemedicine experience and shall not be interpreted as a ruling, opinion or finding of the Kansas State Board of Examiners in Optometry.

1. Patient – Optometrist Relationship: An optometrist who provides comprehensive eyecare via telemedicine to a patient who is not physically present at the same location as the optometrist must ensure that an appropriate optometrist-patient relationship is established prior to diagnosing or treating the patient.
 - a. Establishing an appropriate optometrist-patient relationship is best accomplished through the optometrist having at least one in-person encounter with the patient at the optometrist's established office location before engaging in the practice of telemedicine. If this in-person initial encounter is not possible, the optometrist must take the time and effort, and use means and methods appropriate under the circumstances, to gain the necessary understanding of the patient and the patient's history, condition, and needs in order to render a diagnosis and treatment plan that is consistent with the standard of care.
 - b. The Optometrist must provide comprehensive care to the patient, not just screen the patient for presence or absence of abnormal conditions or pathology of the eye. As such, the optometrist becomes the patient's primary eyecare provider and manages the patient consistent with the optometrist's training and licensure. Before entering into or continuing a telemedicine relationship, the optometrist must assess whether he or she will be able to provide comprehensive eyecare

and maintain the same standard of care utilizing telemedicine as would be provided if the optometrist's services were to be provided in-person.

c. The optometrist must verify the patient's identity to avoid HIPAA and related patient confidentiality issues. In addition, the optometrist must ensure the data telecommunications network has the appropriate level of security so that the patient's confidential information is protected.

d. The optometrist must obtain or review all aspects of the patient's medical history and any available medical records.

e. The optometrist must:

i. disclose his/her identity and credentials, including informing the patient that the optometrist is licensed to practice in the jurisdiction in which the patient is located.

ii. provide the patient the optometrist's direct contact information so the optometrist examining the patient is accessible for urgent or emergent issues that arise outside normal business hours; this may be accomplished by providing the optometrist's cell phone number, pager number, or personal answering service number.

iii. maintain in the optometrist's patient records an acknowledgment signed and dated by the patient, indicating that the optometrist has provided to the patient, in written form:

1. an appropriate summary of the risks and benefits of being treated by telemedicine; and,
2. the contact information required by subparagraph ii. above.

f. Place the welfare of the patient first; protect patient confidentiality; maintain acceptable standards of practice; and properly supervise and oversee any technicians participating in the telemedicine process, thus maintaining appropriate control over the practice.

2. Examination, evaluation, and diagnosis: the optometrist must conduct an appropriate evaluation prior to diagnosing or treating the patient, including prior to rendering a prescription for pharmaceuticals, glasses, or contact lenses. Physical remoteness of the patient does not change the need for a proper patient identification, appropriate intake procedures, adequate patient history, examination, and, where indicated, testing. An optometrist is not excused from performing an appropriate examination, evaluation, and assessment of the patient's condition by virtue of the patient's physical remoteness from the optometrist. Any technician involved in the telemedicine patient encounter must be trained in the use of all equipment utilized in the telemedicine encounter and competent in the operation of such equipment.

3. Patient records: the optometrist treating via telemedicine must create and maintain a complete record of the patient's intake, diagnosis, and treatment, no different than for an in-person patient encounter. The optometrist must have access to those records at all times so that the optometrist can address and communicate with the patient any issue the patient brings to the optometrist's attention. Maintaining these records electronically so they can be accessed from any of the optometrist's practice locations and after normal business hours meets the standard of care.

4. Prescribing: Prior to prescribing any medication or ophthalmic device (such as glasses or contact lenses), the optometrist should conduct an appropriate assessment of the ocular health and visual status of the patient. The standard of care as currently recognized by the Kansas State Board of Examiners in Optometry, does not permit an examination consisting solely of objective refractive data or information generated by an automated testing device such as an autorefractor in order to establish a medical diagnosis or to establish refractive error. Likewise, issuing a prescription based solely on a patient's responses to a written or online questionnaire does not meet the standard of care. Optometrists prescribing controlled substances via telemedicine also should obey all other relevant state and federal laws and regulations (see 40-2,214. Prescribing of drugs via telemedicine).

5. Where the practice of optometry occurs: 40-2,211 considers that the practice of optometry occurs both where the patient is located (originating site) and where the optometrist providing professional services is located (distance site). In order for an optometrist to provide professional optometric services to a person located in Kansas that optometrist must be licensed by the Kansas State Board of Examiners in Optometry.

6. Laws and regulations governing the practice of optometry: As indicated previously, there is not a separate standard of care for telemedicine in the practice of optometry in Kansas. Accordingly, the optometrist who seeks to use telemedicine in their practice should be familiar with the requirements of Kansas statutes and all other applicable laws and regulations, whether state or federal. The Kansas State Board of Examiners in Optometry can only provide direction to current statute and rules, and cannot provide legal advice.

7. Other licensing bodies may also have oversight: Kansas licensees who wish to treat patients located outside Kansas by utilizing telemedicine should know both that the Minnesota Board of Optometry has oversight of such practice and that the "Originating site" state's board of optometry may take the position that such constitutes the practice of optometry in their respective states, and accordingly such boards also may require licensure in their state as a prerequisite. Optometrists intending to practice in such manner should therefore seek guidance from the optometry boards in all states in which they intend to treat patients for those states' licensure requirements to determine whether or not such practice is permitted in those jurisdictions.

8. Displaying license and current certificate of renewal; branch office licenses: The licensee must display their license and current certificate of renewal in a conspicuous place in the optometrist's office. A licensee who practices in more than one office location must obtain a duplicate license for each such branch office, with such branch office licenses to be displayed in like manner. For telemedicine encounters, providers should display their license at the "originating site" or include licensing information along with patient onboarding materials. Providers may also consider displaying other materials commonly found in a traditional office setting such as an image of the provider (head shot), biographical information, and other certificates at an "originating site". Consumers should be aware that all current Kansas Licensed Optometrists can be validated through the "Verify a License" feature on the Kansas State Board of Examiners in Optometry website.

KANSAS PROPOSED STATUTES

40-2,210. Kansas telemedicine act; citation. (a) K.S.A. 2020 Supp. 40-2,210 through [40-2,216](#), and amendments thereto, shall be known and may be cited as the Kansas telemedicine act.

(b) This section shall take effect on and after January 1, 2019.

History: L. 2018, ch. 98, § 1; July 1.

40-2,211. Same; definitions. (a) For purposes of Kansas telemedicine act:

(1) "Distant site" means a site at which a healthcare provider is located while providing healthcare services by means of telemedicine.

(2) "Healthcare provider" means a physician, licensed physician assistant, licensed advanced practice registered nurse or person licensed, registered, certified or otherwise authorized to practice by the behavioral sciences regulatory board.

(3) "Originating site" means a site at which a patient is located at the time healthcare services are provided by means of telemedicine.

(4) "Physician" means a person licensed to practice medicine and surgery by the state board of healing arts.

(5) "Telemedicine," including "telehealth," means the delivery of healthcare services or consultations while the patient is at an originating site and the healthcare provider is at a distant site. Telemedicine shall be provided by means of real-time two-way interactive audio, visual, or audio-visual communications, including the application of secure video conferencing or store-and-forward technology to provide or support healthcare delivery, that facilitate the assessment, diagnosis, consultation, treatment, education and care management of a patient's healthcare. "Telemedicine" does not include communication between:

(A) Healthcare providers that consist solely of a telephone voice-only conversation, email or facsimile transmission; or

(B) a physician and a patient that consists solely of an email or facsimile transmission.

(b) This section shall take effect on and after January 1, 2019.

History: L. 2018, ch. 98, § 2; July 1.

40-2,212. Same; confidentiality. (a) The same requirements for patient privacy and confidentiality under the health insurance portability and accountability act of 1996 and 42 C.F.R. § 2.13, as applicable, that apply to healthcare services delivered via in-person contact shall also apply to healthcare services delivered via telemedicine. Nothing in this section shall supersede the provisions of any state law relating to the confidentiality, privacy, security or privileged status of protected health information.

(b) Telemedicine may be used to establish a valid provider-patient relationship.

(c) The same standards of practice and conduct that apply to healthcare services delivered via in-person contact shall also apply to healthcare services delivered via telemedicine.

(d) (1) A person authorized by law to provide and who provides telemedicine services to a patient shall provide the patient with guidance on appropriate follow-up care.

(2) (A) Except when otherwise prohibited by any other provision of law, when the patient consents and the patient has a primary care or other treating physician, the person providing telemedicine services shall send within three business days a report to such primary care or other treating physician of the treatment and services rendered to the patient in the telemedicine encounter.

(B) A person licensed, registered, certified or otherwise authorized to practice by the behavioral sciences regulatory board shall not be required to comply with the provisions of subparagraph (A).

(e) This section shall take effect on and after January 1, 2019.

History: L. 2018, ch. 98, § 3; July 1.

40-2,213. Same; application of; coverage parity established. (a) The provisions of this section shall apply to any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization that provides coverage for accident and health services and that is delivered, issued for delivery, amended or renewed on or after January 1, 2019. The provisions of this section shall also apply to the Kansas medical assistance program.

(b) No individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society, health maintenance organization or the Kansas medical assistance program shall exclude an otherwise covered healthcare service from coverage solely because such service is provided through telemedicine, rather than in-person contact, or based upon the lack of a commercial office for the practice of medicine, when such service is delivered by a healthcare provider.

(c) The insured's medical record shall serve to satisfy all documentation for the reimbursement of all telemedicine healthcare services, and no additional documentation outside of the medical record shall be required.

(d) Payment or reimbursement of covered healthcare services delivered through telemedicine may be established by an insurance company, nonprofit health service corporation, nonprofit medical and hospital service corporation or health maintenance organization in the same manner as payment or reimbursement for covered services that are delivered via in-person contact are [is] established.

(e) Nothing in this section shall be construed to:

(1) Prohibit an individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization that provides coverage for telemedicine or the Kansas medical assistance program from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered individual's health benefits plan;

(2) mandate coverage for a healthcare service delivered via telemedicine if such healthcare service is not already a covered healthcare service, when delivered by a healthcare provider subject to the terms and conditions of the covered individual's health benefits plan; or

(3) allow an individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization that provides coverage for telemedicine or the Kansas medical assistance program to require a covered individual to use telemedicine or in lieu of receiving an in-person healthcare service or consultation from an in-network provider.

(f) The provisions of K.S.A. [40-2248](#) and [40-2249a](#), and amendments thereto, shall not apply to this section.

(g) This section shall take effect on and after January 1, 2019.

History: L. 2018, ch. 98, § 4; July 1.

40-2,214. Prescribing of drugs via telemedicine. (a) The state board of healing arts, following consultation with the state board of pharmacy and the board of nursing, shall adopt rules and

regulations relating to the prescribing of drugs, including controlled substances, via telemedicine. Such rules and regulations shall be adopted by December 31, 2018.

(b) The state board of healing arts shall adopt such rules and regulations as may be necessary to effectuate the provisions of Kansas telemedicine act. Such rules and regulation [regulations], shall be adopted by December 31, 2018.

(c) The behavioral sciences regulatory board shall adopt such rules and regulations as may be necessary to effectuate the provisions of Kansas telemedicine act. Such rules and regulations shall be adopted by December 31, 2018.

History: L. 2018, ch. 98, § 5; July 1.

40-2,215. Abortions delivered via telemedicine not authorized. Nothing in the Kansas telemedicine act shall be construed to authorize the delivery of any abortion procedure via telemedicine.

History: L. 2018, ch. 98, § 6; July 1.

40-2,216. Same; nonseverability clause. If any provision of the Kansas telemedicine act, or the application thereof to any person or circumstance, is held invalid or unconstitutional by court order, then the remainder of the Kansas telemedicine act and the application of such provision to other persons or circumstances shall not be affected thereby and it shall be conclusively presumed that the legislature would have enacted the remainder of the Kansas telemedicine act without such invalid or unconstitutional provision, except that the provisions of K.S.A. 2020 Supp. [40-2,215](#), and amendments thereto, are expressly declared to be nonseverable.

History: L. 2018, ch. 98, § 7; July 1.

Louisiana Telemedicine

§509. Optometric Telemedicine

A. General Provisions

1. Telemedicine is a tool and not separate field of optometry, nor does telemedicine alter the scope of practice of Louisiana-licensed optometrists. There is no separate or different scope of practice or standard of care applicable to those who practice optometry via telemedicine within this state or to those optometrists located outside Louisiana who diagnose and treat via telemedicine patients located within this state. Accordingly, telemedicine in the field of optometry, if employed in the appropriate manner and circumstances, can provide significant benefits, among them increased patient access to health care.
2. The practice of optometry is deemed to occur both where the patient is located and where the optometrist providing professional services is located and is hereby declared to affect the public health, safety and welfare, and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of optometry, as defined in this chapter, rendered to a person located in Louisiana or by an optometrist located in Louisiana be limited to qualified persons licensed to practice optometry in the state of Louisiana and registered as a telemedicine provider with the board.

B. Definitions. For the purpose of this Chapter, the following terms shall have the respective meaning ascribed by this Section.

Distant Site Provider—the provider providing the optometric telemedicine service from a site other than the patient's current location. A distant site provider shall hold an active Louisiana license and must hold an active optometric license in good standing in Louisiana and be a registered Telemedicine provider with the board.

Established Treatment Site—a location where a patient shall present to seek optometric care where there is an optometrist present and sufficient technology and equipment to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. The term requires an optometrist-patient relationship. A patient's private home is not considered an established treatment site.

Face to Face Visit—an evaluation and/or treatment performed on a patient where both the provider and patient are at the same physical location or where the patient is at an established treatment site.

Human Eye and Its Adjacent Structures—the eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lachrymal system.

In-Person Evaluation—a patient evaluation and/or treatment conducted by a provider who is at the same physical location as the location of the patient.

Optometric Telemedicine—a health service interaction that is delivered by a licensed optometrist acting within the scope of his or her license between an optometrist in one physical location and a patient located in any different physical location, accomplished via audio-visual link, imaging, telephone, or other appropriate forms of electronic communication and/or technology used to allow or assist the optometrist in providing care to the patient and may require the use of advanced telecommunications technology, other than facsimile technology, including all of the following:

- a. compressed digital interactive video, audio, or data transmission;
- b. clinical data transmission using computer imaging by way of still image capture and store and forward;
- c. other technology that facilitates access to health care services or optometric specialty expertise.

Pharmaceutical Agents—any diagnostic and therapeutic drug or combination of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation of abnormal conditions or symptoms of the human eye and its adjacent structures.

Provider—optometrist holding an active Louisiana license in good standing and is a registered telemedicine provider with the board.

C. License, Registration. An optometric telemedicine provider must hold an active Louisiana optometric license in good standing. Any optometric telemedicine license shall be renewed on an annual basis provided the licensee is in good standing and shall have the same renewal due dates as the basic optometric license.

D. Prerequisite Conditions

1. A provider must hold an active Louisiana optometric license in good standing and be telemedicine registered.

2. Prior to utilizing optometric telemedicine at an established treatment site the provider shall ensure that:
 - a. he or she has access to those portions of the patient's medical record pertinent to the visit;
 - b. there exists appropriate support staff who:
 - i. are trained to conduct the visit by optometric telemedicine;
 - ii. are available to implement optometrist orders, identify where medical records generated by the visit are to be transmitted for future access, and provide or arrange back up, follow up, and emergency care to the patient; and
 - iii. provide or arrange periodic testing and maintenance of all optometric telemedicine equipment.

3. A trained and supervised health care professional who can adequately and accurately assist with the requirements of LAC 46:XLV.7509-7511 shall be in the examination room with the patient at all times that the patient is receiving optometric telemedicine services.

E. Services; Provider-Patient Relationship; Standards of Practice; Confidentiality

1. Optometric telemedicine services provided at an established treatment site may be used for all patient visits, including initial evaluations to establish a proper doctor-patient relationship between a provider and a patient.
 - a. a provider shall be reasonably available onsite at the established medical site to assist with the provision of care.
 - b. a provider may delegate tasks and activities at an established treatment site to an assistant who is properly trained and supervised or directed.
 2. A distant site provider who provides optometric telemedicine services to a patient that is not present at an established treatment site shall ensure that a proper provider-patient relationship is established, which at a minimum includes all of the following:
 - a. having had at least one face-to-face meeting at an established treatment site before engaging in optometric telemedicine services. A face-to-face meeting is not required for new conditions relating to an existing patient, unless the provider deems that such a meeting is necessary to provide adequate care;
 - b. if an in-person initial encounter is not possible, the optometrist must take the time and effort, and to use means and methods appropriate under the circumstances, to gain the necessary understanding of the patient and the patient's history, condition, and needs in order to render a diagnosis and treatment plan that is consistent with the standard of care.
 - c. establishing that the person requesting the treatment is in fact whom he or she claims to be.
 3. Evaluation, treatment, and consultation recommendations made in an optometric telemedicine setting, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional in-person clinical settings.
 4. Adequate security measures shall be implemented to ensure that all patient communications, recordings, and records remain confidential.
 - a. Written policies and procedures shall be maintained when using electronic mail for provider-patient communications. Policies shall be evaluated periodically to make sure they are up to date. Policies and procedures shall address all of the following:
 - i. privacy to assure confidentiality and integrity of patient-identifiable information;
 - ii. health care personnel, in addition to the provider, who will process messages;
 - iii. hours of operation and availability;
 - iv. types of transactions that shall be permitted electronically;
 - v. required patient information to be included in the communication, such as the patient name, identification number, and type of transaction;
 - vi. archival and retrieval;
 - vii. quality oversight mechanisms.
 - b. All relevant provider-patient email, and other patient-related electronic communications, shall be stored and filed in the patient record.
 - c. Patients shall be informed of alternative forms of communication for urgent matters.
- #### F. Protocols; Privacy Practices
1. A provider who uses optometric telemedicine in his or her practice shall adopt protocols to prevent fraud and abuse through the use of optometric telemedicine.
 2. Privacy Practices

- a. A provider that communicates with patients by electronic communications other than facsimile shall provide patients with written notification of the provider's privacy practices before evaluation or treatment.
 - b. The notice of privacy practices shall include language that is consistent with federal standards under 45 CFR Parts 160 and 164 relating to privacy of individually identifiable health information.
 - c. A provider shall make a good faith effort to obtain the patient's written acknowledgment of the notice.
3. Limitations of Optometric Telemedicine. A provider who uses optometric telemedicine services, before providing services, shall give each patient notice regarding optometric telemedicine services, including the risks and benefits of being treated via optometric telemedicine, and how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated notice, including an electronic acknowledgement by the patient, establishes a presumption of notice.
 4. Necessity of In-Person Evaluation. When, for whatever reason, the optometric telemedicine modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a healthcare provider exercising ordinary skill and care would deem reasonably necessary for the practice of optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site provider shall make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person evaluation reasonably able to meet the patient's needs.
- G. Maintenance of Records
1. Patient records shall be maintained for all optometric telemedicine services. The provider or distance site provider shall maintain the records created at any site where treatment or evaluation is provided.
 2. Distance site providers shall obtain an adequate and complete medical history for the patient before providing treatment and shall document the medical history in the patient record.
 3. Patient records shall include copies of all relevant patient-related electronic communications, including relevant provider-patient emails, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions. If possible, optometric telemedicine encounters that are recorded electronically shall also be included in the patient record.
- H. Exceptions
1. A licensed optometrist, who is not licensed in Louisiana, who utilizes optometric telemedicine across state lines in an emergency, as defined by the board, is not subject to the requirements of this article.
 2. A provider that is contacted in an emergency is not subject to the notice and security provisions of this rule, but is subject to those provisions should any nonemergency care continue with the patient.
- I. Limitation on Application of Chapter. This Section shall not be construed as authorizing any optician or other person selling eyeglasses or contact lenses on prescription as authorized above to use any instrumentation or determine any data by performing any type of examination or corneal evaluation necessary for the fitting of contact lenses or to use any drugs in relation thereto.
- J. Penalties. Any person who violates this chapter is subject to criminal prosecution for the unlicensed practice of optometry, or other action authorized in this state to prohibit or penalize continued practice without a license.

Please see the following Montana Statute,

https://leg.mt.gov/bills/mca/title_0370/chapter_0020/part_0030/section_0050/0370-0020-0030-0050.html:

Telehealth Services -- Rulemaking Authority 37-2-305. Telehealth services -- rulemaking authority. (1) A person licensed under this title to provide health care in the ordinary course of business or practice of a profession may provide services by means of telehealth when the use of telehealth:

- (a) is appropriate for the services being provided;
 - (b) meets the standard of care for delivery of services; and
 - (c) complies with any administrative rules for telehealth adopted by the board that licenses the health care provider.
- (2) A board may adopt rules establishing requirements for the use of telehealth by its licensees.
- (3) (a) For the purposes of this section, "telehealth" means the use of audio, video, or other telecommunications technology or media, including audio-only communication, that is:
- (i) used by a health care provider or health care facility to deliver health care services; and
 - (ii) delivered over a secure connection that complies with the requirements of state and federal privacy laws.
- (b) The term does not include delivery of health care services by means of facsimile machines or electronic messaging alone. The use of facsimile machines and electronic messaging is not precluded if used in conjunction with other audio, video, or telecommunications technology or media.
- (c) For physicians providing written certification of a debilitating medical condition pursuant to 16-12-509, the term does not include the use of audio-only communication unless the physician has previously established a physician-patient relationship through an in-person encounter.

History: En. Sec. 1, Ch. 497, L. 2021.

Utah Telehealth Law

R156-1-602. Telehealth - Definitions. In accordance with Section 26-60-103 and Subsection 26-60-104(1), in addition to the definitions in Title 26, Chapter 60, Telehealth Act, as used in Title 58 or this Title R156 the following rule definitions supplement the statutory definitions:

(1) "Originating site" means the same as defined in Subsection 26-60-102(3).

(2) "Patient" means the same as defined in Subsection 26-60-102(4).

(3) "Patient Encounter" means any encounter where medical treatment and evaluation and management services are provided. The entire course of an inpatient stay in a healthcare facility or treatment in an emergency department is a single patient encounter.

(4) "Provider" means the same as defined in Subsection 26-60-102(6)(b), an individual licensed under Title 58 to provide health care services, and:

(a) shall include an individual exempt from licensure as defined in Section 58-1-307 who provides health care services within the individual's scope of practice under Title 58, Occupations and Professions; and

(b) may include multiple providers obtaining informed consent and providing care as a team, consistent with the standards of practice applicable to a broader practice model found in traditional health care settings.

(5) "Telehealth services" means the same as defined in Subsection 26-60-102(8).

(6) "Telemedicine services" means the same as defined in Subsection 26-60-102(9). R156-1-603. Telehealth - Scope of Telehealth Practice.

(1)(a) In accordance with Subsection 26-60-103(1), a provider offering telehealth services shall, prior to each patient encounter:

(i) verify the patient's identity and originating site;

(ii) allow the patient an opportunity to select their provider rather than being assigned a provider at random, to the extent possible; and

(iii) ensure that the online site does not restrict the patient's choice to select a specific pharmacy for pharmacy services; and

(b) prior to each initial patient encounter, and at least annual intervals, obtain informed consent to the use of telehealth services by clear disclosure of:

(i) additional fees for telehealth services, if any, and how payment is to be made for those additional fees if they are charged separately;

(ii) to whom patient health information may be disclosed and for what purpose, including clear reference to any patient consent governing release of patient-identifiable information to a third-party;

(iii) the rights of the patient with respect to patient health information;

(iv) appropriate uses and limitations of the site, including emergency health situations;

(v) information affirming that the telehealth services meet industry security and privacy standards in Subsection 26-60-102(9)(b)(ii), and warning of potential risks to privacy regardless of the security measures; (vi) a warning that information may be lost due to technical failures, and clearly referencing any patient consent to hold the provider harmless for such loss; and (vii) information disclosing the website owner-operator, location, and contact information.

(2) In accordance with Subsection 26-60-103(1)(d), a provider offering telehealth services shall be available to the patient for subsequent care related to the initial telemedicine services as follows:

(a) providing the patient with a clear mechanism to:

(i) access, supplement, and amend patient-provided personal health information;

(ii) contact the provider for subsequent care;

(iii) obtain upon request an electronic or hard copy of the patient's medical record documenting the telemedicine services, including the informed consent provided; and

- (iv) request a transfer to another provider of the patient's medical record documenting the telemedicine services; and*
 - (b) if the provider recommends that the patient be seen in person, such as if diagnosis requires a physical examination, lab work, or imaging studies:
 - (i) arranging to see the patient in person, or directing the patient to the patient's regular provider, or if none, to an appropriate provider; and*
 - (ii) documenting the recommendation in the patient's medical record; and*
 - (c) upon patient request, electronically transferring to another provider the patient's medical record documenting the telemedicine services, within a reasonable time frame allowing for timely care of the patient by that provider.**
- (3) Nothing in this section shall prohibit electronic communications consistent with standards of practice applicable in traditional health care settings, including the following:*
- (a) between a provider and a patient with a preexisting provider-patient relationship;*
 - (b) between a provider and another provider concerning a patient with whom the other provider has a provider-patient relationship;*
 - (c) in on-call or cross coverage situations when the provider has access to patient records;*
 - (d) in broader practice models when multiple providers provide care as a team, including, for example:
 - (i) within an existing organization; or*
 - (ii) within an emergency department; or*
 - (e) in an emergency, which as used in this section means a situation when there is an occurrence posing an imminent threat of a life-threatening condition or severe bodily harm.**