
SENATE BILL 5759

State of Washington

66th Legislature

2019 Regular Session

By Senators Cleveland, Rivers, Conway, Bailey, Wilson, L., Short, and Keiser

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

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

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

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

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

1 use of developments in technology that are not properly supervised by
2 competent health care providers.

3 (3) The legislature recognizes that the use of technology that
4 permits a consumer to submit data to an entity for the purposes of
5 obtaining a prescription for corrective lenses without a physical
6 examination of the eye or visual system may fail to detect serious
7 eye health issues resulting in permanent vision loss.

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

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

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

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

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

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

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

37 (6) "Prescription" means the written or electronic directive from
38 a qualified vision care provider for corrective lenses and consists
39 of the refractive powers.

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

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

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

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

20 NEW SECTION. **Sec. 4.** USE OF REMOTE TECHNOLOGY FOR EYE
21 EXAMINATIONS. A qualified vision care provider may prepare a
22 prescription for lenses intended to correct an individual's
23 refractive error by remote technology if:

24 (1) The prescribing qualified vision care provider is held to the
25 same standards of care applicable to qualified vision care providers
26 practicing in traditional in-person clinical settings;

27 (2) A patient-practitioner relationship is clearly established by
28 the qualified vision care provider agreeing to undertake diagnosis
29 and treatment of the patient and the patient agreeing that the
30 practitioner will diagnose and treat, whether or not there was an in-
31 person encounter between the parties. The parameters of the patient-
32 practitioner relationship for the use of remote technology must
33 mirror those that would be expected for similar in-person encounters;

34 (3) Continuity of care is maintained. Continuity of care requires
35 but is not limited to:

36 (a) A qualified vision care provider addressing an adverse event
37 that occurs as a result of the prescription written by the qualified
38 vision care provider by:

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

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

7 (iii) Referring the patient to a qualified vision care provider
8 or licensed medical provider who is capable of addressing the
9 patient's condition;

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

15 (4) The prescribing qualified vision care provider performed the
16 same level of evaluation based on the patient's condition, health
17 history, and risk as they would typically have performed if an in-
18 person exam was done for the same condition, history, and risk; and

19 (5) When prescribing for contact lenses, a physical eye health
20 assessment was performed either remotely by a qualified vision care
21 provider, if technology allows, or by a qualified vision care
22 provider in person within a reasonable time period from when the
23 prescription is written. The components of the physical eye health
24 assessment, if done remotely, must be to the same standard and
25 evaluation the provider would typically do in an in-person setting
26 for the same condition. If the health assessment is performed by
27 someone other than the prescribing qualified vision care provider,
28 the prescribing qualified vision care provider must obtain written
29 affirmative verification of the results of that assessment from the
30 provider who performed the health assessment.

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

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

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

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

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

8 (4) The remote technology, when used for the collection and
9 transmission of diagnostic information and data, may only transmit
10 the diagnostic information and data to a qualified vision care
11 provider, their staff, or another licensed health care provider for
12 the purposes of collaboration in providing care to the patient. When
13 diagnostic information and data is collected and transmitted through
14 remote technology for purposes of generating a glasses or contact
15 lens prescription, that information must be read and interpreted by a
16 qualified vision care provider; and

17 (5) The owner, lessee, or operator of the remote technology must
18 maintain liability insurance in an amount reasonably sufficient to
19 cover claims which may be made by individuals diagnosed or treated
20 based on information and data, including photographs and scans,
21 generated by the automated equipment.

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

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

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

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

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

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

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

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

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