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**SENATE BILL 5759**

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**State of Washington 66th Legislature 2019 Regular Session**

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

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

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

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

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

(2) The legislature also recognizes that health care consumers, including eye health care consumers, can benefit from developments in technology that offer advantages such as increased convenience or increased speed in delivery of services. However, the legislature recognizes that health care consumers can be misled or harmed by the use of developments in technology that are not properly supervised by competent health care providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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