

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5759

66th Legislature
2020 Regular Session

Passed by the Senate March 10, 2020
Yeas 47 Nays 0

President of the Senate

Passed by the House March 5, 2020
Yeas 97 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5759** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5759

AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington 66th Legislature 2020 Regular Session

By Senate Health & Long Term Care (originally sponsored by Senators Cleveland, Rivers, Conway, Bailey, Wilson, L., Short, and Keiser)

READ FIRST TIME 02/06/20.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (11) "Standard of care" means those standards developed and
22 defined by the American academy of ophthalmology preferred practice
23 pattern "Comprehensive Adult Medical Eye Evaluation" (Appendix 1), as
24 the preferred practice pattern existed on the effective date of this
25 act.

26 (12) "Standard of care for contact lenses" means the frequency of
27 eye examinations as recommended for contact lens wearers in the
28 American academy of ophthalmology publication "Refractive Errors &
29 Refractive Surgery Preferred Practice Pattern" (Appendix 2), as the
30 preferred practice pattern existed on the effective date of this act.

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

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

1 (2) A patient-practitioner relationship is clearly established by
2 the qualified provider agreeing to provide a corrective lens
3 prescription, whether or not there was an in-person encounter between
4 the parties. The parameters of the patient-practitioner relationship
5 for the use of remote technology must mirror those that would be
6 expected for similar in-person encounters to provide corrective lens
7 prescriptions;

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

15 (4) Continuity of care is maintained. Continuity of care requires
16 but is not limited to:

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

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

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

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

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

33 (5) When prescribing for contact lenses, the examination of the
34 eyes is performed in accordance with the standard of care and
35 standard of care for contact lenses. The components of the eye
36 examination, if done remotely, must be to the same evaluation and
37 standard of care the qualified provider would typically do in an in-
38 person setting for the same condition. If the eye examination is
39 performed by someone other than the prescribing qualified provider,
40 the prescribing qualified provider must obtain written, faxed, or

1 electronically communicated affirmative verification of the results
2 of that eye examination from the provider who performed the
3 examination. The absence of receipt of affirmative verification
4 within any specified time period cannot be used as presumed
5 affirmative verification.

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

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

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

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

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

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

1 NEW SECTION. **Sec. 6.** ENFORCEMENT. (1) The relevant disciplinary
2 authority for the qualified provider shall review any written
3 complaint alleging a violation, or attempted violation, of this
4 chapter or rules adopted pursuant to this chapter, and conduct an
5 investigation.

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

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

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

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

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

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

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

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