

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 HOUSE BILL 2560

By: Wright

4
5
6 AS INTRODUCED

7 An Act relating to public health and safety; creating
8 the Patient Safety in Eye Care Act; defining terms;
9 requiring prescription for contact lenses and certain
10 spectacles; providing prescription requirements;
11 providing requirements to operate a kiosk or generate
12 prescriptions with a kiosk; prohibiting certain eye
13 assessments or prescriptions for persons under
14 certain age; providing requirements for over-the-
15 counter spectacles; specifying certain standards of
16 care are applicable when utilizing a kiosk;
17 authorizing complaints to be filed; authorizing the
18 State Department of Health to conduct investigation
19 and hearings; providing penalties; permitting civil
20 action; authorizing the promulgation of rules and
21 regulations; providing for codification; and
22 providing an effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 7401 of Title 63, unless there
is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Patient
Safety in Eye Care Act".

B. For purposes of the Patient Safety in Eye Care Act:

1 1. "Contact lens" means any lens placed directly on the surface
2 of the eye, regardless of whether or not it is intended to correct a
3 visual defect. Contact lens includes, but is not limited to, any
4 cosmetic, therapeutic or corrective lens;

5 2. "Department" means the State Department of Health;

6 3. "Dispense" means the act of furnishing spectacles or contact
7 lenses to a patient;

8 4. "Eye evaluation" means a physical assessment of the ocular
9 health and visual status of a patient that does not consist solely
10 of objective refractive data or information generated by an
11 automated testing device including an autorefractor, either through
12 an Internet-based device or in person in order to establish a
13 medical diagnosis or for the correction of vision disorders;

14 5. "Kiosk" means a computerized, electronic and self-contained
15 structure that is typically portable, may have touch screens and can
16 be classified as interactive. Advanced technology may include basic
17 diagnostic tests;

18 6. "Over-the-counter spectacles" means eyeglasses or lenses in
19 a frame for the correction of vision that may be sold by any person,
20 firm or corporation at retail without a prescription;

21 7. "Prescription" means a provider's handwritten or electronic
22 order based on an eye examination;

23 8. "Provider" means an optometrist licensed by the Board of
24 Optometry;

1 9. "Provider-patient relationship" means a relationship exists
2 when the provider has examined the patient on at least one occasion
3 in person within a three-year period;

4 10. "Established treatment site" means a location that allows a
5 patient to seek care where there is a provider present and
6 sufficient technology and equipment to allow for an adequate
7 physical evaluation as appropriate for the patient's presenting
8 complaint;

9 11. "In-person evaluation" means a patient evaluation conducted
10 by an optometrist who is at the same physical location as the
11 location of the patient; and

12 12. "Spectacles" means an optical instrument or device worn or
13 used by an individual that has one or more lenses designed to
14 correct or enhance vision addressing the visual needs of the
15 individual wearer, commonly known as glasses or eyeglasses,
16 including spectacles that may be adjusted by the wearer to achieve
17 different types or levels of visual correction or enhancement.
18 Spectacles does not include an optical instrument or device that is
19 not intended to correct or enhance vision or sold without
20 consideration of the visual status of the individual who will use
21 the optical instrument or device.

22 C. No person in this state shall dispense contact lenses or
23 spectacles, other than over-the-counter spectacles, to a patient
24

1 without a valid prescription. A valid prescription for spectacles
2 or contact lenses:

3 1. Shall contain an expiration date of not less than one (1)
4 year from the date of the eye examination or a statement of the
5 reasons why a shorter time is appropriate based on the medical needs
6 of the patient; and

7 2. Shall not be made based solely on information about the
8 human eye generated by a kiosk's technology and shall take into
9 consideration any medical findings and any refractive error
10 discovered during the eye examination.

11 An optometrist shall not refuse to release a prescription for
12 spectacles or contact lenses to a patient.

13 D. No person shall operate a kiosk to conduct an eye evaluation
14 or to generate a prescription for contact lenses or spectacles,
15 unless:

16 1. Diagnostic information and data, including photographs and
17 scans, gathered by the kiosk are read and interpreted by an
18 optometrist; and

19 2. The optometrist who reads and interprets the diagnostic
20 information and data, including photographs and scans, gathered by
21 the kiosk has an established provider-patient relationship with the
22 patient and has performed at least one in-person evaluation of the
23 patient that includes the required elements for an eye evaluation as
24 defined by the Board of Optometry;

1 3. Treatment occurs at an established treatment site;

2 4. The optometrist, prior to treatment, verifies the identity
3 of the patient requesting treatment via the kiosk;

4 5. The federal Food and Drug Administration has approved the
5 kiosk for the intended use;

6 6. The kiosk is designed and operated in a manner that provides
7 any applicable accommodation required by the federal Americans with
8 Disabilities Act;

9 7. The kiosk and accompanying technology used for the
10 collection and transmission of information and data, including
11 photographs and scans, gathers and transmits protected health
12 information in compliance with the federal Health Insurance
13 Portability and Accountability Act of 1996;

14 8. The procedures used by the kiosk or its affiliated entity or
15 entities have a recognized Current Procedural Terminology code
16 maintained by the American Medical Association;

17 9. The kiosk prominently displays the name and state license
18 number of the optometrist who will read and interpret the diagnostic
19 information and data during interaction with the patient, including
20 photographs and scans; and

21 10. The owner or lessee of the kiosk maintains liability
22 insurance in an amount adequate to cover claims made by individuals
23 diagnosed or treated based on information and data, including
24 photographs and scans, generated by the kiosk.

1 E. No person shall operate a kiosk to conduct an eye assessment
2 or to generate a prescription for anyone under the age of eighteen
3 (18) years old.

4 F. The lenses in over-the-counter spectacles shall be of
5 uniform focus power in each eye and shall not be less than +1.00
6 diopter and shall not exceed +3.25 diopters in power.

7 G. Evaluation, treatment and consultation recommendations made
8 by an optometrist utilizing a kiosk, including issuing a
9 prescription via electronic means, shall be held to the same
10 standards of care as those in traditional in-person clinical
11 settings.

12 H. 1. Any person who believes a violation of the Patient
13 Safety in Eye Care Act or the rules and regulations adopted
14 thereunder has occurred or been attempted may file a complaint with
15 the Department in writing. If, upon reviewing the complaint, the
16 Department determines there is a reasonable basis to believe a
17 violation or attempted violation has occurred, the Department shall
18 investigate. The Department on its own initiative may initiate an
19 investigation if it has a reasonable basis to believe a violation of
20 the act or the rules and regulations has occurred or been attempted.
21 Nothing in the Patient Safety in Eye Care Act shall be construed to
22 require the Department to wait until human harm has occurred to
23 initiate an investigation.
24

1 2. As part of the investigation under this subsection, the
2 Department may hold hearings, administer oaths and take testimony in
3 person or by deposition. Such hearings shall be conducted pursuant
4 to the Administrative Procedure Act. The findings of the
5 investigation and any hearings held pursuant to the investigation
6 shall be in writing.

7 3. If as a result of an investigation pursuant to this
8 subsection the Department finds that a person has violated or
9 attempted to violate the Patient Safety in Eye Care Act, it may
10 impose a civil penalty of not more than Ten Thousand Dollars
11 (\$10,000.00) for each violation. If the Department finds that a
12 violation or attempted violation occurred and did not result in
13 significant harm to human health, the Department may issue a warning
14 instead of imposing a civil penalty.

15 4. At the request of the Department, the Attorney General may
16 file a civil action seeking an injunction or other appropriate
17 relief to enforce the Patient Safety in Eye Care Act and the rules
18 and regulations adopted and promulgated thereunder.

19 I. In addition to any remedies under the Patient Safety in Eye
20 Care Act or the rules and regulations adopted thereunder, a person
21 adversely affected by a violation may bring action for injunctive
22 relief and, upon prevailing, in addition to such injunctive relief,
23 shall recover monetary damages of no more than One Thousand Dollars
24

1 (\$1,000.00) for each day found to be in violation and may recover
2 attorney fees and costs.

3 J. The Department, in consultation with the Board of Optometry
4 and the Board of Medicine and Surgery, may adopt and promulgate
5 rules and regulations to carry out the Patient Safety in Eye Care
6 Act.

7 SECTION 2. This act shall become effective November 1, 2016.

8
9 55-2-7830 AMM 01/20/16

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24