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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

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

Introduced By: Senators Ciccone, Lombardi, and Gallo

Date Introduced: February 13, 2019

Referred To: Senate Health & Human Services

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 95

4 THE CONSUMER PROTECTION IN EYE CARE ACT

5 **23-95-1. Short title.**

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

7 **23-95-2. Definitions.**

8 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 assessment" means an eye care service including, but not limited to, vision test
8 or screening that produces prescription or prescription renewals for contact lenses, spectacles, or
9 other ophthalmic goods.

10 (8) "Eye examination" means a physical assessment of the ocular health and visual or
11 refractive status of a patient that does not consist solely of objective refractive data or information
12 generated by an automated testing device, including an autorefractor, in order to establish a
13 medical or refractive diagnosis or for the correction of vision disorders.

14 (9) "Eye examination equipment" means computerized or manual medical devices used to
15 measure refractive status and/or ocular health of the patient, including, but not limited to,
16 Internet-based or local computer programs, automated examination equipment, manual
17 examination equipment, cameras, scanning lasers, automated refracting devices, non-contact or
18 contact tonometers.

19 (10) "In-person evaluation" means a patient evaluation conducted by a provider who is at
20 the same physical location as the location of the patient.

21 (11) "Prescription" means a provider's handwritten or electronic order for spectacles or
22 contact lenses based on an eye examination.

23 (12) "Provider" means a health care professional licensed under chapter 35.1 or 37 of title
24 5.

25 (13) "Spectacles" means an optical instrument or device worn or used by an individual
26 that has one or more lenses designed to correct or enhance vision addressing the visual needs of
27 the individual wearer, commonly known as "glasses" or "eyeglasses", including spectacles that
28 may be adjusted by the wearer to achieve different types or levels of visual correction or
29 enhancement. Spectacles does not include an optical instrument or device that is not intended to
30 correct or enhance vision or is sold without consideration of the visual status of the individual
31 who will use the optical instrument or device.

32 (14) "Supervision" means overseeing the utilization of a delegated automated computer
33 program or other eye examination equipment and shall be provided by a provider. The utilization
34 of an automated computer program or other eye examination equipment by a delegate may be

1 performed if the examination has been delegated and the delegating provider provides appropriate
2 on-site supervision and the delegate has met necessary training requirements.

3 **23-95-3. Dispensing; Prescriptions.**

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

6 (b) A prescription for spectacles or contact lenses:

7 (1) Shall contain an expiration date of not less than one year from the date of the eye
8 examination, unless the provider determines that it is medically appropriate for the prescription to
9 expire sooner. If the expiration date is less than one year from the date of the eye examination, the
10 provider shall inform the patient of the reasoning, and document the reasoning in the provider's
11 medical records for the patient.

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

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

16 (4) Shall include the name, non-urgent and emergency contact information, state license
17 number and physical location of provider issuing the prescription.

18 (c) No contact lenses may be sold or dispensed in this state except pursuant to a
19 prescription which:

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

22 (2) Explicitly states the number of refills; provided, however, that the number of refills
23 shall be sufficient for, and not excessive of, the provision of the requisite number of contact
24 lenses under normal use until the expiration date of the prescription;

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

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

29 (d) Anyone who fills a prescription bears the full responsibility of the accuracy of the
30 contact lenses or spectacles provided under the prescription.

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

1 (f) All sales of and prescriptions for contact lenses in this state shall conform to the
2 Federal Fairness to Contact Lens Consumers Act, Pub. L. 108-164, 15 U.S.C. § 7601, et seq. The
3 provisions of this chapter shall be construed in aid of and in conformity with said federal act.
4 Civil proceedings to enforce the provisions of this chapter may be brought by any board created
5 under the Rhode Island department of health or by any other interested person through injunction
6 or other appropriate remedy.

7 **23-95-4. Emergent technologies.**

8 No person shall operate or utilize eye assessments generated from an automated computer
9 program or other eye examination equipment to conduct an eye assessment or to generate a
10 prescription for contact lenses or spectacles, unless:

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

13 (2) The provider who reads and interprets the diagnostic information and data, including
14 photographs and scans, gathered by the automated computer program or delegate, has performed
15 at least one in-person evaluation of the patient that satisfies the standard of care for an eye
16 examination as provided for in the general laws and the rules and regulations promulgated by the
17 department thereunder, at an established treatment site;

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

20 (4) The automated computer program or other eye examination equipment complies with
21 all the applicable state and federal laws and regulations;

22 (5) The name, non-urgent and emergency contact information, state license number and
23 physical location of providers who read and interpret diagnostic information and data are filed
24 with the department and disclosed on a publicly accessible website maintained by the owner or
25 operator of the automated computer program;

26 (6) Prior to conducting an eye assessment through an automated computer program, any
27 entity providing such service shall present to the consumer a disclaimer stating that the automated
28 computer program is not a substitute for a comprehensive eye health examination, and that the
29 consumer should consult an optometrist or an ophthalmologist for a complete eye health and
30 vision examination. The consumer must acknowledge receipt of the disclaimer before proceeding
31 with the automated computer program; and

32 (7) The provider maintains medical malpractice insurance consistent with § 42-14.1-2
33 and the rules and regulations promulgated thereunder.

34 (b) No person shall operate an automated computer program or attempt to provide remote

1 vision correction services, or to conduct an eye assessment to generate a spectacle or contact lens
2 prescription for any individual under the age of eighteen (18) years old.

3 (c) A provider utilizing an automated computer program to generate a spectacle or
4 contact lens prescription shall conform to the standard of care expected of in-person care.

5 **23-95-5. Delegation.**

6 (a) Prior to delegating the performance of eye care services, including, but not limited to
7 refractive eye care services, the delegating provider shall inform the patient of:

8 (1) The name, training and qualifications of the individual who will perform the eye care
9 services;

10 (2) The inherent limitations of the service being delegated and any device being used to
11 perform the service; and

12 (3) A description of appropriate care and proper follow-up, including a plan to ensure that
13 the service meets standards of care.

14 (b) A delegate may only perform those services delegated by and under the supervision of
15 a provider who shall be immediately available to respond promptly to any question or problem
16 that may arise as a result of the service being provided.

17 **23-95-6. Violations; Penalty.**

18 (a) Any person who believes a violation of this chapter or the rules and regulation
19 adopted pursuant thereto has occurred or been attempted may file a complaint with the
20 department in writing. If, upon reviewing the complaint, the department determines there is a
21 reasonable basis to believe a violation or attempted violation has occurred, the department shall
22 investigate. The department may, on its own initiative or otherwise, initiate an investigation if it
23 has a reasonable basis to believe a violation of the act or the rules and regulations has occurred or
24 been attempted. Nothing in this chapter shall be deemed to require the department to wait until
25 human harm has occurred to initiate an investigation of a violation of this chapter. As part of the
26 investigation under this section, the department may hold hearings, administer oaths, and take
27 testimony in person or by deposition. Such hearings shall be conducted pursuant to chapter 35 of
28 title 42 ("the administrative procedures act"). The findings of the investigation and any hearings
29 held pursuant to the investigation shall be in writing.

30 (b) If, as a result of an investigation pursuant to this section the department finds that a
31 person has violated or attempted to violate this chapter, it may impose a civil penalty of not more
32 than one thousand dollars (\$1,000) for each violation. If the department finds that a violation or
33 attempted violation occurred and did not result in significant harm to human health, the
34 department may issue a warning instead of imposing a civil penalty.

1 (c) Nothing in this section shall restrict the department from enforcing disciplinary action
2 against a provider pursuant of chapter 35.1 and 37 of title 5, and any rules and regulations
3 promulgated thereunder.

4 **23-95-7. Rules and regulations.**

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

8 **23-95-8. Severability.**

9 If any provision of this chapter, any rule or regulation made under this chapter, or the
10 application of this chapter to any person or circumstance is held invalid by any court of
11 competent jurisdiction, the remainder of the chapter, rule, or regulation, and the application of the
12 provision to other persons or circumstances shall not be affected.

13 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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