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AN ACT

RELATING TO HEALTH CARE; LIMITING PRESCRIBING POWER FOR CONTACT LENSES AND SPECTACLES; PROVIDING FOR CRIMINAL PENALTIES AND CIVIL REMEDY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. CONTACT LENSES--SPECTACLES--LIMITATIONS ON PRESCRIPTIONS--CRIMINAL PENALTY--CIVIL REMEDY--EXCEPTIONS.--

A. Unless the person is licensed pursuant to the Optometry Act, the Medical Practice Act or the Osteopathic Medicine Act, a person shall not:

(1) perform an eye examination on an individual physically located in the state at the time of the eye examination; or

(2) write a prescription for contact lenses or spectacles.

B. A person shall not write a prescription for contact lenses or spectacles unless an eye examination is performed before writing the prescription. The prescription shall take into consideration any medical findings and any refractive error determined during the eye examination.

C. A person who violates a provision of this section is guilty of:

(1) for a first or second conviction, a misdemeanor and shall be sentenced pursuant to Section

1 31-19-1 NMSA 1978; or

2 (2) for a third or subsequent conviction, a
3 fourth degree felony and shall be sentenced pursuant to
4 Section 31-18-15 NMSA 1978.

5 D. The board of optometry, the New Mexico medical
6 board, the board of osteopathic medicine or any other person
7 potentially aggrieved by a violation of this section may
8 bring a suit in a court of competent jurisdiction to enjoin a
9 violation of a provision of this section.

10 E. Nothing in this section shall be construed to
11 prohibit:

12 (1) a health care provider from using
13 telehealth in accordance with the provisions of the New
14 Mexico Telehealth Act for ocular diseases;

15 (2) a vision screening performed in a school
16 by a nurse, physician assistant, osteopathic physician
17 assistant or another provider otherwise authorized pursuant
18 to state law;

19 (3) an optician from completing a
20 prescription for spectacles or contact lenses in accordance
21 with the provisions of the Optometry Act;

22 (4) a technician from providing an eye care
23 screening program at a health fair, not-for-profit event,
24 not-for-profit public vision van service, public health event
25 or other similar event;

1 (5) a physician assistant licensed pursuant
2 to the Medical Practice Act, or an osteopathic physician
3 assistant licensed pursuant to the Osteopathic Medicine Act,
4 working under the supervision of an ophthalmologist licensed
5 pursuant to the Medical Practice Act or the Osteopathic
6 Medicine Act, from performing an eye examination on an
7 individual physically located in the state at the time of the
8 eye examination; or

9 (6) a vision screening performed by another
10 provider otherwise authorized pursuant to state law.

11 F. As used in this section:

12 (1) "autorefractor" means any electronic
13 computer or automated testing device used remotely, in person
14 or through any other communication interface to provide an
15 objective or subjective measurement of an individual's
16 refractive error;

17 (2) "contact lens" means any lens placed
18 directly on the surface of the eye, regardless of whether or
19 not it is intended to correct a visual defect, including any
20 cosmetic, therapeutic or corrective lens;

21 (3) "eye examination" means an in-person
22 assessment at a physician's office or an optometrist's
23 office, in a hospital setting or in a hospital health system
24 setting that:

25 (a) is performed in accordance with the HJC/HB 364
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1 applicable standard of care;

2 (b) consists of an assessment of the
3 ocular health and visual status of an individual;

4 (c) does not consist of solely
5 objective or subjective refractive data or information
6 generated by an automated testing device, including an
7 autorefractor or kiosk, in order to establish a medical
8 diagnosis or for the determination of refractive error; and

9 (d) is performed on an individual who
10 is physically located in this state at the time of the
11 assessment;

12 (4) "kiosk" means any automatic or
13 electronic equipment, application or computer software
14 designed to be used on a telephone, teleconference device,
15 computer, virtual reality device or internet-based device
16 that can be used remotely, in person or through any other
17 communication interface to conduct an eye examination or
18 determine refractive error;

19 (5) "prescription" means an optometrist's or
20 ophthalmologist's handwritten or electronic order for
21 spectacle lenses or contact lenses based on an eye
22 examination that corrects refractive error; and

23 (6) "spectacles" means an optical instrument
24 or device worn or used by an individual that has one or more
25 lenses designed to correct or enhance vision addressing the

1 visual needs of the individual wearer, commonly known as
2 "glasses" or "eyeglasses", including spectacles that may be
3 adjusted by the wearer to achieve different types of visual
4 correction or enhancement. "Spectacles" does not mean:

5 (a) an optical instrument or device
6 that is not intended to correct or enhance vision or that
7 does not require consideration of the visual status of the
8 individual who will use the optical instrument or device; or

9 (b) eyewear that is sold without a
10 prescription.

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