

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 364

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

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. [NEW MATERIAL] 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

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underscored material = new
~~[bracketed material] = delete~~

1 spectacles.

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

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

9 (1) for a first or second conviction, a
10 misdemeanor and shall be sentenced pursuant to Section 31-19-1
11 NMSA 1978; or

12 (2) for a third or subsequent conviction, a
13 fourth degree felony and shall be sentenced pursuant to Section
14 31-18-15 NMSA 1978.

15 D. The board of optometry, the New Mexico medical
16 board, the board of osteopathic medicine or any other person
17 potentially aggrieved by a violation of this section may bring
18 a suit in a court of competent jurisdiction to enjoin a
19 violation of a provision of this section.

20 E. Nothing in this section shall be construed to
21 prohibit:

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

25 (2) a vision screening performed in a school

1 by a nurse, physician assistant, osteopathic physician
2 assistant or another provider otherwise authorized pursuant to
3 state law;

4 (3) an optician from completing a prescription
5 for spectacles or contact lenses in accordance with the
6 provisions of the Optometry Act;

7 (4) a technician from providing an eye care
8 screening program at a health fair, not-for-profit event,
9 not-for-profit public vision van service, public health event
10 or other similar event;

11 (5) a physician assistant licensed pursuant to
12 the Medical Practice Act, or an osteopathic physician assistant
13 licensed pursuant to the Osteopathic Medicine Act, working
14 under the supervision of an ophthalmologist licensed pursuant
15 to the Medical Practice Act or the Osteopathic Medicine Act,
16 from performing an eye examination on an individual physically
17 located in the state at the time of the eye examination; or

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

20 F. As used in this section:

21 (1) "autorefractor" means any electronic
22 computer or automated testing device used remotely, in person
23 or through any other communication interface to provide an
24 objective or subjective measurement of an individual's
25 refractive error;

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

5 (3) "eye examination" means an in-person
6 assessment at a physician's office or an optometrist's office,
7 in a hospital setting or in a hospital health system setting
8 that:

9 (a) is performed in accordance with the
10 applicable standard of care;

11 (b) consists of an assessment of the
12 ocular health and visual status of an individual;

13 (c) does not consist of solely objective
14 or subjective refractive data or information generated by an
15 automated testing device, including an autorefractor or kiosk,
16 in order to establish a medical diagnosis or for the
17 determination of refractive error; and

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

20 (4) "kiosk" means any automatic or electronic
21 equipment, application or computer software designed to be used
22 on a telephone, teleconference device, computer, virtual
23 reality device or internet-based device that can be used
24 remotely, in person or through any other communication
25 interface to conduct an eye examination or determine refractive

1 error;

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

6 (6) "spectacles" means an optical instrument
7 or device worn or used by an individual that has one or more
8 lenses designed to correct or enhance vision addressing the
9 visual needs of the individual wearer, commonly known as
10 "glasses" or "eyeglasses", including spectacles that may be
11 adjusted by the wearer to achieve different types of visual
12 correction or enhancement. "Spectacles" does not mean:

13 (a) an optical instrument or device that
14 is not intended to correct or enhance vision or that does not
15 require consideration of the visual status of the individual
16 who will use the optical instrument or device; or

17 (b) eyewear that is sold without a
18 prescription.

