

LEGISLATIVE BILL 235

Approved by the Governor April 19, 2016

Introduced by Howard, 9; Kolterman, 24.

A BILL FOR AN ACT relating to public health and welfare; to adopt the Consumer Protection in Eye Care Act.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Consumer Protection in Eye Care Act.

Sec. 2. For purposes of the Consumer Protection in Eye Care Act:

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

(2) Department means the Department of Health and Human Services;

(3) Dispense means the act of furnishing spectacles or contact lenses to a patient;

(4) Eye examination means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis or for the establishment of a refractive error;

(5) Kiosk means automated equipment or application designed to be used on a telephone, a computer, or an Internet-based device that can be used either in person or remotely to conduct an eye examination;

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

(7) Prescription means a provider's handwritten or electronic order based on an eye examination that corrects refractive error;

(8) Provider means a physician, an osteopathic physician, or a physician assistant licensed under the Medicine and Surgery Practice Act or an optometrist licensed under the Optometry Practice Act;

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

Sec. 3. No person in this state may dispense contact lenses or spectacles, other than over-the-counter spectacles, to a patient without a valid prescription from a provider. A valid prescription for spectacles or contact lenses (1) shall contain an expiration date of not less than two years for spectacles or one year for contact lenses from the date of the eye examination by the provider or a statement by the provider of the reasons why a shorter time is appropriate based on the medical needs of the patient and (2) may not be made based solely on information about the human eye generated by a kiosk. The prescription shall take into consideration any medical findings and any refractive error discovered during the eye examination. A provider may not refuse to release a prescription for spectacles or contact lenses to a patient.

Sec. 4. No person shall operate a kiosk in Nebraska unless:

(1) The kiosk is registered or approved by the federal Food and Drug Administration for the intended use;

(2) The kiosk is designed and operated in a manner that provides any accommodation required by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., as such act existed on January 1, 2015;

(3) The kiosk and accompanying technology used for the collection and transmission of information and data, including photographs and scans, gathers and transmits protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2015;

(4) The procedure for which the kiosk is used has a recognized Current Procedural Terminology code maintained by the American Medical Association;

(5)(a) If the kiosk has a physical location, the name and state license number of the provider who will read and interpret the diagnostic information and data shall be prominently displayed on the kiosk; or

(b) If the kiosk is an application, the name and state license number of the provider who will read and interpret the diagnostic information and data shall be displayed on the patient's prescription;

(6) Diagnostic information and data, including photographs and scans, gathered by the kiosk is read and interpreted by a provider if clinically appropriate; and

(7) The owner or lessee of the kiosk maintains liability insurance in an amount adequate to cover claims made by individuals diagnosed or treated based

on information and data, including photographs and scans, generated by the kiosk.

Sec. 5. The lenses in over-the-counter spectacles shall be of uniform focus power in each eye and shall not exceed +3.25 diopters.

Sec. 6. (1) The Uniform Credentialing Act shall apply to any person alleged or believed to have violated the Consumer Protection in Eye Care Act. The department shall investigate potential violations of the Consumer Protection in Eye Care Act according to the procedures of the Uniform Credentialing Act and shall take appropriate action as provided by the Uniform Credentialing Act.

(2) In addition to the remedies, penalties, or relief available under the Uniform Credentialing Act, the department may impose a civil penalty against a person who does not hold a credential under the Uniform Credentialing Act who has violated or attempted to violate the Consumer Protection in Eye Care Act. The civil penalty shall not exceed ten thousand dollars for each violation, up to the maximum provided in section 38-198. If the department finds that a violation or attempted violation occurred and did not result in significant harm to human health, the department may issue a warning instead of imposing a civil penalty. Any civil penalty imposed pursuant to this section may be collected as provided in section 38-198.

(3) At the request of the department, the Attorney General may file a civil action seeking an injunction or other appropriate relief to enforce the Consumer Protection in Eye Care Act and the rules and regulations adopted and promulgated under the Consumer Protection in Eye Care Act.

Sec. 7. The department, in consultation with the Board of Optometry and the Board of Medicine and Surgery, may adopt and promulgate rules and regulations to carry out the Consumer Protection in Eye Care Act.