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HOUSE BILL 364

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

INTRODUCED BY

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and Brian Egolf

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.--

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;
- (2) write a prescription for contact lenses or
spectacles; or

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1 (3) dispense or adapt contact lenses or
2 spectacles without first receiving authorization to do so by a
3 written prescription.

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

9 C. A prescriber may refuse to provide a patient a
10 copy of the patient's prescription for contact lenses or
11 spectacles until the patient has paid for all services rendered
12 in connection with the prescription.

13 D. Any person that fills a prescription for contact
14 lenses or spectacles bears the full responsibility of the
15 accuracy of the contact lenses or spectacles provided under the
16 prescription. At no time, without the direction of a
17 prescriber, shall any changes or substitutions be made in the
18 brand or type of lenses the prescription calls for with the
19 exceptions of tint change if requested by the patient.

20 E. A person who violates a provision of this
21 section is guilty of:

22 (1) for a first or second violation, a
23 misdemeanor and shall be sentenced pursuant to Section 31-19-1
24 NMSA 1978; or

25 (2) for a third or subsequent violation, a

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1 fourth degree felony and, notwithstanding the provisions of
2 Section 31-18-15 NMSA 1978, shall be sentenced to a term of
3 imprisonment not to exceed five years and a fine not to exceed
4 ten thousand dollars (\$10,000), or both.

5 F. 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 bring
8 a suit in a court of competent jurisdiction to enjoin a
9 violation of a provision of this section.

10 G. As used in this section:

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

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

20 (3) "dispense" means to furnish spectacles or
21 contact lenses to an individual;

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

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1 (a) is performed in accordance with the
2 applicable standard of care;

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

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

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

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

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

23 (7) "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

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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 that
6 is not intended to correct or enhance vision or that is sold
7 without consideration of the visual status of the individual
8 who will use the optical instrument or device; or

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