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FISCAL IMPACT REPORT

ORIGINAL DATE 3/4/17

SPONSOR HJC LAST UPDATED _____ HB CS/364/HJCS

SHORT TITLE Contact Lenses Prescriptions SB _____

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

House Judiciary Committee Substitute for HB364 would:

- Limit the performance of eye examinations and prescription writing to practitioners licensed pursuant to the Optometry Act, the Medical Practice Act or the Osteopathic Medicine Act;
- Require that an in-person eye examination must precede a prescription for contacts or spectacles and that the prescription must take into consideration any medical findings and any refractive error determined during the eye examination;

The bill provides that violations of these rules result in:

- A misdemeanor for a first or second conviction sentenced pursuant to Section 31-19-1 NMSA 1978;
- A felony for a third and subsequent convictions sentenced pursuant to Section 31-18-15 NMSA 1978.

Additionally, the board of optometry, the New Mexico medical board, the board of osteopathic medicine or any other person potentially aggrieved by a violation of this section may bring a suit in a court of competent jurisdiction to enjoin a violation of a provision of Section 1 of the bill.

Finally, Subsection E states that nothing in this section shall be construed to prohibit:

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

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

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

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

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

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

The bill provides definitions for “autorefractor,” prescription, and for “spectacles,” what each term means and does not mean. For example, “spectacles” does not include eyewear sold without a prescription.

FISCAL IMPLICATIONS

The OAG noted (for a similar bill) that the bill’s requirements could result in the OAG bringing enforcement actions under the Act; however, the bill does not provide an appropriation to cover the potential costs of such enforcement actions (see “Performance Implications” section below).

SIGNIFICANT ISSUES

RLD points out (for a similar bill) that the bill addresses a growing global industry that provides prescriptions for eyeglasses and contacts for consumers by using an "app" or some other on-line method of "examination" during which the healthcare provider may be in another state, or perhaps another country. While this industry can increase access to care for some, there are legitimate concerns that online prescribing does not detect or screen for conditions such as diabetes, glaucoma, cataracts, macular degeneration, and tumors.

This bill would prohibit the prescribing or renewal of spectacles or contact lenses without an in-person physical examination by a provider licensed in the state of New Mexico. It would prohibit the use of automated technologies such as smartphone apps, automated kiosks, computer terminals, virtual reality devices, or other remote imaging/measuring devices to generate or renew a prescription for eyeglasses, contact lenses, or other prescriptive optical devices without an in-person physical examination by a licensed provider.

PERFORMANCE IMPLICATIONS

Both the OAG and RLD pointed out (for a similar bill) that it is unclear which agencies would civilly and criminally enforce the bill. If the OAG was required to enforce the provisions, including as counsel for the Board of Optometry, Medical Board, and Board of Osteopathic Medicine, the additional responsibilities could divert resources and affect the OAG’s performance-based budget targets because the bill provides no additional appropriation to the OAG.

TECHNICAL ISSUES

RLD noted (for a similar bill) that the bill does not mention the term of a prescription. Currently, the Optometry Act provides that contact lens and spectacle prescriptions are valid for two years, unless otherwise indicated by the optometrist. This is a significant issue and is regulated by federal law.

CB/sb/al