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BILL ANALYSIS



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Senate Bill 365 (as introduced 5-30-23)

Sponsor: Senator Kevin Hertel

Committee: Health Policy

Date Completed: 11-7-23

CONTENT

The bill would amend Part 55A (Eye Care Consumer Protection) of the Public Health Code to allow an eye examination and evaluation to be conducted through telemedicine under specified circumstances.

Specifically, the bill would allow an examination and evaluation to occur through telemedicine if all the following requirements were met:

- The standard of care applicable to the licensee's profession for the examination and evaluation was maintained at the same level as if the examination and evaluation were performed in person.
- The patient had an in-person examination and evaluation within the immediately preceding two years.
- The licensee was not writing an initial contact lens prescription for the patient or changing the refractive power of the patient's previous contact lens prescription.

Under the bill, "telemedicine" would mean the use of electronic media to link a patient with a licensee in a different location. To be considered telemedicine, the licensee would have to be able to conduct an examination and evaluation of the patient via a means compliant with the Health Insurance Portability and Accountability Act (HIPAA).¹ The means would have to have secure and interactive audio or video, or both, a telecommunications system, or would have to use store and forward online technology.

A licensee or a person that sold contact lenses would have to comply with the Fairness to Contact Lens Consumers Act and regulations promulgated under the Act.² A licensee or person that sold spectacles would have to comply with the eyeglass rule, which would mean that term as prescribed in 16 CFR part 45.³

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is similar to House Bill 4356 from the 2021-2022 Legislative Session, which passed the House and was reported by a Senate Committee on Health Policy and Human Services but received no further action.

¹ Generally, HIPAA created national standards to protect sensitive patient health information from being disclosed without patients' consent or knowledge.

² Generally, the Fairness to Contact Lens Consumers Act provides individuals the right to shop around when buying contact lenses and prescribes duties of contact lens prescribers and sellers. It also requires the Federal Trade Commission to develop and enforce implementing rules.

³ Generally, the Eyeglass Rule requires that optometrists and ophthalmologists provide patients a copy of their prescription after the completion of an eye examination without extra cost.

FISCAL IMPACT

The bill would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs, which has the authority to investigate any potential violation of the bill's terms. The Department could assess costs related to an investigation against the licensee in question following an administrative hearing. In addition to these recovered costs, it is likely that existing appropriations would be adequate to address investigatory needs.

The Department also could elect to file a civil action against a licensee. The court would be permitted to impose a civil fine of not less than \$5,000 per violation or attempted violation. In addition, an individual who violated the terms of the bill or who violated a cease and desist order in relation to this section of the Public Health Code would be guilty of a misdemeanor. This action would be punishable by up to one year's imprisonment or a fine of between \$5,000 and \$25,000. The average annual cost of imprisonment is approximately \$45,700.

If the individual were convicted, the agency prosecuting the case would be entitled to costs and attorney fees from the defendant. If a conviction were not obtained, it is likely that these actions would not be frequent enough to result in any significant new costs to the agency or court.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.