

House Bill 2091

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Board of Optometry)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows licensed optometrists to use telehealth to provide telemedicine to patients. Defines "telehealth" and "telemedicine."

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to optometry; creating new provisions; amending ORS 683.010, 683.180, 683.200 and 683.240;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 683.010 to**
6 **683.310.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "Licensed optometrist" means an optometrist licensed under ORS 683.010 to 683.340.

9 (b) "Optometric clinical health care services" includes, but is not limited to, assessment,
10 consultation, diagnosis, patient education and care management by a licensed optometrist.

11 (c) "Store and forward" means the transmission of patient information between a li-
12 censed optometrist and a patient, whether or not in real time.

13 (d)(A) "Telehealth" means the use of electronic and telecommunications technologies,
14 including remote patient monitoring devices and store and forward technology, to support
15 delivery of optometric clinical health care services.

16 (B) "Telehealth" does not include electronic mail communication, facsimile transmission
17 or audio-only telephone communication between a licensed optometrist and a patient, or the
18 use of an automated computer program or managed website to diagnose or treat ocular or
19 refractive conditions.

20 (e) "Telemedicine" means the delivery of optometric clinical health care services to a
21 patient by a licensed optometrist, through telehealth.

22 (2) A licensed optometrist authorized by the board to practice optometry may practice
23 telemedicine if:

24 (a) The licensed optometrist provides notice to the patient that the licensed optometrist
25 intends to practice telemedicine prior to engaging in the practice of telemedicine with the
26 patient;

27 (b) The patient is physically located in this state during the practice of telemedicine; and

28 (c) The licensed optometrist reviews the patient's clinical history or performs an in-
29 person exam of the patient and appropriately documents the patient's relevant clinical his-
30 tory and symptoms, prior to engaging in the practice of telemedicine with the patient.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **(3) A licensed optometrist may not prescribe contact or ophthalmic lenses based solely**
 2 **on automated testing of a patient.**

3 **(4) The Oregon Board of Optometry may adopt rules related to the use of telehealth and**
 4 **the practice of telemedicine.**

5 **SECTION 3.** ORS 683.010 is amended to read:

6 683.010. As used in ORS 683.010 to 683.310, unless the context requires otherwise:

7 (1) [*“Board” means the Oregon Board of Optometry.*]

8 (2) “Optometric nontopical formulary” means the list of nontopical pharmaceutical agents for
 9 the treatment of diseases of the human eye and the protocols for their usage adopted by the Council
 10 on Optometric Nontopical Formulary under ORS 683.240 (2).

11 (3) (2) “Practice of optometry” means the use of any means other than invasive or laser sur-
 12 gery, or the prescription of Schedule I and II drugs or pharmaceutical agents that are not on the
 13 optometric nontopical formulary, for diagnosis and treatment in the human eye, for the measurement
 14 or assistance of the powers or range of human vision or the determination of the accommodative
 15 and refractive states of the human eye or the scope of its functions in general or the adaptation of
 16 lenses or frames for the aid thereof, subject to the limitations of ORS 683.040. “Practice of
 17 optometry” includes the prescription of Schedule II hydrocodone-combination drugs for the purposes
 18 listed in this subsection **and the use of telehealth as defined in section 2 of this 2019 Act.**

19 (4) (3) “Trial frames” or “test lenses” means any frame or lens **that is** used in testing the eye
 20 [*which*] **and that** is not sold and not for sale.

21 **SECTION 4.** ORS 683.180 is amended to read:

22 683.180. A person may not:

23 (1) Sell or barter, or offer to sell or barter, any license issued by the [*board*] **Oregon Board of**
 24 **Optometry.**

25 (2) Purchase or procure by barter any such license with intent to use it as evidence of the
 26 holder’s qualification to practice optometry.

27 (3) Alter the license with fraudulent intent in any material regard.

28 (4) Use or attempt to use any such license which has been purchased, fraudulently issued,
 29 counterfeited or materially altered as a valid license.

30 (5) Practice optometry under a false or assumed name.

31 (6) Willfully make any false statement in a material regard in an application for an examination
 32 before the board or for a license.

33 (7) Practice optometry in this state without having at the time of so doing a valid unrevoked
 34 license as an optometrist.

35 (8) Advertise or represent, by displaying a sign or otherwise, to be an optometrist without hav-
 36 ing at the time of so doing a valid unrevoked license from the board.

37 (9) Dispense or sell an ophthalmic contact lens without having obtained a valid, unexpired pre-
 38 scription from the person to whom the contact lens is dispensed or sold. As used in this subsection,
 39 “ophthalmic contact lens” means a contact lens with or without refractive power, including a plano
 40 lens or a cosmetic lens.

41 **SECTION 5.** ORS 683.200 is amended to read:

42 683.200. (1) Optometrists utilizing pharmaceutical agents shall be held to the same standards of
 43 liability as persons licensed as physicians to practice medicine and surgery by the Oregon Medical
 44 Board under ORS chapter 677.

45 (2) Notwithstanding ORS 683.010 [(3)] (2), an optometrist may remove superficial foreign bodies

1 from the eye and its appendages.

2 (3)(a) An optometrist treating a patient with antiglaucoma medication shall consult with an
3 ophthalmologist if:

- 4 (A) The glaucoma progresses despite the use of two glaucoma medications;
- 5 (B) More than two medications are required to control the glaucoma; or
- 6 (C) A secondary glaucoma develops.

7 (b) Glaucoma shall be considered to be progressing if, in comparison to prior examinations, there
8 is a reproducible worsening of the patient's visual field as measured by standard threshold testing
9 or if there is a worsening of the patient's optic nerve as measured by direct observation or standard
10 imaging technology or by rising eye pressure despite the use of medication. Glaucoma shall be
11 considered to be under control if target eye pressure, individualized for each patient, is maintained
12 with no abnormal glaucomatous progression.

13 (c) For purposes of this subsection, a combination medication that contains two pharmacologic
14 agents shall be considered one medication.

15 **SECTION 6.** ORS 683.240 is amended to read:

16 683.240. (1)(a) The Council on Optometric Nontopical Formulary is established and shall consist
17 of seven members appointed as follows:

18 (A) One member of the Oregon Board of Optometry appointed by the Oregon Board of
19 Optometry;

20 (B) One member who is a pharmacist licensed by the State Board of Pharmacy or a person with
21 an advanced degree in pharmacology or pharmacognosy appointed by the State Board of Pharmacy;

22 (C) One member of the Oregon Medical Board appointed by the Oregon Medical Board;

23 (D) One member of the faculty of the Oregon Health and Science University School of Medicine
24 appointed by the Oregon Medical Board;

25 (E) One member who is a physician licensed under ORS chapter 677 appointed by the Oregon
26 Medical Board after consideration of three qualified nominees provided by the Oregon Academy of
27 Ophthalmology;

28 (F) One member who is a practicing optometrist appointed by the Oregon Board of Optometry
29 after consideration of three qualified nominees from the Oregon Optometric Physicians Association;
30 and

31 (G) One member with a degree in optometry or ophthalmology who is a member of the faculty
32 at a college of optometry appointed by the Oregon Board of Optometry.

33 (b)(A) The chair of the council shall be elected by a majority of the members.

34 (B) The term of office of each member of the council shall be two years. A member shall serve
35 until a successor is appointed. If a vacancy occurs, it shall be filled for the unexpired term by a
36 person with the same qualifications as the vacating member.

37 (C) Any member of the council who fails to attend two consecutive meetings of the council,
38 whether regular or special, shall forfeit office unless the council member is prevented from attending
39 by serious illness of the member or of a member of the council member's family.

40 (D) Meetings of the council shall be called at the request of the chair or at the request of two
41 or more members of the council.

42 (E) Members of the council shall serve without compensation.

43 (2) After public hearings, the council shall determine the substances to be included in the
44 optometric nontopical formulary that may be used by an optometrist under ORS 683.010 [(3)] (2).
45 The council shall review the formulary periodically. Immediately upon adoption or revision of the

1 formulary, the council shall transmit the approved formulary to the Oregon Board of Optometry.
2 The board shall adopt the formulary or a portion of the formulary. If the council approves protocols
3 for the use of a nontopical pharmaceutical agent and the board adopts the portion of the formulary
4 listing that agent, the board must also adopt those protocols. The board may not expand or add to
5 the formulary submitted for adoption in any manner.

6 **SECTION 7. (1) Section 2 of this 2019 Act and the amendments to ORS 683.010, 683.180,**
7 **683.200 and 683.240 by sections 3 to 6 of this 2019 Act become operative on January 1, 2020.**

8 **(2) The Oregon Board of Optometry may take any action before the operative date spec-**
9 **ified in subsection (1) of this section that is necessary to enable the board to exercise, on**
10 **and after the operative date specified in subsection (1) of this section, all of the duties,**
11 **functions and powers conferred on the board by section 2 of this 2019 Act and the amend-**
12 **ments to ORS 683.010, 683.180, 683.200 and 683.240 by sections 3 to 6 of this 2019 Act.**

13 **SECTION 8. This 2019 Act being necessary for the immediate preservation of the public**
14 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
15 **on its passage.**

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