

2020 -- H 7767

=====
LC004222
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

—————
A N A C T

RELATING TO HEALTH AND SAFETY -- CONSUMER PROTECTION IN EYE CARE ACT

Introduced By: Representatives Jacquard, Lima, and McNamara

Date Introduced: February 26, 2020

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 95

4 THE CONSUMER PROTECTION EYE CARE ACT

5 **23-95-1. Short Title.**

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

7 **23-95-2. Definitions.**

8 (a) As used in this chapter:

9 (1) "Assessment mechanism" means automated or virtual equipment, application, or
10 technology designed to be used on a telephone, a computer, or an Internet-accessible device that
11 may be used either in person or remotely to conduct an eye assessment, and includes artificial
12 intelligence devices and any equipment, electronic or nonelectronic, that is used to perform an
13 eye assessment.

14 (2) "Contact lens" means any lens placed directly on the surface of the eye, regardless of
15 whether or not it is intended to correct a visual defect, including any cosmetic, therapeutic, or
16 corrective lens.

17 (3) "Eye assessment" means an assessment of the ocular health and visual status of a
18 patient that may include, but is not limited to, objective refractive data or information generated
19 by an automated testing device, including an autorefractor, in order to establish a medical

1 diagnosis for the correction of vision disorders.

2 (4) "Person" means an individual, corporation, trust, partnership, incorporated or
3 unincorporated association, and any other legal entity.

4 (5) "Prescription" means a handwritten or electronic order issued by a provider, or an oral
5 order issued directly by a provider.

6 (6) "Provider" is a health care professional licensed under chapter 35.1 or 37 of title 5.

7 (7) "Seller" means an individual or entity that sells contact lenses or visual aid glasses
8 and dispenses them in Rhode Island in any manner.

9 (8) "Visual aid glasses" means eyeglasses, spectacles, or lenses designed or used to
10 correct visual defects, including spectacles that may be adjusted by the wearer to achieve
11 different types or levels of visual correction or enhancement. Visual aid glasses do not include
12 optical instrument or devices that are:

13 (i) Not intended to correct or enhance vision;

14 (ii) Sold without consideration of the visual status of the individual who will use the
15 optical instrument or device, including nonprescription sunglasses, plano lenses that are clear,
16 colored or tinted, or lenses that are designed and used solely to filter out light; or

17 (iii) Completely assembled eyeglasses or spectacles designed and used solely to magnify.

18 **23-95-3. Prescriptions - Content; release.**

19 (a) A contact lens prescription shall include the following:

20 (1) The ophthalmic information necessary to accurately fabricate or dispense the lenses,
21 including the lens manufacturer, lens series, and the lens material if applicable;

22 (2) Power and base curve;

23 (3) Name, license number, telephone number, and for written orders, the signature of the
24 prescribing provider;

25 (4) Patient's name and address, expiration date of the prescription, and number of refills
26 or lenses permitted; and

27 (5) The date of issuance.

28 (b) A contact lens prescription may also include the diameter, axis, add power, cylinder,
29 peripheral curve, optical zone and center thickness.

30 (c) A prescription for visual aid glasses shall include the following:

31 (1) The name, license number, telephone number, and for written orders, the signature of
32 the prescribing provider;

33 (2) The patient's name;

34 (3) The date of issuance; and

1 (4) The value of all parameters the provider has deemed necessary to dispense corrective
2 lenses appropriate for a patient.

3 (d) A provider shall not refuse to release a prescription for contact lenses or visual aid
4 glasses to a patient.

5 **23-95-4. Verification of contact lens prescriptions.**

6 (a) All contact lens sellers and any person authorized under the general laws to dispense
7 contact lenses in the state shall verify the contact lens prescription by the following:

8 (1) Receipt of a written or faxed valid contact lens prescription signed by the prescribing
9 provider; or

10 (2) An electronic or oral affirmative communication of the complete contact lens
11 prescription from the prescribing provider.

12 (b) If a contact lens seller or any person authorized to dispense contact lenses in the state
13 finds it necessary to contact the prescribing provider via telephone in order to verify a contact
14 lens prescription, the following protocols shall be followed:

15 (1) Calls shall be made during regular business hours;

16 (2) Any verification requests shall include the name, address, and telephone number of
17 the patient;

18 (3) The toll-free telephone number as required by § 23-95-7(a)(7) shall be included in
19 voice mail or messages left on answering machines;

20 (4) Contact lens prescriptions shall not be mailed, sent, delivered, or dispensed before
21 verification by the provider;

22 (5) Touch-tone telephone options offered by a contact lens seller or any person
23 authorized to dispense contact lenses in the state shall not constitute verification; and

24 (6) Response-time options stated by a contact lens seller or any person authorized to
25 dispense contact lenses in the state shall not constitute verification.

26 (c) In the absence of a prescription as defined and described in this chapter, it shall be a
27 violation of this chapter to dispense contact lenses in Rhode Island in any manner.

28 **23-95-5. Dispensing.**

29 (a) Any contact lens seller or any person authorized to dispense contact lenses or visual
30 aid glasses in the state who fills a prescription bears the full responsibility for the accurate
31 dispensing of the contact lenses or visual aid glasses provided under the prescription. At no time
32 shall any changes or substitutions be made including brand, type of lenses, or ophthalmic
33 parameters without the direction of the provider who issued the contact lens or visual aid glasses
34 prescription.

1 (b) The provider shall not be liable for any damages for injury resulting from the
2 packaging, manufacturing, or dispensing of the contact lenses or visual aid glasses.

3 **23-95-6. Prerequisites for writing contact lens prescriptions.**

4 (a) A contact lens fitting shall be complete and a contact lens prescription may be written
5 when:

6 (1) The provider has completed all measurements, tests, and examinations necessary to
7 satisfy his or her professional judgment that the patient is a viable candidate to wear contact
8 lenses, recognizing that more than one visit between the patient and the provider may be required;
9 and

10 (2) Contact lenses suitable for the patient's eyes have been evaluated and fitted by the
11 provider to the patient's eyes and the provider is satisfied with the fitting based on ocular health
12 and the visual needs of the patient.

13 (b) The patient shall be entitled to receive a copy of the contact lens prescription until its
14 expiration date.

15 **23-95-7. Registration of nonresident contact lens sellers.**

16 (a) The department of health shall require and provide for the annual registration of all
17 contact lens sellers located outside of the state that dispense contact lenses in Rhode Island
18 including those providing contact lenses via the Internet. A contact lens seller's registration shall
19 be granted upon the disclosure and certification by the seller of all of the following:

20 (1) The seller is licensed or registered to distribute contact lenses in the state in which the
21 dispensing facility is located and from which the contact lenses are dispensed;

22 (2) The location, names, and titles of all owners, partners, corporate officers, and the
23 person who is responsible for overseeing the dispensing of contact lenses to persons in this state;

24 (3) The seller has complied with and shall continue to comply with all lawful directives
25 and appropriate requests for information from the appropriate agency of each state in which the
26 seller is licensed or registered;

27 (4) The seller shall respond to all requests for information from the department of health
28 within thirty (30) days from receipt of the request;

29 (5) The seller shall maintain records of contact lenses dispensed to persons in this state
30 for a period of ten (10) years, and that the records shall be readily available for inspection by the
31 department of health upon demand;

32 (6) The seller shall provide a toll-free telephone service during its regular hours of
33 operation for the sole purpose of responding to the patients in this state concerning questions and
34 complaints. All questions relating to eye care shall be referred to the doctor prescribing the

1 contact lenses;

2 (7) The seller shall provide a toll-free telephone service during its regular hours of
3 operation solely for providers.

4 (8) The seller shall provide the following or a substantially equivalent written notification
5 to the patient whenever contact lenses are supplied: WARNING: IF YOU ARE HAVING ANY
6 OF THE FOLLOWING SYMPTOMS REMOVE YOUR CONTACT LENSES IMMEDIATELY
7 AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES
8 AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR
9 REDNESS; and

10 (9) The seller's license or registration, in the state in which the seller is licensed or
11 registered, has not been suspended or revoked, but should the seller be the subject of any
12 investigation undertaken by the licensing or registering state, or should the seller's license or
13 registration be suspended or revoked, then the seller shall immediately notify the department of
14 health of such actions.

15 **23-95-8. Assessment Mechanisms.**

16 (a) An assessment mechanism to conduct an eye assessment or to generate a prescription
17 for contact lenses or visual aid glasses in Rhode Island shall:

18 (1) Provide synchronous or asynchronous interaction between the patient and the
19 provider;

20 (2) Collect the patient's medical history, previous prescription for corrective eyewear,
21 and length of time since the patient's most recent in-person comprehensive eye health
22 examination;

23 (3) Provide any applicable accommodation required by the federal Americans with
24 Disabilities Act, 42 U.S.C. sec. 12101 et seq., as amended;

25 (4) Gather and transmit protected health information in compliance with the federal
26 Health Insurance Portability and Accountability Act of 1996 as amended;

27 (5) Be used to perform a procedure with a recognized Current Procedural Terminology
28 code maintained by the American Medical Association, if applicable; and

29 (6) Maintain liability insurance, through its owner or lessee, in an amount adequate to
30 cover claims made by individuals diagnosed or treated based on information and data, including
31 any photographs and scans, generated by the assessment mechanism.

32 (b) A provider shall:

33 (1) Read and interpret the diagnostic information and data, including any photographs
34 and scans, gathered by the assessment mechanism;

- 1 (2) Verify the identity of the patient requesting treatment via the assessment mechanism;
- 2 (3) Create and maintain a medical record for each patient, which is for use during the
3 ongoing treatment of a patient, and complies with all state and federal laws regarding
4 maintenance and accessibility;
- 5 (4) Provide a handwritten or electronic signature, along with their Rhode Island state
6 license number, certifying their diagnosis, evaluation, treatment, prescription, or consultation
7 recommendations of the patient;
- 8 (5) Utilize an assessment mechanism for an eye assessment or to generate a prescription
9 for visual aid glasses only if:
- 10 (i) The patient is at least eighteen (18) years of age; and
- 11 (ii) The patient has received an in-person comprehensive eye examination by a provider
12 within the previous twenty-four (24) months.
- 13 (6) Utilize an assessment mechanism to generate a prescription for contact lenses only if:
- 14 (i) The patient is at least eighteen (18) years of age; and
- 15 (ii) The patient has received an in-person comprehensive eye health examination by a
16 provider:
- 17 (A) For the initial prescription and one follow-up or first renewal of the initial
18 prescription; or
- 19 (B) Within twenty-four (24) months after the follow-up or first renewal of the initial
20 prescription, and every twenty-four (24) months thereafter.
- 21 (c) Prior to using an assessment mechanism, each Rhode Island patient shall be provided
22 with and shall accept as a term of use a disclosure that includes the following information:
- 23 (1) This assessment is not a replacement for an in-person comprehensive eye health
24 examination;
- 25 (2) This assessment cannot be used to generate an initial prescription for contact lenses or
26 a follow-up or first renewal of the initial prescription;
- 27 (3) This assessment may only be used if the patient has had an in-person comprehensive
28 eye health examination within the previous twenty-four (24) months if the patient is conducting
29 an eye assessment or receiving a prescription for visual aid glasses; and
- 30 (4) The United States Centers for Disease Control and Prevention (CDC) advises contact
31 lens wearers to visit an eye doctor one time a year or more often if needed.
- 32 (d) Evaluation, treatment, and consultation recommendations by a provider utilizing an
33 assessment mechanism as requested in this chapter, including issuing a prescription via electronic
34 means, shall be held to the same standards of appropriate practice as those in traditional in-person

1 clinical settings.

2 (e) This section shall not:

3 (1) Limit the discretion of a provider to direct a patient to utilize any tele-health service
4 deemed appropriate for any treatment and care of the patient;

5 (2) Limit the sharing of patient information, in whatever form, between providers; or

6 (3) Apply beyond ocular health and eye care.

7 **23-95-9. Fees.**

8 The department of health shall charge a fee for investigation and registration of
9 nonresident dispensers of contact lenses and visual aid glasses.

10 **23-95-10. Penalties.**

11 (a) Any person who dispenses, offers to dispense, or attempts to dispense contact lenses
12 or visual aid glasses in violation of this chapter or the rules or regulations promulgated by the
13 department of health concerning the dispensing of contact lenses or visual aid glasses shall, in
14 addition to any other penalty provided by law, pay a civil penalty to the department of health in
15 an amount not to exceed ten thousand dollars (\$10,000) for each violation.

16 (b) Any person charged in a complaint filed by the department of health with violating
17 any of the provisions of this chapter shall be entitled to an administrative hearing conducted in
18 accordance with § 42-35-1, et seq.

19 (c) Any person aggrieved by a final order issued under the authority of this chapter shall
20 have the right of an appeal by filing a petition in the state superior court.

21 (d) Nothing in this chapter shall restrict the department of health from enforcing
22 disciplinary action against a provider pursuant to chapters 35.1 and 37 of title 5, and any rules or
23 regulations promulgated thereunder.

24 **23-95-11. Rules and Regulations.**

25 The department of health may adopt and promulgate reasonable rules and regulations to
26 carry out the provisions of this chapter.

27 **23-95-12. Severability.**

28 If any provision of this chapter, or of any rule or regulation made under this chapter, or
29 the application of this chapter to any person or circumstances is held invalid by a court of
30 competent jurisdiction, the remainder of the chapter, rule, or regulation, and the application of
31 this provision to other persons or circumstances, shall not be affected.

1 SECTION 2. This act shall take effect upon passage.

=====
LC004222
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- CONSUMER PROTECTION IN EYE CARE ACT

1 This act would create the Consumer Protection in Eye Care Act which establishes
2 standards for eyeglass prescriptions, verification of contact lens prescriptions, dispensing of
3 contact lenses and glasses, prerequisites for writing prescriptions, registration of nonresident
4 contact lens sellers, and assessment mechanisms to conduct an eye assessment test.

5 This act would take effect upon passage.

=====
LC004222
=====