

January 25, 2018

Representative Addia Wuchner
Chair, Health and Family Services Committee
702 Capitol Ave
Annex Room 315
Frankfort KY 40601

Re: KY HB 191

Dear Chairwoman Wuchner, Vice Chair Prunty and Members of the Committee,

This letter is submitted on behalf of the National Association of Optometrists and Opticians ("NAOO") in opposition to House Bill 191 (Gooch).

The NAOO is a national trade organization representing the retail optical industry. NAOO is consumer-service oriented and dedicated to the proposition that the consumer's visual care needs are met most completely and economically by the free market, in the tradition of the American business system. NAOO membership in Kentucky consists of many large and mid-sized optical firms that are both national and local. Our members have leasing and franchise arrangements with many licensed optometrists in the state. NAOO members collectively represent nearly 9000 co-located eye care offices and optical dispensaries serving millions of patients and eyewear customers each year.

Our concerns relate to the proposed restrictions on ocular telehealth procedures, the writing of prescriptions using telehealth technology and proposed new requirements relating to the online sales of eye wear:

1. Section 6 of the bill, amending KRS 367.686, imposes an unnecessary new registration requirement on online sellers of "visual aid glasses" (prescription eyeglasses). No other U.S. jurisdiction imposes such a requirement and the reason is simple – there are no public health, safety or welfare reasons for the imposition of such additional regulation on an industry that has demonstrated the ability to serve the public well and economically. Such companies have simple, easy return policies and are committed to customer satisfaction. Adding this new level of bureaucracy for the sake of adding regulation is contrary to the public good and will do nothing more than add to the cost of eye wear products and services. This requirement should be deleted from the legislation.

Furthermore, KRS 367.687, as amended in Section 7 of the bill requires in paragraph (1) that the seller be "licensed or registered to distribute contact lenses or visual aid glasses in the state in which the dispensing facility is located." Such requirement relating to the registration of online contact lens sellers ignores the fact that most states do not license or register online sellers of contact lenses (and eyeglasses). This provision should be modified to require such evidence only if the seller's state requires such licensure or registration and the requirement for online sellers of eyeglasses should be eliminated.

In paragraph (2) of this same section, the required listing of all “owners, partners and corporate officers” as part of the registration process goes beyond what is necessary for a registration system for this industry. Requiring the name and address information for a primary corporate contact, who is an officer of the company, makes more sense and is much less onerous. It more simply accomplishes the goal of the state having useful contact information for the seller.

Paragraphs (6) and (7) of Section 7 requires two separate toll-free numbers for the online seller. Controlling federal law regulating contact lens sales already requires that the seller provide contact information, including by telephone, so the requirement of the additional line only adds unnecessary cost and complexity.

2. The legislation attempts to stifle the development and use of new technology in the eye care industry. This is not just so with respect to optometry - but also in how ophthalmologists decide how to care for and treat their patients. Telehealth, as it relates to eye care, is ubiquitous within the various states, and this legislation imposes regulations that most states do not, and which are unnecessary for the safety and welfare of the public. As has been seen in other attempts to limit new technology, legislation like this is an attempt to shield certain practitioners from new and useful technology. This technology will not replace the eye care practitioner, it will allow eye care providers to make the best decisions for their patients. Furthermore, allowing for the use of these new technologies will increase competition and, specifically, give people in rural areas easier access to eye care, saving them time and money.

Several of our specific concerns in HB 191, Section 8, include:

- Paragraphs (1) (c) – FDA approval, (d) – ADA accommodation and (e) – HIPAA privacy and security - are unnecessary requirements for the safe use of such technology. The addition of these requirements suggests applicable governmental requirements that do not exist or necessarily apply. The tools used for assessment are information gathering devices, not medical devices that pose a risk of harm to consumers as the result of their use. Many are used by the consumer themselves, eliminating ADA issues and under HIPAA, the consumer can decide to transmit the non-sensitive information that is generally the result of the ocular testing. In any event, other federal law addresses these issues and is an unnecessary complication in this bill.
- Paragraphs (1)(g) and (j) eliminate the use of store-and-forward techniques and technology unnecessarily. These tools are used widely in ocular telehealth.
- Finally, paragraph (3) requires in in-person exam before the tools of telehealth may be used for a patient. There is no demonstrable need for this restriction as all elements of the service can properly be supplied by synchronous interaction or through the use of store-and-forward technology. Applying the usual standard of care to telehealth interactions supplies all the protection needed for high quality care.

The NAOO's recommendation is to eliminate each of these sections, thereby trusting doctors and allowing them to choose the technology they want to use. There is no danger in the use of these online vision care tools – just more choices.

In short, ocular telehealth should not be burdened with restrictions that do not otherwise exist for telehealth generally in the state.

3. Finally, and as it relates to the prescribing and filling of contact lens prescriptions addressed in Section 3 of the bill, paragraphs (2)(a), (d), (e) and (f) all conflict with controlling federal law in this area (Fairness to Contact Lens Consumers Act, 15 U.S.C. 7601–7610). The Kentucky law as written creates confusion for prescribers about operative law and puts prescribers in the

untenable position of having to decide which law controls. We recommend that these sections of KRS 367.683 be repealed.

Thank you for the opportunity to comment. We ask that this anti-consumer legislation be defeated or amended as suggested.

Sincerely,

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