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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA BOARD OF OPTOMETRY
Proposed Rule 14-12 Optometric Telehealth

The Board's Response to Comments from the Public

The Board appreciates receiving comments from the public regarding the formation if its proposed rule, 14-12, as dictated by the Legislature's passage of W.Va. Code, 30-1-26. Our response will begin with a statement from our Rules Chairman, Dr. James Herman, O.D., We will then list the commenters and provide feedback on each comment. Unfortunately, the comments were received very close to the deadline for written comments, July 29, 2022, at 9:00 a.m. with the most recent comment being received at 11:43 p.m. on July 28, 2022. Some of the comments were detailed preventing a more detailed analysis and response for each one. There are some common themes in many. The Board will address those comments.

Statement from Dr. James Herman, O.D., WV Board of Optometry Chairman

After review of all comments on **TITLE 14 LEGISLATIVE RULE WEST VIRGINIA BOARD OF OPTOMETRY SERIES 12 OPTOMETRIC TELEHEALTH PRACTICE, The West Virginia Board of Optometry believes that it is in the best interest of the public and the visual welfare of the citizens of West Virginia to continue with the rule as presented, without modification.**

It is our belief that the technology currently available for remote telehealth eyecare does not meet the standards necessary for the delivery of quality eyecare and poses both real and potential dangers to the public. Furthermore, Although, we recognize the advancements in technology have made telehealth in some instances possible and effective, there appears to be no demonstrated need to assume the significant risks associated with remote delivery of eyecare in West Virginia at the present time. Optometrists are well distributed throughout the state within person eyecare readily available. The risks and unintended consequences associated with remote eyecare seem unwarranted at this time and pose unnecessary risk and harm to the visual welfare of our citizens. There are optometric offices in 50 our of 55 counties in West Virginia.

It is the responsibility of the Board of Optometry to put the visual welfare of our citizens ahead of corporate interests and therefore we recommend adoption of the proposed rule without modification.

Comments from the Public

The comments fall into three categories: opposition to the rule as written for comment, support for the rule as written and a comment that combines the concerns of the previously listed categories.

Commenting Entities

The American Optometric Association, The West Virginia of Optometric Physicians, the National Association of Optometrists and Opticians, the ata Action, and Dr. Gregory Moore, O.D. A brief comment for each comment is listed in this section given the deadline meeting, but late nature of the comments prevented a more detailed analysis the complete comments are at the end of this document.

The American Optometric Association supported the appropriate use of telemedicine in optometry to access high-value, high quality eye, health and vision care. However, the association was concerned that "the standard of eye, health and vision services must remain the same regardless of whether services are provided in-person, remotely via telehealth or through any combination thereof." They expressed a preference for optometric telehealth practitioners to be licensed by this state. They also highlighted proper coordination with the patient's additional health care practitioners being the same as for in-person care.

The West Virginia Association of Optometric Physicians (WVAOP) advocated for long-standing consumer protection provisions in West Virginia Code (30-8A). The association was concerned that one of the commenters, the National Association of Optometrists and Opticians are advocates for large corporations that sell products. The expressed that the WVAOP and optometrists" first duty is maintaining the health of our patients is our first consideration."

The National Association of Optometrists and Opticians represent the "retail optical industry" expressed an objection to the requirement that an optometrist may only make exceptions to the "within 12 months" requirement in "an imminent, life-threatening or significant sight-threatening emergency" as listed in the rule. The association felt that the rule goes beyond the requirement for telemedicine listed in W.Va. Code, 30-1-26. The second concern is regarding the rules provision is 14-12-5.1. We that their interpretation that the provision prevents an optometrist from performing a remote exam unless present with the patient is a misinterpretation of the provision. The requires that anyone with the patient performing the exam must be under direct-supervision (as listed in W.Va. Code, 30-8a, which includes have a West Virginia licensed optometrist to be in the building. It does not prevent another optometrist from using telemedicine.

ataAction also expressed concern regarding the limitation of the waiving of the 12-month in person patient visit only in the case of a live-threatening..." They also expressed concern that proper eyecare would not be available to patients in a rural state without telemedicine. The West Virginia Board of Optometry is pleased to announce that there are licensed optometrists with offices in 50 out of 55 counties in West Virginia.

Dr. Gregory Moore, O.D.'s comment is the most comprehensive with eight pages in length. If seems to include concerns expressed by both those who support the rule as submitted and those who oppose

the bill as written. It included a "hybrid" model of optometric telehealth care between a licensed optometrist and a registrant or telehealth provider with a licensed WV optometric telehealth care present in the building. This does not prevent telemedicine's use by in state or out-of-state optometrists. It provides an optometrist to provide care on-site should there be an adverse event during the examination. He also mentioned that contrary some health professions, optometrists have different levels of practice across the United States. He recommends that a registrant be subject to the same standards listed in the Board's rule, 14-8. Requiring the registrant to be licensed to practice at the highest level of prescriptive authority practiced in West Virginia. He also suggested that a registrant take and pass the West Virginia Optometry Jurisprudence exam available online to be sure that he or she may have a knowledge of the practice requirements in this state.

The comments themselves are listed at the end of this document. Please feel free to contact the WV Bord or Optometry regarding any questions or concerns. The telephone number for the Board is 304-558-5901. The Board's e-mail address is wvbdopt@frontier.com.

Sincerely,

Pamela Carper
Pamela Carper
Executive Director, WV Board of Optometry

AMERICAN OPTOMETRIC ASSOCIATION

July 28, 2022

Pam Carper
Executive Director
West Virginia Board of Optometry
179 Summer Street, #231
Charleston, WV 25301

RE: 14-12 Optometry Telehealth Practice Rule

Dear Executive Director Carper,

I write to you today regarding the proposed telehealth practice rule being considered before the West Virginia Board of Optometry. As President of the American Optometric Association (AOA), representing more than 44,000 Doctors of Optometry and optometric students, we believe the doctor-patient relationship is foundational for providing the highest quality eye and vision care available.

The AOA supports the appropriate use of telemedicine in optometry to access high-value, high-quality eye, health, and vision care. Telemedicine in optometry can serve to expand patient access to care, improve coordination of care, and enhance communication among all providers involved in the care of a patient. Important criteria must be met to ensure that telemedicine in optometry meets the existing standard of care, is of high-quality, contributes to care coordination, protects, and promotes the doctor-patient relationship, complies with state licensure and other legal requirements, maintains patient choice and transparency, and protects patient privacy.

Examples of these criteria would include but are not limited to the following:

- *The standard of care for eye, health, and vision services must remain the same regardless of whether services are provided in-person, remotely via telehealth, or through any combination thereof. Doctors may not waive this obligation or require patients to waive their right to receive the standard of care. Further, a payor may not require either the doctor or patient waive the right to receive the standard of care.*

- *In-person care, provided by a Doctor of Optometry, is the gold standard for the delivery of a comprehensive eye exam and for the prescription of glasses or contact lenses.*

- *Unless otherwise permitted by law or regulation, Doctors of Optometry delivering telemedicine in optometry must be licensed in the state in which the patient receives care and must abide by that state's licensure laws and regulations.*

- *The provision of eye, health, and vision services delivered via telemedicine in optometry should adhere to the in-person standard of care with regard to care coordination with the patient's additional health care practitioners. This coordination is especially important*

to ensure that information regarding diagnoses, test results, and medication changes are available to the care team, when one exists.

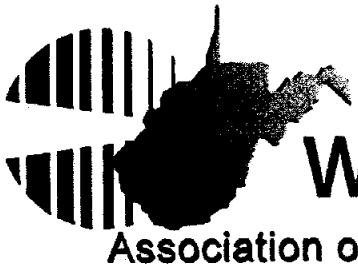
Thank you very much for the opportunity to submit comments on behalf of our members both there in West Virginia, as well as in states across the country on this timely and important issue. I would respectfully ask that any potential rule changes take into account our primary focus of providing the highest quality care to our patients and be mindful of any shifts which could undermine the doctor patient relationship.

Should you have any questions, please do not hesitate to reach out to Daniel Carey, AOA's Chief State Advocacy Officer, at dcarey@aoa.org.

Sincerely,

Robert C. Layman OD

Dr. Robert Layman, O.D.
President
American Optometric Association



West Virginia
Association of Optometric Physicians

July 28, 2022

West Virginia Board of Optometry
179 Summer St., #231
Charleston, WV 25301

Re: 14-12 Optometry Telehealth Practice Rule

Dear West Virginia Board of Optometry,

We are writing to express our support for the continuation of long-standing patient protection statutes that currently exist in West Virginia to maintain the integrity of the quality of care that the citizens of our state receive. The West Virginia Association of Optometric Physicians and the American Optometric Association represent optometric physicians in all modalities of practice throughout the entire state of West Virginia and the United States, respectively, with one common purpose – providing the highest quality of care for our patients. According to their website, the National Association of Optometrists and Opticians has been "advocating for the retail optical industry since 1959." Their advertised members on their website include large corporations that sell products. Their focus is on selling materials to *consumers*.

At the core of our profession, our first duty is maintaining that the health of our patients is our first consideration. Our patients trust that we are in all corners of our great state ready and willing to do our absolute best to restore, maintain, and enhance their vision, eye health, and general health by extension.

There is no substitute for in-person care that strengthens the patient-doctor relationship, any deviation from this in-person interaction enfeebles this most important aspect of our care. Proponents of "store-and-forward" technologies and "online eye exams" take the care of our citizens to out of state entities seek only one end – the sale of materials. Their focus is not the ultimate care of our patients' eye and systemic health as is our solemn duty.

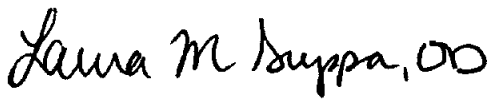
We ask that any proposed rule regarding any change that may affect the quality of care that our patients receive have the best-interest of the patient-doctor relationship at heart. Any attempt to undermine that relationship to drive our patients to "store-and-forward" or "online eye exams" seeks to weaken the quality of care that West Virginians receive and has real potential to result in irreversible loss of vision.

Respectfully submitted,

Executive Board, West Virginia Association of Optometric Physicians

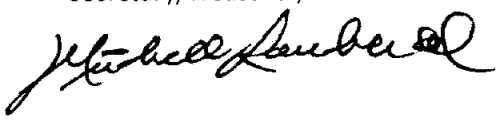
G. Shawn Sammons, OD
President, WVAOP

Kayla Campbell, OD
President-Elect, WVAOP

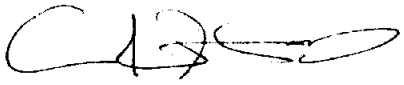


Laura Suppa, OD
Vice President, WVAOP

Ben Mize, OD
Secretary/Treasurer, WVAOP



Mitch Koerber, OD
Trustee, WVAOP



Chris Ratcliff, OD
Trustee, WVAOP

Elicia Miller, OD
Trustee, WVAOP

Brad Lane, OD
Trustee, WVAOP

Nathan Stevens, OD
Immediate Past President, WVAOP

Chad Robinson
Executive Director, WVAOP

National Association of
Optometrists and Opticians
Professionalism Consumerism Education

July 26, 2022

West Virginia Board of Optometry
179 Summers Street
Charleston, WV 25301

Sent via email: wvbdopt@frontier.com

Dear Members of the Board of Optometry,

On behalf of the National Association of Optometrists & Opticians (NAOO), a national organization representing the retail optical industry, we write to comment on the proposed Optometric Telehealth Practice rule. The NAOO's members employ or affiliate with thousands of optometrists and opticians. NAOO members collectively operate nearly 9,000 optical dispensaries with co-located eye care offices throughout the United States, with over 43 locations in West Virginia.

While most aspects of the proposal follow the dictates of HB 2024, as enacted, there are several proposals that we recommend be changed because they are more limiting than that set forth in the statute.

HB 2024, in §30-1-26, and specifically paragraph (b)(4), provides for exceptions to the 12-month in-person exam requirement. The statute provides that such requirement may be suspended "**in the discretion** of the health care provider, on a case-by-case basis..." (emphasis added). That provision provides broad discretion on the part of the provider. The Board's proposed rule, however, imposes additional restrictions on an optometrist to limit the suspension to "an imminent, life threatening or significant sight-threatening emergency..." (see §14-12-3 paragraph 3.4) and we recommend the removal of such wording.

Such limitation is not contemplated by nor authorized by the legislature in HB 2024 and, as such, should be removed from the proposed rule. We recommend that the Board permit the licensed optometrist, in their sound professional judgment, to determine when such a suspension of the 12-month requirement is appropriate. For example, the optometrist, in her professional judgment, could reasonably determine that the patient would be benefitted by a comprehensive eye exam and refraction provided remotely. Such an eye exam could serve to identify health issues as well as provide an accurate prescription for corrective eyewear. This could lead to a more timely referral and presentation for in-person eye care when such care was medically indicated versus denying remote care.

P.O. Box 498472, Cincinnati, OH 45249
(513) 607-5153

Section 30-1-26 of HB 2024 provides that "Telehealth services" includes the use of synchronous and asynchronous technology to, among other things, provide diagnosis and treatment of the patient. Paragraph 3.3.2 of proposed rule §14-12-3 essentially mirrors that permission. Later in the rule proposal, however, under §14-12-5, paragraph 5.1, it appears that the Board is effectively rescinding such permission by prohibiting the generation of refractive data unless the optometrist is on-premises with the patient. That negates the broad permissions in HB 2024 as well as the increased access to comprehensive eyecare provided by telehealth. We recommend that the Board consider revising the referenced rule provision, such that access to eyecare is not restricted for West Virginians that are served throughout the state.

That same section of the rule also appears to prohibit the remote optometrist from conducting the objective or subjective refraction themselves, which flies in the face of other statutory directives in the "Eye Care Consumer Protection Law" (ECPL), §30-8A-3. With the combined effect of HB 2024 and the Eye Care Consumer Protection Law and recognizing the permissive provisions of the later enacted HB 2024, we recommend that the Board revise the proposed rule to clarify that the optometrist may conduct all of these tests remotely and that general supervision of staff by the remote optometrist is permitted to allow for both synchronous and asynchronous diagnosis and treatment of the patient as is called for in the controlling statute.

Based on the above, we recommend that §14-12-5 be revised as follows:
"5.1. Nothing in this section shall be construed to invalidate §30-8A-3, or to prohibit the use of any automated refractor or other automated or remote testing device by the optometrist, or to permit use of any automated refractor or other automated or remote testing device to generate refractive data unless that use is under ~~direct, in-person~~ general supervision of a licensee either in the same physical location as the patient or through use of face-to-face interactive two-way real-time communications services or store-and-forward technologies."

Thank you very much for the opportunity to comment. We request that our comment be made part of the record of the rules consideration. If you have any questions, you may direct them to me at the address on page one or to director@NAOOvision.org.

Best regards,

Joseph B. Neville

Joseph B. Neville
Executive Director
director@NAOOvision.org

ataACTION
Telehealth Policy to Transform Healthcare

July 28, 2022

Ms. Jennifer Stevens
Board President
West Virginia Board of Optometry
179 Summers Street, Suite 231
Charleston, WV 25301

RE: ATA Action Comment Letter on Proposed Optometric Telehealth Practice Rule

Ms. Stevens and Members of the Board of Optometry,

On behalf of the ATA Action I am writing to voice our concerns with the proposed optometric telehealth rules.

ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the health care delivery system – by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – if only allowed to flourish.

ATA Action is concerned about Section 3.4 of the proposed rules regarding the in-person optometrist visit requirements for "established patients." The rule would only allow this requirement to be suspended in certain circumstances identified by the Board, such as life or sight threatening emergencies. This limitation was not included in the legislature's passage of HB 2024 and the Board should not promulgate rules that place additional limit on patients seeking care from their healthcare providers. Licensed medical professionals should have the flexibility and authority to suspend the 12-month requirement using their professional expertise and discretion as long as the standard of care for the patient's condition is maintained. This issue is of even greater importance for patients living in rural areas who may not have convenient access to an optometrist. Due to these restrictions, it is likely that many patients will ultimately forgo care altogether.

ATA Action urges thoughtful consideration on this issue. We believe that it is essential for West Virginians to have access to high-quality, affordable health care as efficiently and equitably as possible. We urge you and your colleagues to consider the changes as proposed in this letter. Please let us know how we can be helpful in your efforts to further telehealth in West Virginia. If you have any questions or would like to discuss further the telehealth industry's perspective, please contact me at kzebley@ataaction.org.

Kind regards,

Kyle Zebley
Executive Director
ATA Action

ATA ACTION
901 N. Glebe Road, Ste 850 | Arlington, VA 22203
Info@ataaction.org

Dear Members of the WV Board of Optometry:

I am responding during the open comment period of the legislative mandated proposed rule by the WV Board of Optometry concerning Telehealth.

I feel I have some insight relevant to this topic having had a combined 10 years of regulatory experience, 6 years on the WV Board of Optometry where I served two terms as President, and 8 years on the Association of Regulatory Boards of Optometry where I served one term as President.

During my Presidency of ARBO we initiated the new and emerging technologies committee to study and stay aware of industry changes. In my outgoing speech as President, I cautioned the boards that using antiquated laws to prevent emerging technologies from developing and being implemented will accomplish one thing, having those laws stricken from the books by legislatures that recognize the boards are limiting access to quality care from the public, or when lawsuits are lost because they are proven to be more about protecting the profession than the public.

Optometrist possess clinical skill sets required to provide complete eye care that current and foreseeable future technologies simply do not address. Maintaining access to those clinical skill sets will be a critical step in allowing new technologies without decreasing quality and access to optometric eye care for the visual welfare of the public. How the diagnostic data is collected and delivered will change drastically, in fact it already has. The key is making sure patients who have access to ANY optometric care, have that same access to ALL optometric care. No robot or computer will be able to do all that optometry has to offer the public with the efficiency of the human brain and hands on clinical skill sets required for licensure in the foreseeable future.

What I find disturbing about the requirement from the legislature is the need to make this rule for WV licensed ODs as well as ODs licensed in other states. I see far greater risk to the public welfare than good this registration process would allow.

Most telehealth technologies, especially during the pandemic, greatly expanded to include certain aspects of all of medicine. However, not all of medicine and certainly optometry can be provided through remote technologies. Other governing bodies are writing rules to make sure access to that needed in house clinical care is not diminished. They require some form of hybrid system where the patient has full access to the health care those providers offer.

As I see it, the legislature has given the board a lot of leeway. I think you should use that leeway to establish rules with meaning that will provide the public increased access to care via current and evolving technologies, withc it exposing them to care that eliminates access to skill sets from the practice of optometry that require in-house, direct, live provider care.

This mandate demands that the quality of care given remotely meets that of in-house care, as it should. In my opinion the legislature has wisely given you all you need to write meaningful rules that protect the public.

Let's start with the mandates requirement that any optometrists licensed in good standing in the US shall be able to register.

14-12-3 Requirements for Optometric Telemedicine.

3.2.1 Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to an administrative complaint.

On its face value and to the laymen legislature this made sense. For other healthcare providers the scope of practice is almost the same in every state. This is simply not so in optometry. Your rules that you submit should limit this. WV Code demands that any optometrist applying for licensure by endorsement MUST be licensed in a state with equivalent or greater scope of practice privileges. Furthermore, the WV Code also prohibits the board from giving initial licenses to anyone who is not trained to practice to the highest level of scope allowed by law. That should be carried over to your rules for registration.

If you need an example of this, WV Optometrists have been licensed since 1976 to treat glaucoma. Massachusetts optometrists have only been given the authority to treat glaucoma since 2020. I think it's fair to say a Massachusetts optometrist may not have the privilege to treat glaucoma, yet we know that 2% of WV citizens at the age of 40 will present with glaucomatous changes and that must be fully diagnosed and treated. There is no technology at the present or in the foreseeable future that will allow an optometrist to do a gonioscopy.

That example is one of hundreds that could be used to mandate a hybrid system that requires in house optometry be provided as the foundation of ANY practice with remote technologies being allowed where it is safe for certain aspects of clinical eye care. This should be done in a way to allow WV licensed ODs to expand their footprint into remote areas that will not support a full time optometrist, however they must be able to get to those offices if there is an inhouse need. A hybrid system would allow remote registered ODs to offer clinical care as appropriate through technologies, but only if they are doing so in offices where a licensed WV optometrist within reasonable access can be in house to provide services that are not feasible with remote technologies.

In addition, the National Board of Examiners has partnered with practically every state including WV to provide a jurisprudence test specific to that state's laws. This ensures that any one registered to practice in WV knows the state law regarding the practice of optometry in this state. I would suggest you require a registrant to apply for, take, and pass that test as part of the application process. This is not an undue burden in that it is an open book test. But it does assure the board that registrant knows what the state law does and does not allow with optometric privileges.

Therefore, I propose the following considerations be made to your rules.

14-12-3 Requirements for Optometric Telemedicine.

3.2.1 Licensed in good standing in all states in which they are licensed, provided at least one of those states meets the WV 3-8-1 Code for Optometry regarding licensure by endorsement standards, and not currently under investigation or subject to an administrative complaint.

3.3 must have successfully passed the West Virginia jurisprudence exam required for anyone to receive a license by endorsement or a new license that is provided through the National Board of Examiners in Optometry or otherwise approved by the West Virginia Board of Optometry.

I would ask that you consider that no remote exam or eye care in office should be done without support staff. I suggest you adopt a term familiar to Medicine and by proxy the legislature.

Physicians use Physician Extenders as a broad term to cover support staff. I propose you keep with that terminology and use "Optometric Physician Extenders." This is a new term for optometric" law" but is well established within the profession. All optometric CE programs offer training for staff under the heading Paraoptometrics. The one thing that all of medicine is requiring in telehealth for in office care is that there be "physician extenders "collecting the data and providing that to the physician. Technology has changed that, and medicine has rules for that. Optometry needs to promulgate rules for that as well and this is the time to do that.

Your most solid reason for requiring staff support is what if an adverse event occurs while the patient is in the office? A patient unattended doing a self-exam would be helpless. Staff, under the direct (live or virtual) supervision of an OD would be able to offer the needed assistance.

The perfect starting point is with Basic Life Support Certification. Almost all medical professionals in WV are required to have a current Basic Life Support Certification to maintain licensure. I submit requiring this of support staff of registered optometrists will protect the public. It will be a step in making the registered non-WV licensed OD provide care that will meet in-office standards.

You must be careful here because you don't want to impose more restrictions on a remote doctor than you do an in-house doctor without a justifiable reason. In-house doctor technicians are allowed to be trained by and work under the doctor to provide care. But I believe you are justified to add layers for remote ODs since the OD registered to provide this care as mandated by the WV Legislature may never step foot in WV.

The WV Board making rules to show that require any remote OD optometric physician extender have verifiable skill sets for the protection of the public and that is VERY defensible.

I would suggest the following be inserted into your rule.

14-10-2 Definitions

2.9 "Optometric Physician Extenders" means those support personnel who will provide in-person live patient care under the direct in-person (live or virtual) supervision of a remote WV licensed OD or registered remote OD licensed in another state.

14-12-3 Requirements for Optometric Telemedicine

3.2.3 Shall provide optometric telemedicine through an office setting that meets the required office setting and equipment for optometry in WV Code 3-8-1

3.2.4 Shall employ a support staff that will provide the same support used by optometrists offering in office care. That staff shall include, but not be limited too, at least one "Optometric Physician Extender".

3.2.5 An Optometric Physician Extender must meet the following requirements to provide patient care to remote virtual telemedicine providers.

3.2.5 (a) must have a current and registered certification in Basic Life Support as offered by the American Heart Association or similar organization approved by the WV Board of Optometry.

3.2.5 (b) must have certification as a para-optometric, certified optometric or ophthalmic assistant or technician. The Certification must come from the American Optometric Association, the American Academy of Optometry, or the WV Academy of Optometric Physicians. Or ither similar certifications as approved by the West Virginia Board of Optometry which will not be unreasonably withheld if they can show similar certifiable skill sets as the ones listed herein.

3.2.5(c) The West Virginia Board may at its discretion approve an "Optometric Physician Extender" if proof is shown to the board that the applicant has served under the direct live supervision of an optometrist for a period of not less than one year and has been certified by the manufacturer of any equipment being used as being fully trained to use that equipment.

It seems that your rewording of the mandate regarding in-house visits every 12 months eliminates the "at the doctor's discretion." I suggest you allow the remote optometrist to decide if a patient needs in-house care not available through remote exams technologies, certainly a licensed optometrist should be able to assess the need and level of care provided. However, this should not absolve the registered OD from being accountable to offer all optometric care to any patient that enters their office. Remote care at the present and for the foreseeable future does not provide technologies that offer all the care an optometrist is licensed to provide. There needs to be a hard line that any office offering remote care cannot offer partial optometric services. They must provide all optometric care.

The most significant consideration you should make regarding this rule is that if remote optometrists are allowed to only provide ONLY that care which can be safely done with remote technologies, their patients will not have access to the full skill sets WV optometric care provides. That could easily eliminate many rural practices. That would be the EXACT OPPOSITE of what the legislature believes they are mandating you do.

The goal of the legislature and Board should be that anyone making profit from offering optometric care should be required to offer all care optometry in WV can offer. Not just skim the higher profit services off the top and denying those who need more complex care access to that care.

The way WV was the first in therapeutics and later in expanded privileges was the very valid argument that people in rural areas won't and in many cases can't travel to more populated areas to get eye care. That same argument holds true here. Unless the remote eye care provider offers complete eye care services, you will set patient care back 46 years to when WV optometrist were limited to providing glasses and contacts

You cannot require a remote doctor to offer complex patient care that is beyond the capability of remote or telehealth technologies, BUT you can require that they must practice in locations that provide that care. They can do that by contracting with an in-house state licensed OD who will come to that office as needed to provide that care for any patient that cannot be managed with remote technologies. Requiring the patient to travel any distance beyond where they were initially seen will impose an unknown and uncertain hardship on the patient. The office the patient is seen in remotely for routine care should be the office they are seen in for more complex care. That is a very real and defensible limitation you must put on remotely registered doctors, either out of state registrants or WV licensed ODs who are offering remote care. They should be allowed to go to small rural towns and provide remote optometric care that technologies have proven to be safe and effective, but they must be required to offer care that those technologies cannot provide and in the exact same locations.

I think you will find this "required access to in house for services not available through remote technology" consistent with what other health care boards are demanding

I would suggest the following be inserted into your rule.

14-12-3 Requirements for Optometric Telemedicine

(3.4) The standard of care for the provision of telehealth services. The standard of care shall require that with respect to the established patient, the patient with a medical diagnosis will visit an in-person (live) Optometrist in the same location the telehealth was provided on an as needed basis within a time frame determined to be the lessor of that required by the medical diagnosis or 3 months from the time of using the initial telemedicine service or the telemedicine service shall no longer be available to the patient until an in -person(live) visit is obtained. This requirement may be suspended, in the discretion of the optometrist, on a case-by-case bases where there is not a medical diagnosis, and it does not apply to the following services: in the event of an imminent, life threatening or sight-threatening emergency, acute in-patient care, or any medical diagnoses where the patient may require emergent or urgent in office care by an in person (live) optometrist sooner than 3 months or less from the time the initial remote care was provided.

Allowing anything less than a patient with any medical diagnosis being seen in person as soon as needed based on that diagnosis or with within 3 months *and in the office where the remote exam was provided* is not keeping with the legislated mandate to offer remote care equivalent to in house care.

If I have written this correctly, this meets the legislated mandate to provide rules for telemedicine that requires the registered optometrist to provide remote care to the same level and in the same manner that an in-office OD would provide. There are simply too many procedures and diagnostic testing that patients need to have that are not covered under current remote technologies now and for the foreseeable future.

With that I would offer the following suggestion for registration for a remote optometric telemedicine provider, both in state and out of state.

14-12-4 Registration and Renewal

4.7 The application for registration shall include a plan provided by the remote telemedicine provider, regardless of them being registered as an out of state or an in-state provider, that shows how the office will provide in-person live care for patients who present and require routine, non-urgent, and emergent care that is under the scope of practice for WV ODs. This will require a schedule for a WV licensed OD to be present live in that office a minimum of every 3 months, more if needed, to provide timely care for their patients. A registered OD who is not licensed to practice in WV must have a signed and notarized agreement from a state licensed OD who will provide the required in office care under these provisions. In the event the agreement between the registered remote provider and WV licensed provider is terminated. Both the registered optometrist and WV licensed OD must notify the WV Board immediately and all remote care shall cease until a new plan can be submitted.

4.8 The applicant for registration shall include the name(s) of the optometric physician extenders as well as evidence they have the required skill sets as defined in 14-12-3. The registrant and WV licensed

OD must notify the WV Board immediately if there is a change in staff members. In the event the remote optometric telemedicine provider does not have staff members with the skill sets defined herein, the provision of remote care must be suspended until such time qualified staff members are in place with board approval.

Finally. the language used to define direct supervision under the eye care consumer protection law is a bit ambiguous and could be seen as an attempt to derail telehealth completely if interpreted exactly as written. I think it more prudent to get on top of that, so a more liberal definition is not imposed. See the following:

30-8A-1 Definitions

(d) "Direct Supervision" means supervision that occurs when a licensee is present in the building.

If taken at face value, what would be the purpose of allowing telehealth for only those OD's who are in the same building as the patient, unless there is one OD offering telehealth and one in the same office providing in-house care and staff supervision?

Again, your rules must be developed to allow telemedicine, but control it so the public is protected.

Another way to interpret this rule is that "actually present in the building" could mean real time supervision with a provider who is present and in the building in *person* **live** or ***virtually with approved support staff*** through available and acceptable technologies.

Current technology allows direct supervision without the provider being physically present. The real goal here should be that the patient and staff have access to the knowledge the licensed provider has at the time the exam is performed. This will ensure proper testing and supervision of care if an adverse event should occur. A few examples that make this meaningful would be in the case of Angle Closure Glaucoma or a retinal detachment. If the IOP is elevated or the patient presents with a retinal detachment and the optometrist is viewing store and forward data days later, those patients could be totally blind by the time the provider sees the data.

Technology has advanced now to allow virtual direct supervision from remote locations that is as competent as live direct supervision, provided you have the properly trained support staff in place.

Economies of scale is a great thing and using technology can offer greater access to SOME care optometrists provide. That will undoubtedly increase as technology advances. However, we live in Appalachia. One of the highest incidences in the world of diabetic blindness. We cannot allow economies of scale to be so focused on profit margins that it all but eliminates more advanced care that still requires hands on care for patients in locations we know the patient is able to physically be present for ALL of their optometric eye care needs. Otherwise, profit will be the directive and access to optometric care not feasible with technology will be denied to many of the state's rural residents. I do not think that is the legislative intent of this mandate.

I am always available if you would want to discuss this further.

Warm Regards

Gregory S Moore OD