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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Board of Optometry
Division:	
Contact Person:	Eric Winters, Associate General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee 37243
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	710 James Robertson Parkway, Andrew Johnson Building, 5 th Floor, Nashville, Tennessee 37243
Phone:	(615) 741-6350
Email:	Tina.M.Harris2@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Metro Center
Address 2:	665 Mainstream Drive, Poplar Conference Room
City:	Nashville, Tennessee
Zip:	37228
Hearing Date:	10/06/2021
Hearing Time:	9:00 A.M. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- ☒ Amendment
☒ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1045-02	General Rules Governing the Practice of Optometry
Rule Number	Rule Title
1045-02-.08	Corporate or Business Names and Advertising
1045-02-.19	Telehealth in the Practice of Optometry

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Rule Chapter 1045-02
General Rules Governing the Practice of Optometry

Amendment

Rule 1045-02-.08 Corporate or Business Names and Advertising is being amended by deleting item (3)(a)(ii)(VI) in its entirety and by substituting instead the following language, so that as amended, the new item shall read:

(VI) Medically necessary follow-up examinations.

Authority: T.C.A. §§ 63-8-112, 63-8-115, and 63-8-107.

New Rule 1045-02-.19
Telehealth in the Practice of Optometry

Chapter 10045-02 General Rules Governing the Practice of Optometry is being amended by adding new Rule 1045-02-.19, so that as amended, the new table of contents and new rule shall read:

New Table of Contents

1045-02-.01	Fees
1045-02-.02	Licensure Process
1045-02-.03	Examinations
1045-02-.04	License Renewal
1045-02-.05	Continuing Education
1045-02-.06	Board Meetings, Members' Authority and Records
1045-02-.07	Diagnostic and Therapeutic Certification
1045-02-.08	Corporate or Business Names and Advertising
1045-02-.09	Ocular and Contact Lens Prescriptions and Office Equipment
1045-02-.10	Disciplinary Actions, Civil Penalties, Declaratory Orders, Screening Panels, Assessment of Costs, and Subpoenas
1045-02-.11	Scope of Practice
1045-02-.12	Primary Eye Care Procedures
1045-02-.13	Optometric Professional Corporations and Optometric Professional Limited Liability Companies
1045-02-.14	Optometric Records
1045-02-.15	Consumer Right-To-Know Requirements
1045-02-.16	Tamper-Resistant Prescriptions
1045-02-.17	Reserved
1045-02-.18	Minimum Discipline for Opioid Prescribers
1045-02-.19	Telehealth in the Practice of Optometry

1045-02-.19 Telehealth in the Practice of Optometry

(1) Definitions

- (a) Emergency – A situation or condition where failure to provide immediate treatment poses a threat of loss of sight to a person. For the purposes hereof, routine visual care shall not be an emergency.
- (b) In-person patient encounter – A patient encounter conducted by a provider who is at the same physical location as the location of the patient.
- (c) Patient encounter – The rendering of a documented optometrist opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the optometrist is physically present in the same room, in a remote location within the state, or across state lines.

- (d) Telehealth – The definition of telehealth shall be defined as provided in T.C.A. § 63-1-155(a)(2).

(2) Establishment of an Optometrist-Patient Relationship

- (a) Optometrist-patient relationship. Pursuant to T.C.A. § 63-1-155(b), an optometrist-patient relationship with respect to telemedicine or telehealth is created by mutual consent and mutual communication, except in an emergency, between the patient and the optometrist. The consent by the patient may be expressed or implied consent; however, the optometrist-patient relationship is not created simply by the receipt of patient health information by an optometrist unless a prior optometrist-patient relationship exists. The duties and obligations created by the relationship do not arise until the optometrist:
 - 1. Affirmatively undertakes to diagnose or treat the patient; or
 - 2. Affirmatively participates in the diagnosis or treatment.
- (b) The optometrist-patient relationship established via telehealth, shall at a minimum, meet the requirements of T.C.A. § 63-1-155(b).
- (c) An optometrist shall not render telehealth services, ophthalmic prescribing and eye health services, advice and/or care using telehealth technologies without:
 - 1. fully verifying, to the extent possible, the requesting patient's identity;
 - 2. disclosing the optometrist's identity and applicable credential(s) to the patient; and
 - 3. obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telehealth technologies.
- (d) An appropriate optometrist-patient relationship has not been established when the identity of the optometrist is unknown to the patient.

(3) The Appropriate Use of Telehealth Technologies in Optometric Practice

- (a) Policy Statement - The Tennessee Board of Optometry has developed these rules to educate licensees as to the appropriate use of telehealth technologies in the practice of optometry. The Tennessee Board of Optometry is committed to ensuring patient access to the convenience and benefits afforded by telehealth technologies, while promoting the responsible practice of optometry by licensees. These rules shall not be construed to alter the scope of practice of any optometrist or authorize the delivery of optometric services in a setting, or in a manner, not otherwise authorized by Tennessee law.
- (b) Licensure
 - 1. An optometrist is a "healthcare services provider" under Tennessee law and shall be licensed and under the jurisdiction of the Tennessee Board of Optometry when utilizing telehealth technology to provide services to a patient located in the State of Tennessee.
 - 2. Optometrists who treat or prescribe through online services sites are practicing optometry and are under the jurisdiction of the Tennessee Board of Optometry. Optometrists shall possess appropriate licensure through the Tennessee Board of Optometry. The optometrists shall abide by the established requirements for spectacle and contact lens prescription release pursuant to T.C.A. § 63-8-101, et seq.
- (c) Treatment of the Patient
 - 1. An optometrist who delivers services through the use of telehealth shall be held to the

same standard of professional practice as a similar optometrist of the same practice area or specialty that is providing the same healthcare services through in-person encounters, and nothing in this rule is intended to create any new standards of care.

(d) Informed Consent

1. Evidence documenting appropriate patient informed consent for the use of telehealth technologies shall be obtained and maintained. A signed and dated notice, including an electronic acknowledgement by the patient, establishes a presumption of notice. Appropriate informed consent should include the following terms:
 - (i) Identification of the patient, the optometrist and the optometrist's credentials;
 - (ii) Types of transmissions permitted using telehealth technologies;
 - (iii) Necessity of in-person patient encounter. When, for whatever reason, the telemedicine modality in use for a particular patient encounter is unable to provide all pertinent clinical information that an optometrist exercising ordinary skill and care would deem reasonably necessary for the practice of optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site optometrist shall make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person patient encounter reasonably able to meet the patient's needs;
 - (iv) Limitations of telehealth. A provider who uses telehealth technology, before providing services, shall give each patient notice regarding telehealth services, including the risks and benefits of being treated via telehealth, and how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure; and
 - (v) Details on security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;

- (e) Continuity of Care. Patients should be able to seek, with relative ease, follow-up care or information from the optometrist who conducts an encounter using telemedicine technologies. Optometrists solely providing services using telehealth technologies with no existing optometrist-patient relationship prior to the encounter shall make documentation of the encounter available using telehealth technologies easily available to the patient, and subject to the patient's consent and request, any identified care provider of the patient within a reasonable time frame after the encounter.

- (f) Optometric Records. The patient's optometric record should include, if applicable, copies of all patient-related electronic communications, including optometrist-patient communication(s), prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with an encounter involving telehealth technologies should also be filed in the patient's examination record. The patient record established during the use of telehealth technologies shall be accessible and documented for both the optometrist and the patient, consistent with T.C.A. § 63-8-101, et seq.

(g) Privacy and Security of Patient Records and Exchange of Information

1. Optometrists shall meet or exceed applicable federal and state legal requirements of optometric patient encounters/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and State of Tennessee privacy, confidentiality, security, and optometric record retention rules.
2. Optometrists shall ensure that sufficient privacy and security measures shall be in place and documented to assure confidentiality and integrity of patient-identifiable information.

(h) Prescribing

1. Telehealth technologies, where prescribing medications and ophthalmic materials may be contemplated, shall require an optometrist to implement measures to uphold patient safety in the absence of a traditional in-person patient encounter. Such measures shall guarantee that the identity of the patient and provider is clearly established and that detailed documentation for the clinical patient encounter and resulting prescription is both enforced and independently kept.
2. Prescribing medications, in-person or via telehealth, is at the professional discretion of the optometrist based on licensure. The indication, appropriateness, and safety considerations for each telehealth visit prescription shall be evaluated by the optometrist in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an in-person patient encounter. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, optometrists may exercise their judgment and prescribe medications as part of telehealth encounters.
3. Pursuant to Tenn. Comps. Rules & Regulations 1045-02-.09(3), all therapeutic prescriptions written by a Tennessee optometrist certified to practice therapeutics shall include:
 - (i) Tennessee license number; and
 - (ii) "T" designation preceding license number, i.e. OD-T000.
4. For telehealth ophthalmic prescriptions, the same requirements exist as for fixed fee in-person services as outlined in Tenn. Comps. Rules & Regulations 1045-02-.08(3).

Authority: T.C.A. §§ 63-8-112(1) and 63-1-155

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: June 29, 2021

Signature: 

Name of Officer: Eric Winters

Title of Officer: Associate General Counsel, Department of Health

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Tre Hargett
Secretary of State

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