

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled

Senate Bill 447

(Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

**Health Occupations - Requirements for the Practice of Optometry -
Miscellaneous Revisions**

This bill alters various provisions relating to the practice of optometry for therapeutically certified optometrists (TCO), including the circumstances under which a TCO may (1) administer and prescribe pharmaceutical agents; (2) treat glaucoma; (3) perform specified procedures; and (4) order specified tests. The bill also alters the definition of “practice optometry.” TCOs must obtain specified additional training by July 1, 2020, with limited exceptions. **The bill’s training requirements take effect June 1, 2019. The remainder of the bill’s provisions take effect March 1, 2020.**

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Definition of “Practice Optometry”

Under current law, an individual must be licensed by the State Board of Examiners in Optometry to practice optometry in the State. Currently, “practice optometry” is defined, among other things and subject to specified certification restrictions, as the use of any

means known in science of optics or eye care, except surgery, to (1) detect, diagnose, and treat any optical or diseased condition in the human eye or (2) to prescribe eyeglasses, lenses, or contact lenses to correct any optical or visual condition. Subject to specified certification restrictions, the definition also includes (1) the administration of topical ocular diagnostic pharmaceutical agents; (2) the administration and prescription of therapeutic pharmaceutical agents; and (3) the removal of superficial foreign bodies from the cornea and conjunctiva.

The bill modifies this definition to include *manage and treat* any optical or diseased condition in the human eye *and the adnexa of the eye*. Specific to TCOs, the definition is also expanded to include (1) the administration of pharmaceutical agents (not just topical ocular diagnostic agents); (2) the diagnosis, treatment, and management of open-angle glaucoma; (3) the ordering of cultures and bloodwork testing; and (4) the ordering and performing of in-office noninvasive, nonradiographic imaging.

Definition of “Surgery”

The bill defines “surgery” to mean a procedure using any instruments, including lasers, scalpels, needles, cautery, a cryoprobe, or sutures in which human tissue is cut, burned, vaporized, removed, or otherwise permanently altered by any mechanical means, laser, ionizing radiation, ultrasound, or other means. “Surgery” does not include (1) preoperative and postoperative care provided subject to specified restrictions; (2) nonsurgical light therapies used only for the treatment of Meibomian gland disease and vision therapy but not for corneal collagen cross linking; (3) orthokeratology; (4) a noninvasive procedure to remove a superficial foreign body; (5) corneal scraping or conjunctival swabs for cultures; (6) epilating with forceps an eyelash from the eyelid, adnexa, or lacrimal system of a patient; or (7) noninvasive Meibomian gland expression.

Therapeutically Certified Optometrists

Under current law, a licensed optometrist may not administer or prescribe any therapeutic pharmaceutical agents or remove superficial foreign bodies from a human eye, adnexa, or lacrimal system, unless the licensed optometrist is a TCO. A TCO is a licensed optometrist who has an additional certification from the board.

Administering and Prescribing Pharmaceutical Agents: Under current law, a TCO may administer and prescribe therapeutic pharmaceutical agents limited to specific agents. A TCO may not administer or prescribe (1) antiviral agents; (2) antifungal agents; (3) antimetabolite agents; or (4) antiparasitic agents. Additionally, a TCO may not administer or prescribe any *oral* pharmaceutical agents with limited specified exceptions.

Under the bill, a TCO may administer and prescribe therapeutic pharmaceutical agents for *the prevention, management, or treatment of conditions and diseases of the eye and ocular adnexa*, rather than only specified agents. However, a TCO may not administer or prescribe pharmaceutical agents that are:

- controlled dangerous substances;
- nontopical systemic immunosuppressive and immunomodulatory agents, except for oral corticosteroids administered or prescribed for up to one month, or if the TCO has consulted with a physician;
- oral antifungal agents;
- oral and topical antimetabolite agents;
- delivered intravenously;
- given by injection, except an injection of epinephrine for the treatment of acute anaphylaxis or emergency resuscitation;
- given or delivered by a sustained delivery device, except for punctal plugs, contact lenses, or other extraocular devices that release medication into the tear film; or
- for the treatment of a systemic disease, unless specific to the treatment of an ocular condition or disease.

Additionally, a TCO may not administer or prescribe any oral pharmaceutical agent to a patient younger than age 18. However, if a TCO consults with a physician first, the TCO may prescribe and administer oral antibiotics to a minor who is at least age 16 but must provide the physician who was consulted with a written report.

Under current law, a TCO is required to consult with an ophthalmologist within 72 hours of administering or prescribing a topical therapeutic pharmaceutical agent if the patient does not have the expected response. The bill repeals this requirement.

Treatment of Glaucoma: Under current law, a TCO may administer and prescribe topical therapeutic pharmaceutical agents for glaucoma only for patients with open-angle glaucoma, after referring the patient to an ophthalmologist, consulting with the ophthalmologist, and jointly developing a written individualized treatment plan. The joint treatment plan may only be modified after further consultation with the ophthalmologist and each modification must be noted in the patient's record.

Under the bill, the circumstances under which a TCO may administer and prescribe topical therapeutic pharmaceutical agents for the treatment of glaucoma are modified to allow treatment only for a patient who is *at least age 18* and has open-angle glaucoma. The requirements for consultation with an ophthalmologist and development of a treatment plan are repealed.

Under current law, when a TCO is treating a patient with primary open-angle glaucoma, the TCO must refer the patient to an ophthalmologist at least once a year after the initial mandatory referral. Under the bill, a TCO treating a patient with open-angle glaucoma must refer the patient to an ophthalmologist for an examination: (1) within three months of the initial diagnosis or presentation to the TCO unless the intraocular pressure has been reduced 20% or more from the initial pressure; and (2) within 12 months of the initial diagnosis or presentation to the TCO unless clinical stability has been documented by visual field or imaging of the optic nerve structure.

If a patient is on glaucoma medication when the patient first presents to a TCO and the TCO is unable to determine either the date of initial open-angle glaucoma diagnosis or the intraocular pressure at the time of initial diagnosis, the TCO may render treatment without referral to an ophthalmologist if: (1) the intraocular pressure of the patient remains stable; and (2) clinical stability is documented by visual field or imaging of the optic nerve structure within 12 months after the patient is first examined by the TCO.

For a patient who is at least 18 years old, a TCO may only administer or prescribe oral glaucoma medications for up to 24 hours after the patient presents in the office with uncontrolled intraocular pressure. A TCO who administers or prescribes oral glaucoma medication under these circumstances must immediately consult with and refer the patient to an ophthalmologist.

Removal of Superficial Foreign Bodies: Under current law, a TCO may remove superficial foreign bodies from the human eye only if (1) the foreign body may be removed with a cotton-tipped applicator or blunt spatula and (2) the foreign body has not penetrated beyond the Bowman's membrane of the cornea and is not within 2.5 millimeters of the visual axis.

Under the bill, a TCO may remove superficial *conjunctival or corneal* foreign bodies from the human eye if (1) the foreign body has not penetrated beyond the Bowman's membrane of the cornea and *is* within 2.5 millimeters of the visual axis *of the cornea or is peripheral and anterior to the mid-stroma* and (2) *removal will not require permanent alteration of tissue.*

Ordering Tests and Procedures: Under current law, a TCO may not order laboratory tests for a patient with the exception of a conjunctival culture.

Under the bill, a TCO may not order *any* laboratory tests, *genetic tests, extraocular imaging, or other testing* for a patient with specified exceptions, including (1) a conjunctival *or corneal* culture; (2) a nongenetic blood test, after consultation with a physician and subject to the requirement that the TCO send the written results to the physician consulted; or (3) in-office, noninvasive, nonradiographic imaging.

Standard of Care: Under current law, a TCO is held to the same standard of care as a licensed ophthalmologist who is providing similar services. The bill additionally requires that a TCO comply with notice requirements related to a lack or lapse or medical professional liability insurance coverage.

Other Provisions

Under current law, the Maryland Optometric Association and the Maryland Society of Eye Physicians and Surgeons must recommend to the Secretary of Health quality assurance guidelines for TCOs and optometric care. The Secretary must adopt regulations for (1) standards of quality; (2) an ongoing quality assurance program; (3) a program to evaluate the cost of optometric care; and (4) a plan to monitor complaint investigation. The regulations must also require the board to study, investigate, and report on the quality of care provided by TCOs. The board's study and investigation must include a peer review program and review of patient records for data regarding drugs and treatment that are prescribed and administered.

Under the bill, *the board* must recommend to the Secretary quality assurance guidelines for TCOs and optometric care. The Secretary must adopt regulations for standards of quality care for TCOs and optometric care. The requirement to adopt regulations regarding an ongoing quality assurance program, a program to evaluate the cost of optometric care, a plan to monitor complaint investigation, and a requirement that the board study, investigate, and report on the quality of care provided by TCOs is repealed. Specified prohibitions for optometrists practicing in the State are also repealed in favor of the bill's provisions: (1) using surgical lasers; (2) performing any surgery, including cataract surgery or cryosurgery; (3) performing a radial keratotomy; (4) giving an injection, with the exception of epinephrine injections; and (5) dispensing a therapeutic pharmaceutical agent to any person.

Training Requirements

Uncodified language in the bill requires a TCO to demonstrate to the board successful completion of a 10-hour course in advanced pharmacology with emphasis on the use of oral pharmaceutical agents in treating ocular diseases by July 1, 2020. This requirement may be fulfilled through a course given by the Maryland Optometric Association or any other statewide association or nonprofit association and may be counted toward the total number of hours of continuing education required during the licensing period in which the course is completed. This requirement does not apply to an individual who graduates on or after July 1, 2019, from an accredited college of optometry, an accredited university school of optometry, or an equivalent program of education as determined by the board.

Background: According to the board, there are currently 945 licensed optometrists in the State. Of these, 868 are TCOs, 69 are certified to administer topical ocular diagnostic pharmaceutical agents, and 11 have no certifications.

Additional Comments: A TCO must meet the additional training requirement of a specified 10-hour course by July 1, 2020. However, this additional training may be satisfied by a course offered through a statewide association or nonprofit association at little or no financial cost and counted toward the total number of hours of continuing education (36 hours every two-year renewal cycle) that are already required to maintain an optometrist's license in the State.

Additional Information

Prior Introductions: HB 1296 of 2018, a related bill, was withdrawn. HB 807 and SB 611 of 2017, bills with similar provisions, received hearings in the House Health and Government Operations and Education, Health, and Environmental Affairs committees, respectively. Both bills were referred to interim study.

Cross File: HB 471 (Delegate K. Young, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2019
mag/jc Third Reader - March 22, 2019
Revised - Amendment(s) - March 22, 2019
Enrolled - April 9, 2019

Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510