



## DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

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### Board of Examiners in Optometry

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**BILL NO:** SB 402  
**COMMITTEE:** EHE  
**POSITION:** Support with Amendments

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### **TITLE: Health Care Practitioners - Telehealth**

#### **BILL ANALYSIS:**

The purpose of this bill is to authorize certain health care practitioners to establish a practitioner-patient relationship through telehealth interactions under certain circumstances and adopt regulations; require a health care practitioner providing telehealth services to be held to certain standards of practice, be licensed in the State, perform a clinical evaluation before providing treatment or issuing a prescription through telehealth, and document certain information in a patient's medical record using certain documentation standards; and provide that a health care practitioner who prescribes a controlled dangerous substance through telehealth interactions is subject to certain laws regarding confidentiality and a patient's right to health information.

**POSITION AND RATIONALE:** The Maryland Board of Examiners in Optometry ("Board") supports SB 402 with amendments. The Board considers telehealth to be a tool to be used in the practice of optometry. The use of telehealth interaction does not negate, replace, nor alter the provisions of the practice of optometry as defined in the Maryland Optometry Practice Act. The benefits to the citizens include increased patient access to health care, increased availability of patient records, and reduced costs. However, the Board's ultimate mandate of public protection is at the forefront of its support of telehealth interaction in order to promote visual health, patient safety, and wellbeing. The appropriate practitioner-patient relationship underpins the provision of effective telehealth care and service.

Historically, the Board's statute and regulations were intended for the delivery of services by direct face-to-face, in-person interactions. However, the world exists and functions in this age of technology. Therefore, the Board must be adaptable and be able to provide the framework and foundation for the practice of optometry in this digital age. The Board's stance is that there is no separate or different scope of practice or standard of care applicable to those who practice telehealth within the state of Maryland.

There are, however, two instances during which asynchronous telehealth interactions would not be allowed by the Board. The Board does not support asynchronous telehealth interactions to establish or initiate a practitioner-patient relationship or during clinical evaluations for the purpose of issuing prescriptions for ophthalmic devices, including glasses, contact lenses, and low vision devices. Any online or asynchronous telehealth interaction which includes refraction and vision or contact lenses exams with the issuance of prescriptions is a disservice to the public.

Telehealth as a tool can be appropriate. However, under no circumstances, should refractive vision testing be an asynchronous telehealth interaction. Not only does online refractive vision testing and the prescribing of glasses, contact lenses, and low vision devices not meet the requirements of a minimum optometric examination, but more importantly: these actions do not provide for consumer safety and protection, patient wellbeing, and visual health.

As a case in point, due to concerns and reports regarding patient health and safety, there was federal action taken recently. The FDA issued a Cease and Desist Order to Opternative, a company that had been offering online eye exams for more than 3 years in several states.

The Board's position is that there are situations where asynchronous telehealth interactions are unacceptable and pose a detriment to patient health and consumer safety. Therefore, the Board's proposed amendments to SB 402 are listed at the end of this position paper.

The Maryland Board of Examiners in Optometry thanks you for reviewing its position and requests your favorable consideration of the position to support SB 402 with the proposed amendments.

For more information, please contact Patricia G. Bennett, Executive Director, Maryland Board of Examiners in Optometry at 443-934-0816 or [patricia.bennett@maryland.gov](mailto:patricia.bennett@maryland.gov)

*The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.*

### **Amendment No. 1**

On page 2, amend lines 25–26 with the following:

**A HEALTH CARE PRACTITIONER MAY ~~ESTABLISH A~~ PROVIDE CARE TO A PATIENT WHERE THERE IS AN ESTABLISHED PRACTITIONER-PATIENT RELATIONSHIP THROUGH EITHER A SYNCHRONOUS TELEHEALTH INTERACTION OR AN ASYNCHRONOUS TELEHEALTH INTERACTION, IF THE HEALTH CARE PRACTITIONER:**

### **Amendment No. 2**

On page 3, add new language to line 13 with the following:

SB 402  
Optometry - SWA

**(B) (1) A HEALTH CARE PRACTITIONER SHALL PERFORM A CLINICAL EVALUATION THAT IS APPROPRIATE FOR THE PATIENT AND THE CONDITION WITH WHICH THE PATIENT PRESENTS BEFORE PROVIDING TREATMENT OR ISSUING A PRESCRIPTION THROUGH SYNCHRONOUS OR ASYNCHRONOUS TELEHEALTH INTERACTION, AS APPROPRIATE.**