



*National Association of
Retail Optical Companies*
Professionalism Consumerism Education

April 1, 2025

South Dakota Board of Examiners in Optometry
Deni Martin, Executive Secretary
13537 Dark Timber Ct.
Piedmont SD 57769

Sent via email: sdoptboard@outlook.com

RE: Proposed Rules 20:50:04:14 - Telehealth

Dear Secretary Martin and Members of the Board,

On behalf of the National Association of Retail Optical Companies (NAROC), a national organization representing the retail optical industry, which includes its members' thousands of employed opticians and affiliated optometrists, I write today to express NAROC's suggestions about provisions of the Board's proposed regulations, especially as they relate to an optometrist's use of telehealth protocols.

NAROC is consumer-service oriented, dedicated to the consumer's visual care needs in accessible settings, providing high quality products and services. NAROC members collectively represent nearly 9000 co-located eye care offices and optical dispensaries throughout the United States, serving millions of patients and customers each year.

Proposed section 20:50:04:14 sets forth several requirements for the use of telehealth, including: the establishment of a provider-patient relationship pursuant to the over-arching statute; a prior in-person consultation; consent from the patient for such treatment; a comprehensive eye examination as part of the telehealth process; and protocols for referrals. We agree that providing clarity on how to establish the patient-provider relationship and confirming patient consent to the use of telehealth are admirable objectives.

However, we encourage the Board to allow the optometrists the professional discretion to determine whether a prior in-person consultation is necessary for any given patient about to undergo a comprehensive exam via telehealth. Such requirement may not always be necessary to meet the standard of care and may limit appropriate use of professional judgment to address refractive error or other eye care needs that can be addressed without an in-person eye examination. While we understand that each state makes their own determinations in this regard, most states do not have such a requirement. We urge the Board to remove this requirement from the proposed rule.

Over-arching South Dakota telehealth law (SDCL 34-52-1) requires a “face-to-face examination” using real time audio and visual technology with the patient in order to provide medical care, but such law does not require a prior in-person examination. Comprehensive eye examinations can safely and effectively be provided by telehealth without a prior in-person exam, as is the case in almost 40 states throughout the nation.¹ We also note that South Dakota medical law does not require such a prior in-person exam, meaning the adoption of this part of the rule will put optometrists on an unequal footing and at a disadvantage to ophthalmologists.

We also note that state insurance law prohibits the exclusion of coverage because a service was provided via telehealth and not through an in-person consultation (SDCL 58-17-168). Clearly, the spirit and direction of South Dakota law is not to require a prior in-person consultation, but to rely on the professional judgment of the provider to decide if the use of telehealth is appropriate for the particular patient. A violation of this professional judgment can be handled through normal disciplinary rules.

The proposal will also limit access to eye care and not provide any additional benefits or protections to the state’s citizens. Especially as it relates to rural care or cases where the patient has not or cannot get to the doctor’s office, this rule would mean that consumers will go without care, losing access to the eye care that they need to correct refractive error.

We urge the Board to trust the optometrist’s professional judgment to determine if telehealth is appropriate for the patient and whether the lack of a prior in-person consultation makes a comprehensive eye examination via telehealth less viable. As mentioned, the remote optometrist is still free to require an in-person exam if the situation so dictates or to make an appointment or referral for related care. The usual standard of care is not in any way violated by leaving this decision in the hands of the optometric professional.

In light of the above, we recommend that section 20:50:04:15 be amended to remove the first sentence of the second paragraph of the proposal as follows (see strikethrough):

“The same standard of care applies to the practice of optometry, whether provided in-person or via telehealth. An optometrist may not provide telehealth services unless the optometrist has established a provider-patient relationship with the patient in compliance with SDCL 34-52-3 and this section.”

¹ See American Telemedicine Association Ocular Special Interest Group whitepapers on ocular telehealth assessments discussing the accuracy, efficiency and efficacy of telehealth/telemedicine in conducting comprehensive eye examinations: “Ocular Telehealth Assessments and Disease Monitoring – Part One , Elements of a Remote Comprehensive Eye Exam”, Sept. 18, 2023 (<https://www.americantelemed.org/resources/ocular-telehealth-assessments-and-disease-monitoring-part-one/>) and “Ocular Telehealth Assessments and Disease Monitoring – Part Two”, Sept. 18, 2023 (<https://www.americantelemed.org/resources/ocular-telehealth-assessments-and-disease-monitoring-part-two/>)

~~To provide telehealth services, an optometrist must have provided services to the patient at an in person consultation no more than three years prior to the date when telehealth services are provided. An optometrist may provide telehealth services in the absence of a provider-patient relationship when, in the professional clinical judgment of the optometrist, the patient requires emergency care.~~

Before providing telehealth services, the optometrist must: ...”

Thank you for the opportunity to comment on this proposal. We have co comments on the other sections of the proposed rules.

Very truly yours,

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