

SUBJECT: Requiring issuance of contact lens prescriptions

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Berlanga, Hirschi, Coleman, Davila, Delisi, Janek, Maxey
0 nays
2 absent — Glaze, Rodriguez

WITNESSES: For — Lisa McGiffert, Consumers Union; Sandra Helton
Against — None
On — Ron Hopping; Fred Neimann, Jr., Texas Optometric Association;
Debbie Bradford, Texas Department of Health; Lois Ewald, Texas
Optometry Board

DIGEST: CSHB 196, the proposed Texas Contact Lens Prescription Act, would require optometrists and physicians to release contact lens prescriptions for most patients on request. The bill also would direct the filling of contact lens prescriptions and establish a lens dispensing permit for opticians and include civil and administrative enforcement provisions.

CSHB 196 also would specify that the act would not create liability for physicians or optometrists that did not exist prior to the act's enactment.

The act would take effect September 1, 1997, and provisions relating to prescription release and filling, dispensing permits and enforcement would take effect January 1, 1998.

Prescription release. A physician or optometrist could exclude categories of contact lenses from prescription release if the exclusion was clinically indicated. Patients could request contact lens prescriptions at any time during which the prescription is valid. A contact lens prescription could not be issued that expired before the first anniversary of the date the patient's prescription parameters were determined.

A physician or optometrist could refuse to give a contact lens prescription to a patient if the patient's ocular health contraindicates the use of contact lenses; the refusal was warranted due to potential harm to the patient's ocular health; the patient had not paid for the examination or certain other financial obligations; the patient had an existing medical condition that indicated the patient's ocular health would be damaged if the prescription were released; or the request is made after the first anniversary of the date of the patient's last eye examination. The patient would have to receive a verbal explanation of the reason for the refusal, and a written explanation of the reason would have to be maintained in the patient's records.

A physician or optometrist could not condition the availability of an eye examination or other services on a requirement that the patient agree to purchase contact lenses or other ophthalmic goods. Prescriptions would have to be released without charging an additional fee; however, delivery costs could be charged if the patient requested the prescription to be delivered to another person or doctor.

The board of health would have to provide to the public and appropriate state agencies information regarding the release of contact lens prescriptions.

Filling prescriptions. CSHB 196 would allow only physicians, optometrists, pharmacists or permitted opticians to dispense a contact lenses. An optician would have to have a contact lens dispensing permit from the Texas Board of Health. Employees of physicians, optometrists or pharmacists would not be required to have a permit if they dispensed lenses under the direct supervision and control of their employer.

Prescriptions could not be modified. Opticians could make additional measurements and evaluations if directed to do so in a prescribed manner on the prescription by a physician. Expired prescriptions could not be filled.

If fewer than the total number of lenses authorized by the prescription were filled, the person dispensing the lenses would have to make specified notations on the prescription, photocopy the prescription for record keeping and give the original back to the patient.

Prescriptions could be telephoned or faxed for emergency refills. The fax or

telephone record would have to include the name, address, telephone number, and license number of the physician or optometrist. A two-month extension of the prescription also could be authorized by the physician or optometrist.

Optician permits. CSHB 196 would require permits to be issued to optician applicants by the board of health if certain requirements were met. The board of health could suspend or revoke a permit, place the permit holder on probation or impose administrative penalties not to exceed \$1,000 for violations. The annual permit fee would be \$10, and after January 1, 1998, the board could raise the fee to reflect actual costs in administering permitting provisions. The permit would be valid for one year and could be renewed.

Fees would be deposited in a special contact lens dispensing account in the general revenue fund and could only be appropriated to the department of health for administration of the act.

Enforcement. An offense under the bill would be a Class B misdemeanor, punishable by a maximum penalty of 180 days in jail and a \$2,000 fine. The attorney general also could bring action to enjoin or restrain a person from violating the bill, and the court could impose a civil penalty for a violation of law or rule.

Violations by physicians, optometrists and pharmacists would be enforced by the appropriate licensing board and would be considered violations of their respective practice acts.

**SUPPORTERS
SAY:**

CSHB 196 would help consumers obtain needed prescriptions for contact lenses in a timely and convenient manner, allow them to competitively shop for contact lenses, and prevent unnecessary and duplicative eye examination expenses or over-priced contact lens charges. The bill would strike a fair balance between the public's right to access prescriptions and concerns for medical consequences.

CSHB 196 would clarify an ambiguity in the law that prevents many patients from getting their contact lens prescription in emergencies, when they move or travel, or from shopping around for the best contact lens

prices. Texas law does not explicitly require optometrists or physicians (ophthalmologists) to release prescriptions to patients, so some doctors refuse to do so even though the patient has paid for the service that created the prescription. A recent Consumer's Union survey of about 60 eye doctors across the state found that nearly 70 percent refused to give patients their contact lens prescriptions.

Current law gives eye doctors a luxury no other doctor can claim — a built-in guarantee of selling eye care products to every patient they examine. Contact lenses in Texas vary in price from \$40 to \$140 for the same brand and type of lens. Patients who have moved or lost their contacts while traveling, students away from home at school, or those who simply want to find the least costly contact lenses often have to pay for an additional eye exam from another doctor. Twenty-two states require eye doctors to release contract lens prescriptions to patients.

CSHB 196 would protect consumers from possible eye problems that can be caused by outdated prescriptions, hard contact lens-related problems, or medical conditions in which the wearing of a contact lens can cause complications. The bill would allow physicians and optometrists to refuse to release a prescription for health-related reasons, including any potential harm to the patient's ocular health, or because the prescription was more than one year old. They also could exclude *a category* of contact lenses if clinically indicated. Contact lenses could only be dispensed by other eye doctors, pharmacists or specially trained opticians, so the patient's ocular health would continue to receive appropriate monitoring.

Physician and optometrist liability also would be protected. Physicians and optometrists could refuse to release prescriptions they considered to be unsafe for the consumer, and the bill explicitly states that no liability would be created by its enactment.

OPPONENTS
SAY:

Exceptions from the mandatory release of contact lens prescriptions should be made for hard contact lenses, which represent about 15 percent of the market, because they pose greater risk to the eye than soft lenses. Due to the way they are made, hard lenses warrant close scrutiny by a patient's eye doctor in the fitting and the wearing of the lens.

NOTES:

The original version of the bill would have amended only the Texas Optometry Act to require physicians or optometrists to give patients a copy of their prescription at the completion of the eye examination or contact lens fitting. The physician or optometrist could not have issued a prescription that expired two years, instead of one year as in the committee substitute, after the date of issuance. The committee substitute added provisions relating to optician permits and employee supervision in dispensing contact lenses, board of health duties, telephoned or faxed prescriptions, physician/optometrist liability protections and enforcement.