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Official Code of Georgia Annotated TITLE 31 Health (Chs. 1 – 54). CHAPTER 12 Control of Hazardous Conditions, Preventable Diseases, and Metabolic Disorders (§§ 31-12-1 – 31-12-14).

31-12-12. Restrictions on sale or dispensing of contact lenses and spectacles; definitions; responsibilities relating to prescriptions; criminal violation; enforcement.

(a) As used in this Code section, the term:

- (1) "Assessment mechanism" means automated or virtual equipment, application, or technology designed to be used on a telephone, a computer, or an internet accessible device that may be used either in person or via telemedicine to conduct an eye assessment, and includes artificial intelligence devices and any equipment, electronic or nonelectronic, that are used to conduct an eye assessment.
- (2) "Contact lens" means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect, including any cosmetic, therapeutic, or corrective lens.
- (3) "Dispense" means the act of furnishing spectacles or contact lenses to an individual.
- (4) "Eye assessment" means an assessment of the ocular health and visual status of a patient that may include, but is not limited to, objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a refraction diagnosis for the correction of vision disorders. This may include synchronous or asynchronous telemedicine technologies.
- (5) "Eye examination" means a real-time examination, which includes the use of telemedicine, in accordance with the applicable standard of care of the prescriber, of the ocular health and visual status of an individual that does not consist solely of objective refractive data or information generated by an automated testing device, including an autorefractor or kiosk, in order to establish a medical diagnosis or refractive diagnosis for the establishment of refractive error, conducted with the patient and prescriber in the same physical location or via telemedicine. If the eye examination is conducted via telemedicine, the patient and prescriber shall be required to be in synchronous verbal and visual contact during such parts of the examination necessary to ensure that the examination is, at a minimum, equivalent to an eye examination conducted in person.
- (6) "Kiosk" means automatic equipment or application designed to be used on a telephone, a computer, or an internet based device that can be used either in person or via telemedicine to conduct an eye examination.
- (7) "Over-the-counter spectacles" means eyeglasses or lenses in a frame for the correction of vision that may be sold by any person, firm, or corporation at retail without a prescription; these spectacles shall not exceed +3.25 diopters.
- (8) "Prescriber" means an optometrist or ophthalmologist licensed in this state.
- (9) "Prescription" means a handwritten or electronic order issued by a prescriber.
- (10) "Spectacles" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer, commonly known as glasses or eyeglasses, including spectacles that may be adjusted by the wearer to achieve different types of visual correction or enhancement. Spectacles does not include an optical instrument or device that is not intended to correct or enhance vision or that is sold without consideration of the visual status of the individual who will use the optical instrument or device. Spectacles does not include over-the-counter spectacles.
- (11) "Telehealth" has the same meaning as in paragraph (6) of subsection (b) of Code Section 33-24-56.4.
- (12) "Telemedicine" has the same meaning as in paragraph (7) of subsection (b) of Code Section 33-24-56.4.

(b)

(1)

- (A) No person in this state shall sell, dispense, or serve as a conduit for the sale or dispensing of contact lenses or spectacles to the ultimate user of such contact lenses or spectacles except persons licensed and regulated by Chapter 29, 30, or 34 of Title 43.
- (B) No person in this state shall write a prescription for contact lenses or spectacles unless he or she is a prescriber.
- (C) No person in this state shall write a prescription for contact lenses or spectacles unless an eye examination is conducted or, pursuant to the conditions in subsection (d) of this Code section, an eye assessment is performed.
- (D) No person in this state shall write an initial prescription for contact lenses until he or she has completed all measurements, tests, and examinations necessary to satisfy his or her professional judgment that the patient is a viable candidate to wear contact lenses, recognizing that more than one visit between the patient and the prescriber may be required and contact lenses suitable for the patient's eyes have been evaluated and fitted by the prescriber, and the prescriber is satisfied with the fitting based on ocular health and the visual needs of the patient. The patient shall be entitled to receive a copy of the contact lens prescription upon completion of fit.

- (2) Any person who violates a subparagraph of paragraph (1) of this subsection one or two times shall upon conviction be guilty of a misdemeanor and punished by imprisonment for up to one year or by a fine not to exceed \$1,000.00 or by both such fine and imprisonment. Any person who violates a subparagraph of paragraph (1) of this subsection three or more times shall upon conviction be guilty of a felony and punished by imprisonment for one to five years or by a fine not to exceed \$10,000.00 or by both such fine and imprisonment.
- (c) An assessment mechanism to conduct an eye assessment or to generate a prescription for contact lenses or spectacles in this state shall:
- (1) Be conducted in accordance with the provisions of Code Section 33-24-56.4, the "Georgia Telehealth Act";
- (2) Collect the patient's medical history, previous prescription information for corrective eyewear, and length of time since the patient's most recent in-person eye health examination;
- (3) Provide any applicable accommodation required by the federal Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., as amended;
- (4) Gather and transmit protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996, as amended; and
- (5) Perform a procedure with a recognized current procedural terminology code maintained by the American Medical Association, if applicable.
- (d) To use an assessment mechanism to conduct an eye assessment or to generate a prescription for contact lenses or spectacles, a prescriber shall be licensed in good standing in this state, acting within his or her scope of practice, and shall:
- (1) Conform to the standard of eye healthcare expected of traditional in-person clinical settings as appropriate to the patient's age and presenting condition, including when the standard of care requires the use of diagnostic testing and performance of a physical examination, which may be carried out through the use of peripheral devices appropriate to the patient's condition;
- (2) Not use the data or information obtained from an eye assessment as the sole basis for issuing a prescription;
- (3) Create and maintain for at least seven years a medical record for each patient, for use during the ongoing treatment of a patient and in compliance with all state and federal laws regarding maintenance and accessibility;
- (4) Read and interpret the diagnostic information and data, including any photographs and scans, gathered by the assessment mechanism;
- (5) Verify the identity of the patient requesting treatment via the assessment mechanism;
- (6) Verify that the patient is between 21 and 50 years of age;
- (7) Confirm that the patient is not experiencing any of the following:
- (A) Corneal disease, such as keratoconus or herpes;
- (B) Vessels in the cornea;
- (C) Glaucoma;
- (D) Macular degeneration;
- (E) Hereditary eye disease;
- (F) Freckle, birthmark, or mole inside the eye;
- (G) Diabetes;
- (H) Shingle on the forehead or face;
- (I) Pain, redness, or itchiness of the eye;
- (J) High sensitivity to brightness;
- (K) Pain or discomfort or blurred or double vision while wearing corrective visual aids;
- (L) Bright flashes or floaters;
- (M) Temporary loss of vision; or
- (N) Moderate to severe dry eye;
- (8) Confirm that the patient is not currently taking medications with potentially serious ocular side effects;
- (9) For issuing prescriptions for spectacles, verify that the patient has received an eye examination by a prescriber within the previous 24 months;
- (10) For issuing prescriptions for contact lenses, verify that the patient has received an eye examination by a prescriber:
- (A) For the initial prescription and first renewal of the initial prescription; or
- (B) After the first renewal of the initial prescription, within 24 months;
- (11) Provide a handwritten or electronic signature, along with the prescriber's state licensure number, certifying his or her diagnosis, evaluation, treatment, prescription, and consultation recommendations for the patient;
- (12) Maintain liability insurance, through its owner or lessee, in an amount adequate to cover claims made by individuals diagnosed or treated based on information and data, including any photographs and scans, generated by an assessment mechanism; and
- (13) Disclose to patients and require acceptance in advance as a term of use that:
- (A) The eye assessment is not a replacement of an eye examination;
- (B) The eye assessment cannot be used to generate an initial prescription for contact lenses or spectacles or first renewal of the initial prescription; and
- (C) The eye assessment may only be used if the patient has had an eye examination within the previous 24 months.
- (e) All contact lenses used in the determination of a contact lens prescription are considered to be diagnostic lenses. After the diagnostic period and the contact lenses have been adequately fitted and the patient released from immediate follow-up care by persons licensed and regulated by Chapter 29, 30, or 34 of Title 43, the prescriber shall, upon the request of the patient, at no cost, provide a prescription in writing for replacement contact lenses. A person shall not dispense or adapt contact lenses or spectacles without first receiving authorization to do so by a written prescription, except when authorized orally to do so by a person licensed and regulated by Chapter 30 or 34 of Title 43.
- (f) Patients who comply with such fitting and follow-up requirements as may be established by the prescriber may obtain replacement contact lenses until the expiration date listed on the prescription from a person who may lawfully dispense contact lenses under subsection (b) of this Code section.
- (g) A prescriber may refuse to give the patient a copy of the patient's prescription until the patient has paid for all services rendered in connection with the prescription.
- (h) No replacement contact lenses may be sold or dispensed except pursuant to a prescription which:
- (1) Conforms to state and federal regulations governing such forms and includes the name, address, and state licensure number of the prescriber;
- (2) Explicitly states an expiration date of not more than 12 months from the date of the last prescribing contact lens examination, unless a medical or refractive problem affecting vision requires an earlier expiration date;
- (3) Explicitly states the number of refills;
- (4) Explicitly states that it is for contact lenses and indicates the lens brand name and type, including all specifications necessary for the ordering or fabrication of lenses; and

- (5) Is kept on file by the person selling or dispensing the replacement contact lenses for at least 24 months after the prescription is filled.
- (i) Anyone who fills a prescription bears the full responsibility of the accuracy of the contact lenses or spectacles provided under the prescription. At no time, without the direction of a prescriber, shall any changes or substitutions be made in the brand or type of lenses the prescription calls for with the exceptions of tint change if requested by the patient. However, if a prescription specifies "only" a specific color or tinted lens, those instructions shall be observed.
- (j) All sales of and prescriptions for contact lenses in this state shall conform to the federal Fairness to Contact Lens Consumers Act, P.L. 108-164, 15 U.S.C. Section 7601, et seq. The provisions of this Code section shall be construed in aid of and in conformity with said federal act.
- (k) Civil proceedings to enforce the provisions of this Code section may be brought by any board created under Chapter 29, 30, or 34 of Title 43 or by any other interested person through injunction or other appropriate remedy.
- (l) The Georgia State Board of Optometry and the Georgia Composite Medical Board may each promulgate reasonable rules and regulations applicable to their respective licensees to carry out the provisions of this Code section.
- (m) Evaluation, treatment, and consultation recommendations by a prescriber utilizing an assessment mechanism pursuant to the requirements in this Code section, including a prescription via electronic means, shall be held to the same standards of care as those in traditional in-person clinical settings.
- (n) This Code section shall not be construed to:
- (1) Limit the discretion of a prescriber to direct a patient to utilize telehealth as deemed appropriate;
 - (2) Limit the sharing of patient information, in whatever form, between an optometrist, osteopath, or physician; or
 - (3) Apply beyond ocular health and eye care.
- (o) Any person who dispenses, offers to dispense, or attempts to dispense contact lenses or spectacles in violation of this Code section or any applicable rules and regulations concerning the dispensing of contact lenses or spectacles in this state shall, in addition to any other penalty provided by law, pay a civil penalty to the Office of the Attorney General in an amount not to exceed \$11,000.00 for each violation.

History

Code 1981, § 31-12-12, enacted by Ga. L. 1991, p. 1003, § 1; Ga. L. 1992, p. 1475, § 1; Ga. L. 1995, p. 328, § 1; Ga. L. 2004, p. 903, § 1; Ga. L. 2016, p. 846, § 1/HB 775; Ga. L. 2023, p. 326, § 1/HB 203, effective July 1, 2023.

▼ Annotations

Notes

The 2023 amendment, effective July 1, 2023, rewrote this Code section.

Opinion Notes

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. —

Offenses arising under O.C.G.A. § 31-12-12 are designated as offenses for which those charged are to be fingerprinted. 2017 Op. Att'y Gen. No. 17-1.

Research References & Practice Aids

Hierarchy Notes:

O.C.G.A. Title 31

O.C.G.A. Title 31, Ch. 12



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