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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 852
BOARD OF OPTOMETRY

FILED

11/06/2024 11:22 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updated prescription release rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/23/2024 2:30 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

Updates Board rules to reflect federal requirements

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

federal law=Board office

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These rules apply to all licensees across the state

FISCAL AND ECONOMIC IMPACT:

Minimal to none

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Board is comprised of 4 licensed ODs. This mirrors federal law, so ensures Oregon licensees are fully compliant at all levels of regulation.

AMEND: 852-020-0031

RULE SUMMARY: Updates Board rules regarding prescription release requirements to mirror the federal law requirements.

CHANGES TO RULE:

852-020-0031

Prescription Release ¶¶

- (1) An optometric physician must immediately give the signed written prescription to the patient at the time the doctor would provide spectacles or contact lenses without additional examination, even if the patient does not request the prescription. The optometric physician must confirm prescription release after a refractive eye exam or final contact lens fitting through one of the following methods:¶¶
- (a) Request the patient sign a statement confirming receipt of the spectacles or contact lens prescription,¶¶
 - (b) Request the patient sign a prescriber-retained copy of the spectacles or contact lens prescription that contains a statement confirming receipt of the ~~contact lens~~ prescription,¶¶
 - (c) Request that the patient sign a prescriber-retained copy of the receipt for the examination with a statement confirming receipt of the spectacles or contact lens prescription or¶¶
 - (d) The patient may agree to receive a digital copy of the prescription and the provider may provide a digital copy to the patient. The patient may agree to a digital copy of the prescription only if the prescriber first:¶¶
 - (A) identifies for the patient the specific method or methods of electronic delivery the prescriber will use, such as text message, electronic mail, or an online patient portal;¶¶
 - (B) obtains, either on paper or in digital format, the patient's consent to use the specific method or methods of electronic delivery the prescriber identified. ¶¶
 - (C) If a digital copy was provided to the patient, the prescriber must retain evidence that the prescription was sent, received or made accessible, downloadable and printable. The optometric physician must retain a signed document confirming the patient's agreement to that prescription delivery method. ¶¶
 - (D) If the patient refuses to sign the prescription confirmation, the optometric physician shall note the patient's refusal on the document and sign it. ¶¶
- (2) The prescriber shall provide a contact lens prescription within 40 business hours of the receipt of the request. Prescriber shall note in the patient's record the name of the requestor and the date and time the prescription was provided.¶¶
- (3) ~~If the patient refuses to sign the prescription confirmation, the optometric physician shall note the patient's refusal on the document and sign it.~~¶¶
- (4) ~~Prescriber records as listed above must be retained at least three years~~Prescriber records, including the signed confirmation of prescription receipt, records or evidence of the patient's consent to digital delivery, or documented refusal of the patient to sign the confirmation of prescription receipt as listed above. are considered patient records and must be retained according to OAR 852-010-0051.¶¶
- (54) Upon direct communication from the patient or anyone designated to act on behalf of the patient, an optometric physician must release or verify the patient's prescription to a third party. The patient cannot be required to sign a waiver or release as a condition of verifying a prescription.¶¶
- (65) The prescription is deemed to be officially signed when first issued to the patient. If the examining optometric physician wishes to delegate signature authority for subsequent copies of a valid spectacle or contact lens prescription, exact copies may be dispensed by a designee following the doctor's written policy for ensuring prescription validity. Under no circumstances may an optometric physician delegate authority to alter the prescription, its expiration date or the number of refills for contact lenses.¶¶
- (76) If a patient has not completed a contact lens fitting, the prescription released need only meet the spectacle prescription requirements.¶¶
- (87) As used in this section, the term "direct communication" includes communication in person, by telephone, facsimile (fax), mail or electronic mail.¶¶
- (98) An optometric physician may not:¶¶
- (a) Require purchase of contact lenses or spectacles from any party as a condition of providing a copy of the prescription or verification of the prescription;¶¶
 - (b) Require payment in addition to or as a part of the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription or verification of a prescription; or¶¶
 - (c) Require the patient to sign a waiver or release as a condition of releasing or verifying a prescription.

Statutory/Other Authority: ORS 683, 182

Statutes/Other Implemented: ORS 683.010, 683.335, 182.466