

APA-1
07/04

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. 630 Department or Agency: Alabama Board of Optometry
Rule No. 630-X-13
Rule Title: Practice of Optometry Through Telemedicine
 X New Amend X Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Fred Wallace, OD

Date 11/12/14

(DATE FILED)
(STAMP)

APA-2
07/04

Alabama Board of Optometry
NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Optometry

RULE NO. & TITLE:

Chapter 630-X-13 - Practice of Optometry Across State Lines (Repealed)
Chapter 630-X-13 - Practice of Optometry Through Telemedicine (New)

INTENDED ACTION: Repeal and new.

SUBSTANCE OF PROPOSED ACTION:

The Alabama Board of Optometry intends to repeal Chapter 630-X-13 of its regulations now entitled "Practice of Optometry Across State Lines" and to replace the said chapter with new regulations entitled "Practice of Optometry Through Telemedicine" in order to carry into effect Act 2014-339 repealing previous law regarding the practice of optometry across state lines and replacing it with the said act allowing for the practice of optometry through telemedicine.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Notice is hereby given that a public hearing shall be held by the Alabama Board of Optometry at the law office of Brooks, Hubbard, James & Mills on January 17, 2015 at 10:00 a.m. located at 418 Scott Street, Montgomery, AL 36104, (334) 593-8053, at which any and all interested persons may present either orally or in writing, data, views, or arguments for or against the repeal of old regulations and adoption of the new.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: January 2, 2015.

CONTACT PERSON AT AGENCY: Kim Herzig, Secretary of the Alabama Board of Optometry at P.O. Box 781, Montgomery, Alabama, (334) 593-8053.

Fred Wallace, O.D.

Fred Wallace, O.D.

Alabama Board of Optometry

Chapter 630-X-13

Practice of Optometry Across State Lines **(Repealed)**

- 630-X-13-.01 Definition Of Distance-Based Optometrist
- 630-X-13-.02 Definition Of Alabama Patient
- 630-X-13-.03 Definition Of The Practice Of Optometry Across State Lines
- 630-X-13-.04 Special Purpose License To Practice Optometry Across State Lines
- 630-X-13-.05 Issuance Of Certificate Of Qualification
- 630-X-13-.06 Issuance Of Special Purpose License To Practice Optometry Across State Lines
- 630-X-13-.07 Renewal Of Special Purpose License To Practice Optometry Across State Lines
- 630-X-13-.08 Revocation Or Suspension Of Special Purpose License To Practice Optometry Across State Lines
- 630-X-13-.09 Exemptions
- 630-X-13-.10 Reciprocity

630-X-13-.01 Definition Of Distance-Based Optometrist For the purpose of these regulations, a distance-based optometrist is defined as an optometrist located outside the boundaries of the State of Alabama who does not have a full, unrestricted and current license to practice optometry in Alabama.
History: Author, Dr. William Sullins; Filed December 11, 1998

630-X-13-.02 Definition Of Alabama Patient. For the purposes of these regulations, an Alabama patient is an individual whose physical location is within the boundaries of the State of Alabama.
History: Author, Dr. William Sullins; Filed December 11, 1998

630-X-13-.03 Definition Of The Practice Of Optometry Across state lines. The practice of optometry across state lines means the examination of, or consultation regarding, an Alabama patient by a distance-based optometrist and shall include:

- (1) The rendering by a distance-based optometrist of a professional opinion, either written or otherwise documented, concerning the diagnosis or treatment of an Alabama patient as a result of transmission of individual patient data by electronic or other means to such distance-based optometrist or his or her agent, or
- (2) The rendering by a distance-based optometrist of treatment to an Alabama patient as a result of transmission of individual patient data by electronic or other means to such distance-based optometrist or his or her agent, but
- (3) This definition shall not include an informal consultation regarding an Alabama patient between an Alabama licensed optometrist and a distance-based optometrist provided that the consultation does not result in either:
 - (a) compensation or the expectation of compensation by either optometrist, or
 - (b) the formal rendering of a written or otherwise documented professional opinion concerning the diagnosis or treatment of said patient by the distance-based optometrist.

History: Author, Dr. William Sullins; Filed December 11, 1998

630-X-13-.04 Special Purpose License To Practice Optometry Across State Lines. A special purpose license issued by the Alabama Board of Optometry shall be required for the practice of optometry across state lines in Alabama.

History: Author, Dr. William Sullins; Filed December 11, 1998

630-X-13-.05 Issuance Of Certificate Of Qualification. An individual may apply to the Alabama Board of Optometry for the issuance of a certificate of qualification for a special purpose license to practice optometry across state lines. Such application shall be on a form provided by the Board upon request and shall include an application fee in the amount of \$600.00. The Board shall issue such certificate of qualification providing the following requirements are met:

- (1) The applicant holds a current full and unrestricted license to practice optometry in a state or territory of the United States.
- (2) The applicant has no previous or pending disciplinary action or other action taken against the applicant by any state or other licensing jurisdiction, provided, however, that the Board may issue a certificate of qualification in such cases where the previous or pending disciplinary action or other action does not indicate that the applicant is a potential threat to the public.

(3) The applicant shall affirm his or her intent and willingness to report to the Alabama Board of Optometry in writing the initiation of any disciplinary action against him or her by any state or territory in which he or she is licensed. Said report shall be submitted to the Alabama Board of Optometry within 15 days of the initiation of such disciplinary action.

History: Author, Dr. William Sullins; Filed December 11, 1998. Amended effective February 20, 2008.

630-X-13-.06 Issuance Of Special Purpose License To Practice Optometry Across State Lines. The Alabama Board of Optometry shall issue a special purpose license to practice optometry across state lines upon presentation by a distance-based optometrist of a certificate of qualification issued by the Alabama Board of Optometry in accordance with this chapter. Special purpose licenses to practice across state lines limit the holders thereof solely to the practice of optometry across state lines as defined herein and does not confer the authority to practice optometry while said licensee is within the physical boundaries of the state of Alabama.

History: Author, Dr. William Sullins; Filed December 11, 1998

630-X-13-.07 Renewal Of Special Purpose License To Practice Optometry Across State Lines. The special purpose license to practice optometry across state lines is valid for a period of three years. Such special purpose license may be renewed for additional three year terms upon receipt of a renewal fee of \$260.00. History: Author, Dr. William Sullins; Filed December 11, 1998. Amended effective February 20, 2008.

630-X-13-.08 Revocation Or Suspension of Special Purpose License To Practice Optometry Across State Lines.

(1) A special purpose license to practice optometry across state lines may be revoked or suspended, or other disciplinary action may be imposed, by the Alabama Board of Optometry for any of the following causes:

(a) Failure to renew special purpose license according to the renewal schedule established by the Board shall result in the automatic revocation of said license.

(b) Failure to comply with rules and regulations of the Alabama Board of Optometry shall be cause for the Board to initiate disciplinary actions as set forth in Sections 34-22-1 to 34-22-43, inclusive, Code of Alabama 1975.

(c) Failure to comply with rules and regulations governing optometrists in any other state or territorial licensing jurisdiction in which the licensee holds a license to practice optometry shall be cause for the Board to initiate disciplinary actions in Alabama and to impose the same discipline it would have imposed had the violation been committed by an Alabama licensee in the course of practice in Alabama.

(2) The Alabama Board of Optometry is authorized to temporarily suspend a special purpose license to practice optometry across state lines without a hearing on either of the following grounds:

(a) The failure of the licensee to appear or produce records or materials as requested by the Board.

(b) The initiation of a disciplinary action against the licensee by any state or territorial licensing jurisdiction in which the licensee holds a license to practice optometry. The temporary suspension provided hereby shall remain in effect until the temporary suspension is terminated by written order of the Alabama Board of Optometry, finding that any violation of the rules or regulations governing optometrists committed by the licensee, or any failure by the licensee to honor requests of the Board, does not indicate that the licensee is a potential threat to the public.

History: Author, Dr. William Sullins; Filed December 11, 1998

630-X-13-.09 Exemptions.

(1) A distance-based optometrist who engages in the practice of optometry across state lines in an emergency, is not subject to this rule.

(2) A distance-based optometrist who engages in the practice of optometry across state lines on an irregular or infrequent basis is not subject to this rule. Irregular or infrequent practice of optometry across state lines is defined as such practice involving fewer than 10 patients, occurring less than 10 times in a calendar year, or comprising less than one percent of the distance-based optometrist's diagnostic or therapeutic practice of optometry.

History: Author, Dr. William Sullins; Filed December 11, 1998. Amended effective February 20, 2008.

630-X-13-.10 Reciprocity.

Notwithstanding any provision of this regulation, the Board shall only issue a special purpose license to practice optometry across state lines to an applicant whose principal optometric practice location and license to practice optometry is located in a state or territory of the United States whose laws permit or allow for the issuance of a special purpose license to practice optometry across state lines or similar license to an optometrist whose principal practice location is within the boundaries of the State of Alabama.

History: Author, Dr. William Sullins; **Statutory Authority:** Code of Ala., 1975, §34-22-80 through 87.

Filed December 11, 1998

ALABAMA BOARD OF OPTOMETRY

Chapter 630-X-13

Practice of Optometry Through Telemedicine **(New Chapter)**

Chapter 630 x 13

- 630 x 13.01 Definitions
- 630 x 13.02 Optometric Telemedicine
- 630 x 13.03 On-site Optometrist
- 630 x 13.04 Security Measures for Electronic Mail
- 630 x 13.05 Communication in Patient Records
- 630 x 13.06 Alternative Forms of Communication
- 630 x 13.07 Patient Records
- 630 x 13.08 Emergency Telemedicine

630 X 13.01 Definitions

- (1) Distant Site Provider. A provider of optometric services through telemedicine from a site other than the patient's then current location. A distant site provider shall hold an active Alabama optometry license as set out in § 34-22-20 and § 34-22-21 of the Alabama Code.
- (2) Emergency. A situation or condition where failure to provide immediate treatment poses a threat of loss of sight to a person. For the purposes hereof, routine visual care shall not be an emergency.
- (3) Established Treatment Site. A location where a patient shall present to seek optometric care (through telemedicine). An established treatment site shall have an optometrist licensed by the Alabama Board of Optometry present on site during the provision of any telemedicine to a patient, and there must exist between said optometrist and patient an optometrist-patient relationship. There shall be sufficient equipment and technology present at any established treatment site to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. A patient's home is not considered an established treatment site.
- (4) Face-to-face Visit. An evaluation or appointment for treatment at which both the provider and patient are at the same physical location, or where the patient is at an established treatment site and the provider is a distant site provider.
- (5) In-person Evaluation. A patient evaluation conducted by a provider who is at the same physical location as the location of the client.
- (6) Provider. As used in this chapter the term "provider" shall mean an optometrist holding an active license to practice optometry granted by the Alabama Board of Optometry in accordance with § 34-22-20 and § 34-22-21 of the Alabama Code.
- (7) Telemedicine. As used in these regulations, a health service that is delivered by a licensed optometrist acting within the scope of his or her license and that requires the use of telecommunications technology other than telephone or facsimile. Telecommunications technology as used herein shall include, but not be limited to:
- (a) compressed digital interactive video, audio, or data transmission;
 - (b) clinical data transmission using computer imaging by way of still image capture and store and forward;
 - (c) other technology that facilitates access to health care services or optometric speciality services.

630 x 13.02 Optometric Telemedicine

(1) The provision of optometric diagnosis, treatment, or other services to a patient through telemedicine at an established treatment site may be used for all patient visits, including initial evaluations to establish an optometrist-patient relationship between a provider and a patient.

(2) A distant site provider who provides telemedicine services to a patient that is not present at an established treatment site shall ensure that a proper provider-patient relationship is established, which shall include at least the following:

(a) Having had at least one face-to-face meeting, either in person, or at an established treatment site via telecommunications technology as set out in 630 x 13.01 (7);

(b) Confirming the identity of the person requesting treatment by establishing that the person requesting the treatment is in fact whom he or she claims to be.

(3) Evaluation, treatment, and consultation recommendations made via telemedicine, including, but not limited to the issuance of prescriptions, shall be held to the same standards of practice as those in traditional in-person clinical settings. The provision of optometric diagnosis, treatment, or other services through telemedicine shall comply with the requirements of the Alabama Code, this chapter, and these regulations. Failure to comply with such requirements shall be considered a failure to meet standard of care as required by 630-X-12-.06 herein.

(4) Distant site providers shall obtain an adequate and complete medical history for the patient before providing treatment and shall document the medical history in the patient record.

630 x 13.03 On-site Optometrist

A provider may delegate tasks and activities at an established treatment site to an assistant who is properly trained, supervised, and directed. There shall be, however, an Alabama-licensed optometrist present and available to assist with the provision of care at any established treatment site during the provision of optometric telemedicine.

630 x 13.04 Security Measures for Electronic Mail

Adequate measures shall be taken to ensure the security of all patient communications through electronic mail, and that said information remains confidential. Electronic mail includes any type-written communication that is transferred via the Internet, telephone or cable line, or cellular telephone service, but shall not include facsimile, or "fax" communications. Providers of optometric telemedicine shall, prior to providing optometric telemedicine services, establish and adopt written policies and procedures to ensure the security of patient communications, recordings, and records transferred by electronic mail. Policies shall be evaluated periodically so that they remain up-to-date. The written policies and procedures for such security measures for electronic mail shall address all of the following:

- (1) Confidentiality and integrity of patient-identifiable information;
- (2) The identity—by position or title—of health care personnel who will process or otherwise have access to information sent by electronic mail;
- (3) Hours of operation and availability of the provider and distant site provider;
- (4) Types of transaction which shall be permitted electronically;
- (5) The type of information to be included in the communication, such as patient name, identification number, and type of transaction;
- (6) How and when electronic mail will be archived and retrieved;

(7) Mechanisms for the oversight of the processing, handling, storage, and archival of electronic mail.

630 x 13.05 Communication in Patient Records

All relevant provider-patient electronic communications, including recordings and electronic mail shall be stored and filed in or with the patient's record in addition to any other storage methods.

630 x 13.06 Alternative Forms of Communication

All patients who are served through optometric telemedicine shall be informed of alternative forms of contacting their provider for urgent matters. Conventional telephone numbers used by a provider for traditional on-site optometry shall be sufficient.

630 x 13.07 Patient Records(1) Patient records shall be maintained for all telemedicine services. The provider or distant site provider shall maintain the records created at any site where treatment or evaluation is provided.

(2) Patient records shall include copies of all relevant patient-related electronic communications, including relevant provider-patient email, prescriptions, laboratory and test results, evaluations and consultation, records of past care, medical histories, and instructions. If possible, telemedicine encounters that are recorded electronically shall also be included in the patient record. Where means of storage will not allow for the storage of electronically recorded encounters with or in the patient record, the patient record shall include a notation or entry that the recording exists and the location and means of storage of such recording.

630 x 13.08 Emergency Telemedicine

(1) An optometrist who is licensed by another state to practice optometry, but who is not licensed in the state of Alabama pursuant to §§ 34-22-20 or 34-22-21, who utilizes telemedicine to provide optometric services in the state of Alabama from a distant site outside of the state of Alabama during a state of emergency is not subject to the requirements of this article. For the purposes of this section 13.08(1), a state of emergency means a natural or man-made disaster for which the Governor of the State of Alabama has declared or proclaimed a state of emergency or where the President of the United States has declared a disaster in accordance with the Disaster Relief and Emergency Assistance Act of 1988 as amended. For the exemption contained in this section to apply, the patient receiving telemedicine services from the distant site must be located within the geographical boundaries established in the governor's declaration of a state of emergency or the president's disaster declaration.

(2) A provider who is contacted in an emergency shall not be subject to the notice and security provisions of this article. the provisions of this section 13.08(2) shall not apply to any non-emergency optometric services provided to the patient as a continuation of treatment initiated in the emergency or for a different condition or issue which arises later. For the purposes of this section 13.08(2), an emergency shall have the meaning and definition set out in section 13.01(2) above.

Author: Dr. Fred Wallace

Statutory Authority: Code of Ala., 1975, §34-22-80 through 87.

History: New Rule: . Filed ; effective .