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To: Board Members **Date:** April 20, 2018

From: Rachel Michelin, Chair **Telephone:** (916) 575-7170
Legislation and Regulation Committee

Subject: **Agenda Item 8 – Update, Discussion and Possible Action Regarding Board Committee Reports**

D. Legislation and Regulation Committee (LRC)

Audio: [March 23, 2018](#)

Requested Actions:

1. **Consider approving LRC’s recommendations addressing mobile optometric facilities.**
2. **Discuss whether the Board should sponsor legislation to amend BPC § 3109 (*During Agenda Item 10*).**
3. **Consider taking positions on pending legislation (*During Agenda Item 9*)**

Mobile Clinics

During its March 23, 2018 meeting, the LRC held a Mobile Clinic stakeholder meeting to discuss next steps in addressing mobile optometric facilities. As previously discussed (and explained in more detail [here](#)), the Mobile Clinic workgroup recommended the Legislation and Regulation Committee (LRC) break the mobile clinic solution into two categories:

1. Access for homebound patients who are unable to obtain care from a traditional brick and mortar location, and
2. Access to all other mobile services (e.g., mobile services brought directly to schools, health events, businesses, etc.).

The Mobile Clinic Workgroup (now part of the LRC) worked closely with stakeholders over the past several months on amendments to BPC § 3070.1 to allow optometric services to homebound patients. The LRC and stakeholders agree that an amenable solution is extremely close, and will likely have legislation ready for the 2019 legislative session.

With a homebound patient resolution near, the LRC discussed the pros and cons to addressing access to all other mobile services simultaneously during the 2019 session. Concerns were raised that combining the issues would hinder the success of addressing homebound care. However, concerns were also raised that waiting to address the entire issue would essentially “kick the can down the road” and delay any true progress in increasing access to all Californians.

The California Optometric Association explained their support for addressing the homebound patient care strong opposition to any for-profit mobile clinic legislation.

The LRC recommends the Board proceed with one comprehensive bill, addressing both portions of the mobile clinic issue, for the 2019 legislative session. The LRC would like the Board to consider approving the attached amendments to BPC § 3070.1 for homebound patients, and then the LRC will work with stakeholders through 2018 to address all other mobile services.

BPC § 3109

The LRC discussion and requests are covered in detail under [Agenda Item 10](#).

Proposed Regulation Defining a “Complete Report” and Related Form

As explained in the LRC materials [here](#), staff recommended defining a “complete report” referenced in BPC § [801](#) rather than wait for potential legislative changes.

The Board’s current [settlement form](#) is not mandated through regulation and does not request any supporting documentation (e.g., copy of the settlement, depositions, etc.). Due to the lack of information received on the report, the enforcement unit spends a significant amount of time trying to obtain supporting documents for a subject matter expert to review.

Currently, physician and surgeons are required to include copies of the report, records, and depositions. The Medical Board of California’s [Report of Settlement, Judgement or Arbitration Award](#) appears to be more inclusive, and staff proposes using some of those sections in the Board’s report.

The LRC supported staff’s recommended direction. However, the LRC directed staff to prepare a detailed justification for each report section, similar to the Initial Statement of Reasons (ISR) in a rulemaking packet when it is presented to the Board. Rather than duplicating work, staff agreed to prepare the ISR and present that at the Board meeting. Due to the level of work involved, staff plans to present the ISR during the August meeting.

Pending Legislation

The LRC was updated on pending legislation Board staff is monitoring. At the time of the LRC meeting, many bills were in their infancy stages and did not have analyses available. The LRC did not recommend any formal positions on legislation. However, based on anticipated amendments, the Board may want to consider taking a position on the bills impacting the optometric profession, as listed under Agenda Item 9A.

Attachment

1. Proposed Amendments to BPC § 3070.1 for homebound patient care

3070.1.

(a) For purposes of this section, the following terms have the following meanings:

(1) "Health facility" means a health facility as defined in Section 1250 of the Health and Safety Code, exclusive of a hospital defined in subdivision (a) or (b) of that section.

(2) "Residential care facility" means a residential facility, as defined in paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code, licensed by the State Department of Social Services, including, but not limited to, the following:

(A) Adult residential facilities.

(B) Adult residential facilities for persons with special health care needs.

(C) Residential care facilities for the chronically ill.

(D) Residential care facilities for the elderly.

(E) Continuing care retirement communities.

(F) Social rehabilitation facilities.

(3) "Home residence" means the dwelling of a person who is unable to obtain optometric services outside of their home due to a disabling physical or mental condition.

(b) (1) No optometrist may engage in the practice of optometry at any home residence without a home residence certificate. The Board may, upon application and payment of the fee prescribed in Section 3152, issue a home residence certificate to a California Therapeutic Pharmaceutical Agents certified optometrist. A home residence certified optometrist shall meet and maintain the requirements in paragraphs (1), (2), and (3) of subsection (c).

(2) Home-residence certificates expire with the optometrist license, unless renewed. Home-residence certificates may be renewed upon application and payment of the fee prescribed in Section 3152.

(3) Optometrists engaging in temporary practice as defined in Section 3070 are not required to obtain a home residence certificate.

~~(b)~~ (c) A Therapeutic Pharmaceutical Agents certified optometrist may engage in the practice of optometry at any health facility or residential care facility provided that all of the following requirements are satisfied:

(1) The optometrist maintains a primary business office, separate from the health facility, ~~or~~ residential care facility, or home residence that meets all of the following requirements:

(A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

(B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.

(C) Is registered by the optometrist with the Board of Optometry.

(D) Is owned or leased by the optometrist or by the employer of the optometrist.

(E) Is not located in or connected with a residential dwelling.

(2) The optometrist maintains or discloses patient records in the following manner:

(A) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. The disclosure of records shall be made at or near the time services are rendered and shall be maintained at the primary business office specified in paragraph (1). Records shall be provided to any referring primary care provider.

(B) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).

(C) Pursuant to Section 3007, the optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.

(D) If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient's chart, including all of the following information about the optometrist:

(i) Name.

(ii) Optometrist license number.

(iii) The place of practice and the primary business office.

(iv) Description of the goods and services for which the patient is charged and the amount charged.

(E) A copy of any referral or order requesting optometric services for a patient from the health facility's, home residence, or residential care facility's administrator, director of social services, the attending physician and surgeon, the patient, or a family member shall be kept in the patient's medical record.

(3) The optometrist possesses and appropriately uses the instruments and equipment required for all optometric services and procedures performed within the health facility, ~~or~~ residential care facility, or home residence.

~~(ed)~~ An optometrist who satisfies all of the requirements in this section for the practice of optometry at a health facility or residential care facility shall not be required to comply with Section 3070 with regard to providing notification to the board of each facility or residential care facility at which he or she practices.

(e) Prior to engaging in the practice of optometry at any health facility, residential care facility, or home residence, an optometrist shall provide each patient and the patient's caregiver, if applicable, a Consumer Notice, approved by the Board, which includes, but is not limited to, an optional authorization releasing the patient's medical information to the Board. This authorization may be used to safeguard patients from substandard optometric care, fraud, and violations of the Optometry Practice Act.

(f) An optometrist engaging in the practice of optometry at any health facility, residential care facility, or home residence is subject to periodic quality assurance reviews by the board to ensure compliance with the Optometry Practice Act.

(Added by Stats. 2010, Ch. 604, Sec. 5. Effective January 1, 2011.)

3152. The amounts of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

- (a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars (\$275).
- (b) The fee for renewal of an optometric license shall not exceed five hundred dollars (\$500).
- (c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars (\$75).
- (d) The fee for a branch office license shall not exceed seventy-five dollars (\$75).
- (e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars (\$25).
- (f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars (\$25).
- (g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars (\$50).
- (h) The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars (\$50).
- (i) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars (\$50).
- (j) The fee for approval of a continuing education course shall not exceed one hundred dollars (\$100).
- (k) The fee for issuance of a statement of licensure shall not exceed forty dollars (\$40).
- (l) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars (\$40).
- (m) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars (\$20).
- (n) The application fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (o) The renewal fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (p) The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars (\$25).
- (q) The fee for a retired license shall not exceed twenty-five dollars (\$25).
- (r) The fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).
- (s) The biennial renewal fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).
- (t) The application fee for a certificate to administer immunizations shall not exceed fifty dollars (\$50).
- (u) The application fee for a homebound patient care license shall not exceed fifty dollars (\$50).
- (v) The renewal fee for a homebound patient care license shall not exceed fifty dollars (\$50).
- (x) The delinquency fee for a homebound patient care license shall not exceed twenty-five dollars (\$25).