



ISSUE MEMORANDUM

DATE	February 1, 2019
TO	California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer prepared by Marc Johnson, Policy Analyst
SUBJECT	Merger of CSBO and Dispensing Optician Committee (DOC) revenue funds

In 2015, the registration and regulation of nonresident contact lens sellers and dispensing opticians was moved from the jurisdiction of the California Medical Board to the CSBO as a result of Assembly Bill 684 (Alejo, Chapter 405, Statutes of 2015). AB 684 directed fees collected from registered dispensing opticians and persons seeking registrations as a dispensing optician to be paid into the Dispensing Opticians Fund (DOC), and to be available, upon appropriation, to the CSBO. Although the operations of the DOC are now integrated within CSBO’s functions, the revenue funds for both are kept in separate accounts within the State Treasury. Though this arrangement enabled the Board to closely monitor the health of the RDO fund upon initial integration, it creates disconnected reporting and planning for current and future year budgeting. Following the directive of the Board given during the November 2, 2018 Board Meeting and in previous meetings, staff presents the following research and proposal to merge these separate accounts for the Optometry Fund and Dispensing Opticians Fund into one combined fund for accounting and budgetary purposes.

Although non-controversial, this change will require legislative action, currently being negotiated for inclusion in an Assembly Business and Professions Committee omnibus bill. The final wording of merger language would need to be determined by the Legislative Counsel.

Existing general BPC laws relating to revenue:

Optometry Fund - BPC 205(a) (11)

Dispensing Opticians Fund – BPC 205(a) (24)

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=BPC&division=1.&title=&part=&chapter=3.&article=

Existing Program specific BPC law relating to revenue:

Optometry Fund – BPC 3145

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=BPC&division=2.&title=&part=&chapter=7.&article=7



3145. *There is the Optometry Fund in the State Treasury. Unless otherwise provided, all money collected under the authority of this chapter shall be paid into this fund, and shall be available, upon appropriation of the Legislature, to carry out the purposes of this chapter. The board shall not maintain a reserve balance in the fund that is greater than six months of the appropriated operating expenses of the board in any fiscal year.*

RDO Fund – BPC 2567

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=BPC&division=2.&title=&part=&chapter=5.5.&article=3.

2567. *(a) The provisions of Article 19 (commencing with Section 2420) and Article 20 (commencing with Section 2435) of Chapter 5 which are not inconsistent or in conflict with this chapter apply to the issuance and govern the expiration and renewal of certificates issued under this chapter. All fees collected from persons registered or seeking registration under this chapter shall be paid into the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter. Any moneys within the Contingent Fund of the Medical Board of California collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund.*

Related Legislation:

In 2000, the Landscape Architects Technical Committee (LATC) was absorbed into the California Architect Board, via Senate Bill 1863 (Chap. 1064, Statutes of 1054). This model is not recommended due to the age of the statute and lack of available information about the fund merger.

In 2009, AB 1535 (Jones, Chap. 309, Statutes of 2009) eliminated the Hearing Aid Dispensers Bureau and consolidated its functions into the newly created Speech-Language Pathology and Audiology Board. As part of that bill, a combined fund known as “Speech-Language Pathology and Audiology Fund” was created into Business and Professions Code §2534. Legislative Analysis of the bill does not comment on specifics or the reasoning of the fund merger, but it is assumed to be a routine action as part of the Board absorbing the Hearing Aid Dispensers Bureau.

In 2015, AB 177 (Bonilla, Chap. 428, Statutes of 2015) the Board for Professional Engineers, Land Surveyors and Geologists underwent a fund merger similar to what CSBO may wish to complete.

From committee analysis: *“At the time of the subsequent sunset review in 2012, the recommendation was to keep the funds of each board separate until the functions of the new board integrated. Initially, the licensing, enforcement, and administrative units of the BPELSG had separate personnel for geologists and geophysicists and for engineers and land surveyors. Presently, the activities and staff of these units are combined so each unit has authority to regulate all of the professions under the BPELSG. Despite the merger of these duties, funds are maintained separately as the Geology and Geophysics Account within the Professional*



Engineers and Land Surveyors Fund. This bill would combine the accounts to enable the BPELSG to fully integrate its operations and costs.”

http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB177

Specifically, AB 177 sets out the following changes to BPC 6797:

6797. (a) *The department shall receive and account for all money derived from the operation of this chapter and, at the end of each month, shall report such money to the Controller and shall pay it to the Treasurer, who shall keep the money in a separate fund known as the Professional Engineer’s, Land Surveyor’s, and Geologist’s Fund.*

(b) *For accounting and recordkeeping purposes, the Professional Engineer’s, Land Surveyor’s, and Geologist’s Fund shall be deemed to be a single special fund and shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.*

(c) *The fees and civil penalties received under this chapter shall be deposited in the Professional Engineer’s, Land Surveyor’s, and Geologist’s Fund. All moneys in the fund are hereby appropriated for the purposes of this chapter.*

(d) *This section shall become operative on July 1, 2016.*

Possible Solution:

Use text from AB 177 as a template for CSBO and RDO’s proposed fund merger.

Potential language from AB 177 used as a template for CSBO and RDO (additions are underlined and deletions are struck through):

2567. (a) The provisions of Article 19 (commencing with Section 2420) and Article 20 (commencing with Section 2435) of Chapter 5 which are not inconsistent or in conflict with this chapter apply to the issuance and govern the expiration and renewal of certificates issued under this chapter. All fees collected from persons registered or seeking registration under this chapter shall be paid into the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter. Any moneys within the Contingent Fund of the Medical Board of California collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund.

(b) For accounting and recordkeeping purposes, the Dispensing Optician Fund and the Optometry Fund, as defined in Section 3145 of Chapter 7 of this division, shall be deemed to be a single special fund to be known as the Optometry and Dispensing Optician Fund, and shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

~~(b)~~ (c) The board may employ, subject to civil service regulations, whatever additional clerical assistance is necessary for the administration of this chapter.

3145. (a) There is the Optometry Fund in the State Treasury. Unless otherwise provided, all money collected under the authority of this chapter shall be paid into this fund, and shall be available, upon appropriation of the Legislature, to carry out the purposes of this chapter. The



board shall not maintain a reserve balance in the fund that is greater than six months of the appropriated operating expenses of the board in any fiscal year.

(b) For accounting and recordkeeping purposes, the Dispensing Optician Fund, as defined in Section 2567 of Chapter 5.5 of this division and the Optometry Fund shall be deemed to be a single special fund to be known as the Optometry and Dispensing Optician Fund and shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

ASSEMBLY BILL

No. 156

Introduced by Assembly Member Voepel

January 7, 2019

An act to add Chapter 5.48 (commencing with Section 2548) to Division 2 of the Business and Professions Code, relating to eye care.

LEGISLATIVE COUNSEL'S DIGEST

AB 156, as introduced, Voepel. Eye care: remote assessment.

Existing law restricts to a physician and surgeon licensed by the Medical Board of California or optometrist licensed by the State Board of Optometry the power to prescribe ophthalmic devices, including spectacle or contact lenses. Existing law establishes standards for spectacle lens and contact lens prescriptions. Existing law prohibits any person other than licensed physicians and surgeons, licensed optometrists, or registered dispensing opticians from dispensing, selling, or furnishing prescription lenses, except as provided in the Nonresident Contact Lens Seller Registration Act.

This bill would prohibit a person from operating an assessment mechanism to conduct an eye assessment or to generate a prescription for contact lenses or visual aid glasses to a patient at a California residence unless prescribed requirements are met. The bill would define "assessment mechanism" to mean an automated or virtual equipment, application, or technology designed to be used on a telephone, a computer, or an internet-based device that may be used either in person or remotely to conduct an eye assessment and includes artificial intelligence devices and any equipment that is used to perform an eye assessment. The bill would define other terms for its purposes. The bill would prohibit a person from operating an assessment mechanism to

conduct an eye assessment or generate a prescription to a California patient that is under 18 years of age or to a California patient that has not received an in-person comprehensive eye health examination by an optometrist or physician and surgeon within the previous 24 months. The bill would require that the evaluation, treatment, and consultation recommendations by a licensed optometrist or physician and surgeon utilizing an assessment mechanism be held to the same standards of appropriate practice as those in traditional in-person clinical settings. The bill would make a knowing violation of these provisions subject to civil penalties and enforceable by the Attorney General.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5.48 (commencing with Section 2548)
2 is added to Division 2 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 5.48. CONSUMER PROTECTION IN EYE CARE ACT
6

7 2548. This chapter shall be known as the Consumer Protection
8 in Eye Care Act.

9 2548.1. As used in this chapter:

10 (a) "Assessment mechanism" means automated or virtual
11 equipment, application, or technology designed to be used on a
12 telephone, a computer, or an internet-based device that may be
13 used either in person or remotely to conduct an eye assessment
14 and includes artificial intelligence devices and any equipment,
15 electronic or nonelectronic, that is used to perform an eye
16 assessment.

17 (b) "Contact lens" has the same meaning as described in Section
18 2541.

19 (c) "Diagnostic information and data" includes, but is not limited
20 to, photographs and scans.

21 (d) "Eye assessment" means an assessment of the ocular health
22 and visual status of a patient that may include, but is not limited
23 to, objective refractive data or information generated by an
24 automated testing device, including an autorefractor, in order to
25 establish a medical diagnosis for the correction of vision disorders.

1 (e) “Person” means an individual, corporation, trust, partnership,
2 incorporated or unincorporated association, and any other legal
3 entity.

4 (f) “Prescription” means a handwritten or electronic order issued
5 by a licensed optometrist or physician and surgeon, or an oral order
6 issued directly by a licensed optometrist or physician and surgeon.

7 (g) “Seller” means an individual or entity that sells contact
8 lenses or visual aid glasses and dispenses them to residents of this
9 state in any manner.

10 (h) “Visual aid glasses” means eyeglasses, spectacles, or lenses
11 designed or used to correct visual defects, including spectacles
12 that may be adjusted by the wearer to achieve different types or
13 levels of visual correction or enhancement. “Visual aid glasses”
14 does not include optical instruments or devices that are any of the
15 following:

16 (1) Not intended to correct or enhance vision.

17 (2) Sold without consideration of the visual status of the
18 individual who will use the optical instrument or device, including,
19 but not limited to, sunglasses that are designed and used solely to
20 filter out light.

21 (3) Completely assembled eyeglasses or spectacles designed
22 and used solely to magnify.

23 2548.2. (a) A person shall not operate an assessment
24 mechanism to conduct an eye assessment or to generate a
25 prescription for contact lenses or visual aid glasses to a patient at
26 a California residence, unless all of the following apply:

27 (1) Diagnostic information and data gathered by the assessment
28 mechanism are read and interpreted by a licensed optometrist or
29 physician and surgeon.

30 (2) The licensed optometrist or physician and surgeon can
31 confirm the identity of the patient requesting treatment via the
32 assessment mechanism.

33 (3) The assessment mechanism is approved by the federal Food
34 and Drug Administration or any third party certification program
35 endorsed by the Food and Drug Administration for the intended
36 use.

37 (4) The assessment mechanism is designed and operated in a
38 manner that provides any applicable accommodation required by
39 the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101
40 et seq.).

1 (5) The assessment mechanism and accompanying technology
2 used for the collection and transmission of information and data
3 gathers and transmits protected health information in compliance
4 with the federal Health Insurance Portability and Accountability
5 Act of 1996 (Public Law 104-191).

6 (6) The procedure for which the assessment mechanism is used
7 has a recognized Current Procedural Terminology code maintained
8 by the American Medical Association.

9 (7) The assessment mechanism prominently displays the name
10 and California state license number of the optometrist or physician
11 and surgeon who will read and interpret the diagnostic information
12 and data.

13 (8) The owner or lessee of the assessment mechanism maintains
14 liability insurance in an amount adequate to cover claims made by
15 individuals diagnosed or treated based on diagnostic information
16 and data generated by the assessment mechanism.

17 (9) The assessment mechanism creates and maintains a medical
18 record for each patient, which is for use during the ongoing
19 treatment of a patient, and complies with all state and federal laws
20 regarding maintenance and accessibility.

21 (10) There is simultaneous interaction between the patient and
22 the licensed optometrist or physician and surgeon.

23 (11) The licensed optometrist or physician and surgeon utilizing
24 an assessment mechanism provides a handwritten or electronic
25 signature certifying their evaluation, treatment, prescription, or
26 consultation recommendations of the patient.

27 (b) A person shall not operate an assessment mechanism to
28 conduct an eye assessment or to generate a prescription to a patient
29 under 18 years of age at a California residence.

30 (c) A person shall not operate an assessment mechanism to
31 conduct an eye assessment or to generate a prescription to a patient
32 at a California residence unless the patient has received an
33 in-person comprehensive eye health examination by an optometrist
34 or physician and surgeon within the previous 24 months.

35 (d) Evaluation, treatment, and consultation recommendations
36 by a licensed optometrist or physician and surgeon utilizing an
37 assessment mechanism as required in this section, including issuing
38 a prescription via electronic means, shall be held to the same
39 standards of appropriate practice as those in traditional in-person
40 clinical settings.

1 2548.3. A person that engages in a knowing violation of this
2 chapter shall be subject to a civil penalty of not more than ten
3 thousand dollars (\$10,000) for each violation. These civil penalties
4 may be assessed and recovered through a civil action brought in
5 the name of the people of the State of California by the Attorney
6 General.

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