

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on
Regulated Occupations within Committee Jurisdiction – Optometrist

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Optometrist

- II. Name of Occupational Board Responsible for Enforcement
 - A) Per Nebraska Revised Statutes Section [38-161](#), the Board of Optometry provides recommendations to the Department of Health and Human Services regarding the issuance or denial of credentials, and provides recommendations to the Department of Health and Human Services regarding rules and regulations to carry out the Uniform Credentialing Act.

- III. Public Purpose and Assumptions Underlying License Creation
 - A) An Optometrist examines, diagnoses, and treats conditions of the visual system. They prescribe corrective procedures and conserve, improve, and correct vision through the use of lenses, contact lenses, prisms, orthotopic exercises, visual training, and controlled visual environment. Optometrists examine patients for visual pathology or manifestations of disease, and refer patients with pathological conditions to a medical practitioner and/or treat the condition if certified to do so.

The license was created to protect the public health, safety, and welfare.

- IV. Number of Regulated Professionals in Nebraska
 - A) There are 446 licensed Optometrists in Nebraska.

BOARD MEMBERSHIPS AND MEETINGS

- I. Number of Members
 - A) There are four members of the Board of Optometry.

- II. Who Appoints Members of the Board / Is Legislative Approval Required?
 - A) The Board of Health appoints the members of the Board of Optometry.
Legislative approval is not required.

- III. Term Length
 - A) The length of term for service on the Board of Optometry is up to two consecutive five year terms, on a rotating basis.

- IV. Qualifications for Membership of the Board
 - A) The Board of Optometry is made up of three professional Optometrists and one public member. The professional Optometrists shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member.

- V. The Number of Meetings Required Per Year / Meetings Actually Held
 - A) For fiscal year (FY) 2014-2015: Meetings Required – 1; Meetings Held – 3.
 - B) For FY 2015-2016: Meetings Required – 1; Meetings Held – 2.
 - C) For FY 2016-2017: Meetings Required – 1; Meetings Held – 2.
 - D) For FY 2017-2018: Meetings Required – 1; Meetings Held – 2.
 - E) For FY 2018-2019: Meetings Required – 1; Meetings Held – 2.

- VI. Annual Budget Information for the Previous Five Years
 - A) The Board of Optometry is cash-funded from licensure fees. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.
 - B) For FY 2014-2015: \$5,875
 - C) For FY 2015-2016: \$8,827
 - D) For FY 2016-2017: \$39,769
 - E) For FY 2017-2018: \$43,067
 - F) For FY 2018-2019: \$41,828

VII. Statement from Occupational Board on Effectiveness of Regulations

- A) The Chair of the Boar of Optometry stated that he felt the optometry regulations have maintained “the spirit of law” since the transition to the Uniform Credentialing Act. He does, however, feel that scope expansion processes move slowly.

AUTHORIZATION

I. Statutory Authorization

- A) Statutory authorization for the Optometrist occupation may be found in the Nebraska Revised Statutes, sections [38-2601](#) to [38-2623](#), which may be cited as the Optometry Practice Act. For text of the Nebraska statutes relating to the Optometrist occupation, see Appendix A.

II. Other Authorization

- A) Rules and regulations regarding the licensure of Optometrists may be found in the Nebraska Administrative Code [Title 172, Chapter 120](#).

CREDENTIALING

I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years

- A) There were 77 Optometrist licenses issued in the past five years.

II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years

- A) There were no Optometrist licenses denied in the past five years.

III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years

- A) There were no Optometrist licenses revoked in the past five years.

IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years

- A) There were two Optometrist licenses penalized in the past five years.
- B) License penalizations were due to severe alcohol use disorder, probation violation, alcohol abuse, and misdemeanor convictions.

V. Comparison of How Other States Regulate This Occupation

- A) All 50 states require licensure for Optometrists. The National Board of Examiners in Optometry maintains a website with state licensure requirements, which may be found [here](#).

VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?

- A) If Optometrists were no longer licensed, certified, or regulated, individuals without the proper education, experience, and training would be able to work with the public in the areas of the eye. A lack of adequate education and training involving treatment of the visual system could have disastrous consequences for the public.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Board of Optometry and the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Optometrist occupation by licensure is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO THE OPTOMETRY PRACTICE ACT

38-2601. Act, how cited.

Sections 38-2601 to 38-2623 shall be known and may be cited as the Optometry Practice Act.

Source:Laws 2007, LB463, § 872.

38-2602. Definitions, where found.

For purposes of the Optometry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2603 to 38-2605 apply.

Source:Laws 2007, LB463, § 874.

38-2603. Board, defined.

Board means the Board of Optometry.

Source:Laws 2007, LB463, § 875.

38-2604. Pharmaceutical agents, defined.

(1) Pharmaceutical agents, for diagnostic purposes, means anesthetics, cycloplegics, and mydriatics.

(2) Pharmaceutical agents, for therapeutic purposes, means topical ophthalmic pharmaceutical agents which treat eye diseases, infection, inflammation, and superficial abrasions, or oral analgesics, including oral analgesics enumerated in Schedules III and IV of section 28-405 necessary to treat conditions of the eye, ocular adnexa, or visual system, or oral pharmaceutical agents for the treatment of diseases or infections of the eye, ocular adnexa, or visual system, or oral anti-inflammatory agents to treat conditions of the eye, ocular adnexa, or visual system.

(3) Pharmaceutical agents, for therapeutic purposes, includes an epinephrine autoinjector for treatment of anaphylaxis and an oral steroid, oral glaucoma agent, or oral immunosuppressive agent.

Source:Laws 1979, LB 9, § 4; Laws 1986, LB 131, § 2; Laws 1993, LB 429, § 4; Laws 1998, LB 369, § 4; R.S.1943, (2003), § 71-1,135.01; Laws 2007, LB463, § 876; Laws 2014, LB526, § 1.

38-2605. Practice of optometry, defined.

(1) The practice of optometry means one or a combination of the following:

(a) The examination of the human eye to diagnose, treat, or refer for consultation or treatment any abnormal condition of the human eye, ocular adnexa, or visual system;

(b) The employment of instruments, devices, pharmaceutical agents, and procedures intended for the purpose of investigating, examining, diagnosing, treating, managing, or correcting visual defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(c) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, ophthalmic devices, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(d) The dispensing and sale of a contact lens, including a cosmetic or plano contact lens or a contact lens containing an ocular pharmaceutical agent which an optometrist is authorized by law to prescribe and which is classified by the federal Food and Drug Administration as a drug;

(e) The ordering of procedures and laboratory tests rational to the diagnosis or treatment of conditions or diseases of the human eye, ocular adnexa, or visual system; and

(f) The removal of superficial eyelid, conjunctival, and corneal foreign bodies.

(2) The practice of optometry does not include the use of surgery, the use of laser surgery, or the treatment of infantile/congenital glaucoma, which means the condition is present at birth.

Source:Laws 1927, c. 167, § 111, p. 487; C.S.1929, § 71-1601; R.S.1943, § 71-1,133; Laws 1979, LB 9, § 1; Laws 1986, LB 131, § 1; Laws 1987, LB 116, § 1; Laws 1993, LB 429, § 2; Laws 1998, LB 369, § 1; R.S.1943, (2003), § 71-1,133; Laws 2007, LB236, § 20; Laws 2007, LB463, § 877; Laws 2010, LB849, § 6; Laws 2014, LB526, § 2.

38-2606. Board; members; qualifications.

The board shall consist of four members, including three licensed optometrists and one public member.

Source:Laws 2007, LB463, § 878.

38-2607. Practice of optometry; activities not included.

The practice of optometry shall not be construed to:

(1) Include merchants or dealers who sell glasses as merchandise in an established place of business or who sell contact lenses from a prescription for contact lenses written by an optometrist or a person licensed to practice medicine and surgery and who do not profess to be optometrists or practice optometry;

(2) Restrict, expand, or otherwise alter the scope of practice governed by other statutes; or
(3) Include the performance by an optometric assistant, under the supervision of a licensed optometrist, of duties prescribed in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source:Laws 1927, c. 167, § 112, p. 487; C.S.1929, § 71-1602; R.S.1943, § 71-1,134; Laws 1979, LB 9, § 2; Laws 1998, LB 369, § 2; Laws 2002, LB 1062, § 30; R.S.1943, (2003), § 71-1,134; Laws 2007, LB236, § 21; Laws 2007, LB463, § 879.

38-2608. Optometry; license; requirements.

Every applicant for a license to practice optometry shall: (1) Present proof that he or she is a graduate of an accredited school or college of optometry; and (2) pass an examination approved by the board. The examination shall cover all subject matter included in the practice of optometry.

Source:Laws 1927, c. 167, § 113, p. 487; C.S.1929, § 71-1603; R.S.1943, § 71-1,135; Laws 1979, LB 9, § 3; Laws 1989, LB 323, § 3; Laws 1998, LB 369, § 3; Laws 1999, LB 828, § 95; R.S.1943, (2003), § 71-1,135; Laws 2007, LB236, § 22; Laws 2007, LB463, § 880.

Cross References

- **Credentialing**, general requirements and issuance procedures, see section 38-121 et seq.

38-2609. Applicant for licensure based on license outside the state; requirements; military spouse; temporary license.

(1) In addition to the standards set by the board pursuant to section 38-126, an applicant for licensure based on a license in another state or territory of the United States or the District of Columbia must have been actively engaged in the practice of optometry for at least two of the three years immediately preceding the application for licensure in Nebraska and must provide satisfactory evidence of being credentialed in such other jurisdiction at a level with requirements that are at least as stringent as or more stringent than the requirements for the comparable credential being applied for in this state.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source:Laws 2007, LB463, § 881; Laws 2008, LB972, § 1; Laws 2017, LB88, § 84.

38-2610. License; renewal; statement as to use of pharmaceutical agents.

In issuing a license or renewal, the department, with the recommendation of the board, shall state whether such person licensed in the practice of optometry has been certified to use pharmaceutical agents pursuant to section 38-2613, 38-2614, or 38-2615 and shall determine an appropriate means to further identify those persons who are certified in the diagnostic use of such agents or the therapeutic use of such agents.

Source:Laws 1979, LB 9, § 7; Laws 1986, LB 131, § 4; Laws 1993, LB 429, § 5; Laws 1998, LB 369, § 7; Laws 1999, LB 828, § 98; R.S.1943, (2003), § 71-1,135.04; Laws 2007, LB236, § 24; Laws 2007, LB463, § 882.

38-2611. Continuing competency requirements; waiver.

The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a credential holder submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the credential holder's control pursuant to such section, such circumstances shall include situations in which:

(1) The credential holder has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the renewal date; or

(2) The credential holder was initially licensed within the twenty-six months immediately preceding the renewal date.

Source:Laws 1965, c. 415, § 2, p. 1325; Laws 1985, LB 250, § 14; Laws 1986, LB 926, § 46; Laws 1988, LB 1100, § 42; Laws 1997, LB 307, § 123; Laws 1999, LB 828, § 99; Laws 2001, LB 209, § 10; Laws 2002, LB 1021, § 21; R.S.1943, (2003), § 71-1,136.01; Laws 2007, LB236, § 27; Laws 2007, LB463, § 883; Laws 2008, LB972, § 2.

38-2612. Fees.

The department shall establish and collect fees for credentialing under the Optometry Practice Act as provided in sections 38-151 to 38-157.

Source:Laws 2007, LB463, § 884.

38-2613. Optometrist; diagnostic pharmaceutical agents; use; certification.

(1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for diagnostic purposes authorized under subdivision (1)(b) of section 38-2605, if such person is certified by the department, with the recommendation of the board, as qualified to use topical ocular pharmaceutical agents for diagnostic purposes.

(2) Such certification shall require (a) satisfactory completion of a pharmacology course at an institution accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education and approved by the board and passage of an examination approved by the board or (b) evidence provided by the optometrist of certification in another state for use of diagnostic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

Source:Laws 1979, LB 9, § 5; Laws 1986, LB 131, § 3; Laws 1987, LB 116, § 2; Laws 1988, LB 1100, § 41; Laws 1994, LB 987, § 1; Laws 1996, LB 1044, § 439; Laws 1998, LB 369, § 5; Laws 1999, LB 828, § 96; Laws 2003, LB 242, § 50; R.S.1943, (2003), § 71-1,135.02; Laws 2007, LB236, § 23; Laws 2007, LB247, § 73; Laws 2007, LB296, § 341; Laws 2007, LB463, § 885.

38-2614. Optometrist; therapeutic pharmaceutical agents; certification of courses of instruction; board approval.

(1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for therapeutic purposes authorized under subdivision (1)(b) or (c) of section 38-2605 if such person is certified by the department, with the recommendation of the board, as qualified to use ocular pharmaceutical agents for therapeutic purposes, including the treatment of glaucoma.

(2) In order to be certified by the department under subsection (1) of this section, the optometrist shall show (a) satisfactory completion of classroom education and clinical training which emphasizes the examination, diagnosis, and treatment of the eye, ocular adnexa, and visual system offered by a school or college approved by the board and passage of an examination approved by the board or (b) evidence of certification in another state for the use of therapeutic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

Source:Laws 2007, LB247, § 74; Laws 2007, LB463, § 886; Laws 2014, LB526, § 3.

38-2615. Optometrist; applicability of requirements.

After January 1, 2000, only an optometrist licensed in this state prior to April 30, 1987, may practice optometry without meeting the requirements and obtaining certification required by sections 38-2613 and 38-2614.

Source:Laws 2007, LB247, § 75; Laws 2007, LB463, § 887.

38-2616. Optometry; approved schools; requirements.

No school of optometry shall be approved by the board as an accredited school unless the school is accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education.

Source:Laws 1927, c. 167, § 114, p. 488; C.S.1929, § 71-1604; R.S.1943, § 71-1,136; Laws 1965, c. 415, § 1, p. 1325; Laws 1979, LB 9, § 8; Laws 1994, LB 987, § 3; Laws 1996, LB 1044, § 440; R.S.1943, (2003), § 71-1,136; Laws 2007, LB236, § 26; Laws 2007, LB296, § 342; Laws 2007, LB463, § 889.

38-2617. Use of pharmaceutical agents or dispensing of contact lens containing ocular pharmaceutical agent by licensed optometrist; standard of care.

(1) A licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.

(2) An optometrist who dispenses a contact lens containing an ocular pharmaceutical agent which is classified by the federal Food and Drug Administration as a drug shall comply with the rules and regulations of the board relating to packaging, labeling, storage, drug utilization review, and record keeping. The board shall adopt and promulgate rules and regulations relating to packaging, labeling, storage, drug utilization review, and record keeping for such contact lenses.

Source:Laws 1993, LB 429, § 3; Laws 1998, LB 369, § 8; R.S.1943, (2003), § 71-1,135.06; Laws 2007, LB236, § 25; Laws 2007, LB463, § 890; Laws 2010, LB849, § 7.

38-2618. Optometric assistants; authorized.

Any licensed optometrist may employ optometric assistants. Such assistants, under the supervision of a licensed optometrist, may perform such duties as are prescribed in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source:Laws 2002, LB 1062, § 31; R.S.1943, (2003), § 71-1,135.07; Laws 2007, LB463, § 891.

38-2619. Optometry; patient's freedom of choice.

No agencies of the state or its subdivisions administering relief, public assistance, public welfare assistance, or other health service under the laws of this state, including the public schools, shall in the performance of their duties, interfere with any patient's freedom of choice in the selection of practitioners licensed to perform examinations and provide treatment within the field for which their respective licenses entitle them to practice.

Source:Laws 1967, c. 431, § 1, p. 1319; R.S.1943, (2003), § 71-1,136.04; Laws 2007, LB236, § 28; Laws 2007, LB463, § 892.

Cross References

- **Provisions for insuring cost of service of optometrist**, see section 44-513.

38-2620. Nebraska Optometry Education Assistance Contract Program; purpose.

There is hereby established the Nebraska Optometry Education Assistance Contract Program for the purpose of providing opportunities for citizens of this state desiring to pursue study in the field of optometry at accredited schools and colleges outside the state. Eligibility for the program shall be limited as provided in sections 38-2622 and 38-2623.

Source:Laws 1974, LB 911, § 1; R.S.1943, (2003), § 71-1,136.05; Laws 2007, LB463, § 893; Laws 2011, LB334, § 3.

38-2621. Program; Board of Regents; administer; rules and regulations; adopt; reports; conditions.

The program established by section 38-2620 shall be administered by the Board of Regents of the University of Nebraska. The Board of Regents shall adopt appropriate rules and regulations to carry out sections 38-2620 to 38-2623 and negotiate contract arrangements with accredited schools and colleges of optometry, as provided in section 38-2616, for the admission and education of qualified applicants who are citizens of Nebraska and who have demonstrated their interest, aptitude, and readiness for study in the field of optometry. The Board of Regents shall require reports each year from institutions receiving payments showing the progress and suitability of each student being aided and containing such other information as such board deems proper.

Source:Laws 1974, LB 911, § 2; R.S.1943, (2003), § 71-1,136.06; Laws 2007, LB463, § 894.

38-2622. Program; financial assistance; number of students.

Annual financial payments made under sections 38-2620 to 38-2623 shall be limited to students who participated in or were accepted into the program in the academic year 2010-11 and shall continue for the remaining academic year or years that any such student is enrolled in an accredited school or college of optometry subject to the limitation provided in section 38-2623.

Source:Laws 1974, LB 911, § 3; R.S.1943, (2003), § 71-1,136.07; Laws 2007, LB463, § 895; Laws 2011, LB334, § 4; Laws 2011, LB637, § 23.

38-2623. Program; financial assistance; limitation.

Financial assistance under sections 38-2620 to 38-2623 shall be continued not to exceed four years until the enrolled student has received a degree in optometry. Contracts with schools and colleges shall set forth terms and provisions for continuation of such payments.

Source:Laws 1974, LB 911, § 4; R.S.1943, (2003), § 71-1,136.08; Laws 2007, LB463, § 896.