

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 15.
CALIFORNIA STATE BOARD OF OPTOMETRY

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:

Mobile Optometric Office Program

Amend Title 16, California Code of Regulations (CCR), Sections 1505 and 1524, and Adopt Sections 1583 – 1587

NOTICE IS HEREBY GIVEN that the California State Board of Optometry (Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than Tuesday, April 9, 2024, by 5:00 p.m.**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section(s) 137, 138, 3025, 3041, 3044, 3070.2 , 3075, 3092, 3110, 3152, 3152.5, of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section(s) 27, 30, 31, 136, 137, 138, 142, 144, 163.5, 480, 494.5, 495, 2544, 3041, 3041.3, 3055, 3070, 3070.1, 3070.2, 3075, 3077, 3078, 3092, 3110, 3151, 3151.1, 3152, 3152.5, Civil Code sections 1633.2, 1633.7, and 1633.9, Government Code section 16.5; and Penal Code section 11105, the Board is considering amending section(s) 1505 and 1524, and adopting section(s) 1583-1587 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Mobile Optometric Office (MOO) program was established by Assembly Bill (AB) 896 (Low, Chapter 121, Statutes of 2020), which due to an urgency clause, became effective upon signing on September 24, 2020, and enacted BPC Section 3070.2. The following year, AB 1534 (Committee on Business and Professions, Chapter 630, Statutes of 2021), made further changes to BPC section 3070.2. Among other things, BPC section 3070.2 allows for specified nonprofits and charitable organizations to provide optometric services to patients regardless of the patient's ability to pay through mobile optometric offices under a new registration program within the Board.

BPC section 3070.2 also requires the Board to adopt regulations establishing a registry for the owners and operators of mobile optometric offices, and to set a registration fee at an amount not to exceed the reasonable regulatory costs of administration. Existing regulations do not provide the process for registering owners and operators of mobile optometric offices or set a registration fee for the regulatory costs of administration of the MOO program by the Board, including submission of application and quarterly reporting information electronically online. This proposal would set such standards in regulation by adopting proposed amendments to CCR sections 1505 and 1524, and further adopt new MOO program standards at CCR sections 1583 – 1587.

Specifically, the Board's proposal includes the following:

- Amend subdivision (b) of section 1505 of Article 2 of Division 15 of Title 16 of the CCR to specify requirements for providing a statement of licensure for those licensees who will engage in the practice of optometry exclusively at a mobile optometric office (MOO).
- Amend section 1524 of Article 5 of Division 15 of Title 16 of the CCR to include fees for all of the following: (A) the certificate to operate as an owner and operator of a MOO, (B) the biennial renewal fee for a certificate to operate as an owner and operator of a MOO, (C) the delinquency fee for failure to renew a certificate to operate as an owner and operator of a MOO, (D) the application fee for a MOO permit, (E), the biennial renewal fee for a MOO permit; and (F) the delinquency fee for failure to renew a MOO permit.
- Adopt section 1583 of Article 13 of Division 15 of Title 16 of the CCR to establish all the following:

(A) Application and qualifying registration requirements for an owner and operator of a mobile optometric office who wishes to offer optometric services at

the MOO as specified, including electronic submission of the application through an online portal on the Board's website as specified;

(B) Standards for reporting to the Board any change in information provided to the Board within 14 days of the change,

(C) The time frame for when an application shall be deemed to have been abandoned by the Board, the associated requirements for filing a new application if an application is deemed abandoned, and,

(D) the grounds for denying a MOO registration application.

- Adopt section 1584 of Article 13 of Division 15 of Title 16 of the CCR to establish minimum MOO program and operating standards, including:
 - (A) The issuance process and expiration dates for a certificate to operate a MOO, and the process and minimum compliance standards that must be met to renew including, (1) payment of a renewal fee and certification of compliance with specified standards; (2) compliance standards that prohibit an owner and operator of a mobile optometric office and the optometrist providing services from accepting payment for services other than those provided to Medi-Cal beneficiaries; and, (3) compliance standards that mandate that the medical operations of the mobile optometric office be directed by a licensed optometrist and in every phase is under the exclusive control of the licensed optometrist.
 - (B) The consequences for an owner and operator who fails to renew timely, and the process and the time frames for seeking reinstatement of an expired certificate.
 - (C) Minimum standards for responding to a Board inquiry or request and,
 - (D) Grounds for disciplining an owner and operator's certificate to operate.

- Adopt section 1584.5 of Article 13 of Division 15 of Title 16 of the CCR to establish minimum registration requirements for the mobile optometric office permits, including:
 - (A) Specified application and permit requirements for an owner and operator who has obtained approval from the Board and wishes to operate a mobile optometric office, including: the requirements that they apply for a permit from the Board before beginning operation of each mobile optometric office and the minimum processing, procedures and standards for obtaining and maintaining such permit, including that the permit application be electronically submitted through an online portal on the Board's website, as specified.
 - (B) Separate permit requirements for each MOO operated by each owner and operator with a certificate to operate and the limitations on the number of permits issued to any owner and operator until after the owner and operator's first renewal period is complete.

(C) Minimum standards for communication of the unique identification number issued by the Board for each permit and requirements for advertising or other presentments to the public.

(D) The issuance process and expiration dates for a MOO permit, and the process and minimum compliance standards that must be met to renew.

- Adopt section 1584 of Article 13 of Division 15 of Title 16 of the CCR to establish fingerprints and background checks for applicants to register as an owner and operator of a mobile optometric office.

- Adopt section 1586 of Article 13 of Division 15 of Title 16 of the CCR to establish owner and operator quarterly reporting requirements to the Board, including: the process and procedures for submitting a compliant filing, timeframes for filing and filing electronically the quarterly report with the Board through the online portal on the Board's website as specified.

- Adopt section 1587 of Article 13 of Division 15 of Title 16 of the CCR to establish patient notification and record keeping procedures, including:
 - (A) Requirements for an owner and operator of a MOO to post consumer notice as specified in the mobile optometric office,
 - (B) Requirements for an owner and operator to provide an additional written consumer notice to each patient or patient's caregiver or guardian regarding mandated disclosures required by this Board as specified, and,
 - (C) Record retention requirements for an owner and operator to show compliance with BPC section 3070.2 and Article 13 of the Board's regulations governing mobile optometric offices.

Anticipated Benefits of Proposal

The anticipated benefits of the MOO program are substantial and wide-reaching, positively impacting both regulatory alignment and public welfare. Here are the key advantages:

The proposed changes aim to align Title 16 CCR sections 1505 and 1524 with BPC 3070.2, ensuring that the Board's MOO program is in full regulatory compliance. This alignment sets a solid foundation for seamless integration and operation.

Introducing new sections 1583-1587 establishes comprehensive guidelines for creating and managing a Mobile Optometric Office. These guidelines serve as a roadmap, providing specific direction and standards for MOO owners and operators.

Application and registration requirements for the owner and operator certificate and the Mobile Optometric Office Permit set minimum compliance standards for MOO applicants. This ensures that only qualified and capable individuals or organizations are entrusted with providing optometric care at these locations.

Requiring fingerprinting, background checks, and personally identifying information for key program members bolsters public safety measures. This step helps in effective enforcement, safeguarding the well-being of patients and the community.

The institution of application, renewal, and delinquency fees for the Owner and Operator (OAO) certificate and the MOO permit enables the Board to efficiently administer the MOO program. This financial structure ensures that the program remains sustainable and well-supported.

The MOO program directly benefits Californians residing in underserved, low-income, and rural areas of the state. By authorizing through regulation services to be provided through mobile optometric offices, MOO owners and operators will be able to increase access to no-cost optometric care. As a result, the proposed MOO program addresses a critical healthcare gap, ensuring that vulnerable populations have access to essential vision services at more locations.

Access to no-cost optometric care has the potential to significantly improve the health outcomes of individuals in underserved communities. Early detection and intervention for vision issues can prevent more severe complications and enhance overall well-being.

This proposal complies with the legislative mandate to establish such standards and prioritizes public safety, efficient administration, and, most importantly, the health and well-being of Californians in need. This proposal represents a significant step towards ensuring equitable access to high-quality optometric care for all.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Board received three-year limited-term resources (\$262,000 and 2.0 positions) in 2021-22 to implement the provisions of AB 896. Any workload and costs related to this proposal are a result of current law and included in the resources provided in 2021-22. The Board does not anticipate any further costs to the state.

The regulations will result in licensing fee revenues ranging from approximately \$22,000 to \$155,000 per year and up to approximately \$885,000 over a ten-year period. Please see the Initial Statement of Reasons for further detail.

Additionally, the Board estimates fingerprint background check revenues to the DOJ ranging from \$224 to \$320 per year and up to \$3,104 over a ten-year period.

The regulations do not result in any costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to any Local Agency or School District for which Government Code Sections 17500 – 17630 Require Reimbursement: None

Mandate Imposed on Local Agencies or School Districts: None.

Significant Effect on Housing Costs: None.

BUSINESS IMPACT ESTIMATES

The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts:

The Mobile Optometric Office program is exclusive to charitable organizations and nonprofits that will provide eye care to underserved communities in California.

Individuals and entities opting to operate a mobile optometric office will be required to apply for licensure and pay applicable fees, including:

- Certificate to Operate (Owner Application): \$2,632
- Mobile Optometric Office Permit (Initial Application): \$472
- Fingerprint Background Check: \$75
- Certificate to Operate (Biennial Renewal): \$2,632
- Mobile Optometric Office Permit (Biennial Renewal): \$472

The Board anticipates seven individuals and entities will initially apply for licensure in year-one of implementation and up to ten applicants per year thereafter, which will result in economic impacts ranging from approximately \$22,000 to \$156,000 per year and up to \$892,000 over a ten-year period. Please see the Initial Statement of Reasons for further detail.

The costs of the fingerprint background check (\$75), includes \$32 being forwarded to the Department of Justice (DOJ), \$17 to the Federal Bureau of Investigation, and \$26 remaining with the fingerprint processing business. As a result, these fingerprint businesses are projected to have increased revenues ranging from \$182 to \$260 per year and up to \$2,522 over a ten-year period.

The Board notes, entities applying to operate a mobile optometric office under the proposed regulations and in compliance with current law must qualify as a non-profit or charitable organization. As a result, any organization authorized to operate under this proposal are providing optometric healthcare services as non-business entities.

The Board further notes, these non-profit and charitable entities are anticipated to focus on providing optometric services to underserved populations, including rural and poor areas, and not competing directly with optometric businesses in the state.

Nearly all data required for the quarterly report set forth in this proposal is information already required to be reported by statute at BPC section 3070.2(f). As a result, it is anticipated that the owners and operators of the MOO can submit the quarterly report to the Board within normal business operations and without incurring additional workload or costs.

Cost Impact on Representative Private Person or Business

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the

Board are as follows. Individuals and entities opting to operate a mobile optometric office will be required to apply for licensure and pay applicable fees, including:

- Certificate to Operate (Owner Application): \$2,632
- Mobile Optometric Office Permit (Initial Application): \$472
- Fingerprint Background Check: \$75
- Certificate to Operate (Biennial Renewal): \$2,632
- Mobile Optometric Office Permit (Biennial Renewal): \$472

The Board anticipates up to seven individuals and entities will initially apply for licensure in year-one of implementation and up to ten applicants per year thereafter, which will result in economic impacts ranging from approximately \$22,000 to 156,000 per year and up to \$892,000 over a ten-year period.

The Board notes, the costs of the fingerprint background check (\$75), includes \$32 being forwarded to the Department of Justice, \$17 to the Federal Bureau of Investigation, and \$26 remaining with the fingerprint processing business. As a result, these fingerprint businesses are projected to have increased revenues ranging from \$182 to \$260 per year and up to \$2,522 over a ten-year period.

The Board notes, entities applying to operate a mobile optometric office under the proposed regulations and in compliance with current law must qualify as a non-profit or charitable organization. As a result, any organization authorized to operate under this proposal are providing optometric healthcare services as non-business entities.

The Board further notes, these non-profit and charitable entities are anticipated to focus on providing optometric services to underserved populations, including rural and poor areas, and not competing direction with optometric businesses in the state.

Nearly all data required for the quarterly report set forth in this proposal is information already required to be reported by statute at BPC section 3070.2(f). As a result, it is anticipated that the owners and operators of the MOO can submit the quarterly report to the Board within normal business operations and without incurring additional workload or costs.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS

Impact on Jobs / Businesses

The California State Board of Optometry has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. This new business model was created by legislation enacting BPC section 3070.2 and the proposed regulations only aim to improve access to care for consumers and better define existing laws and processes for these types of businesses. These businesses may hire optometrists and other staff; however, the Board does not have data regarding the number of new jobs this program might create so the number of new jobs that could result from charitable and nonprofit organizations choosing to hire additional staff cannot be predicted. This business type will not charge consumers for services and materials rendered but can bill Medi-Cal. Additionally, since mobile optometric care would be an optional service limited to non-profits or charitable organizations, it does not require startup costs that all licensees would be forced to implement.

Benefits of Regulation:

The California State Board of Optometry has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents. The proposed regulations will implement a mobile optometric office program that directly benefits Californians residing in underserved, low-income, and rural areas of the state. By authorizing through regulation services to be provided through mobile optometric offices, MOO owners and operators will be able to increase access to no-cost optometric care. This proposal will set minimum standards for MOO owners and operators to meet and therefore ensure that only qualified and capable individuals or organizations are entrusted with providing optometric care at these locations. This helps in effective enforcement, safeguarding the well-being of patients and the community.

This regulatory proposal does not affect or relate to either worker safety or the state's environment.

Business Reporting Requirements

The regulatory action requires businesses to file a quarterly report electronically with the Board with information primarily required to be reported by statute at BPC section 3070.2. The Board has determined that it is necessary for the health, safety, or welfare of the people of the State that the regulation apply to businesses. This report is required to be filed electronically with the Board by proposed CCR section 1586 to ensure that all necessary information is provided by applicants in the simplest and most

secure method available, thus assisting applicants with providing a completed and accurate report to the Board in compliance with legal requirements set by BPC section 3070.2.

Effect on Small Business

The Board has determined that the proposed regulations would affect small businesses, but the regulations will not have a significant statewide adverse economic impact on small businesses for the reasons set forth in the “Business Impact Estimates” section. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposal described in this Notice; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2450 Del Paso Road, Suite 105, Sacramento, California 95834 during the written comment period, or at the hearing if one is scheduled or requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board, at 2450 Del Paso Road, Suite 105, Sacramento, California 95834.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Contact Person named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Gregory Pruden
Address: California State Board of Optometry
2450 Del Paso Road, Suite 105, Sacramento, CA 95834
Telephone No.: 916-574-7808
E-Mail Address: Gregory.Pruden@dca.ca.gov

The backup contact person is:

Name: Randy Love
Address: California State Board of Optometry
2450 Del Paso Road, Suite 105, Sacramento, CA 95834
Telephone No.: 279-895-1471
E-Mail Address: Randy.Love@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text , if any, can be accessed through the Board's website at <https://optometry.ca.gov/lawsregs/propregs.shtml>