



ISSUE MEMORANDUM

DATE	May 20, 2022
TO	Members, California State Board of Optometry
FROM	Shara Murphy, Executive Officer <i>Prepared by Genevieve Sanati, Mobile Optometric Office Coordinator</i>
SUBJECT	Agenda Item # 6 - Discussion and Possible Action to Initiate a Rulemaking and Possibly Amend Title 16, California Code of Regulations (CCR), Sections 1505 and 1524, and Adopt Sections 1583 – 1587, Mobile Optometric Office Owner and Permit Program

Summary:

This regulatory proposal would adopt regulations for the Board’s Mobile Optometric Office (MOO) program. The law requires regulatory implementation by January 1, 2023.

The MOO program was created by [Assembly Bill \(AB\) 896 \(Low, Chapter 121, Statutes of 2020\)](#), which was signed into law on September 24, 2020, and created a new [Business and Professions Code \(BPC\) Section 3070.2. AB 1534 \(Committee on Business and Professions, Chapter 630, Statutes of 2021\)](#), signed into law on October 7, 2021, made further changes to BPC section 3070.2. Section 3070.2, among other things, allows for 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.

At the January 7, 2022 public Board meeting, a workgroup was created consisting of two members: Dr. David Turetsky and Eunie Linden. The workgroup met on February 16, April 13, and April 27, 2022 for a preliminary review of the proposal and to discuss feedback from the Sacramento Unified School District regarding mobile optometric care provided to students.

Staff requests approval of text of a new regulatory package implementing the Mobile Optometric Office Owner and Permit program regulations, which would replace the previously approved package from 2021. Changes are being proposed to better facilitate and streamline the registration process through the Board’s website and additional text is proposed to implement new provisions authorized by AB 1534.

If approval is desired, suggested motion:

I move to approve the proposed regulatory text for Section(s) 1505, 1524, 1583, 1584, 1584.5, 1585, 1586, and 1587, and direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive

Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing if requested. If no adverse comments are received during the 45-day comment period and no hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking and amend sections 1505 and 1524, and adopt section(s) 1583, 1584, 1584.5, 1585, 1586 and 1587 as noticed.

Discussion:

Please refer to the text of [Business and Professions Code Section 3070.2](#) for the statutes governing the mobile optometric office program. **Please see attachment A for pdf format.**

BPC section 3070.2 requires, among other things, the following:

- An owner and operator of a mobile optometric office shall register with the Board;
- An owner and operator of a mobile optometric office and the optometrist providing services shall not accept payment for services other than those provided to Medi-Cal beneficiaries;
- The medical operations of the mobile optometric office shall be directed by a licensed optometrist and in every phase shall be under the exclusive control of the licensed optometrist;
- An owner and operator who has obtained approval from the board and wishes to operate a mobile optometric office shall apply for a permit from the board before beginning operation of each mobile optometric office. The application shall be electronically submitted through an online portal on the Board's website;
- An owner and operator shall provide specified information to the board, including but not limited to services rendered, names and license or registration numbers, dates of operation and a description of follow up care;
- An owner and operator shall file a quarterly report with the Board through the online portal on the Board's website;
- An owner and operator shall provide a consumer notice to each patient or patient's caregiver;
- An owner and operator shall maintain records to be made available to the patient;
- Optometrists who provide patient care in conjunction with a mobile optometric office shall obtain a statement of licensure.

As directed by BPC section 3070.2(j), the Board must develop regulations to implement this statute by January 1, 2023. This proposal is offered as a new regulatory package combining the previously approved AB 896 implementation and additional changes brought by AB 1534. The Board has reviewed and approved certain sections, but staff seeks Board approval of all regulatory text for clarity of the record.

As MOO Coordinator, Genevieve will continue to apply knowledge of the statute and tools available to implement the proposed regulations. Genevieve has reviewed the

legislation, proposed regulations, and audited previous Board meetings. She engaged the Board's staff from Licensing, BreEZe Business Integration, and the DCA Internet Team to create the first draft for the Owner and Operator application for licensure in BreEZe. Genevieve has been working closely with the Board's Policy Analyst, Lead Licensing Analyst, and Executive Officer to implement new ideas for the registration process.

The Board's first workgroup meeting was held on February 16, 2022, where the new package was reviewed and discussed, including information gathering changes and the development of a new quarterly report.

On April 13, 2022, Eunie Linden provided an overview of feedback from Sacramento Unified School District regarding care provided to patients in mobile clinics. Page Yarwood, President of the California Vision Foundation and former President of the California Optometric Association, joined the discussion and provided feedback on the proposal.

A third meeting was held on April 27, 2022 including Damian Carroll, National Director and Chief of Staff of Vision to Learn to discuss their service and employment structure.

In light of the high volume of information being gathered, staff proposes that the information requested of the owner and operator by the Board be submitted electronically through an online portal on the Board's website. Therefore, staff have removed the hard copy forms and intend to collect the information through the Board's website.

Proposed Text - Amend Title 16, Sections 1505 and 1524; Adopt Title 16, Sections 1583, 1584, 1584.5, 1585, 1586 and 1587 of the California Code of Regulations (CCR); (Attachment B):

Amend Section 1505 – Notification of Intention to Engage in Practice

Adds a requirement that an optometrist will comply with notice requirements in BPC section 3070.2 via a statement of licensure.

Amend Section 1524 - Fees

Adopts an initial fee of \$2,632 for a certificate to operate a mobile optometric offices, \$2,632 for biennial renewal and a delinquent fee of \$150. Additionally, adopts an initial fee of \$472 for a mobile optometric office permit, \$472 for biennial renewal, and a delinquent fee of \$150.

Adopt Section 1583 – Registration Requirements for Ownership and Operation of Mobile Optometric Offices; Notice of Changes; Abandonment; Grounds for Denial

As required by BPC section 3070.2, this proposed section sets forth registration requirements and requires a fingerprint background check for the application's responsible officers. Additionally, this section sets forth requirements for reporting changes and grounds for abandonment of the application. The applicant must meet all

requirements as set forth by statute and provide all information as requested in the application. Upon successful completion of the application, the owner and operator will be issued a “certificate to operate” mobile optometric offices.

A charitable organization first registers with the Board. To be issued a certificate to operate mobile optometric offices, an organization must submit the requested information through the online portal on the Board’s website:

- Notice and Requirements – this section sets forth various notices and requirements for the applicant.
- General Information – basic information is required, such as the name, address, and email for the organization and contact person.
- Organization Information – requests the organization information, such as owner and operator address of record, employer identification number and Articles of Incorporation.
- Responsible Organization Officers or Officials – requests the names and personal identifying information, including SSN/ITIN of individuals who are responsible for the operations of the organization.
- Additional Information – requires a written description of services that will be rendered and how follow up care will be provided.
- Electronic signature of authorized representative to certify under penalty of perjury that all information is true and accurate. A notice of personal information collection and access is also included.

Adopt Section 1584 – Certificate to Operate a Mobile Optometric Office; Renewal Requirements; Grounds for Discipline; Reinstatement of Expired Certificate

As required by BPC section 3070.2, this proposed section sets forth various operating requirements for the certificate:

- A two-year renewal period for the certificate and requirements to renew, including various certifications of compliance.
- What happens if the certificate expires.
- Requirements for response to any inquiry by the Board within 14 days.
- Disciplinary actions that may be taken against the owner and operator or the optometrist directing the medical operations.

Each individual unit must be registered with the Board through the online portal on the Board’s website. This application is summarized below:

- A non-refundable fee of \$472 upon which the Board shall issue to the owner and operator a non-transferable permit with a unique ID number. A limit of 12 permits may be issued to each owner and operator within the first two years of registration.
- Contact information for the authorized representative and the licensed optometrist providing services.
- Description of services to be rendered within the mobile optometric office(s).
- A list of names, license numbers, and registration numbers of all care providers.

- List of intended dates of operation.
- List of cities/counties to be served.
- Electronic signature of the licensed optometrist in charge of the mobile operations to certify under penalty of perjury that all information is true and accurate.

Adopt Section 1584.5 – Mobile Optometric Office Permits

As required by BPC section 3070.2, this proposed section would set forth requirements for obtaining and renewing a MOO permit:

- Application for a Mobile Optometric Office Permit plus a non-refundable fee of \$472.
- One permit per mobile unit and up to 12 within the first 2 years.
- Permit expires with the Owner and Operator Certificate to Operate.
- Renewal requirements: compliance plus a fee of \$472.

Adopt Section 1585 – Fingerprints and Background Checks for Applicants to Register as an Owner and Operator of Mobile Optometric Office

This proposed section sets forth requirements for responsible individuals to undergo a fingerprint background check as authorized by BPC section 144. It also states a registration will not be issued until the applicants, as listed on the form, have cleared a background check. This process mirrors that for licensure of registered ophthalmic device dispensing businesses.

Adopt Section 1586 – Mobile Optometric Office Quarterly Reporting Requirements

As required by BPC section 3070.2, this proposed section requires a quarterly report to be filed through the online portal on the Board's website and also sets forth the quarterly deadline for submission.

As required by BPC section 3070.2, this proposed report will be submitted by the owner and operator each quarter. The report will be submitted through the online portal on the Board's website no later than the third business day quarterly (four times a year). A summary of the requested information is listed below:

- Name and contact information of the owner and operator and authorized representative.
- As required by statute, the owner and operator are required to submit specific information about their mobile optometric office operations in that quarter:
 - A list of all visits made including the mobile optometric office number, organizations being serviced and the names and license/registration numbers of all care providers.
 - A summary of all complaints received including complainant patient name, mobile optometric office number, the disposition of those complaints, and follow-up care (if provided).
 - An updated and current list of optometrists available for follow-up care or who accept Medi-Cal payments.

- Electronic signature of authorized representative to certify under penalty of perjury that all information is true and accurate. A notice of personal information collection and access is also included.

Adopt Section 1587 - Patient Notification and Records.

As required by BPC section 3070.2, this proposed section sets forth requirements for a patient notice, which must be provided to each patient or patient's caregiver or guardian. It is largely based on the existing consumer notice in 16 CCR 1566.1. The notice contains information on the optometrist who provided services, the owner and operator name and contact information, and information on how to file a complaint with the Board. Additionally, the owner and operator must retain a copy of the patient record and agree to maintain copies of all records.

California State Board of Optometry

Mobile Optometric Office

Review and analysis of owner and operator applications

Rev 12/21

AGPA Task (\$80 / hour)	tasks per year	hours per task	total hours
Review OAO applications			
#Verify 501c3 or 501c4 status		0.5	
#Verify all officers information and association with OAO		0.5	
#verify information on patient notice		0.5	
#Verify optometrist in charge information and disciplinary actions		0.5	
(Subtotal Review OAO applications)	1	2	2
Review lists of fees and charges; compare with Medi-cal	1	3	3
Provide verbal and written responses to complex OAO phone calls/emails from applicants or optometrists	8	0.25	2
Review and decide on applications with Executive Officer	1	2	2
Review and discuss with SME: follow up care plan and proposed services to be rendered	1	2	2
Process/analyze Live scans for OAO personnel			
#Add livescans into main application OAO into BreEZe (manual process)		0.25	
#Review livescan and analyse criminal history, if applicable		0.25	
(Subtotal Livescans)	6	0.5	3
Review operating standards and catalog of complaints, if applicable	1	2	2
Total Hours for AGPA Tasks for OAO application			16
			X \$80 /hour
			\$1,280.00

OT task (\$57 / hour)	tasks per year	hours per task	total hours
Verify eligible optometrist has correct Statement of Licensure for Mobile Office	40	0.25	10
Update eligible optometrist license info in BreEZe	40	0.25	10
Compile initial OAO applications for AGPA			
#cashier application fee		0.25	
#confirm all documents as required by Sec. 1583 are included		1.5	
(Subtotal compile initial OAO apps)	1	2	2
Generate deficiency letters for OAO, send	1	0.5	0.5
Issue authorization letter for OAO, send	1	0.5	0.5
Total Hours for OT Tasks for OAO application	23 X \$57 / hour \$1,357.00		

TOTAL FEE FOR OAO APPLICATION \$2,637.00



BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 7. Optometry [3000 - 3167] (*Chapter 7 added by Stats. 1937, Ch. 423.*)

ARTICLE 4. Registration [3070 - 3078] (*Article 4 added by Stats. 1937, Ch. 423.*)

3070.2. (a) As used in this section, “mobile optometric office” means a trailer, van, or other means of transportation in which the practice of optometry, as defined in Section 3041, is performed and which is not affiliated with an approved optometry school in California.

(b) This section shall not apply to any of the following:

(1) Optometric services provided remotely by an approved optometry school in California that meets the requirements of Section 1507 of Title 16 of the California Code of Regulations.

(2) A licensee engaged in the practice of optometry at a facility defined in paragraph (1), (2), or (3) of subdivision (a) of Section 3070.1.

(3) A federally qualified health center, as defined in Section 1396d(1)(2)(B) of Title 42 of the United States Code.

(4) A nonprofit or charitable organization exempt from taxation pursuant to Section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3), 501(c)(4), or 501(c)(6)), which utilizes the volunteer services of licensees engaging in the temporary practice of optometry pursuant to subdivision (b) of Section 3070.

(5) A free clinic, as defined in subparagraph (B) of paragraph (1) of subdivision (a) of Section 1204 of the Health and Safety Code, which is operated by a clinic corporation, as defined in paragraph (3) of subdivision (b) of Section 1200 of the Health and Safety Code.

(6) A specialized vision health care service plan, as defined in subdivision (f) of Section 1345 of the Health and Safety Code, formed and existing pursuant to the provisions of the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code).

(c) The ownership and operation of a mobile optometric office shall be limited to a nonprofit or charitable organization that is exempt from taxation pursuant to Section 501(c)(3) or Section 501(c)(4) of the United States Internal Revenue Code that provides optometric services to patients regardless of the patient’s ability to pay.

(1) The owner and operator of a mobile optometric office shall register with the board. The owner and operator of a mobile optometric office and the optometrist providing services shall not accept payment for services other than those provided to Medi-Cal beneficiaries.

(2) The medical operations of the mobile optometric office shall be directed by a licensed optometrist and in every phase shall be under the exclusive control of the licensed optometrist, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist or optician spends with patients, the fees charged for optometric products and services, the examination procedures, the treatment provided to patients, and the followup care pursuant to this section.

(3) The owner and operator of a mobile optometric office shall not operate more than 12 mobile optometric offices within the first renewal period of two years, but may operate more than 12 offices after the first renewal period is complete.

(d) An owner and operator who has obtained approval from the board pursuant to paragraph (1) of subdivision (c) and wishes to operate a mobile optometric office shall apply for a permit from the board before beginning operation of each mobile optometric office. The application shall be made on a board-prescribed form which requests any information the board deems appropriate to register a mobile optometric office pursuant to this section. The form shall be accompanied by a nonrefundable fee of four hundred

seventy-two dollars (\$472). The board may increase the fee, as necessary to cover the reasonable regulatory costs of administration, to not more than six hundred dollars (\$600).

- (1) Upon approval of the permit, the board shall issue a unique identifying number for each mobile optometric office that shall be used in all reporting by the owner and operator to the board.
- (2) Upon approval, the permit shall be valid until the next renewal date of the owner and operator registration.
- (3) Mobile optometric office permits are specific to the vehicle registered with the board. Permits are not transferrable.
- (4) An owner and operator may apply for renewal of the mobile optometric office permit by attesting to compliance with the requirements of this section and payment of the biennial renewal fee prescribed by the board.
- (e) The owner and operator of the mobile optometric office registering with the board pursuant to subdivision (c) shall provide the following information to the board:
 - (1) The description of services to be rendered within the mobile optometric office.
 - (2) The names and optometry license numbers of optometrists, registration numbers of opticians, and names of any other persons who are providing patient care, as described in Section 2544.
 - (3) The dates of operation and cities or counties served.
 - (4) A description of how followup care will be provided.
 - (5) A catalog of complaints, if any.
 - (6) Articles of incorporation or acknowledgment of intent to operate and employer identification number demonstrating the owner and operator is a nonprofit or charitable organization that is exempt from taxation pursuant to Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code.
 - (7) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.
- (f) The owner and operator of the mobile optometric office, on a form prescribed by the board, shall file a quarterly report containing the following information:
 - (1) A list of all visits made by each mobile optometric office, including dates of operation, address, care provided, and names and license numbers of optometrists and opticians who provided care.
 - (2) A summary of all complaints received by each mobile optometric office, the disposition of those complaints, and referral information.
 - (3) An updated and current list of licensed optometrists, registered opticians, and any other persons who have provided care within each mobile optometric office since the last reporting period.
 - (4) An updated and current list of licensed optometrists who are available for followup care as a result of a complaint on a volunteer basis or who accept Medi-Cal payments.
 - (5) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.
- (g) The owner and operator of the mobile optometric office shall notify the board of any change to the information provided to the board pursuant to subdivision (d) within 14 days.
- (h) (1) The owner and operator of the mobile optometric office shall provide each patient and, if applicable, the patient's caregiver or guardian, a consumer notice prescribed by the board that includes the following:
 - (A) The name, license number, and contact information for the optometrist.
 - (B) Optometrists providing services at a mobile optometric office are regulated by the board and the contact information for filing a complaint with the board.

- (C) Information on how to obtain a copy of the patient's medical information.
- (D) Information on followup care available for the patient, including a list of available Medi-Cal or volunteer optometrists. This list shall be updated every six months and is subject to the inspection by the board.
- (E) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.
- (2) The optometrist shall maintain a copy of the consumer notice described in paragraph (1) in the patient's medical record.
- (3) Upon request by the patient's caregiver or guardian, a copy of the prescription made for the patient shall be provided.
- (i) Any person who is employed by the owner and operator of the mobile optometric office to drive or transport the vehicle shall possess a valid driver's license.
- (j) By January 1, 2023, the board shall adopt regulations establishing a registry for the owners and operators of mobile optometric offices and shall set a registration fee at an amount not to exceed the reasonable regulatory costs of administration.
- (k) The board may adopt regulations to conduct quality assurance reviews for the owner and operator of a mobile optometric office and optometrists engaging in the practice of optometry at a mobile optometric office.
- (l) The board shall not bring an enforcement action against an owner and operator of a mobile optometric office based solely on its affiliation status with an approved optometry school in California for remotely providing optometric service before January 1, 2023.
- (m) The owner and operator of a mobile optometric office shall maintain records in the following manner, which shall be made available to the board upon request for inspection:
- (1) 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.
- (2) The owner and operator of a mobile optometric office 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).
- (3) Pursuant to Section 3007, the owner and operator of the mobile optometric office 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 owner and operator of the mobile optometric office as being true, accurate, and complete.
- (4) 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:
- (A) Name.
- (B) Optometrist license number.
- (C) The place of practice and the primary business office.
- (D) Description of the goods and services for which the patient is charged and the amount charged. If no charge was made to the patient, a description of the goods and services provided.
- (5) The owners and operators of the mobile optometric offices shall maintain accurate records of the mobile optometric offices, including vehicle registration numbers and the year, make, and model of each trailer or van.
- (n) Any licensed optometrist who provides patient care in conjunction with a mobile optometric office shall obtain a statement of licensure pursuant to subdivision (a) of Section 3070 with the mobile optometric office's address as registered with the board. If the licensee is not practicing optometry at a location other than with the owner and operator of the mobile optometric office, then the licensee shall list as their primary address of record the owner and operator of the mobile optometric office's address as registered with the board.

(o) All examinations performed at the mobile optometric office shall be performed by a licensed optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3.

(p) This section does not apply to optometry services defined in Section 3070.1.

(q) This section shall remain in effect only until July 1, 2025, and as of that date is repealed.

(Amended by Stats. 2021, Ch. 630, Sec. 85. (AB 1534) Effective January 1, 2022. Repealed as of July 1, 2025, by its own provisions.)