



September 30, 2026

Janice McCoy
Executive Director
Texas Optometry Board, Suite 9.300
1801 N. Congress Avenue
Austin, Texas 78701-1319

RE: ATA Action Comments on Proposed Amendments to 22 Texas Administrative Code Chapter 279

Dear Ms. McCoy,

On behalf of ATA Action, I am writing regarding the Texas Optometry Board's proposed amendments to 22 Texas Administrative Code Chapter 279. Our comments are limited to the provisions regarding telehealth-enabled eye care. As proposed, the amendments leave in place instrument-specific and physical-presence requirements in §§ 279.1 and 279.3 that foreclose telehealth delivery of the initial examination. We urge the Board to revise those provisions before adoption, and we support the amendments proposed by the National Association of Retail Optical Companies in its September 25 comments.

ATA Action is the affiliated policy and legislative advocacy arm of the American Telemedicine Association. ATA Action is the leading advocacy organization dedicated to advancing policy and accelerating the adoption of technology-enabled healthcare. Working collaboratively with federal and state legislators and policymakers, our organization drives industry momentum by influencing legislative and regulatory developments in telehealth, virtual care, remote patient monitoring, artificial intelligence in health, health data privacy, private sector healthcare investment, and more. We represent a diverse membership – including hospital systems, technology companies, professional associations, direct-to-consumer digital health providers, payers, pharmaceutical manufacturers, digital therapeutics developers, and remote monitoring organizations.

The Initial Examination Requirements Function as a Gate on Texas' Telehealth Pathway

Section 279.1 provides for telehealth services, and the proposed addition of assured telehealth access for continued care as an alternative to the office-proximity requirement in § 279.13(b) extends that recognition. Both provisions operate only after a patient has completed an initial examination establishing the doctor-patient relationship and the baseline findings required by Texas Occupations Code § 351.353.

The initial examination requirements in §§ 279.1(a) and 279.3(a) therefore determine which patients are appropriate to enter that pathway. The proposed rules continue to require that the biomicroscopy examination be performed “using a binocular microscope,” that the internal ophthalmoscopic examination be performed “using an ophthalmoscope or biomicroscope with fundus condensing lenses,” and that any assistant performing delegable findings be “present in the same office with the optometrist or therapeutic optometrist.” Each of these requirements can only be satisfied through an in-person visit.

For a patient with no optometrist within reasonable traveling distance, the result is not delay but exclusion. That patient cannot obtain the initial examination remotely, because the rule requires named in-

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person instruments and physical co-location of assisting personnel. Therefore, because the initial examination is the precondition for everything that follows, the patient cannot meet the provisions outlined in § 279.16 or § 279.13(b) either. The telehealth provisions in Chapter 279 remain unavailable to the population they would most benefit. Attaching these requirements to the initial visit as defined in 22 TAC § 272.5(6), rather than to every encounter, narrows the frequency of the burden but not its effect, the initial visit is the one visit this patient cannot complete.

Section 111.007 Prohibits Imposing a Higher Standard of Care on Telehealth Delivery

Texas Occupations Code § 111.007(a) provides that a health professional delivering a health care service or procedure as a telehealth service is subject to the standard of care that would apply to the same service or procedure in an in-person setting. Section 111.007(b) then provides that an agency with regulatory authority over a health professional may not adopt rules pertaining to telehealth services that would impose a higher standard of care than the standard described in Subsection (a).

Sections 279.1(a)(1) and 279.3(a)(1) fix the standard of care for the initial examination to particular Instruments, a binocular microscope for the biomicroscopy examination, and an ophthalmoscope or biomicroscope with fundus condensing lenses for the internal ophthalmoscopic examination and expressly provide that videos and photographs do not fulfill the latter requirement. Sections 279.1(a)(2) and 279.3(a)(2) further require that assisting personnel be physically present in the same office as the supervising practitioner. Because each of these conditions can be met only where practitioner, patient, and staff are physically together, the practical effect is a standard of care that in-person delivery satisfies as a matter of course and that telehealth delivery cannot satisfy at all. A requirement that one modality can never meet is not an equivalent standard; it is a higher one. Section 111.007(b) forecloses that result.

The Proposed Standard Is Set Without an Evidentiary Basis

Compounding the conflict with § 111.007, the Board has identified no evidentiary basis for the standard these provisions impose. Nothing in the proposal establishes that a binocular microscope produces clinically superior findings to other biomicroscopy technology, that an ophthalmoscope or fundus condensing lens produces clinically superior findings to contemporary ophthalmic imaging, or that an assistant physically co-located with the supervising practitioner produces more reliable findings than one working with the patient under remote supervision. The preamble offers no clinical analysis, no citation to evidence, and no explanation of why these particular requirements are necessary to protect patients — while the same rulemaking elsewhere replaces prescriptive means with outcome-based standards, as in the proposed amendment to § 279.1(b) substituting sanitary conditions consistent with accepted clinical practice for the requirement of running water.

An agency rule that fixes a clinical standard to a named device or staffing configuration, without evidence that the alternatives are clinically inadequate, is arbitrary and capricious. ATA Action raises this not to invite dispute but because Texas Government Code § 2001.033 requires the Board's order adopting these amendments to include a reasoned justification responding to comments received, and § 2001.038 permits judicial determination of a rule's validity. A record that contains no clinical justification for an in-person-only standard, and no response to comments identifying that gap, leaves the adopted rule exposed. The Board can avoid that exposure by adopting the outcome-based standard described below, which preserves every finding § 351.353 requires while allowing the examining practitioner to determine whether the equipment and process used are clinically adequate to obtain them.

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Requested Amendments

ATA Action respectfully requests that the Board:

1. Delete “using a binocular microscope” from §§ 279.1(a)(1)(A) and 279.3(a)(1)(A), so that the standard is predicated on whether the examination is clinically adequate rather than on a named device.
2. Amend §§ 279.1(a)(1)(B) and 279.3(a)(1)(B) to permit videos and photographs to fulfill the internal ophthalmoscopic examination requirement where the examining optometrist or therapeutic optometrist determines, in their professional judgment, that the equipment and process used are clinically adequate to obtain the required findings and meet the standard of care.
3. At a minimum, extend to § 279.3(a)(1)(B) the same amendment the Board has already proposed for § 279.1(a)(1)(B), removing the “documentation and consultation purposes” limitation. There is no principled basis for the spectacle examination rule to remain more restrictive than the contact lens examination rule on this point.
4. Delete “present in the same office with the optometrist or therapeutic optometrist” from §§ 279.1(a)(2) and 279.3(a)(2), permitting a trained technician to be with the patient at the originating site while the supervising optometrist participates from a distant site, provided the optometrist remains readily available throughout the encounter and reviews and incorporates the resulting findings into the patient’s record.
5. Add language to §§ 279.1(a) and 279.3(a) confirming that an examination or supervision conducted in accordance with § 279.16 satisfies those provisions and does not require physical co-location of the optometrist with the patient or with assisting personnel.

None of these changes would lower the clinical standard, instead removing a prescriptive limitation on how those findings may be obtained. The optometrist or therapeutic optometrist would remain professionally responsible under the Optometry Act for the proper examination and recording of every required finding and ensure the clinical-equivalence determination rests with the examining practitioner, not arbitrary regulation.

Thank you for the opportunity to comment. We would welcome the opportunity to provide any additional information that may be useful to the Board as it considers these amendments. If you have any questions or would like to discuss the telehealth industry’s perspective further, please contact me at hyoung@ataaction.org.

Kind regards,

A handwritten signature in black ink that reads "Hunter Young". The signature is written in a cursive, flowing style.

Hunter Young
Head of State Government Relations
ATA Action

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