Opponent Testimony - S.B. 129
Todd Baker - Ohio Ophthalmological Society and Ohio State Medical Association
Senate Health Committee
June 12, 2024

Chairman Huffman, Vice-Chair Johnson, Ranking Member Antonio and members of the Senate Health Committee, my name is Todd Baker. I currently serve as executive director of the Ohio Ophthalmological Society and chief executive officer of the Ohio State Medical Association. I am here today with other representatives from these organizations to voice our collective opposition to Senate Bill 129. We believe that while there are improvements that can be made to the eye health delivery system in Ohio for the benefit of patients, SB 129 does not create solutions that do so. It is our hope that by working with members of the Ohio Senate, House, Governor's office, Department of Health and other interested organizations, we can develop important, meaningful solutions and resources to improve outcomes for all Ohioans.

We appreciate the opportunity to be here today to articulate our concerns, offer solutions and respond to several issues covered in proponent testimony, including:

- Reviewing our involvement in discussions and activities related to SB 129 and other eye care legislative activity in Ohio
- A detailed description of the surgical procedures proposed in the legislation, how it compares to other states and the risks associated with them
- The education and training differences between ophthalmology and optometry and what education/training is required to safely provide the proposed procedures
- Review of data related to access and workforce including the experience in other states

<u>Recent legislative activity in Ohio and ophthalmology collaboration</u>
At the practice level, ophthalmology and optometry routinely work together in all corners of Ohio. Many ophthalmology practices employ optometrists and collaborate with them to provide efficient and effective care. This is similar to relationships between physicians and other healthcare non-physician providers in Ohio – many of whom have also come before this committee to expand their scope of practice. The primary difference between those instances and what is before you in SB 129 is that in most of those cases the provider is required to practice collaboratively with the physician and none have been given the authority to perform surgical procedures with lasers or scalpels to the extent permitted by this legislation.

As an organization, we have also historically worked collectively with the proponents on many issues to benefit patients and the professions. I have personally worked with four different counterparts at the optometric association covering a span of almost thirty years. Specifically, in the last two years there have been several examples of this collaborative approach.

- During the 2022 lame duck session the optometric association proposed a number of licensure, educational and practice changes that they indicated were important for the majority of their members – we participated as an interested party and didn't oppose these changes.
- We also worked collaboratively during the budget process last year to increase Medicaid rates for vision care for the first time in many years helping ensure access to care for almost 3 million Ohioans.

After collaborating on these efforts, early in 2023, the optometric association leadership met with the leadership of the ophthalmological society and proposed their surgical language which we were opposed to for reasons we will outline later in testimony. Finally, in late November of 2023, we participated in an interested party meeting with the sponsor, Senator Cirino, and Chairman Huffman where we continued to express our opposition. After that meeting, Senator Cirino asked us to provide him with additional information and we did as was requested when the Senate returned in January of this year (attachment A).

In summary, we believe collaboration is imperative to ensuring high quality and accessible care. However, we believe providing surgical privileges for optometrists does not address the challenges the eye health delivery system in Ohio faces today and that there are other solutions that do. Therefore, we welcome the opportunity to collaborate with other healthcare organizations and policy makers to accomplish these changes.

Now, with Chairman Huffman's permission, I will end my testimony here and turn the remarks over to Dr. Rachitskaya and Dr. Cahill to provide their review of the surgical procedures being proposed in the legislation.

Attachment A

Ohio State Medical Association
Bringing physicians together for a healthier Ohio

Ohio Ophthalmological Society

January 23, 2024

Senator Jerry C. Cirino
Senate Building
1 Capitol Square
Columbus, OH 43215

Senator Cirino:

The Ohio Ophthalmological Society (OOS) and Ohio State Medical Association (OSMA) sincerely appreciate your consideration of our feedback regarding Senate Bill 129. Following our interested party meeting, we wanted to provide you with some additional information regarding this issue as you requested, and to shed some light on how this information relates to our overall concerns about this legislation. With the information provided below, we would like to re-emphasize our concerns related to patient safety risk and lack of demonstrative positive impact on access to care, to clarify claims related to optometrists performing surgeries in the Veterans Affairs system, and to offer some alternative solutions for nonsurgical changes that could benefit the eye care delivery system in Ohio.

Patient Safety Concerns
As we have previously expressed, the OOS and OSMA have serious concerns about how SB 129 would result in dramatic changes to eye care in Ohio by allowing optometrists to perform certain surgical procedures. We maintain that optometrists are not adequately educated or trained in surgery. Notably, even those allied practitioners in Ohio who work under the supervision of physicians are not permitted by their scopes of practice to perform surgery. We believe that this expansion in the scope of optometrists would introduce significant risk to patients.

Lack of Positive Impact on Access to Care
We do not believe there is demonstrated benefit of this legislation to the eye care delivery system in Ohio, including with regard to access to care. In fact, national billing data from Medicare Fee for Service Claims shows for those states which have passed similar measures, very few optometrists in these states chose to perform these surgeries, and many of those who do are practicing out of ophthalmology practices. The extremely low percentages of optometrists filing claims for performing surgical procedures in these states is an indicator that even where it is allowed, optometric surgical experience remains low and does not provide a meaningful solution to any challenges related to access to care. (See Appendices 1 & 2).

Optometrists NOT Performing Surgery in the VA in Ohio
We also wanted to provide clarification on a topic of discussion in the IP meeting, specifically regarding a claim that optometrists are already performing surgical procedures in the VA in Ohio. While it is true that this might have been happening for a very short period of time, once presented to the leadership of the VA, a directive was issued to the entire VA system nationwide. In a November 2023 communication (Appendix 3) from the VA Chief Medical Officer, she specifically states "VHA policy explicitly authorizes

only ophthalmologists to perform laser eye procedures and does not permit the practice of laser eye procedures by optometrists."

Other Solutions to Improve Eye Care in Ohio

We were also asked to propose legislative language that we believe would positively impact the eye health delivery system in Ohio. We have two specific legislative proposals that we think can address some challenges currently experienced in treating glaucoma that will lead to better care and outcomes:

- ***Eye Drop Refill Reform:*** Many patients require prescription eye drops for in-home treatment of their condition. When patients self-administer these eye drops, a certain amount goes unused due to spills or other factors. This particularly affects our older patients in Ohio. However, eye drop prescription laws often assume patients administer eye drops under perfect conditions. Because of these laws, patients can't always refill their eye drops as soon as they need more. In order to properly maintain their treatment, patients should have the right to refill their eye drop prescriptions early when they run out of the medicine. Access to these medicines is particularly important as drug developers seek to make more treatments available in eye drop form.

  More than half the states in the country have already approved changes to their laws to address this problem. At the federal level, both the ophthalmology and optometry societies have supported proposed changes to the CMS Part D program. Attached (Appendix 4) is a copy of draft legislation that we believe could make an important improvement to eye health in Ohio and be supported by all members of the eye care team.

- ***Topical Medication Waste Reduction Reform:*** When performing eye surgery, such as cataract surgery, ophthalmologists may use only one or two eye drops from a medicine container. There are often drops still left in that container. Because regulations governing the ability to dispense the remaining portion of stock-item medications for post-discharge use can be unclear or appear overly burdensome, many facilities do not allow the ophthalmologist to give that container to the patient to take home with them. The ophthalmologist, instead, must write a prescription for the patient and the rest of the medication is discarded. This draft model legislation (Appendix 5) would resolve this issue and eliminate this waste. It tells the surgeon that they can give the patient that unused portion of medication - ointments, eye drops, and creams - and the patient can take these home with them.

  This bill would apply to topical stock-item medications. Topical stock-item medications are unlabeled ointments or drops that a hospital operating room (OR), or Emergency Room (ER), or Ambulatory Surgical Treatment Center (ASTC) staff has on stand-by or is retrieved from a dispensing system for a specified patient for use during a procedure or visit. Members of the public often voice concerns about the price of medication; however, right now, even if a patient has not used an entire container of medication while in a medical facility, the patient cannot leave with the unused portion after discharge. This is true even if the patient was charged the full amount for the medication and still needs the medication. Patients may then need to purchase duplicate agents for post-discharge use, increasing patient cost and creating medical waste. This bill would resolve this issue. There are up to 3.8 million cataract surgeries performed in the United States every year and unlabeled topical ointment costs about $25 a tube and topical drops cost about $56 a bottle. These medications are often used in cataract surgeries. So, the estimates are

Americans could be saving $95 million on topical ointments and $212.8 million on topical antibiotic drops.

Ohio patients would not have to shoulder the extra burden of going to the pharmacy after surgery to fill a prescription. This bill will better ensure medication compliance and relieve patients of the financial burden of having to choose between medication and other essential items ultimately improving the eye health delivery system in Ohio.

Conclusion

Again, we thank you for the opportunity to comment on this issue and give some alternate solutions to improving the health delivery system for Ohioans. We hope that the information provided helps to illustrate that the proposed expansion of optometric scope of practice into surgical procedures does not improve the eye care in Ohio while putting patient safety at risk and introducing needless cost and confusion to the system. We also have a variety of other significant concerns with SB 129, including education, training, workforce, etc. We look forward to discussing these in further detail.

Finally, as you shared your experiences with the Cole Eye Institute at the Cleveland Clinic during the IP meeting, we would certainly welcome the opportunity to host you at the Institute to meet with and discuss the legislation with some of its ophthalmologists. We look forward to continuing to work with you moving forward.

Sincerely,

Carla Ford, MD
OOS President

Eric Drobny, MD
OSMA President

Alexsandra Rachitskaya, MD
OOS President-Elect

Lisa Borkowski, MD
OOS Secretary Treasurer

APPENDIX 1

YAG Capsulotomies Procedure

In 2021, few optometrists filed original Medicare fee for service claims for YAG capsulotomies in the seven states for which there is data. Out of 2,198 optometrists only 167 filed a claim. (2021 data is the latest year available from this dataset. The statutes authorizing optometrists to perform lasers in Colorado and Virginia were enacted in 2022, so Medicare claims data is not yet available for these two states.)

The volume of clinical surgical experience amongst these optometrists - who already have little breadth and depth of surgical knowledge – also varies widely amongst this small subset of practitioners. For example, in 2021,17 of the 167 optometrists (10.2%) filing Medicare Part B Fee for Service claims for YAG capsulotomies, performed 38.2% of the YAG capsulotomies performed by optometrists. Specifically in Kentucky, 5 of the 39 perform 50% of the YAG procedures done in the state.

State*	Total No of OD FFS Claimants	No. of OD Claimants Filing Claims for Performing Yag Capsulotomies (CPT Code 66821)	Percentage of Total Claimants Filing Claims for Performing YAG Capsulotomies
AK	114	2	1.75%
AR	352	9	2.56%
KY	501	39	7.78%
LA	272	18	6.62%
MS	293	14	4.78%
OK	565	83	14.69%
WY	101	2	1.98%
TOTAL	2198	167	7.6%

*Medicare Fee for Service Claims data is not yet available for CO and VA.

APPENDIX 2

SLT/ALT Procedures

For the glaucoma procedures (SLT/ALT) proposed in the Ohio legislation, there are few if any optometrists performing these procedures in states that have passed legislation. Out of 2,198 optometrists only 23 filed a claim – about 1%. Specifically in Kentucky, only 10 or .2% filed a claim.

Similar to the YAG data, a significant amount of procedures performed are concentrated with a small amount of optometrists. For example, 2 of the 23 optometrists (9%) filing Medicare Part B Fee for Service claims for SLTs/ALTs, performed 21% of these laser surgeries performed by optometrists.

State*	Total No of OD FFS Claimants	No. of OD Claimants Filing Claims for Performing SLTs/ALTs (CPT Code 65855)	Percentage of Total Claimants Filing Claims for Performing SLT/ALTs (CPT CODE 65855)
AK	114	0	0%
AR	352	3	.85%
KY	501	10	.20%
LA	272	1	.37%
MS	293	0	0%
OK	565	9	1.59%
WY	101	0	0%
TOTAL	2198	23	1.05%

*Medicare Fee for Service Claims data is not yet available for CO and VA.

Department of Veterans Affairs

Memorandum

Date: November 6, 2023

From: Assistant Under Secretary for Health for Clinical Services/Chief Medical Officer (11)

Subj: For Action: Data Call: Veterans Health Administration (VHA) Optometrist Currently Performing Certain Laser Eye Procedures (VIEWS 11025556)

To: Veterans Integrated Service Network (VISN) Directors (10N1-23)

1. **Purpose**: The purpose of this memorandum is to announce a data call to understand how many optometrists in VHA are privileged to perform laser eye procedures and how many procedures were performed in fiscal year (FY) 2023. It also requires all Department of Veteran Affairs (VA) optometrists to stop performing laser eye procedures at VA medical facilities.

2. **Background**: VHA Directive 1121(2), *VHA Eye and Vision Care*, amended August 18, 2020, included an update to Appendix G on Credentialing and Privileging requirements for ophthalmologists related to laser eye procedures:

> *"Therapeutic laser eye procedures in VHA are currently performed by only ophthalmologists and ophthalmology residents. To independently perform laser eye procedures, ophthalmologists must have completed an accredited ophthalmology residency approved by the Accreditation Council for Graduate Medical Education or the American Medical or Osteopathic Association, have appropriate training and experience in therapeutic laser procedures in accordance with the credentialing and privileging procedures at the VA medical facility, and be board-eligible or board certified by the American Board of Ophthalmology. Physicians who perform laser surgery must maintain currency in laser safety training provided within VA Talent Management System (TMS Laser Safety Training item #3870739) for initial granting of and maintenance of laser privileges."*

This update explicitly authorizes only ophthalmologists to perform laser eye procedures. However, we have become aware of the possibility that despite this policy, optometrists may have been privileged to perform these procedures, if licensed by their state to do so. Although this was appropriate given the optometrist's license, it also was contrary to policy. These providers were not at fault and did not take any actions inappropriate under their license. However, it is necessary to come into compliance with this policy.

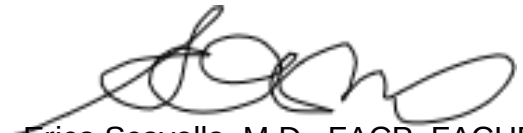
As of October 2023, eleven states permit optometrists to perform certain laser eye procedures under their state license, although state laws vary in terms of which procedures are permissible. These include: VISN 6 (Virginia), VISN 9 (Kentucky),

VISN 10 (Indiana), VISN 12 (Wisconsin), VISN 16 (Arkansas, Louisiana, and Mississippi), VISN 19 (Colorado, Oklahoma, and Wyoming), and VISN 20 (Alaska). Despite this state authorization, VHA policy explicitly authorizes only ophthalmologists to perform laser eye procedures and does not permit the practice of laser eye procedures by optometrists.

3. **Decision**: All VA Medical Centers (VAMC) must report if optometrists are privileged to perform laser eye procedures, type of procedures, FY 2023 volume by procedure type, State of licensure, and State(s) of practice for each deidentified optometrist. If optometrists are privileged to perform laser eye procedures at a facility or community-based outpatient clinic, facility Chiefs of Staff must designate a point of contact for communications on this issue. All VAMC's must report this by responding to this data call: Data Call: VHA Optometrist Currently Performing Certain Laser Eye Procedures (office.com), **no later than November 17, 2023.**

As of November 6, 2023, VA Optometrists can no longer perform laser eye procedures at any VA medical facility. If any VA optometrists are currently scheduled to perform laser eye procedures at a VA facility, those laser eye procedures must be rescheduled and reassigned to an ophthalmologist or ophthalmology resident as permitted by VHA Directive 1121(2), *VHA Eye and Vision Care*.

4. If you have any questions, please reach out to VHA11SPEC19Opt@va.gov.



Erica Scavella, M.D., FACP, FACHE

Model Language: Early Eye Drop Prescription Refill

AN ACT relating to prescription eye drops.

SECTION 1:

BE IT ENACTED BY THE STATE LEGISLATURE:

(1.) Any health benefit plan issued or renewed on or after the effective date of this Act that provides coverage for prescription eye drops shall not deny coverage for a refill of a prescription if:

a.) The refill is requested by the insured:

1. For a thirty (30) day supply, between twenty-one (21) and thirty (30) days from the later of:

(i). The original date the prescription was distributed to the insured; or

(ii.) The date the most recent refill was distributed to the insured; and

2. For a sixty (60) day supply, between forty-two (42) and sixty (60) days from the later of:

(i). The original date the prescription was distributed to the insured; or

(ii.) The date the most recent refill was distributed to the insured; and

3. For a ninety (90) day supply, between sixty-three (63) and ninety (90) days from the later of:

(i). The original date the prescription was distributed to the insured; or

(ii.) The date the most recent refill was distributed to the insured; and

b.) The prescription eye drops prescribed by the practitioner are a covered benefit under the policy or contract of the insured, and;

c.) The prescribing practitioner indicates on the original prescription that additional quantities of the prescription eye drops are needed, and:

d.) The refill requested by the insured does not exceed the number of additional quantities needed.

(2.) This Section shall, to the extent practicable, be limited in quantity so as not to exceed the remaining dosage initially approved for coverage, provided further that such limited refilling shall not limit or restrict coverage with regard to any previously or subsequently approved prescription for eye drop medication and shall be subject to the terms and conditions of the policy otherwise applicable to this coverage.

Model Language: Early Eye Drop Prescription Refill

SECTION 2:

BE IT FURTHER ENACTED, that this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after (XXXX Date)

SECTION 3:

AND BE IT FURTHER ENACTED, that this Act shall take effect (XXXX Date)

Model Legislation

AN ACT concerninghealth.

Be it enacted by the People of the State of _____, represented in the _____:

Section 1. This Section shall be known as The Topical Medical Waste Reduction Act of 2022:

(a) The Legislature finds that this Act is necessary for the immediate preservation of the public peace, health, and safety.

(b) In this Act, "facility-provided medication" means any topical antibiotic, anti-inflammatory, dilation, or glaucoma drop orointment that a hospital operating room (OR), or Emergency Room (ER), or Ambulatory Surgical Treatment Center (ASTC) staff has on stand-by or is retrieved from a dispensing system for a specified patient for use during a procedure or visit.

(c) When a facility-provided medication is ordered at least 24 hours in advance for surgical procedures and is administered to a patient at the facility, any unused portion of the facility-provided medication must be offered to the patient upon discharge when it is required for continuing treatment.

(d) A facility-provided medication shall be labeled consistent with labeling requirements under the Pharmacy PracticeAct.

(e) If the facility-provided medication is used in an

operating room or emergency department setting, the prescriber is responsible for counseling the patient on its proper use and administration and the requirement of pharmacist counseling is waived.

Section 2. Effective date. This Act takes effect July 1, 2022.