

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENGROSSED

House Bill 4655

(BY DELEGATES WALTERS AND PERRY)

[Introduced February 22, 2016;
referred to the Committee on Health and
Human Resources.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §33-6-38, relating to defining certain key terms; prohibiting insurers, vision
3 care plan or vision care discount plans from requiring vision care providers to provide
4 discounts on noncovered services or materials; prohibiting eye care providers from
5 charging more to enrollees for noncovered services than the normal and customary fee;
6 providing that insurers, vision care plan or vision care discount plans may not provide for
7 a nominal reimbursement in order to claim that a service or material is covered; prohibiting
8 insurers, vision care plan or vision care discount plan from falsely representing benefits
9 provided to sell coverage or communicate benefits to enrollees; prohibiting the
10 requirement that eye care providers be credentialed through a designated vision plan;
11 providing pay parity for optometrist and ophthalmologists; providing that optometrist and
12 ophthalmologist be held to the same credentialing standards; prohibiting eye care
13 providers from being required to accept all plan and discount plans offered by an insurer,
14 vision care plan or vision care discount plan in order to be on a panel for the insurer, vision
15 care plan or vision care discount plan; prohibits the insurer, vision care plan or vision care
16 discount plan from changing the terms of an agreement with an eye care provider without
17 communication with and agreement from the eye care provider; permitting eye care
18 providers to use any lab or supplier and notification of contract changes; creating a private
19 right of action for eye care providers; placing limits on charge backs of administrative fees
20 and other recoupments; providing that an insurer, vision care plan or vision care discount
21 plan may not discriminate against a provider based on geographic location of the eye care
22 provider; and authorizing suits for injunctions by persons aggrieved or by Insurance
23 Commissioner and recovery of monetary damages, costs and attorney's fees.

Be it enacted by the Legislature of West Virginia:

1 That §33-25E-2 the Code of West Virginia, 1931, as amended, be amended be amended
2 and reenacted; and that said code be amended by adding thereto a new section, designated §33-
3 25E-5, all to read as follows:

ARTICLE 25E. PATIENTS' EYE CARE ACT.

§33-25E-2. Definitions.

1 For the purposes of this article:

2 (1) "Commissioner" means the Insurance Commissioner of West Virginia.

3 (2) "Contractual discount" means a percentage reduction from a provider's usual and
4 customary rate for covered services and materials required under a participating provider
5 agreement.

6 (3) "Covered services" means services for which reimbursement from the insurer or vision
7 care plan or vision care discount plan is provided to a vision care provider by an enrollee's plan
8 contract, or for which a reimbursement would be available but for the application of the enrollee's
9 contractual plan limitations of deductibles, copayments, or coinsurance, regardless of how the
10 benefits are listed in an enrollee's benefit plan's definition of benefits.

11 (4) "Covered materials" means materials for which reimbursement from the insurer, vision
12 care plan or vision care discount plan is provided to a vision care provider by an enrollee's plan
13 contract, or for which a reimbursement would be available but for the application of the enrollee's
14 contractual limitations of deductibles, copayments, or coinsurance.

15 ~~(a) (5)~~ "Covered person" means an individual enrolled in a health benefit plan or an eligible
16 dependent of that person.

17 (6) "Enrollee" means any individual enrolled in a health care plan, vision care plan or vision
18 care discount plan provided by a group, employer or other entity that purchases or supplies
19 coverage for a vision care plan or vision care discount plan.

20 ~~(b) "Eye care provider" means an optometrist or ophthalmologist licensed by the State of~~
21 ~~West Virginia.~~

22 (7) "Eye care provider" means a licensed doctor of optometry practicing under the authority
23 of article eight, chapter thirty of this code or a licensed medical physician specializing in
24 ophthalmology licensed in West Virginia to practice medicine and surgery under the authority of

25 article three, chapter thirty of this code or osteopathy under article fourteen, chapter thirty of this
26 code.

27 ~~(e)~~ (8) “Eye care benefits” means coverage for the diagnosis, treatment and management
28 of eye disease and injury.

29 ~~(d)~~ (9) “Health benefit policy” means any individual or group plan, policy or contract
30 providing medical, hospital or surgical coverage issued, delivered, issued for delivery or renewed
31 in this state by an insurer, after January 1, 2001. It does not include credit accident and sickness,
32 long-term care, Medicare supplement, champus supplement, disability or limited benefits policies.

33 ~~(e)~~ “Insurer” means ~~any health care corporation, health maintenance organization,~~
34 ~~accident and sickness insurer, nonprofit hospital service corporation, nonprofit medical service~~
35 ~~corporation or similar entity.~~

36 (10) “Insurer” has the same meaning ascribed to it in section one, article forty-five of this
37 chapter.

38 (11) “Materials” means ophthalmic devices including, but not limited to, lenses, devices
39 containing lenses, artificial intraocular lenses, ophthalmic frames and other lens mounting
40 apparatus, prisms, lens treatments and coatings, contact lenses, and prosthetic devices to
41 correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

42 (12) “Services” means the professional work performed by an eye care provider.

43 (13) “Subcontractor” means any company, group or third party entity including, but not
44 limited to, agents, servants, partially- or wholly-owned subsidiaries and controlled organization
45 that is contracted by the insurer, vision care plan or vision care discount plan to supply services
46 or materials for an eye care provider or enrollee to fulfill the benefit plan of an insurer, vision care
47 plan or vision care discount plan.

48 ~~(f)~~ (14) “Vision care benefits” means benefits for the refraction of the eyes and other optical
49 benefits.

50 (15) "Vision care discount plan" means a business arrangement or contract governed by
51 the provisions of this chapter in which a person, in exchange for fees, dues, charges or other
52 consideration, offers access for its plan members to providers of eye care or ancillary services
53 and the right to receive discounts on eye care or ancillary services provided under the discount
54 vision care plan from those providers.

55 (16) "Vision care plan" means an entity that creates, promotes, sells, provides, advertises
56 or administers, an integrated or stand-alone vision benefit plan, or a vision care insurance policy
57 or contract which provides vision benefits to an enrollee pertaining to the provision of covered
58 services or covered materials.

§33-25E-5. Noncovered discounts

1 (a) No agreement between an insurer, vision care plan or vision care discount plan and
2 an eye care provider may seek to or require that an eye care provider provide services or materials
3 at a fee limited or set by the insurer, vision care plan or vision care discount plan unless the
4 services or materials are reimbursed as covered services or covered materials under the contract.

5 (1) An eye care provider may not charge more for services and materials that are
6 noncovered services or noncovered materials to an enrollee of a vision care plan or insurer than
7 his or her usual and customary rate for such services and materials.

8 (2) Reimbursements paid by an insurer, vision care plan, or vision care discount plan for
9 covered services and covered materials, regardless of supplier or optical lab used to obtain
10 materials, shall be reasonable, shall be clearly listed on a fee schedule that is made available to
11 the vision care provider prior to accepting a contract from the insurer, vision care plan or vision
12 discount plan and shall not provide nominal reimbursement or advertise services and materials
13 to be covered with additional copay or coinsurance if the health plan, vision care plan or vision
14 care discount plan do not reimburse for the services or materials in order to claim that services
15 and materials are covered services and materials.

16 (3) Insurers, vision care plans and vision care discount plans shall not publish, disseminate
17 or falsely represent the benefits that are provided to groups, employers or individual enrollees as
18 a means of selling coverage to or communicating benefit coverage to enrollees.

19 (4) All provisions in this section shall apply to any successors in interest of an insurer,
20 vision care plan, or vision care discount plan and shall apply to any subcontractors that are used
21 by an insurer, vision care plan or vision care discount plan to supply materials or services to an
22 eye care provider or enrollee and be subject to all applicable penalties as provided in this section.

23 (c) No agreement between an insurer, vision care plan or vision care discount and a vision
24 care provider may require that an eye care provider must participate with or be credentialed by
25 any specific vision care plan or vision care discount plan as a condition of participation in the
26 health care network of the insurer to provide covered medical services to its enrollees.

27 (1) Any insurer issuing or renewing a health benefit plan, vision care plan or vision care
28 discount plan issued or renewed which provides coverage for services rendered by an eye care
29 provider shall provide the same reimbursement for services to optometrists as allowed for those
30 services rendered by physicians or osteopaths.

31 (2) An insurer may not require an optometrist to meet terms and conditions that are not
32 required of a physician or osteopath as a condition for participation in its provider network for the
33 provision of services that are within the scope of practice of an optometrist.

34 (3) A clause requiring that if a provider enters into any subcontract agreement with another
35 provider to provide their licensed health care services to the subscriber, dependent of the
36 subscriber, or enrollee of a managed care plan where the subcontracted provider will bill the
37 managed care plan or subscriber or enrollee directly for the subcontracted services, the
38 subcontract agreement must meet all requirements of this section and that the subcontract
39 agreements shall be filed with the commissioner.

40 (4) The provisions of subdivisions (1), (2) and (3) of this section also apply to any
41 agreements an insurer enters into to provide services covered under the health benefit plan, vision
42 care plan or vision care discount plan.

43 (d) It is an unfair trade practice for an insurer that offers multiple vision benefit plans or
44 multiple vision discount plans to require an eye care provider, as a condition of participation in a
45 vision benefit plan or vision discount plan of the insurer, to participate in any of the insurer's other
46 vision benefit plans or vision discount plans. In addition to the proceedings and penalties provided
47 in this chapter for violation of this provision, a contract violating this subsection is void.

48 (e) An insurer, vision care plan or vision care discount plan may not change or alter an
49 agreement entered into with an eye care provider without performing the following steps:

50 (1) Sending a certified letter detailing proposed changes to the eye care provider;

51 (2) Having a face-to-face meeting to discuss proposed changes if requested by an eye
52 care provider;

53 (3) An eye care provider either agrees or does not agree to the proposed changes. If the
54 changes to the agreement are not agreed to by the eye care provider, the current agreement shall
55 continue and the insurer, vision care plan or vision care discount plan may not remove the eye
56 care provider from a panel or plan for not accepting the changes to the agreement; and

57 (4) A new agreement is required to be established and agreed upon after three or more
58 material changes are made to an existing agreement from an insurer, vision care plan or vision
59 care discount plan.

60 (f) No agreement between an insurer, vision care plan or vision care discount plan and an
61 eye care provider may restrict or limit, either directly or indirectly, the vision care provider's choice
62 of sources and suppliers of services or materials or use of optical labs provided by the eye care
63 provider to an enrollee.

64 (g) No insurer, vision care plan or vision care discount plan may change the terms,
65 discounts or reimbursement rates contained in the agreement, regardless of supplier or
66 fabricating lab used to supply materials, without a signed acknowledgement of written agreement
67 from the vision care provider.

68 (h) A person adversely affected by a violation of this section may bring action in a court of
69 competent jurisdiction for injunctive relief against the insurer, vision care plan or vision care
70 discount plan and, upon prevailing, may recover monetary damages of no more than \$1,000 for
71 each instance found to be in violation plus attorney's fees and costs.

72 (i) In a fiscal year, no insurer, vision care plan or vision care discount plan may charge
73 back or otherwise recoup administrative fees or other amounts from an eye care provider in a
74 total amount of more than three percent of the payments received by the eye care provider from
75 the insurer, vision care plan or vision care discount plan for providing services to enrollees without
76 the written agreement of the eye care provider.

77 (j) The Insurance Commissioner of West Virginia may seek an injunction against an
78 insurer, vision care plan or vision care discount plan in a court of competent jurisdiction for
79 violation of this section.

80 (k)The requirements of this section apply to insurer, vision care plan or vision care discount
81 plan policies, contracts, addendums and certificates executed, delivered, issued for delivery,
82 continued or renewed in the State of West Virginia.

83 (1) No insurer, vision care plan or vision care discount plan contract may be longer than
84 two years from the date that it was first signed.

85 (2) No insurer, vision care plan or vision care discount plan may construe recredentialing
86 as recontracting with a vision care provider.

87 (l) An insurer, vision care plan or vision care discount plan may not discriminate against
88 any provider who is located within the geographic coverage area of the insurer, vision care plan
89 or vision care discount plan and who is willing to meet the terms and conditions for participation
90 established by the insurer, including West Virginia Medicaid programs and Medicaid partnerships.

91 (m) This section is effective upon passage and includes all vision care plans and discount
92 card plans upon renewal of enrollee's current plan or upon issue of a new plan to any enrollee.

NOTE: The purpose of this bill is to prohibit insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials. It prohibits eye care providers from charging more to enrollees for noncovered services than the normal and customary fee. The bill provides that insurers, vision care plan or vision care discount plans may not provide for a nominal reimbursement in order to claim that a service or material is covered and prohibits insurers, vision care plan or vision care discount plan from falsely representing benefits provided to sell coverage or communicate benefits to enrollees. The bill prohibits the requirement that eye care providers be credentialed through a designated vision plan and provides pay parity for optometrist and ophthalmologists. The bill provides that optometrist and ophthalmologist be held to the same credentialing standards. It prohibits eye care providers from being required to accept all plan and discount plans offered by an insurer, vision care plan or vision care discount plan in order to be on a panel for the insurer, vision care plan or vision care discount plan. The bill prohibits the insurer, vision care plan or vision care discount plan from changing the terms of an agreement with an eye care provider without communication with and agreement from the eye care provider. It also permits eye care providers to use any lab or supplier and notification of contract changes; creating a private right of action for eye care providers and places limits on charge backs of administrative fees and other recoupments. The bill provides that an insurer, vision care plan or vision care discount plan shall not discriminate against a provider based on geographic location of the eye care provider. And, the bill authorizes suits for injunctions by persons aggrieved or by Insurance Commissioner and recovery of monetary damages, costs and attorney's fees.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.