

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**ENROLLED**

**House Bill 4655**

BY DELEGATES WALTERS AND PERRY

[Passed March 12, 2016; in effect ninety days from  
passage.]

1 AN ACT to amend and reenact §33-25E-2 of the Code of West Virginia, 1931, as amended; and  
2 to amend said code by adding thereto a new section, designated §33-25E-5, all relating  
3 to vision care insurance, benefit and discount plans; defining terms; prohibiting  
4 requirement that eye care providers give discounts on noncovered services or materials;  
5 prohibiting eye care providers from charging more to enrollees for noncovered services  
6 than the customary rate; requiring reasonable reimbursements, requiring fee schedule and  
7 stating that plans may not provide for nominal reimbursements in order to claim that a  
8 service or material is covered; prohibiting plans from falsely representing benefits;  
9 specifying application to subcontractors; prohibiting the requirement that eye care  
10 providers be credentialed through a designated vision plan as a condition of participation  
11 in a health care network; providing pay parity for optometrists and ophthalmologists;  
12 providing that optometrists and ophthalmologists be held to the same credentialing  
13 standards; setting forth requirements for alterations to and content of eye care provider  
14 agreements; requiring that eye care providers be permitted to use any lab or supplier;  
15 creating a private right of action for persons or entities adversely affected, including  
16 injunctive relief, specifying damages and providing for attorney fees and costs; placing  
17 limits on chargebacks of administrative fees and other recoupments; authorizing suits for  
18 injunctions by Insurance Commissioner; prohibiting discrimination against a provider  
19 based on geographic location of the eye care provider; and providing effective date.

*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) "Covered services" and "covered materials" means services or materials for which  
4 reimbursement from the insurer or vision care plan or vision care discount plan is available under  
5 an enrollee's vision plan or contract, or for which a reimbursement would be available but for the  
6 application of contractual limitations such as deductibles, copayments, coinsurance, waiting  
7 periods, annual or lifetime maximums, frequency limitations, alternative benefit payments or other  
8 limitations.

9 (3) "Covered person" means an individual enrolled in a health benefit plan or an eligible  
10 dependent of that person.

11 (4) "Enrollee" means any individual enrolled in a health care plan, vision care plan or vision  
12 care discount plan provided by a group, employer or other entity that purchases or supplies  
13 coverage for a vision care plan or vision care discount plan.

14 (5) "Eye care provider" means a licensed doctor of optometry practicing under the  
15 authority of article eight, chapter thirty of this code or a licensed medical physician specializing in  
16 ophthalmology licensed in West Virginia to practice medicine and surgery under the authority of  
17 article three, chapter thirty of this code or osteopathy under article fourteen, chapter thirty of this  
18 code.

19 (6) "Eye care benefits" means coverage for the diagnosis, treatment and management of  
20 eye disease and injury.

21 (7) "Health benefit policy" means any individual or group plan, policy or contract providing  
22 medical, hospital or surgical coverage issued, delivered, issued for delivery or renewed in this  
23 state by an insurer, after January 1, 2001. It does not include credit accident and sickness, long-  
24 term care, Medicare supplement, champus supplement, disability or limited benefits policies.

25 (8) "Insurer" means any health care corporation, health maintenance organization,  
26 accident and sickness insurer, nonprofit hospital service corporation, nonprofit medical service  
27 corporation or similar entity.

28 (9) "Materials" means ophthalmic devices, including, but not limited to, lenses, devices  
29 containing lenses, artificial intraocular lenses, ophthalmic frames and other lens-mounting  
30 apparatus, prisms, lens treatments and coatings, contact lenses and prosthetic devices to correct,  
31 relieve or treat defects or abnormal conditions of the human eye or its adnexa.

32 (10) "Services" means the professional work performed by an eye care provider.

33 (11) "Subcontractor" means any company, group or third party entity, including, but not  
34 limited to, agents, servants, partially- or wholly-owned subsidiaries and controlled organizations  
35 that is contracted by the insurer, vision care plan or vision care discount plan to supply services  
36 or materials for an eye care provider or enrollee to fulfill the benefit plan of an insurer, vision care  
37 plan or vision care discount plan.

38 (12) "Vision care benefits" means benefits for the refraction of the eyes and other optical  
39 benefits.

40 (13) "Vision care discount plan" means a business arrangement or contract offered by an  
41 insurer in which a person, in exchange for fees, dues, charges or other consideration, offers  
42 access for its plan members to providers of eye care or ancillary services and the right to receive  
43 discounts on eye care or ancillary services provided under the discount vision care plan from  
44 those providers.

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

**§33-25E-5. Noncovered discounts.**

1 (a) An agreement between an insurer, vision care plan or vision care discount plan and  
2 an eye care provider may not seek to or require that an eye care provider provide services or  
3 materials at a fee limited or set by the insurer, vision care plan or vision care discount plan, unless  
4 the services or materials are reimbursed as covered services or covered materials under the

5 contract.

6 (1) An eye care provider may not charge more for services and materials that are non-  
7 covered services or non-covered materials to an enrollee of a vision care plan, vision care  
8 discount plan or insurer than his or her usual and customary rate for the services and materials.

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

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

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

24 (b) An agreement between an insurer, vision care plan or vision care discount plan and  
25 an eye care provider may not require that an eye care provider must participate with or be  
26 credentialed by any specific vision care plan or vision care discount plan as a condition of  
27 participation in the health care network of the insurer to provide covered medical services to its  
28 enrollees.

29 (1) Any insurer issuing or renewing a health benefit plan, vision care plan or vision care  
30 discount plan issued or renewed which provides coverage for services rendered by an eye care

31 provider shall provide the same reimbursement for services to optometrists as allowed for those  
32 services rendered by physicians or osteopaths.

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

36 (3) If an eye care provider enters into any subcontract agreement with another provider to  
37 provide covered services or covered materials to an enrollee which provides that the  
38 subcontracted provider will bill the vision care plan or enrollee directly for the subcontracted  
39 services or materials, the subcontract agreement shall meet all requirements of this section.

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

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

45 (1) Mailing a certified letter detailing proposed changes to the eye care provider;

46 (2) Obtaining agreement or disagreement to the proposed changes from the eye care  
47 provider; and

48 (3) Providing a new agreement after three or more material changes are made to an  
49 existing agreement from an insurer, vision care plan or vision care discount plan.

50 (d) An agreement between an insurer, vision care plan or vision care discount plan and  
51 an eye care provider may not restrict or limit, either directly or indirectly, the eye care provider's  
52 choice of sources and suppliers of services or materials or use of optical labs provided by the eye  
53 care provider to an enrollee.

54 (e) An insurer, vision care plan or vision care discount plan may not change the terms,  
55 discounts or reimbursement rates contained in the agreement, regardless of supplier or  
56 fabricating lab used to supply materials, without a signed acknowledgement of written agreement

57 from the eye care provider.

58 (f) A person or entity adversely affected by a violation of this section may bring action in a  
59 court of competent jurisdiction for injunctive relief against the insurer, vision care plan or vision  
60 care discount plan and, upon prevailing, may recover monetary damages of no more than \$1,000  
61 for each instance found to be in violation of this section, plus attorneys' fees and costs.

62 (g) In a fiscal year, an insurer, vision care plan or vision care discount plan may not charge  
63 back or otherwise recoup administrative fees or other amounts from an eye care provider in a  
64 total amount of more than three percent of the payments received by the eye care provider from  
65 the insurer, vision care plan or vision care discount plan for providing services to enrollees without  
66 the written agreement of the eye care provider.

67 (h) The Commissioner may seek an injunction against an insurer, vision care plan or vision  
68 care discount plan in a court of competent jurisdiction for violation of this section.

69 (i) The requirements of this section apply to insurers, vision care plans, vision care  
70 discount plans, contracts, addendums and certificates executed, delivered, issued for delivery,  
71 continued or renewed in the State of West Virginia.

72 (1) An insurer, vision care plan or vision care discount plan contract may not be in effect  
73 for more than two years from the date that it was first signed.

74 (2) An insurer, vision care plan or vision care discount plan may not construe  
75 recredentialing as recontracting with an eye care provider.

76 (j) An insurer, vision care plan or vision care discount plan may not discriminate against  
77 any eye care provider who is located within the geographic coverage area of the insurer, vision  
78 care plan or vision care discount plan and who is willing to meet the terms and conditions for  
79 participation established by the insurer, vision care plan or vision care discount plan, including  
80 West Virginia Medicaid programs and Medicaid partnerships.

81 (k) This section becomes effective on July 1, 2016, and applies to vision care plans and  
82 vision care discount plans which take effect or are renewed on or after July 1, 2016.