# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

## Introduced

# House Bill 4655

BY DELEGATES WALTERS AND PERRY

[Introduced February 22, 2016;

referred to the Committee on Banking and Insurance

then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-38, relating to defining certain key terms; prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials; prohibiting eye care providers from charging more to enrollees for noncovered services than the normal and customary fee; providing 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; prohibiting insurers, vision care plan or vision care discount plan from falsely representing benefits provided to sell coverage or communicate benefits to enrollees; prohibiting the requirement that eye care providers be credentialed through a designated vision plan; providing pay parity for optometrist and ophthalmologists; providing that optometrist and ophthalmologist be held to the same credentialing standards; prohibiting 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; 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; permitting eye care providers to use any lab or supplier and notification of contract changes; creating a private right of action for eye care providers; placing limits on charge backs of administrative fees and other recoupments; providing that an insurer, vision care plan or vision care discount plan may not discriminate against a provider based on geographic location of the eye care provider; and authorizing suits for injunctions by persons aggrieved or by Insurance Commissioner and recovery of monetary damages, costs and attorney's fees.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-6-38, to read as follows:

## ARTICLE 6. THE INSURANCE POLICY.

### §33-6-38. Noncovered discounts

(a) For purposes of this section:

(1) “Commissioner” means the Insurance Commissioner of West Virginia.

(2) “Contractual discount” means a percentage reduction from a provider’s usual and customary rate for covered services and materials required under a participating provider agreement.

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

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

(5) “Enrollee” means any individual enrolled in a health care plan, vision care plan or vision care discount plan provided by a group, employer or other entity that purchases or supplies coverage for a vision care plan or vision care discount plan.

(6) “Eye care provider” means a licensed doctor of optometry practicing under the authority of article eight, chapter thirty of this code or a licensed medical physician specializing in ophthalmology licensed in West Virginia to practice medicine and surgery under the authority of article eight, chapter thirty of this code or osteopathy under article fourteen, chapter thirty of this code.

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

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

(9) “Services” means the professional work performed by an eye care provider as defined in this section.

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

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

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

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

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

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

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

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

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

(1) Any insurer issuing or renewing a health benefit plan, vision care plan or vision care discount plan issued or renewed which provides coverage for services rendered by a physician or osteopath licensed under article eight, chapter thirty of this code or osteopathy under article fourteen, chapter thirty of this code that are within the scope of practice of an optometrist licensed under article eight ,chapter thirty of this code shall provide the same reimbursement for services to optometrists as allowed for those services rendered by physicians or osteopaths.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) This section is effective upon passage and includes all vision care plans and discount 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.