

By: Buckley, Oliverson, Cook, Gerdes, Noble,
et al.

H.B. No. 1696

A BILL TO BE ENTITLED

AN ACT

relating to the relationship between managed care plans and
optometrists and therapeutic optometrists.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter D, Chapter 1451,
Insurance Code, is amended to read as follows:

SUBCHAPTER D. ACCESS TO OPTOMETRISTS ~~[AND OPHTHALMOLOGISTS]~~ USED
UNDER MANAGED CARE PLAN

SECTION 2. Section 1451.151, Insurance Code, is amended to
read as follows:

Sec. 1451.151. DEFINITION ~~[DEFINITIONS]~~. In this
subchapter, ~~[+]~~

~~[(1)]~~ "managed ~~[Managed]~~ care plan" means a plan under
which a health maintenance organization, preferred provider
benefit plan issuer, vision benefit plan issuer, vision benefit
plan administrator, or other organization provides or arranges for
health care benefits or vision benefits to plan participants and
requires or encourages plan participants to use health care
practitioners the plan designates.

~~[(2)] "Ophthalmologist" means a physician who
specializes in ophthalmology.~~

SECTION 3. Section 1451.153, Insurance Code, is amended to
read as follows:

Sec. 1451.153. USE OF OPTOMETRIST OR ~~[7]~~ THERAPEUTIC

1 OPTOMETRIST[~~7~~ OR OPHTHALMOLOGIST]. (a) A managed care plan may
2 not:

3 (1) discriminate against a health care practitioner
4 because the practitioner is an optometrist or a[~~7~~] therapeutic
5 optometrist[~~7~~ or ophthalmologist];

6 (2) restrict or discourage a plan participant from
7 obtaining covered vision or medical eye care services or procedures
8 from a participating optometrist or[~~7~~] therapeutic optometrist[~~7~~
9 ~~or ophthalmologist~~] solely because the practitioner is an
10 optometrist or[~~7~~] therapeutic optometrist[~~7~~ or ophthalmologist];

11 (3) exclude an optometrist or a[~~7~~] therapeutic
12 optometrist[~~7~~ or ophthalmologist] as a participating practitioner
13 in the plan because the optometrist or[~~7~~] therapeutic optometrist[~~7~~
14 ~~or ophthalmologist~~] does not have medical staff privileges at a
15 hospital or at a particular hospital;

16 (4) identify a participating optometrist or
17 therapeutic optometrist differently from another optometrist or
18 therapeutic optometrist based on:

19 (A) a discount or incentive offered on a medical
20 or vision care product or service, as defined by Section 1451.155,
21 that is not a covered product or service, as defined by Section
22 1451.155, by the optometrist or therapeutic optometrist;

23 (B) the dollar amount, volume amount, or percent
24 usage amount of any product or good purchased by the optometrist or
25 therapeutic optometrist; or

26 (C) the brand, source, manufacturer, or supplier
27 of a medical or vision care product or service, as defined by

1 Section 1451.155, utilized by the optometrist or therapeutic
2 optometrist to practice optometry;

3 (5) incentivize, recommend, encourage, persuade, or
4 attempt to persuade an enrollee to obtain covered or uncovered
5 products or services:

6 (A) at any particular participating optometrist
7 or therapeutic optometrist instead of another participating
8 optometrist or therapeutic optometrist;

9 (B) at a retail establishment owned by, partially
10 owned by, contracted with, or otherwise affiliated with the managed
11 care plan instead of a different participating optometrist or
12 therapeutic optometrist; or

13 (C) at any Internet or virtual provider or
14 retailer owned by, partially owned by, contracted with, or
15 otherwise affiliated with the managed care plan instead of a
16 different participating optometrist or therapeutic optometrist;

17 (6) exclude an optometrist or a~~[7]~~ therapeutic
18 optometrist~~[7, or ophthalmologist]~~ as a participating practitioner
19 in the plan because the services or procedures provided by the
20 optometrist or~~[7]~~ therapeutic optometrist~~[7, or ophthalmologist]~~
21 may be provided by another type of health care practitioner; or

22 (7) ~~[(5)]~~ as a condition for a therapeutic optometrist
23 ~~[or ophthalmologist]~~ to be included in one or more of the plan's
24 medical panels, require the therapeutic optometrist ~~[or~~
25 ~~ophthalmologist]~~ to be included in, or to accept the terms of
26 payment under or for, a particular vision panel in which the
27 therapeutic optometrist ~~[or ophthalmologist]~~ does not otherwise

1 wish to be included.

2 (b) A managed care plan shall:

3 (1) include optometrists and~~[7]~~ therapeutic
4 optometrists~~[7, and ophthalmologists]~~ as participating health care
5 practitioners in the plan; ~~[and]~~

6 (2) include the name of a participating optometrist
7 or~~[7]~~ therapeutic optometrist~~[7, or ophthalmologist]~~ in any list of
8 participating health care practitioners and give equal prominence
9 to each name;

10 (3) provide directly to an optometrist, therapeutic
11 optometrist, or plan enrollee immediate access by electronic means
12 to an enrollee's complete plan coverage information, including
13 in-network and out-of-network coverage details;

14 (4) publish complete plan information, including
15 in-network and out-of-network coverage details, with any marketing
16 materials that describe the plan benefits, including any summary
17 plan description;

18 (5) allow an optometrist or a therapeutic optometrist
19 to utilize any third-party claim-filing service, billing service,
20 or electronic data interchange clearinghouse company that uses the
21 standardized claim submission protocol of the National Uniform
22 Claim Committee and that allows the optometrist or therapeutic
23 optometrist to submit details for both services and vision care
24 products to facilitate the authorization, submission, and
25 reimbursement of claims; and

26 (6) allow an optometrist or a therapeutic optometrist
27 to receive reimbursement through an electronic funds transfer.

1 (c) For the purposes of Subsection (a)(7) [~~(a)(5)~~],
2 "medical panel" and "vision panel" have the meanings assigned by
3 Section [1451.154](#)(a).

4 SECTION 4. Section [1451.154](#)(a)(2), Insurance Code, is
5 amended to read as follows:

6 (2) "Vision panel" means the optometrists and~~[~~
7 therapeutic optometrists~~], and ophthalmologists~~ who are listed as
8 participating providers for routine eye examinations under a
9 managed care plan or who a patient seeking a routine eye examination
10 is encouraged or required to use under a managed care plan.

11 SECTION 5. Section [1451.154](#)(c), Insurance Code, is amended
12 to read as follows:

13 (c) A therapeutic optometrist who is included in a managed
14 care plan's medical panels under Subsection (b) must:

15 (1) abide by the terms and conditions of the managed
16 care plan;

17 (2) satisfy the managed care plan's credentialing
18 standards for therapeutic optometrists; and

19 (3) provide proof that the Texas Optometry Board
20 considers the therapeutic optometrist's license to practice
21 therapeutic optometry to be in good standing~~[, and~~

22 ~~[(4) comply with the requirements of the Controlled~~
23 ~~Substances Registration Program operated by the Department of~~
24 ~~Public Safety]~~.

25 SECTION 6. Section [1451.155](#), Insurance Code, is amended to
26 read as follows:

27 Sec. 1451.155. CONTRACTS WITH OPTOMETRISTS OR THERAPEUTIC

1 OPTOMETRISTS. (a) In this section:

2 (1) "Chargeback" means a dollar amount, fee,
3 surcharge, or item of value that reduces, modifies, or offsets all
4 or part of the patient responsibility, provider reimbursement, or
5 fee schedule for a covered product or service.

6 (2) "Covered product or service" means a medical or
7 vision care product or service for which reimbursement is available
8 under an enrollee's managed care plan contract or for which
9 reimbursement is available subject to a contractual limitation,
10 including:

- 11 (A) a deductible;
- 12 (B) a copayment;
- 13 (C) coinsurance;
- 14 (D) a waiting period;
- 15 (E) an annual or lifetime maximum limit;
- 16 (F) a frequency limitation; or
- 17 (G) an alternative benefit payment.

18 (3) ~~(2)~~ "Medical or vision [~~Vision~~] care product or
19 service" means a product or service provided within the scope of the
20 practice of optometry or therapeutic optometry under Chapter 351,
21 Occupations Code.

22 (a-1) For the purposes of this section, a product or service
23 reimbursed to an optometrist or therapeutic optometrist at a
24 nominal or de minimis rate is not a covered product or service.

25 (a-2) For the purposes of this section, a product or service
26 reimbursed to an optometrist or therapeutic optometrist solely by
27 the enrollee is not a covered product or service.

1 (b) A contract between a managed care plan [~~an insurer~~] and
2 an optometrist or therapeutic optometrist may not limit the fee the
3 optometrist or therapeutic optometrist may charge for a product or
4 service that is not a covered product or service.

5 (c) A contract between a managed care plan [~~an insurer~~] and
6 an optometrist or therapeutic optometrist may not require a
7 discount on a product or service that is not a covered product or
8 service.

9 (d) A contract between a managed care plan and an
10 optometrist or therapeutic optometrist may not contain a provision
11 authorizing a chargeback to the patient, optometrist, or
12 therapeutic optometrist if the chargeback is for a covered product
13 or service that the managed care plan does not incur the cost to
14 produce, deliver, or provide to the patient, optometrist, or
15 therapeutic optometrist.

16 (e) A contract between a managed care plan and an
17 optometrist or therapeutic optometrist may not contain a provision
18 authorizing a reimbursement fee schedule for a covered product or
19 service that is different from the fee schedule applicable to
20 another optometrist or therapeutic optometrist because of the
21 optometrist's or therapeutic optometrist's choice of:

22 (1) optical laboratory;

23 (2) source or supplier of:

24 (A) contact lenses;

25 (B) ophthalmic lenses;

26 (C) ophthalmic glasses frames; or

27 (D) covered or uncovered products or services;

1 (3) equipment used for patient care;

2 (4) retail optical affiliation;

3 (5) vision support organization;

4 (6) group purchasing organization;

5 (7) doctor alliance;

6 (8) professional trade association membership;

7 (9) affiliation with an arrangement defined as a
8 franchise by 16 C.F.R. Part 436;

9 (10) electronic health record software, electronic
10 medical record software, or practice management software; or

11 (11) third-party claim-filing service, billing
12 service, or electronic data interchange clearinghouse company.

13 (f) A managed care plan may not change a contract between a
14 managed care plan and an optometrist or therapeutic optometrist,
15 including terms, reimbursements, or fee schedules, unless the
16 managed care plan provides written notice of the change to the
17 optometrist or therapeutic optometrist at least 90 days before the
18 date the proposed change takes effect.

19 (g) A contract between a managed care plan and an
20 optometrist or therapeutic optometrist may not contain a provision
21 requiring the optometrist or therapeutic optometrist to provide a
22 covered product at a loss.

23 (h) A contract between a managed care plan and an
24 optometrist or therapeutic optometrist may not contain a provision
25 requiring the optometrist or therapeutic optometrist to accept a
26 reimbursement payment in the form of a virtual credit card or any
27 other payment method where a processing fee, administrative fee,

1 percentage amount, or dollar amount is assessed to receive the
2 reimbursement payment, except in the case of a nominal fee assessed
3 by the optometrist's or therapeutic optometrist's bank to receive
4 an electronic funds transfer.

5 SECTION 7. The heading to Section 1451.156, Insurance Code,
6 is amended to read as follows:

7 Sec. 1451.156. CERTAIN CONDUCT PROHIBITED [~~CONDUCT~~].

8 SECTION 8. Section 1451.156(a), Insurance Code, is amended
9 to read as follows:

10 (a) A managed care plan, as described by Section
11 1451.152(a), may not directly or indirectly:

12 (1) control or attempt to control the professional
13 judgment, manner of practice, or practice of an optometrist or
14 therapeutic optometrist;

15 (2) employ an optometrist or therapeutic optometrist
16 to provide a vision care product or service as defined by Section
17 1451.155;

18 (3) pay an optometrist or therapeutic optometrist for
19 a service not provided;

20 (4) reimburse an optometrist or therapeutic
21 optometrist a different amount for a covered product or service as
22 defined by Section 1451.155 because of the optometrist's or
23 therapeutic optometrist's choice of:

24 (A) optical laboratory;

25 (B) source or supplier of:

26 (i) contact lenses;

27 (ii) ophthalmic lenses;

1 (iii) ophthalmic glasses frames; or
2 (iv) covered or uncovered products or
3 services;

4 (C) equipment used for patient care;
5 (D) retail optical affiliation;
6 (E) vision support organization;
7 (F) group purchasing organization;
8 (G) doctor alliance;
9 (H) professional trade association membership;
10 (I) affiliation with an arrangement defined as a
11 franchise by 16 C.F.R. Part 436;

12 (J) electronic health record software,
13 electronic medical record software, or practice management
14 software; or

15 (K) third-party claim-filing service, billing
16 service, or electronic data interchange clearinghouse company;

17 (5) restrict, ~~or~~ limit, or influence an
18 optometrist's or therapeutic optometrist's choice of sources or
19 suppliers of services or materials, including optical laboratories
20 used by the optometrist or therapeutic optometrist to provide
21 services or materials to a patient;

22 (6) restrict, limit, or influence an optometrist's or
23 therapeutic optometrist's choice of electronic health record
24 software, electronic medical record software, or practice
25 management software;

26 (7) restrict, limit, or influence an optometrist's or
27 therapeutic optometrist's choice of third-party claim-filing

1 service, billing service, or electronic data interchange
2 clearinghouse company;

3 (8) restrict or limit an optometrist's or therapeutic
4 optometrist's access to a patient's complete plan coverage
5 information, including in-network and out-of-network coverage
6 details;

7 (9) apply a chargeback, as defined by Section
8 1451.155, to a patient, optometrist, or therapeutic optometrist if
9 the chargeback is for a covered product or service that the managed
10 care plan does not incur the cost to produce, deliver, or provide to
11 the patient, optometrist, or therapeutic optometrist;

12 (10) require an optometrist or therapeutic
13 optometrist to provide a covered product at a loss; [~~or~~]

14 (11) [~~(5)~~] require an optometrist or therapeutic
15 optometrist to disclose a patient's confidential or protected
16 health information unless the disclosure is authorized by the
17 patient or permitted without authorization under the Health
18 Insurance Portability and Accountability Act of 1996 (42 U.S.C.
19 Section 1320d et seq.) or under Section 602.053;

20 (12) require an optometrist or therapeutic
21 optometrist to disclose or report a medical history or diagnosis as
22 a condition to file a claim, adjudicate a claim, or receive
23 reimbursement for a routine or wellness vision eye exam;

24 (13) require an optometrist or therapeutic
25 optometrist to disclose or report a patient's glasses prescription,
26 contact lens prescription, ophthalmic device measurements, facial
27 photograph, or unique anatomical measurements as a condition to

1 file a claim, adjudicate a claim, or receive reimbursement for a
2 claim unless the information is needed for the managed care plan to
3 manufacture or cause to be manufactured a covered product that is
4 submitted on the claim;

5 (14) require an optometrist or therapeutic
6 optometrist to disclose any patient information, other than
7 information identified on the version of the Health Insurance Claim
8 Form approved by the National Uniform Claim Committee as of March 1,
9 2023, as a condition to file a claim, adjudicate a claim, or receive
10 reimbursement for a claim unless the information is needed for the
11 managed care plan to manufacture or cause to be manufactured a
12 covered product that is submitted on the claim; or

13 (15) require an optometrist or therapeutic
14 optometrist to accept a reimbursement payment in the form of a
15 virtual credit card or any other payment method where a processing
16 fee, administrative fee, percentage amount, or dollar amount is
17 assessed to receive the reimbursement payment, except in the case
18 of a nominal fee assessed by the optometrist's or therapeutic
19 optometrist's bank to receive an electronic funds transfer.

20 SECTION 9. Subchapter D, Chapter 1451, Insurance Code, is
21 amended by adding Sections 1451.157 and 1451.158 to read as
22 follows:

23 Sec. 1451.157. EXTRAPOLATION PROHIBITED. (a) In this
24 section:

25 (1) "Extrapolation" means a mathematical process or
26 technique used by a vision care plan in the audit of an optometrist
27 or therapeutic optometrist to estimate audit results or findings

1 for a larger batch or group of claims not reviewed by the plan.

2 (2) "Vision care plan" means a limited-scope policy,
3 agreement, contract, or evidence of coverage that provides coverage
4 for eye care expenses but does not provide comprehensive medical
5 coverage.

6 (b) A vision care plan may not use extrapolation to complete
7 an audit of a participating optometrist or therapeutic optometrist.
8 Any additional payment due to a participating optometrist or
9 therapeutic optometrist or any refund due to the vision care plan
10 must be based on the actual overpayment or underpayment and may not
11 be based on an extrapolation.

12 Sec. 1451.158. ENFORCEMENT OF SUBCHAPTER. (a) A violation
13 of this subchapter by a managed care plan is subject to an
14 administrative penalty under Chapter 84.

15 (b) The commissioner shall take all reasonable actions to
16 ensure compliance with this subchapter, including issuing orders to
17 enforce this subchapter.

18 SECTION 10. Sections 1451.154(d) and 1451.156(d),
19 Insurance Code, are repealed.

20 SECTION 11. The changes in law made by this Act apply only
21 to a contract between a managed care plan or vision care plan and an
22 optometrist or a therapeutic optometrist entered into or renewed,
23 or a managed care plan or vision care plan delivered, issued for
24 delivery, or renewed, on or after January 1, 2024. A contract
25 entered into or renewed, or a managed care plan or vision care plan
26 delivered, issued for delivery, or renewed, before January 1, 2024,
27 is governed by the law as it existed immediately before the

H.B. No. 1696

1 effective date of this Act, and that law is continued in effect for
2 that purpose.

3 SECTION 12. This Act takes effect September 1, 2023.