

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

H.B. No. 1696

Substitute the following for H.B. No. 1696:

By: Oliverson

C.S.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) create, offer, or use a contractual fee schedule  
17 that reimburses an optometrist or a therapeutic optometrist  
18 differently from another optometrist or therapeutic optometrist;

19 (5) identify a participating optometrist or  
20 therapeutic optometrist differently from another optometrist or  
21 therapeutic optometrist based on:

22 (A) a discount or incentive offered on a medical  
23 or vision care product or service, as defined by Section 1451.155,  
24 that is not a covered product or service, as defined by Section  
25 1451.155, by the optometrist or therapeutic optometrist;

26 (B) the dollar amount, volume amount, or percent  
27 usage amount of any product or good purchased by the optometrist or

1 therapeutic optometrist; or

2 (C) the brand, source, manufacturer, or supplier  
3 of a medical or vision care product or service, as defined by  
4 Section 1451.155, utilized by the optometrist or therapeutic  
5 optometrist to practice optometry;

6 (6) incentivize, recommend, encourage, persuade, or  
7 attempt to persuade an enrollee to obtain covered or uncovered  
8 products or services:

9 (A) at any particular participating optometrist  
10 or therapeutic optometrist instead of another participating  
11 optometrist or therapeutic optometrist;

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

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

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

25 (8) [~~5~~] as a condition for a therapeutic optometrist  
26 [~~or ophthalmologist~~] to be included in one or more of the plan's  
27 medical panels, require the therapeutic optometrist [~~or~~

1 ~~ophthalmologist~~] to be included in, or to accept the terms of  
2 payment under or for, a particular vision panel in which the  
3 therapeutic optometrist [~~or ophthalmologist~~] does not otherwise  
4 wish to be included.

5 (b) A managed care plan shall:

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

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

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

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

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

1 reimbursement of claims; and

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

4 (c) For the purposes of Subsection (a)(8) [~~(a)(5)~~],  
5 "medical panel" and "vision panel" have the meanings assigned by  
6 Section 1451.154(a).

7 SECTION 4. Section 1451.154(a)(2), Insurance Code, is  
8 amended to read as follows:

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

14 SECTION 5. Section 1451.154(c), Insurance Code, is amended  
15 to read as follows:

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

18 (1) abide by the terms and conditions of the managed  
19 care plan;

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

22 (3) provide proof that the Texas Optometry Board  
23 considers the therapeutic optometrist's license to practice  
24 therapeutic optometry to be in good standing[~~7, and~~

25 [~~(4) comply with the requirements of the Controlled~~  
26 ~~Substances Registration Program operated by the Department of~~  
27 ~~Public Safety]~~.

1 SECTION 6. Section 1451.155, Insurance Code, is amended to  
2 read as follows:

3 Sec. 1451.155. CONTRACTS WITH OPTOMETRISTS OR THERAPEUTIC  
4 OPTOMETRISTS. (a) In this section:

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

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

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

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

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

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

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

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

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

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

25                (1) optical laboratory;

26                (2) source or supplier of:

27                        (A) contact lenses;

1           (B) ophthalmic lenses;

2           (C) ophthalmic glasses frames; or

3           (D) covered or uncovered products or services;

4           (3) equipment used for patient care;

5           (4) retail optical affiliation;

6           (5) vision support organization;

7           (6) group purchasing organization;

8           (7) doctor alliance;

9           (8) professional trade association membership;

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

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

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

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

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

26           (h) A contract between a managed care plan and an  
27 optometrist or therapeutic optometrist may not contain a provision



1 requiring the optometrist or therapeutic optometrist to accept a  
2 reimbursement payment in the form of a virtual credit card or any  
3 other payment method where a processing fee, administrative fee,  
4 percentage amount, or dollar amount is assessed to receive the  
5 reimbursement payment, except in the case of a nominal fee assessed  
6 by the optometrist's or therapeutic optometrist's bank to receive  
7 an electronic funds transfer.

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

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

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

13 (a) A managed care plan, as described by Section  
14 1451.152(a), may not directly or indirectly:

15 (1) control or attempt to control the professional  
16 judgment, manner of practice, or practice of an optometrist or  
17 therapeutic optometrist;

18 (2) employ an optometrist or therapeutic optometrist  
19 to provide a vision care product or service as defined by Section  
20 1451.155;

21 (3) pay an optometrist or therapeutic optometrist for  
22 a service not provided;

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

27 (A) optical laboratory;

- 1                   (B) source or supplier of:  
2                    (i) contact lenses;  
3                    (ii) ophthalmic lenses;  
4                    (iii) ophthalmic glasses frames; or  
5                    (iv) covered or uncovered products or  
6 services;  
7                    (C) equipment used for patient care;  
8                    (D) retail optical affiliation;  
9                    (E) vision support organization;  
10                   (F) group purchasing organization;  
11                   (G) doctor alliance;  
12                   (H) professional trade association membership;  
13                   (I) affiliation with an arrangement defined as a  
14 franchise by 16 C.F.R. Part 436;  
15                    (J) electronic health record software,  
16 electronic medical record software, or practice management  
17 software; or  
18                    (K) third-party claim-filing service, billing  
19 service, or electronic data interchange clearinghouse company;  
20                    (5) restrict, [~~or~~] limit, or influence an  
21 optometrist's or therapeutic optometrist's choice of sources or  
22 suppliers of services or materials, including optical laboratories  
23 used by the optometrist or therapeutic optometrist to provide  
24 services or materials to a patient;  
25                    (6) restrict, limit, or influence an optometrist's or  
26 therapeutic optometrist's choice of electronic health record  
27 software, electronic medical record software, or practice

1 management software;

2 (7) restrict, limit, or influence an optometrist's or  
3 therapeutic optometrist's choice of third-party claim-filing  
4 service, billing service, or electronic data interchange  
5 clearinghouse company;

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

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

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

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

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

27 (13) require an optometrist or therapeutic

1 optometrist to disclose or report a patient's glasses prescription,  
2 contact lens prescription, ophthalmic device measurements, facial  
3 photograph, or unique anatomical measurements as a condition to  
4 file a claim, adjudicate a claim, or receive reimbursement for a  
5 claim;

6 (14) require an optometrist or therapeutic  
7 optometrist to disclose any patient information, other than  
8 information identified on the version of the Health Insurance Claim  
9 Form approved by the National Uniform Claim Committee as of March 1,  
10 2023, as a condition to file a claim, adjudicate a claim, or receive  
11 reimbursement for a claim; or

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

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

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

24 (1) "Extrapolation" means a mathematical process or  
25 technique used by a vision care plan in the audit of an optometrist  
26 or therapeutic optometrist to estimate audit results or findings  
27 for a larger batch or group of claims not reviewed by the plan.

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

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

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

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

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

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

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