

By: Buckley

H.B. No. 1696

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 1451.151(1), Insurance Code, is amended to read as follows:

(1) "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.

SECTION 2. Section 1451.153, Insurance Code, is amended to read as follows:

Sec. 1451.153. USE OF OPTOMETRIST, THERAPEUTIC OPTOMETRIST, OR OPHTHALMOLOGIST. (a) A managed care plan may not:

(1) discriminate against a health care practitioner because the practitioner is an optometrist, therapeutic optometrist, or ophthalmologist;

(2) restrict or discourage a plan participant from obtaining covered vision or medical eye care services or procedures from a participating optometrist, therapeutic optometrist, or ophthalmologist solely because the practitioner is an optometrist,

1 therapeutic optometrist, or ophthalmologist;

2 (3) exclude an optometrist, therapeutic optometrist,
3 or ophthalmologist as a participating practitioner in the plan
4 because the optometrist, therapeutic optometrist, or
5 ophthalmologist does not have medical staff privileges at a
6 hospital or at a particular hospital;

7 (4) deny participation of an optometrist, therapeutic
8 optometrist, or ophthalmologist as a participating practitioner in
9 the plan if the optometrist, therapeutic optometrist, or
10 ophthalmologist meets the plan's credentialing requirements and
11 agrees to the plan's contractual terms;

12 (5) create, offer, or use a contractual fee schedule
13 that reimburses an optometrist, therapeutic optometrist, or
14 ophthalmologist differently from another optometrist, therapeutic
15 optometrist, or ophthalmologist based on professional degree held;

16 (6) identify a participating optometrist, therapeutic
17 optometrist, or ophthalmologist differently from other
18 participating health care practitioners based on any
19 characteristic other than professional degree held;

20 (7) incentivize, recommend, encourage, persuade, or
21 attempt to persuade an enrollee to obtain covered or uncovered
22 products or services:

23 (A) at any particular participating optometrist,
24 therapeutic optometrist, or ophthalmologist instead of another
25 participating optometrist, therapeutic optometrist, or
26 ophthalmologist;

27 (B) at a retail establishment owned by, partially

1 owned by, contracted with, or otherwise affiliated with the managed
2 care plan instead of a different participating optometrist,
3 therapeutic optometrist, or ophthalmologist; or

4 (C) at any Internet or virtual provider or
5 retailer owned by, partially owned by, contracted with, or
6 otherwise affiliated with the managed care plan instead of a
7 different participating optometrist, therapeutic optometrist, or
8 ophthalmologist;

9 (8) exclude an optometrist, therapeutic optometrist,
10 or ophthalmologist as a participating practitioner in the plan
11 because the services or procedures provided by the optometrist,
12 therapeutic optometrist, or ophthalmologist may be provided by
13 another type of health care practitioner; or

14 (9) [~~(5)~~] as a condition for a therapeutic optometrist
15 or ophthalmologist to be included in one or more of the plan's
16 medical panels, require the therapeutic optometrist or
17 ophthalmologist to be included in, or to accept the terms of payment
18 under or for, a particular vision panel in which the therapeutic
19 optometrist or ophthalmologist does not otherwise wish to be
20 included.

21 (b) A managed care plan shall:

22 (1) include optometrists, therapeutic optometrists,
23 and ophthalmologists as participating health care practitioners in
24 the plan; [~~and~~]

25 (2) include the name of a participating optometrist,
26 therapeutic optometrist, or ophthalmologist in any list of
27 participating health care practitioners and give equal prominence

1 to each name;

2 (3) provide directly to an optometrist, therapeutic
3 optometrist, ophthalmologist, or plan enrollee immediate access by
4 electronic means to an enrollee's complete plan coverage
5 information, including in-network and out-of-network coverage
6 details;

7 (4) publish complete plan information, including
8 in-network and out-of-network coverage details, with any marketing
9 materials that describe the plan benefits, including any summary
10 plan description;

11 (5) allow an optometrist, therapeutic optometrist, or
12 ophthalmologist to utilize any third-party claim-filing service,
13 billing service, or electronic data interchange clearinghouse
14 company that uses the standardized claim submission protocol of the
15 National Uniform Claim Committee to facilitate the authorization,
16 submission, and reimbursement of claims; and

17 (6) allow an optometrist, therapeutic optometrist, or
18 ophthalmologist to receive reimbursement through an automated
19 clearinghouse electronic funds transfer.

20 (c) For the purposes of Subsection (a)(9) [~~(a)(5)~~],
21 "medical panel" and "vision panel" have the meanings assigned by
22 Section 1451.154(a).

23 SECTION 3. Section 1451.154(c), Insurance Code, is amended
24 to read as follows:

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

27 (1) abide by the terms and conditions of the managed

1 care plan;

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

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

7 [~~(4) comply with the requirements of the Controlled~~
8 ~~Substances Registration Program operated by the Department of~~
9 ~~Public Safety]~~.

10 SECTION 4. Section 1451.155, Insurance Code, is amended to
11 read as follows:

12 Sec. 1451.155. CONTRACTS WITH OPTOMETRISTS OR THERAPEUTIC
13 OPTOMETRISTS. (a) In this section:

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

18 (2) "Covered product or service" means a medical or
19 vision care product or service for which reimbursement is available
20 under an enrollee's managed care plan contract or for which
21 reimbursement is available subject to a contractual limitation,
22 including:

23 (A) a deductible;

24 (B) a copayment;

25 (C) coinsurance;

26 (D) a waiting period;

27 (E) an annual or lifetime maximum limit;

1 (F) a frequency limitation; or

2 (G) an alternative benefit payment.

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

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

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

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

17 (c) A contract between a managed care plan [~~an insurer~~] and
18 an optometrist or therapeutic optometrist may not require a
19 discount on a product or service that is not a covered product or
20 service.

21 (d) A contract between a managed care plan and an
22 optometrist or therapeutic optometrist may not contain a provision
23 authorizing a chargeback to the patient, optometrist, or
24 therapeutic optometrist if the chargeback is for a covered product
25 or service that the managed care plan does not produce, deliver, or
26 provide.

27 (e) A contract between a managed care plan and an

1 optometrist or therapeutic optometrist may not contain a provision
2 authorizing a reimbursement fee schedule for a covered product or
3 service that is different from the fee schedule applicable to
4 another optometrist or therapeutic optometrist because of the
5 optometrist's or therapeutic optometrist's choice of:

6 (1) optical laboratory;

7 (2) source or supplier of:

8 (A) contact lenses;

9 (B) ophthalmic lenses;

10 (C) ophthalmic glasses frames; or

11 (D) covered or uncovered products or services;

12 (3) equipment used for patient care;

13 (4) retail optical affiliation;

14 (5) vision support organization;

15 (6) group purchasing organization;

16 (7) doctor alliance;

17 (8) professional trade association membership;

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

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

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

24 (f) A managed care plan may not change a contract between a
25 managed care plan and an optometrist or therapeutic optometrist,
26 including terms, reimbursements, or fee schedules, unless:

27 (1) the managed care plan provides written notice of

1 the change to the optometrist or therapeutic optometrist at least
2 90 days before the date the proposed change takes effect; and

3 (2) the optometrist or therapeutic optometrist
4 affirmatively agrees in writing to the change.

5 (g) A contract between a managed care plan and an
6 optometrist or therapeutic optometrist may not contain a provision
7 requiring a patient, optometrist, or therapeutic optometrist to
8 obtain precertification or prior authorization for a covered
9 product or service provided by the optometrist or therapeutic
10 optometrist.

11 (h) A contract between a managed care plan and an
12 optometrist or therapeutic optometrist may not contain a provision
13 requiring the optometrist or therapeutic optometrist to provide a
14 covered product or service at a loss.

15 (i) A contract between a managed care plan and an
16 optometrist or therapeutic optometrist may not contain a provision
17 requiring the optometrist or therapeutic optometrist to accept a
18 reimbursement payment in the form of a virtual credit card or any
19 other payment method where a processing fee, administrative fee,
20 percentage amount, or dollar amount is assessed to receive the
21 reimbursement payment, except in the case of a nominal fee assessed
22 by the optometrist's or therapeutic optometrist's bank to receive
23 an electronic funds transfer.

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

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

27 SECTION 6. Section 1451.156(a), Insurance Code, is amended

1 to read as follows:

2 (a) A managed care plan, as described by Section
3 1451.152(a), may not directly or indirectly:

4 (1) control or attempt to control the professional
5 judgment, manner of practice, or practice of an optometrist or
6 therapeutic optometrist;

7 (2) employ an optometrist or therapeutic optometrist
8 to provide a vision care product or service as defined by Section
9 1451.155;

10 (3) pay an optometrist or therapeutic optometrist for
11 a service not provided;

12 (4) reimburse an optometrist or therapeutic
13 optometrist a different amount for a covered product or service as
14 defined by Section 1451.155 because of the optometrist's or
15 therapeutic optometrist's choice of:

16 (A) optical laboratory;

17 (B) source or supplier of:

18 (i) contact lenses;

19 (ii) ophthalmic lenses;

20 (iii) ophthalmic glasses frames; or

21 (iv) covered or uncovered products or

22 services;

23 (C) equipment used for patient care;

24 (D) retail optical affiliation;

25 (E) vision support organization;

26 (F) group purchasing organization;

27 (G) doctor alliance;

- 1 (H) professional trade association membership;
2 (I) affiliation with an arrangement defined as a
3 franchise by 16 C.F.R. Part 436;
4 (J) electronic health record software,
5 electronic medical record software, or practice management
6 software; or
7 (K) third-party claim-filing service, billing
8 service, or electronic data interchange clearinghouse company;
9 (5) restrict, [~~or~~] limit, or influence an
10 optometrist's or therapeutic optometrist's choice of sources or
11 suppliers of services or materials, including optical laboratories
12 used by the optometrist or therapeutic optometrist to provide
13 services or materials to a patient;
14 (6) restrict, limit, or influence an optometrist's or
15 therapeutic optometrist's choice of electronic health record
16 software, electronic medical record software, or practice
17 management software;
18 (7) restrict, limit, or influence an optometrist's or
19 therapeutic optometrist's choice of third-party claim-filing
20 service, billing service, or electronic data interchange
21 clearinghouse company;
22 (8) restrict or limit an optometrist's or therapeutic
23 optometrist's access to a patient's complete plan coverage
24 information, including in-network and out-of-network coverage
25 details;
26 (9) apply a chargeback, as defined by Section
27 1451.155, to a patient, optometrist, or therapeutic optometrist if

1 the chargeback is for a covered product or service that the managed
2 care plan does not produce, deliver, or provide;

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

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

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

15 (13) require an optometrist or therapeutic
16 optometrist to disclose or report a patient's glasses prescription,
17 contact lens prescription, ophthalmic device measurements, facial
18 photograph, or unique anatomical measurements as a condition to
19 file a claim, adjudicate a claim, or receive reimbursement for a
20 claim;

21 (14) require an optometrist or therapeutic
22 optometrist to disclose any patient information, other than
23 information identified on the version of the Health Insurance Claim
24 Form approved by the National Uniform Claim Committee as of March 1,
25 2023, as a condition to file a claim, adjudicate a claim, or receive
26 reimbursement for a claim;

27 (15) require a patient, optometrist, or therapeutic

1 optometrist to obtain precertification or prior authorization for a
2 covered product or service provided by the optometrist or
3 therapeutic optometrist;

4 (16) require an optometrist or therapeutic
5 optometrist to provide a covered product or service at a loss; or

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

13 SECTION 7. Subchapter D, Chapter 1451, Insurance Code, is
14 amended by adding Sections 1451.157 and 1451.158 to read as
15 follows:

16 Sec. 1451.157. EXTRAPOLATION PROHIBITED. (a) In this
17 section, "extrapolation" means a mathematical process or technique
18 used by a managed care plan in the audit of a participating
19 physician or provider to estimate audit results or findings for a
20 larger batch or group of claims not reviewed by the plan.

21 (b) A managed care plan may not use extrapolation to
22 complete an audit of a participating optometrist or therapeutic
23 optometrist. Any additional payment due to a participating
24 optometrist or therapeutic optometrist or any refund due to the
25 managed care plan must be based on the actual overpayment or
26 underpayment and may not be based on an extrapolation.

27 Sec. 1451.158. ENFORCEMENT OF SUBCHAPTER. (a) A violation

1 of this subchapter by a managed care plan is an unfair method of
2 competition or an unfair or deceptive act or practice in the
3 business of insurance under Chapter 541 and is subject to
4 enforcement under that chapter.

5 (b) Notwithstanding Section 541.002, a managed care plan
6 that provides vision benefits is considered a person for purposes
7 of enforcing this subchapter under Chapter 541.

8 SECTION 8. Sections 1451.154(d) and 1451.156(d), Insurance
9 Code, are repealed.

10 SECTION 9. The changes in law made by this Act apply only to
11 a contract between a managed care plan and an optometrist,
12 therapeutic optometrist, or ophthalmologist entered into or
13 renewed, or a managed care plan delivered, issued for delivery, or
14 renewed, on or after January 1, 2024. A contract entered into or
15 renewed, or a managed care plan delivered, issued for delivery, or
16 renewed, before January 1, 2024, is governed by the law as it
17 existed immediately before the effective date of this Act, and that
18 law is continued in effect for that purpose.

19 SECTION 10. This Act takes effect September 1, 2023.