By: Buckley, et al. (Senate Sponsor - Hughes) H.B. No. 1696

(In the Senate - Received from the House May 9, 2023; May 11, 2023, read first time and referred to Committee on State Affairs; May 21, 2023, reported favorably by the following vote: Yeas 10, Nays 0; May 21, 2023, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	Absent	PNV
Hughes	X			
Paxton	X			
Bettencourt	X			
Birdwell	X			
LaMantia	X			
Menéndez	X			
Middleton	X			
Parker	X			
Perry	X			
Schwertner	X			
Zaffirini			X	

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[~~,~~] THERAPEUTIC OPTOMETRIST[~~, OR OPHTHALMOLOGIST~~]. (a) A managed care plan may not:

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

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

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

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

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

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

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

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

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

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

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

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

(b) A managed care plan shall:

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

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

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

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

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

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

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

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

(2) "Vision panel" means the optometrists and[~~r~~]

therapeutic optometrists[~~, and ophthalmologists~~] who are listed as participating providers for routine eye examinations under a managed care plan or who a patient seeking a routine eye examination is encouraged or required to use under a managed care plan.

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

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

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

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

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

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

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

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

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

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

(A) a deductible;

(B) a copayment;

(C) coinsurance;

(D) a waiting period;

(E) an annual or lifetime maximum limit;

(F) a frequency limitation; or

(G) an alternative benefit payment.

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

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

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

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

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

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

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

(1) optical laboratory;
(2) source or supplier of:
(A) contact lenses;
(B) ophthalmic lenses;
(C) ophthalmic glasses frames; or
(D) covered or uncovered products or services;
(3) equipment used for patient care;
(4) retail optical affiliation;
(5) vision support organization;
(6) group purchasing organization;
(7) doctor alliance;
(8) professional trade association membership;
(9) affiliation with an arrangement defined as a franchise by 16 C.F.R. Part 436;
(10) electronic health record software, electronic medical record software, or practice management software; or
(11) third-party claim-filing service, billing service, or electronic data interchange clearinghouse company.

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

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

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

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

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

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

(a) A managed care plan, as described by Section 1451.152(a), may not directly or indirectly:
(1) control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;
(2) employ an optometrist or therapeutic optometrist to provide a vision care product or service as defined by Section 1451.155;
(3) pay an optometrist or therapeutic optometrist for a service not provided;
(4) reimburse an optometrist or therapeutic optometrist a different amount for a covered product or service as defined by Section 1451.155 because of the optometrist's or therapeutic optometrist's choice of:
(A) optical laboratory;
(B) source or supplier of:
(i) contact lenses;
(ii) ophthalmic lenses;
(iii) ophthalmic glasses frames; or
(iv) covered or uncovered products or services;
(C) equipment used for patient care;
(D) retail optical affiliation;
(E) vision support organization;
(F) group purchasing organization;
(G) doctor alliance;
(H) professional trade association membership;

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

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

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

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

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

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

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

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

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

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

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

(13) require an optometrist or therapeutic optometrist to disclose or report a patient's glasses prescription, contact lens prescription, ophthalmic device measurements, facial photograph, or unique anatomical measurements as a condition to file a claim, adjudicate a claim, or receive reimbursement for a claim unless the information is needed for the managed care plan to manufacture or cause to be manufactured a covered product that is submitted on the claim;

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *