

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 638

BY SENATORS WALTERS, MULLINS AND KESSLER

[Introduced February 19, 2016;

Referred to the Committee on Banking and Insurance; and

then to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §33-6-38, relating to defining certain key terms; prohibiting insurers, vision
3 care plan or vision care discount plans from requiring vision care providers to provide
4 discounts on noncovered services or materials; prohibiting eye care providers from
5 charging more to enrollees for noncovered services than the normal and customary fee;
6 providing that insurers, vision care plan or vision care discount plans may not provide for
7 a nominal reimbursement in order to claim that a service or material is covered; prohibiting
8 insurers, vision care plan or vision care discount plan from falsely representing benefits
9 provided to sell coverage or communicate benefits to enrollees; prohibiting the
10 requirement that eye care providers be credentialed through a designated vision plan;
11 providing pay parity for optometrist and ophthalmologists; providing that optometrist and
12 ophthalmologist be held to the same credentialing standards; prohibiting eye care
13 providers from being required to accept all plans and discount plans offered by an insurer,
14 vision care plan or vision care discount plan in order to be on a panel for the insurer, vision
15 care plan or vision care discount plan; prohibiting the insurer, vision care plan or vision
16 care discount plan from changing the terms of an agreement with an eye care provider
17 without communication with and agreement from the eye care provider; permitting eye
18 care providers to use any lab or supplier and notification of contract changes; creating a
19 private right of action for eye care providers; placing limits on charge backs of
20 administrative fees and other recoupments; providing that an insurer, vision care plan or
21 vision care discount plan may not discriminate against a provider based on geographic
22 location of the eye care provider; and authorizing suits for injunctions by persons
23 aggrieved or by Insurance Commissioner and recovery of monetary damages, costs and
24 attorney's fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-38. Noncovered discounts

1 (a) For purposes of this section:

2 (1) "Commissioner" means the Insurance Commissioner of West Virginia.

3 (2) "Contractual discount" means a percentage reduction from a provider's usual and
4 customary rate for covered services and materials required under a participating provider
5 agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71 (1) Any insurer issuing or renewing a health benefit plan, vision care plan or vision care
72 discount plan issued or renewed which provides coverage for services rendered by a physician
73 or osteopath licensed under article eight, chapter thirty of this code or osteopathy under article
74 fourteen, chapter thirty of this code that are within the scope of practice of an optometrist licensed

75 under article eight ,chapter thirty of this code shall provide the same reimbursement for services
76 to optometrists as allowed for those services rendered by physicians or osteopaths.

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

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

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

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

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

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

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

99 (3) An eye care provider either agrees or does not agree to the proposed changes. If the
100 changes to the agreement are not agreed to by the eye care provider, the current agreement shall

101 continue and the insurer, vision care plan or vision care discount plan may not remove the eye
102 care provider from a panel or plan for not accepting the changes to the agreement; and

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

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

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

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

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

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

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

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

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

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

138 (m) This section is effective upon passage and includes all vision care plans and discount
139 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.