WEST VIRGINIA CODE: §33-25E-5

§33-25E-5. Noncovered discounts.

(a) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not seek to or require that an eye care provider provide services or materials at a fee limited or set by the insurer, vision care plan or vision care discount plan, unless the services or materials are reimbursed as covered services or covered materials under the contract.

(1) An eye care provider may not charge more for services and materials that are non-covered services or non-covered materials to an enrollee of a vision care plan, vision care discount plan or insurer than his or her usual and customary rate for the services and materials.

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

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

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

(b) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not require that an eye care provider must participate with or be credentialed by any specific vision care plan or vision care discount plan as a condition of participation in the health care network of the insurer to provide covered medical services to its enrollees.

(1) Any insurer issuing or renewing a health benefit plan, vision care plan or vision care discount plan issued or renewed which provides coverage for services rendered by an eye care provider shall provide the same reimbursement for services to optometrists as allowed for those services rendered by physicians or osteopaths.

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

(3) If an eye care provider enters into any subcontract agreement with another provider to provide covered services or covered materials to an enrollee which provides that the subcontracted provider will bill the vision care plan or enrollee directly for the subcontracted services or materials, the subcontract agreement shall meet all requirements of this section.

(4) The provisions of subdivisions (1), (2) and (3) of this subsection also apply to any agreements an insurer enters into for services covered under the health benefit plan, vision care plan or vision care discount plan.

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

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

(2) Obtaining agreement or disagreement to the proposed changes from the eye care provider; and

(3) Providing a new agreement after three or more material changes are made to an existing agreement from an insurer, vision care plan or vision care discount plan.

(d) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not restrict or limit, either directly or indirectly, the eye care provider’s choice of sources and suppliers of services or materials or use of optical labs provided by the eye care provider to an enrollee.

(e) An insurer, vision care plan or vision care discount plan may not change the terms, discounts or reimbursement rates contained in the agreement, regardless of supplier or fabricating lab used to supply materials, without a signed acknowledgement of written agreement from the eye care provider.

(f) A person or entity adversely affected by a violation of this section may bring action in a court of competent jurisdiction for injunctive relief against the insurer, vision care plan or vision care discount plan and, upon prevailing, may recover monetary damages of no more than $1,000 for each instance found to be in violation of this section, plus attorneys’ fees and costs.

(g) In a fiscal year, an insurer, vision care plan or vision care discount plan may not charge back or otherwise recoup administrative fees or other amounts from an eye care provider in a total amount of more than three percent of the payments received by the eye care provider from the insurer, vision care plan or vision care discount plan for providing services to enrollees without the written agreement of the eye care provider.

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(h) The Commissioner may seek an injunction against an insurer, vision care plan or vision care discount plan in a court of competent jurisdiction for violation of this section.

(i) The requirements of this section apply to insurers, vision care plans, vision care discount plans, contracts, addendums and certificates executed, delivered, issued for delivery, continued or renewed in the State of West Virginia.

(1) An insurer, vision care plan or vision care discount plan contract may not be in effect for more than two years from the date that it was first signed.

(2) An insurer, vision care plan or vision care discount plan may not construe recredentialing as recontracting with an eye care provider.

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

(k) This section becomes effective on July 1, 2016, and applies to vision care plans and vision care discount plans which take effect or are renewed on or after July 1, 2016.

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