WEST VIRGINIA CODE CHAPTER 33 ARTICLE 25E

WV Legislature

§33-25E-1. Short title.

This article may be referred to as the patients' eye care act.

WV Legislature

§33-25E-2. Definitions.

For the purposes of this article:

(1) “Commissioner” means the Insurance Commissioner of West Virginia.

(2) “Covered services” and “covered materials” means services or materials for which reimbursement from the insurer or vision care plan or vision care discount plan is available under an enrollee’s vision plan or contract, or for which a reimbursement would be available but for the application of contractual limitations such as deductibles, copayments, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments or other limitations.

(3) "Covered person" means an individual enrolled in a health benefit plan or an eligible dependent of that person.

(4) “Enrollee” means any individual enrolled in a health care plan, vision care plan or vision care discount plan provided by a group, employer or other entity that purchases or supplies coverage for a vision care plan or vision care discount plan.

(5) “Eye care provider” means a licensed doctor of optometry practicing under the authority of article eight, chapter thirty of this code or a licensed medical physician specializing in ophthalmology licensed in West Virginia to practice medicine and surgery under the authority of article three, chapter thirty of this code or osteopathy under article fourteen, chapter thirty of this code.

(6) "Eye care benefits" means coverage for the diagnosis, treatment and management of eye disease and injury.

(7) "Health benefit policy" means any individual or group plan, policy or contract providing medical, hospital or surgical coverage issued, delivered, issued for delivery or renewed in this state by an insurer, after January 1, 2001. It does not include credit accident and sickness, long-term care, Medicare supplement, champus supplement, disability or limited benefits policies.

(8) "Insurer" means any health care corporation, health maintenance organization, accident and sickness insurer, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity.

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

(10) “Services” means the professional work performed by an eye care provider.

WV Legislature

(11) “Subcontractor” means any company, group or third party entity, including, but not limited to, agents, servants, partially- or wholly-owned subsidiaries and controlled organizations that is contracted by the insurer, vision care plan or vision care discount plan to supply services or materials for an eye care provider or enrollee to fulfill the benefit plan of an insurer, vision care plan or vision care discount plan.

(12) "Vision care benefits" means benefits for the refraction of the eyes and other optical benefits.

(13) “Vision care discount plan” means a business arrangement or contract offered by an insurer in which a person, in exchange for fees, dues, charges or other consideration, offers access for its plan members to providers of eye care or ancillary services and the right to receive discounts on eye care or ancillary services provided under the discount vision care plan from those providers.

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

WV Legislature

§33-25E-3. Limitations on conditions of coverage.

(a)Health benefits policies may not require that an optometrist hold hospital staff privileges.

(b)When any health benefits policy provides for the payment of eye care benefits or vision care benefits, such policy shall be construed to include payment to all eye care providers who provide benefits within the scope of their providers' licenses.

(c)Any limitation or condition placed upon services, diagnosis or treatment by or payment to a particular type of licensed provider shall apply equally to all licensed providers without unfair discrimination as to the usual and customary treatment procedures of an eye care provider.

(d)Any health benefits policy that includes eye care benefits, including a diabetic retinal examination, shall provide each covered person diagnosed with diabetes direct access to an eye care provider of their choice from the insurer's panel of providers independent of, and without referral from, any other provider or entity for one annual diabetic retinal examination. The eye care provider shall provide copies of the results of the examination to the covered person's primary care physician. No other services shall be provided to the covered person by the eye care provider without the prior authorization of the insurer or of its designee. This benefit shall be subject to all coinsurance, deductibles, copayments and other policy requirements. When the diabetic retinal examination reveals the beginning stages of an abnormal condition, access to future examinations shall be subject to prior authorization from a primary care physician.

(e)Any health benefits policy that includes eye care benefits or vision care benefits shall include both optometrists and ophthalmologists.

(f)This article may not be construed to require any health benefits policy to cover any specific health care service.

(g)This article may not be construed to require a health benefit plan or an insurer to include on the insurer's panel of providers all providers willing to meet the terms and conditions of participation as a plan provider.

WV Legislature

§33-25E-4. Required disclosure.

Every health benefits policy that is issued, delivered, issued for redelivery or renewed in this state on or after January 1, 2001, that provides for eye care benefits, including a diabetic retinal examination, shall disclose in writing, in clear and accurate language, to enrollees, subscribers, providers and insureds that any covered person diagnosed with diabetes has the right to direct access to an eye care provider of their choice from the insurer's panel of providers for an annual diabetic retinal examination.

WV Legislature

§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.

(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

WV Legislature

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.

(h) The Commissioner may seek an injunction against an insurer, vision care plan or vision

WV Legislature

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.

WV Legislature