

# Proposed Rulemaking

## Title

### Vision Care Plan Coverage

Promulgated by:  
State Insurance Department

#### **Title 23. Public Utilities and Regulated Industries**

#### **Chapter I. State Insurance Department, Department of Commerce**

#### **Subchapter B. Life, Health, and Accident**

#### **Part 142. Vision Care Plan Coverage**

#### **Subpart 1. Generally**

#### **23 CAR § 142-101. Definitions.**

Unless otherwise separately defined in this part and consistent with state law, the terms or phrases as used in this part shall follow the definitions of such terms or phrases as defined under Section 1 of the Vision Care Plan Act of 2015, now codified in Arkansas Code § 23-99-1001 et seq., or as later amended.

#### **23 CAR § 142-102. Prohibited practices.**

(a)(1) Pursuant to Arkansas Code § 23-99-1003(a), a participating provider agreement between an insurer, vision benefit manager, vision care plan, or vision care discount plan and a vision care provider shall not establish a fee that a vision care provider shall charge for services or materials that are not covered by a vision benefit plan or contract.

(2) A vision care insurer, vision benefit manager, vision care plan, or vision care discount plan shall not circumvent or avoid this restriction by providing minimal ~~or de-minimus~~ reimbursement coverage for a service or ~~material materials, or by and~~

designating ~~a~~ the service or ~~material~~ materials as "covered" as defined in Arkansas Code § 23-99-1002(1) and (2).

(b)(1) Pursuant to Arkansas Code § 23-99-1003(b), a vision care provider shall not charge a fee for services or materials that is more than the vision care provider's normal rate for the services or materials if the services or materials are noncovered services or noncovered materials.

(2) This restriction or limitation of a vision care provider's charges for fees to not exceed normal rates for service or materials under Arkansas Code § 23-99-1003(b) is a reference to the vision care provider's charges or pricing to the ~~insured~~ enrollee and not to a vision care provider's normal reimbursement fees or allowed charges for such services or materials in a vision care plan or vision care discount plan participation agreement.

(c) Under Arkansas Code § ~~23-99-1003(e)~~ 23-99-1003(f), a participating provider agreement between an insurer, vision benefit manager, vision care plan, or vision care discount plan and a vision care provider shall not restrict or limit, directly or indirectly, the vision care provider's choice of optical labs or choice of sources and suppliers of services or materials provided by the vision care provider to an ~~individual who is insured by the insurer~~ enrollee.

(d)(1) Pursuant to Arkansas Code § 23-99-1003(d), a reimbursement paid by an insurer, vision benefit manager, vision care plan, or vision care discount plan to a vision care provider for covered services shall not be less than the current calendar year Medicare Physician Fee Schedule rate. reimbursement rate for covered services provided to the enrollee.

(2) For a covered service, reimbursement that is greater than or equal to the Medicare Physician Fee Schedule for the applicable or similar service, regardless of whether the service is eligible for Medicare coverage, shall not be considered a violation.

(2) The relevant Medicare Physician Fee Schedule rates are those non-facility, locality-specific rates for the geographic area in which the services are

furnished, for the applicable fee schedule in effect at the time of service, as established by the Centers for Medicare and Medicaid Services.

(3) If there is no corresponding reimbursement rate in the current year's published Medicare Physician Fee Schedule for a covered service, reimbursement that is greater than or equal to the Medicare Physician Fee Schedule for a similar service, regardless of whether the service is eligible for Medicare coverage, shall not be considered a violation.

(e) Pursuant to Arkansas Code § 23-99-1003(d), a reimbursement paid by an insurer, vision benefit manager, vision care plan, or vision care discount plan to a vision care provider for covered materials shall not be nominal or de minimis.

### **23 CAR § 142-103. Application of Vision Care Plan Act of 2015.**

~~(a) Pursuant to Arkansas Code § 23-99-1005(c), the Vision Care Plan Act of 2015, Arkansas Code § 23-99-1001 et seq., is applicable to all vision benefit plans or contracts issued, renewed, or recredentialed in this state on and after July 22, 2015.~~

(a) This part applies to insurers, vision benefit managers, vision care discount plans, vision care plans, and vision care providers, all as defined in Arkansas Code § 23-99-1002.

~~(b) The State Insurance Department interprets the Vision Care Plan Act of 2015 to apply to all contracts newly issued after July 22, 2015, or renewed after July 22, 2015, but also to apply to all vision care provider contracts when they are recredentialed after the effective date of the Vision Care Plan Act of 2015, even though a renewal process on the contract has not occurred.~~

(b) The requirements of this part shall not apply to a vision benefit plan or contract, vision care plan, or vision care discount plan, if such plan is exempt from state regulation under federal or state law.

### **23 CAR § 142-104. Recoupment.**

If the enrollee is verified to be eligible by the vision care provider through customary verification methods of the insurer, vision benefit manager, vision care plan,

or vision care discount plan, and if the healthcare provider relies in good faith on the verification and provides covered services or covered materials to the enrollee, then the insurer, vision benefit manager, vision care plan, or vision care discount plan shall not withhold or recoup payment made to the healthcare provider for the covered service or covered material if the insurer, vision benefit manager, vision care plan, or vision care discount plan later determines the enrollee to have been ineligible on the date of service.