



Vision Insurance Reforms – HB 156 Overview

Planning and legislation to reform Ohio vision insurance law began in 2014. The OOA developed language utilizing legislation developed by the AOA and influenced by other states' initiatives including Arkansas, Connecticut, Maine, Kentucky, Rhode Island, Texas, Vermont, Virginia, and Colorado. Through multiple hearings and meetings with interested parties, the final language in HB 156 (signed into law December 19, 2018) addresses three major provisions.

HB 156 Major Provisions

HB 156 addresses three major components in contracts between Vision Care Providers (*a licensed optometrist [OD] or a licensed physician [MD or DO]*) and Contracting Entities (*any person who has a primary business purpose of contracting with participating providers for the delivery of health care services*). **The changes in legislation apply to contracts entered into, renewed or amended on or after March 20, 2019** and do not apply to contracts for services in Medicaid/Medicare system or with plans that are self-funded; these contract issues are regulated by federal law and must be changed by Congress. These major provisions address a provider's choice of plans, choice of lab and suppliers of materials, and non-covered services and materials.

Choice of Plans

HB 156 stipulates that **no contract or agreement between a contracting entity and a vision care provider shall require that a provider contract with a plan offering supplemental or specialty health care services as a condition of contracting with a plan offering basic health care services**. Supplemental/specialty care services refer to vision care and optometric services, including lenses and frames.

Choice of Lab and Suppliers of Materials

The bill further stipulates that **no contract or agreement between a contracting entity and a vision care provider shall directly limit a vision care provider's choice of sources and suppliers of vision care materials** (materials defined as *lenses, devices containing lenses, prisms, lens treatments and coatings, contact lenses, vision training, and any other prosthetic device necessary to correct, relieve, or treat any defect or abnormal condition of the human eye or its adnexa*). Furthermore, **no contract or agreement between a contracting entity and a vision care provider shall include a provision that prohibits a vision care provider from describing out-of-network options to patients**. If a doctor recommends an out-of-network supplier of vision care materials, the doctor must notify the patient in writing that the source or supplier of the materials is out-of-network and inform the patient of the cost of those materials.

Important Disclosure – if the vision care provider has a business interest in an out-of-network supplier of materials that they are recommending to a patient and the patient decides to utilize that supplier, the doctor must notify the patient in writing of their business interest. Similarly, insurers must disclose any business interest it has in a supplier of materials to all enrollees in a conspicuous format that is easily accessible. In-house edging or other lab services likely constitute a business interest. These terms are also **effective March 20, 2019**.

Non-covered Services and Materials

HB 156 also addresses payment/fee issues for services and materials that: are not covered by a patient's insurance, the patient is paying out-of-pocket, and there is no reimbursement from the insurer. The law generally prohibits contracts or agreements from requiring vision care providers to accept as payment an amount set by the contracting entity for services and materials that are not covered under a patient's plan. However, a vision care provider may elect, within the contracting process, to accept the non-covered services fees should the doctor choose. Moreover, insurers cannot refuse to contract with a vision care provider based on the doctor's non-covered service/material election.



Vision care providers who elect NOT to accept the fees for non-covered services/materials must:

- 1) Post notice ([Sample NCS Notice](#)) in a conspicuous place in the office,
- 2) Provide pricing and reimbursement information upon a patient's request including the fee suggested by the contracting entity, the estimated fee being charged by the doctor for the noncovered service/material, the amount the doctor expects to be reimbursed by the contracting entity for the non-covered service/material (zero dollars), and estimated pricing and reimbursement information for any covered services/materials provided during the visit.

The bill further orders insurers to disclose the following notice to all enrollees:

IMPORTANT: If you opt to receive vision care services or vision care materials that are not covered benefits under this plan, a participating vision care provider may charge you his or her normal fee for such services or materials. Prior to providing you with vision care services or vision care materials that are not covered benefits, the vision care provider will provide you with an estimated cost for each service or material upon your request.

Insurers must also include an explanation that the enrollee may incur out-of-pocket expenses as a result of the purchase of vision care services or vision care materials that are not covered vision services.

HB 156 further guides insurers in the manner they inform patients. An insurer may inform patients of the doctors who elect to accept the non-covered service/material fees but may not publicize those doctors who elected not to accept the non-covered service/material fees. Furthermore, any communication by insurers on this issue must treat all vision care providers equally in provider directories, provider locators and other marketing materials as participating, in-network providers annotated only as to their decision to accept the non-covered service/material fees.

The legislature intended that these communications should not imply that a doctor is favored or disfavored based on the doctor's election on non-covered service/material fees. Additionally, the bill states that strategies by insurers to provide de minimis or low dollar coverage to avoid the provisions related to non-covered services is contrary to the legislature's intent.

Enforcement

Patterns of continuous or repeated violations of obligations by insurers is considered an unfair or deceptive act in the business of insurance enforceable by the Ohio Department of Insurance. Patterns of continuous or repeated violations of obligations by vision care providers constitute grounds for licensure discipline by the Vision Professionals Board or Medical Board, respectively.

ODs are encouraged to review all contracts before signing; engage with legal counsel if you have questions. **All OOA members may have their contracts reviewed at no cost as a member benefit.** Contact Keith Kerns at kkerns@ooa.org or 614-781-0708.

Finally, patients are advocates to improve their own care and coverage. Encourage patients to speak with their human resources rep if they are unhappy with their vision insurance coverage.

Elimination of the Sales Tax on Prescriptive Eyewear

The OOA has been fighting to abolish the sales tax on prescriptive eyewear since 1938 following the establishment of the tax in 1937. Eighty years later, the OOA had success on the issue with the passage of Senate Bill 8 in 2017. The repeal was passed by Ohio Legislature on November 29, 2017 and signed into law by Governor



Kasich on December 23, 2017. **The repeal will go into effect July 1, 2019** in accordance with the next 2-year state budget cycle.

In addition to eliminating the tax from the sale of glasses, contact lenses, and other items that **require a prescription**, the language in Senate Bill 8 correctly classifies glasses and contact lenses as medical devices, changing the definition of “prosthetic device” to include eyeglasses and contacts. The language includes no dollar limitation and the repeal is estimated to save Ohio taxpayers \$29 million annually.

The repeal would not have occurred but for the advocacy of Ohio ODs and the OOA. Post the [Sample Notice on Sales Tax Repeal](#) in your office so patients are aware that your efforts helped to make this a reality.

The OOA recently met with Ohio Department of Taxation regarding implementation and it plans to release guidance to vendors 60 days before the tax is eliminated.

Guidelines for Exemption

The general rule is that any corrective glasses (including the frames, lenses, etc.) and contact lenses **requiring a prescription** are tax exempt. Furthermore, repair or replacement parts for these items are tax exempt. Prescription lenses sold alone are exempt. Sunglasses **with a prescription** are also exempt. Reading glasses **prescribed by a doctor** and made specifically for an individual patient are exempt as well.

Anything available for sale without a prescription, however, is taxable. Sunglasses without a prescription are taxable as are generic, over-the-counter reading glasses. If these items are sold in your office, you must charge sales tax.

Frames sold alone or with plano lenses are taxable. However, if the consumer intends to place prescription lenses into the frames the purchase is exempt. In this scenario, ODs should ask the patient to execute a [Sales Tax Exemption Certificate](#) to remain in the patient record. Through this form, the patient absolves the doctor from collecting taxes and takes responsibility for tax payment should an audit find that sales tax should have been applied.

The sale of colored contact lenses without a prescription is another instance the OD should request the patient complete an exemption certificate. In any unusual circumstance, the office should consider obtaining a Sales Tax Exemption Certificate from the patient. The patient would be liable to the state for payment if audited, not the doctor.

The sale of supplements, non-prescriptive eyewash, contact lens solution and other items are still subject to taxation as they do not require a prescription to purchase. Offices that sell these items should keep their vendor’s license and continue to remit sales tax as before for the amount collected on those sales.

Please direct all questions to OOA Executive Director Keith Kerns at kkerns@ooa.org or 614-781-0708.