

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 548

6 By: Montgomery

7 COMMITTEE SUBSTITUTE

8 An Act relating to prepaid vision plans; creating the
9 Prepaid Vision Plan Act; providing short title;
10 defining terms; requiring certificate of authority
11 for certain plan providers be obtained by certain
12 date; establishing application procedures; requiring
13 certain accompaniments with application; establishing
14 provisions for approval of application; establishing
15 expiration date of certificate of authority;
16 establishing provisions for renewal of certificate of
17 authority; requiring certain prepaid vision plan
18 organizations respond to Insurance Commissioner by
19 certain date; requiring certain plan organizations to
20 maintain certain tangible net equity; requiring plan
21 organizations with certain expenses to maintain
22 certain tangible net equity or deposit; establishing
23 provisions for exemption to certain deposit
24 requirements; requiring certain plan organizations to
maintain certain financial reserve; establishing
provisions for membership coverage policies;
requiring approval by Commissioner of certain policy;
requiring certain report be submitted to Commissioner
by certain date in certain manner; establishing
components of report; requiring certain tax be paid
to the State Treasurer; allowing for offset of
certain tax with state corporate income tax;
providing for suspension or revocation of certain
certificate of authority subject to certain
conditions; requiring certain restrictions be imposed
on certain suspensions and revocations; providing for
certain fine to be imposed; providing for hearing for
certain plan organizations; establishing requirements
for certain advertising and sales material; requiring
submission of material to Commissioner; establishing

1 approval requirements; prohibiting disapproved
2 materials from certain use; providing certain
3 exceptions; requiring certain statutory obligations
4 apply to plan organizations; allowing Commissioner to
5 conduct certain examinations; providing for
6 promulgation of rules; providing for codification;
7 and providing an effective date.

8 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

9 SECTION 1. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 6104 of Title 36, unless there
11 is created a duplication in numbering, reads as follows:

12 This act shall be known and may be cited as the "Prepaid Vision
13 Plan Act".

14 SECTION 2. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6105 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 As used in this act:

18 1. "Covered expense" means costs incurred by a provider who has
19 agreed in writing not to bill members, except for permissible
20 supplemental charges;

21 2. "Member" means an individual who is enrolled in an
22 individual or group prepaid vision plan as a principal subscriber
23 and any dependents entitled to vision care services under the plan
24 solely because of their status as a dependent of the principal
subscriber;

1 3. "Membership coverage" means any certificate or contract
2 issued to a member specifying the vision coverage to which the
3 member is entitled;

4 4. "Net equity" means the excess of total assets over total
5 liabilities, excluding liabilities which have been subordinated in a
6 manner acceptable to the Insurance Commissioner;

7 5. "Prepaid vision plan" means any contractual agreement
8 whereby any prepaid vision plan organization undertakes to provide
9 payment of vision services directly, to arrange for prepaid vision
10 services, or to pay or make reimbursement for any vision service not
11 provided for by other insurance;

12 6. "Prepaid vision plan organization" means any person who, or
13 organization or entity that, undertakes to conduct one or more
14 prepaid vision plans providing only vision services;

15 7. "Prepaid vision services" means services included in the
16 practice of optometry in all of its branches as defined pursuant to
17 Section 581 of Title 59 of the Oklahoma Statutes;

18 8. "Provider" means any person licensed or otherwise authorized
19 to furnish prepaid vision services in this state other than an
20 authorized insurer;

21 9. "Tangible net equity" means net equity reduced by the value
22 assigned to intangible assets including, but not limited to,
23 goodwill, going concern value, organizational expenses, start-up
24 costs, long-term prepayments of deferred charges, nonreturnable

1 deposits, and obligations of officers, directors, owners, or
2 affiliates, except short-term obligations of affiliates for goods or
3 services arising in the normal course of business that are payable
4 on the same term as equivalent transactions with nonaffiliates and
5 that are not past due; and

6 10. "Uncovered expense" means the cost of health care services
7 that are the obligation of a prepaid vision plan organization for
8 which:

- 9 a. a member may be liable in the event of the insolvency
10 of the organization, and
- 11 b. alternative arrangements acceptable to the
12 Commissioner have not been made to cover the costs.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 6106 of Title 36, unless there
15 is created a duplication in numbering, reads as follows:

16 A. No person, organization, or entity, unless authorized
17 pursuant to the provisions of Section 5 of this act shall establish
18 or operate a prepaid vision plan organization in this state or sell,
19 offer to sell, solicit offers to purchase, or receive advance or
20 periodic consideration in conjunction with a prepaid vision plan
21 without obtaining and maintaining a certificate of authority.

22 B. On or before February 1, 2024, every prepaid vision plan
23 organization operating in this state shall submit an application for
24 a certificate of authority to the Insurance Commissioner. Each

1 applicant may continue to operate as an organization until the
2 Commissioner acts upon the application.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 6107 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 A. An application for a certificate of authority to operate as
7 a prepaid vision plan organization shall be filed with the Insurance
8 Commissioner in the form and manner prescribed by the Commissioner.
9 The application shall be verified by an officer or authorized
10 representative of the applicant and shall set forth or be
11 accompanied by:

12 1. A copy of any basic organizational document of the applicant
13 such as the articles of incorporation, articles of association,
14 partnership agreement, trust agreement, or other applicable
15 documents, with all amendments to the documents;

16 2. A copy of any bylaws, rules, regulations, or similar
17 documents regulating the conduct of the internal affairs of the
18 applicant;

19 3. A list of the names, addresses, and official positions of
20 the persons who are responsible for the conduct of the business
21 affairs of the applicant, including all members of the board of
22 directors, board of trustees, executive committee, or other
23 governing board or committee, and the principal officers, in the
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1 case of a corporation, or the partners or members in the case of a
2 partnership or association;

3 4. A copy of any contract made or to be made between any
4 providers of vision services or persons listed in paragraph 3 of
5 this subsection and the applicant;

6 5. A statement generally describing the prepaid vision plan
7 organization, the facilities, personnel of the organization, and all
8 prepaid vision plans offered by the organization;

9 6. A copy of the form of individual or group membership
10 coverage or a copy of the contract to be issued to the members;

11 7. Financial statements showing assets, liabilities, and
12 sources of financial support of the applicant. If the financial
13 affairs of the applicant are audited by independent certified public
14 accountants, a copy of the most recent regular certified financial
15 statement for the applicant shall satisfy the requirement of this
16 paragraph, unless the Commissioner determines that additional or
17 more recent financial information is required;

18 8. A description of the proposed method of marketing the
19 prepaid vision plan, a financial prospectus which includes a three-
20 year projection of the initial operating results anticipated, and a
21 statement as to the sources of working capital available for the
22 operation of the prepaid vision plan and any other source of
23 funding;

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1 9. A power of attorney, duly executed by the applicant if not
2 domiciled in this state, appointing the Commissioner as the true and
3 lawful representative for service of process for the applicant in
4 this state upon whom all lawful process in any legal action or
5 proceeding against the prepaid vision plan organization on a cause
6 of action arising in this state may be served;

7 10. A fee of One Hundred Dollars (\$100.00) for issuance of a
8 certificate of authority; and

9 11. Any other information as the Commissioner may require.

10 B. Within ten (10) days following any modification for
11 information previously furnished as required by subsection A of this
12 section, a prepaid vision plan organization shall file a notice of
13 the modification with the Commissioner.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6108 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Issuance of a certificate of authority for a prepaid vision
18 plan organization shall be granted by the Insurance Commissioner if
19 the Commissioner is satisfied that the following conditions are met:

20 1. The persons, organization, or entity responsible for
21 conducting the business affairs of the prepaid vision plan
22 organization are competent, trustworthy, and are professionally
23 capable of providing or arranging for the provision of services
24 offered;

1 2. The prepaid vision plan organization constitutes an
2 appropriate mechanism to achieve an effective prepaid vision plan;

3 3. Each officer responsible for conducting the business affairs
4 of the prepaid vision plan organization has filed with the
5 Commissioner a fidelity bond in the amount of Fifty Thousand Dollars
6 (\$50,000.00); provided, the bond is subject to the approval of the
7 Commissioner;

8 4. The financial structure of the prepaid vision plan
9 organization may reasonably be expected to meet obligations for
10 payment of services for members and prospective members. In making
11 this determination, the Commissioner may consider:

12 a. the financial soundness of the arrangements made
13 pursuant to the provisions of the prepaid vision plan
14 for services and the schedule of charges used,

15 b. any agreement with an insurer, hospital, medical
16 service corporation, or any other organization for
17 ensuring the payment or prepaid vision services,

18 c. provisions in the plan for automatic coverage of
19 vision service if the prepaid plan is discontinued,
20 and

21 d. the sufficiency of the agreement for prepaid vision
22 services with providers of vision services; and

23 5. The Commissioner has not made a determination that the
24 prepaid vision plan organization is not competent, trustworthy, or

1 financially responsible, and the organization has not had any
2 insurance license denied for cause by any state.

3 B. 1. A certificate of authority shall expire at midnight on
4 June 30 following the date of issuance or last renewal date. If the
5 prepaid vision plan organization remains in compliance with the
6 provisions of this act and pays a renewal fee of One Hundred Dollars
7 (\$100.00), the certificate of authority may be renewed.

8 2. Renewal fees paid to the Commissioner pursuant to paragraph
9 1 of this subsection shall be deposited into the State Insurance
10 Commissioner Revolving Fund.

11 C. Every prepaid vision plan organization, upon receipt of any
12 inquiry from the Insurance Commissioner, shall furnish the
13 Commissioner with an adequate response to the inquiry within twenty
14 (20) days from the receipt of inquiry.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 6109 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. 1. Except as approved in accordance with subsection C of
19 this section, each prepaid vision plan organization shall at all
20 times have and maintain tangible net equity equal to the greater of:

- 21 a. Fifty Thousand Dollars (\$50,000.00), or
- 22 b. two percent (2%) of the organization's annual gross
23 premium income, up to a maximum of the required

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1 capital and surplus of an accident and health
2 insurance policy.

3 2. A prepaid vision plan organization that has uncovered
4 expenses in excess of Fifty Thousand Dollars (\$50,000.00), as
5 reported on the most recent annual financial statement filed with
6 the Insurance Commissioner, shall maintain tangible net equity equal
7 to twenty-five percent (25%) of the uncovered expense in excess of
8 Fifty Thousand Dollars (\$50,000.00) in addition to the tangible net
9 equity required by paragraph 1 of this subsection.

10 B. 1. Each prepaid vision plan organization shall deposit with
11 the Commissioner cash, securities, other measures deemed acceptable
12 by the Commissioner, or any combination thereof in an amount equal
13 to Twenty-Five Thousand Dollars (\$25,000.00) plus twenty-five
14 percent (25%) of the tangible net equity required in subsection A of
15 this section; provided, however, that the deposit shall not be
16 required to exceed One Hundred Thousand Dollars (\$100,000.00).

17 2. The deposit shall be an admitted asset of the prepaid vision
18 plan organization in the determination of tangible net equity.

19 3. All income from deposits shall be an asset of the prepaid
20 vision organization. A prepaid vision plan organization may
21 withdraw a deposit or any part thereof after making a substitute
22 deposit of an equal amount and value. Any securities shall be
23 approved by the Commissioner before being substituted.

1 4. The deposit shall be used to protect the interests of the
2 prepaid vision plan organization's members and to assure
3 continuation of vision plan services to members of a prepaid vision
4 plan organization that is in rehabilitation or conservation. If a
5 prepaid vision plan organization is placed in receivership or
6 liquidation, the deposit shall be an asset subject to the provisions
7 of the Rehabilitation and Liquidation Act pursuant to Section 1901
8 et seq. of Title 36 of the Oklahoma Statutes.

9 5. The Commissioner may reduce or eliminate the deposit
10 requirement if the prepaid vision plan organization has made an
11 acceptable deposit with the state or jurisdiction of domicile for
12 the protection of members, wherever located, and delivers to the
13 Commissioner a certificate to that effect, duly authenticated by the
14 appropriate state official holding the deposit.

15 C. Upon application by a prepaid vision plan organization, the
16 Commissioner may waive some or all of the requirements of subsection
17 A of this section for any period of time the Commissioner deems
18 proper upon a filing that either:

19 1. The prepaid vision plan organization has a net equity of at
20 least Five Million Dollars (\$5,000,000.00); or

21 2. An entity having a net equity of at least Five Million
22 Dollars (\$5,000,000.00) furnishes to the Commissioner a written
23 commitment, acceptable to the Commissioner, to provide for the
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1 uncovered expenses of the prepaid limited health service
2 organization.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 6110 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A prepaid vision plan organization shall maintain for the
7 protection of members a financial reserve consisting of at least two
8 percent (2%) of all prepaid charges collected from members of the
9 prepaid vision plan until the reserve totals Five Hundred Thousand
10 Dollars (\$500,000.00). This reserve shall be in addition to the
11 deposit prescribed by Section 6 of this act.

12 B. The reserve prescribed by this section shall not apply with
13 respect to a prepaid vision plan organization which is funded by the
14 federal government, state, or any political subdivision thereof.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 6111 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Every member of a prepaid vision plan shall be issued a
19 membership coverage policy by the prepaid vision plan organization.
20 No policy for membership coverage or amendment to the policy shall
21 be issued or delivered to any person in this state until a copy of
22 the policy for membership coverage or amendment to the policy has
23 been filed with and approved by the Insurance Commissioner.

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1 B. A policy for membership coverage shall contain a statement
2 of:

3 1. The prepaid vision services or other benefits to which the
4 member is entitled under the prepaid vision plan;

5 2. Any limitations of the services or benefits to which the
6 member is entitled under the prepaid vision plan;

7 3. Information as to how services may be obtained; and

8 4. The obligation of the member for charges for the prepaid
9 vision plan.

10 C. Any member of a prepaid vision plan shall be free to select
11 any licensed vision practitioner to provide vision services and
12 prepayment or reimbursement determinations shall be made without
13 regard to whether the practitioner is a participating or
14 nonparticipating member of the plan. The provisions of this
15 subsection shall be printed on the policy for membership coverage.

16 D. Membership coverage shall contain no provisions or
17 statements which are unjust, unfair, untrue, inequitable,
18 misleading, deceptive, or which encourage misrepresentation as
19 determined by the Commissioner.

20 E. The Commissioner shall approve any policy of membership
21 coverage if the requirements of this section are complied with and
22 the prepaid vision plan, in the judgment of the Commissioner, is
23 able to meet its financial obligations for the membership coverage.
24 It shall be unlawful for a prepaid vision plan organization to issue

1 a policy until it is approved by the Commissioner. If the
2 Commissioner does not disapprove any policy within thirty (30) days
3 after filing, the policy shall be deemed approved. If the
4 Commissioner disapproves a policy of membership coverage, the
5 Commissioner shall notify the prepaid vision plan organization,
6 specifying the reasons for disapproval. The Commissioner shall
7 grant a hearing on any disapproval within thirty (30) days after a
8 request in writing for a hearing is received by the Commissioner
9 from the prepaid vision plan organization.

10 SECTION 9. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6112 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. On or before March 1 of each calendar year, every prepaid
14 vision plan organization offering coverage in this state shall file
15 with the Insurance Commissioner a report of the business activities
16 of the organization for the preceding calendar year. The report
17 shall be signed by at least two principal officers of the
18 corporation and the signatures shall be notarized.

19 B. A report submitted under this section shall be in the form
20 and manner prescribed by the Commissioner and shall include:

21 1. A financial statement of the organization, including a copy
22 of the balance sheet, receipts, and disbursements of the
23 organization for the subject year certified by an independent
24 certified public accountant. The Commissioner may accept a full

1 report of the most recent examination of a foreign prepaid vision
2 plan, certified to by the appropriate examining official of another
3 state;

4 2. Any material changes in the information required to be
5 provided pursuant to Section 4 of this act;

6 3. The number of persons who have become members during the
7 preceding year, the total number of members of the plan as of the
8 end of the year, and the number of memberships terminated during the
9 year;

10 4. The costs of all care provided and the number of members who
11 received care pursuant to the provisions of the prepaid vision plan;
12 and

13 5. Any other information relating to the performance of the
14 prepaid vision plan organization deemed necessary by the
15 Commissioner.

16 SECTION 10. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 6113 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. At the time of filing the annual report prescribed by
20 Section 9 of this act, each prepaid vision plan shall pay to the
21 State Treasurer through the Insurance Commissioner a tax for
22 transacting a prepaid vision plan. The obligation shall be two
23 percent (2%) of prepaid net charges received from members in this
24 state for both domestic and foreign organizations.

1 B. An organization may offset this tax in whole or in part by
2 payment of state corporate income tax as provided pursuant to
3 Section 2355 of Title 68 of the Oklahoma Statutes. However, an
4 organization is prohibited from carrying over to a succeeding year
5 any credit for paying corporate income tax not used during a year.

6 SECTION 11. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 6114 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The Insurance Commissioner may suspend or revoke any
10 certificate of authority issued pursuant to this act if the
11 Commissioner finds that the prepaid vision plan organization:

12 1. Is operating contrary to the basic organizational documents
13 of the organization or in a manner contrary to that described in or
14 reasonably inferred from any information submitted pursuant to
15 Section 4 of this act;

16 2. Issues membership coverage which does not comply with the
17 requirements of Section 8 of this act;

18 3. Does not provide or arrange for basic vision services
19 appropriate to a prepaid vision plan;

20 4. Can no longer be expected to meet the obligations to members
21 or prospective members of the prepaid vision plan;

22 5. Uses fraudulent, coercive, or dishonest practices, or
23 demonstrates incompetence, untrustworthiness, or financial
24 irresponsibility in the conduct of business;

1 6. Fails to deal equitably with any providers or other persons
2 or facilities which offer services covered within a contract or
3 policy issued pursuant to this act; or

4 7. Fails to substantially comply with the insurance laws of
5 this state or violates any regulation, rule, subpoena, or order of
6 the Commissioner.

7 B. When the certificate of authority of a prepaid vision plan
8 organization is suspended, the organization shall not accept, during
9 the period of such suspension, any additional members except newly
10 acquired dependents of existing members and shall not engage in any
11 advertising or solicitation.

12 C. When the certificate of authority of a prepaid vision plan
13 organization is revoked, the organization shall terminate operation
14 of the organization in this state immediately and shall conduct no
15 further business except as may be essential to the orderly
16 conclusion of the business affairs of the organization. The
17 Commissioner, by written order, may permit further operation of the
18 organization as the Commissioner finds to be in the best interest of
19 members of the organization.

20 D. In addition to or in lieu of any applicable suspension or
21 revocation of a certificate of authority, the Commissioner may
22 invoke a fine not to exceed One Thousand Dollars (\$1,000.00) for
23 each violation. The payment of the fine may be enforced in the same
24 manner as civil judgments may be enforced.

1 E. A prepaid vision plan organization which has had its
2 certificate of authority denied, suspended, or revoked, or has
3 suffered an adverse determination by the Commissioner shall be
4 entitled to a hearing pursuant to the provisions of the
5 Administrative Procedures Act under Section 250 et seq. of Title 75
6 of the Oklahoma Statutes.

7 SECTION 12. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 6115 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 A. No advertising or sales material relating to a prepaid
11 vision plan organization shall be issued or delivered to any person
12 in this state until a copy of the material has been filed with and
13 approved by the Insurance Commissioner. Within thirty (30) days
14 after the submission of advertising or material under this
15 subsection, the Commissioner shall issue a determination approving
16 or disapproving of the material. Disapproval of the advertising or
17 material shall be on the basis that, in whole or in part, the
18 material is false, deceptive, or misleading. Written notification
19 shall be issued to an organization that has materials disapproved
20 pursuant to this subsection. Thereafter, the disapproved
21 advertising material shall not be used. Violation of the provisions
22 of this subsection shall entitle the Commissioner in his or her
23 discretion and without additional cause to withdraw approval of any
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1 membership coverage with respect to which advertising or sales
2 material is used.

3 B. Offers to sell prepaid vision insurance by advertising or
4 publication of material by a prepaid vision plan organization or
5 anyone acting on behalf of the organization to inform members or
6 prospective members of the plan as to the coverage offered by the
7 plan and the operation of the organization shall not be a violation
8 of any provisions of law relating to solicitation of customers or
9 advertising by prepaid vision plan providers if the advertising or
10 sales material:

11 1. Is approved prior to use by the Commissioner upon
12 determination by the Commissioner that the material is not
13 inaccurate, false, deceptive, or misleading;

14 2. Does not identify the providers of vision services nor
15 describe their professional qualifications, except upon request of
16 the member or prospective member;

17 3. Does not describe the professional experience or attainments
18 of providers of vision services individually or as a group, or
19 contain language that states, evaluates, or lauds the professional
20 competence, skills, or reputations of the providers; and

21 4. Shall not cause any providers of vision services to violate
22 any professional ethics or laws that prohibit the solicitation of
23 patients.

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1 SECTION 13. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6116 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Article 12 of Title 36 of the Oklahoma Statutes relating to
5 unfair trade practices and frauds shall apply to prepaid vision plan
6 organizations, except to the extent the Insurance Commissioner may
7 determine that particular provisions of the article shall not apply
8 to prepaid vision plan organizations.

9 B. The Commissioner may conduct an examination of the business
10 affairs of any prepaid vision plan organization as often as the
11 Commissioner deems necessary for the protection of the interests of
12 the people of this state.

13 C. Any rehabilitation, liquidation, or conservation of a
14 prepaid vision plan organization shall be conducted pursuant to the
15 provisions for the rehabilitation, liquidation, or conservation of
16 an insurer provided for by Articles 18 and 19 of Title 36 of the
17 Oklahoma Statutes.

18 D. The Commissioner may promulgate any rules necessary to
19 effectuate the provisions of the Prepaid Vision Plan Act.

20 SECTION 14. This act shall become effective November 1, 2023.

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