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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1892

03/16/2015 Authored by Theis, O'Driscoll and Zerwas

The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to health insurance; limiting certain types of provisions in vision care
1.3 insurance agreements; modifying definitions of ophthalmic goods and services;
1.4 regulating kiosks; imposing disciplinary action for optometrists and physicians;
1.5 amending Minnesota Statutes 2014, sections 145.711; 145.714; 147.091,
1.6 subdivision 1; 148.56, subdivision 3; 148.57, subdivision 3; proposing coding for
1.7 new law in Minnesota Statutes, chapters 62A; 145.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. 62A.67] VISION CARE SERVICES.

1.10 Subdivision 1. Definitions. (a) For purposes of this section, the terms in this
1.11 subdivision have the meanings given them.

1.12 (b) "Contractual discount" means a percentage reduction from a vision care
1.13 provider's usual and customary rate for providing covered services and materials required
1.14 under a participating provider agreement.

1.15 (c) "Covered service" means any service or material for which:

1.16 (1) reimbursement from the vision care insurance or health plan is provided for by
1.17 an insured's vision care insurance plan or health plan contract subject to the application of
1.18 the vision care insurance or health plan deductibles, co-payments, or co-insurance; or

1.19 (2) a reimbursement would be available to the application of any contractual
1.20 limitations of deductibles or co-payments required under the vision care discount plan
1.21 co-insurance.

1.22 Covered service does not include any services or materials covered or provided at a
1.23 nominal or de minimus rate.

1.24 (d) "Health carrier" has the meaning given in section 62A.011, subdivision 2.

1.25 (e) "Health plan" has the meaning given in section 62A.011, subdivision 3.

2.1 (f) "Material" includes, but is not limited to, lenses, devices containing lenses,
2.2 prisms, lens treatments and coatings, contact lenses, orthoptics, vision training, and any
2.3 prosthetic device necessary to correct, relieve, or treat any defect or abnormal condition
2.4 of the human eye or its adnexa.

2.5 (g) "Participating provider agreement" includes a health benefit plan, vision care
2.6 insurance, or a vision care discount plan.

2.7 (h) "Vision care insurance" means an integrated health benefit plan or vision care
2.8 insurance policy or contract that provides vision benefits for covered services or materials.

2.9 (i) "Vision care provider" means an optometrist licensed under sections 148.52 to
2.10 148.62 or an ophthalmologist licensed under chapter 147.

2.11 Subd. 2. **Prohibitions.** (a) No contract or health plan issued or renewed on or after
2.12 January 1, 2016, between any vision care provider and health carrier or provider of vision
2.13 care insurance shall contain any provision that requires the vision care provider to:

2.14 (1) provide services or materials to an insured under the vision care insurance or
2.15 health plan at a fee limited or set by the vision care insurance plan or health plan unless
2.16 the services or materials are reimbursed as covered services under the contract; or

2.17 (2) participate in a vision care insurance plan as a condition to participate in any
2.18 other health plan or vision care plan, regardless of whether the vision care plan is a plan of
2.19 insurance or a discount program that is not an insurance plan.

2.20 (b) No vision care provider shall charge more for services and materials that are not
2.21 covered services under vision care insurance than the vision care provider's usual and
2.22 customary rate for those services and materials.

2.23 (c) No vision care insurance policy contract covered by this section shall change the
2.24 terms, discounts, or rates provided in the contract without the concurrence and agreement
2.25 of the vision care provider at the time of the change.

2.26 (d) No vision care insurance policy that provides covered services for materials shall
2.27 have the effect, directly or indirectly, of limiting the choice of sources and suppliers of the
2.28 materials by a patient of a vision care provider.

2.29 Sec. 2. Minnesota Statutes 2014, section 145.711, is amended to read:

2.30 **145.711 DEFINITIONS.**

2.31 Subdivision 1. **Application.** For purposes of sections 145.711 to 145.714, the
2.32 following definitions apply.

2.33 Subd. 1a. **Commissioner.** "Commissioner" means the commissioner of the
2.34 Department of Health.

3.1 Subd. 1b. **Contact lenses.** "Contact lenses" means any lens placed directly on the
3.2 surface of the eye, regardless of whether or not it is intended to correct a visual defect.
3.3 Contact lenses include, but are not limited to, all cosmetic, therapeutic, and corrective
3.4 lenses.

3.5 Subd. 2. **Dispensing.** "Dispensing" means the retail delivery of ophthalmic goods to
3.6 a patient.

3.7 Subd. 2a. **Eye examination or evaluation.** "Eye examination or evaluation" means
3.8 an assessment of the ocular health and visual status of a patient that does not consist
3.9 solely of objective refractive data or information generated by an automated testing
3.10 device, including an autorefractor, in order to establish a medical diagnosis or for the
3.11 establishment of a refractive error.

3.12 Subd. 2b. **Eyeglasses.** "Eyeglasses" means an optical instrument or device worn or
3.13 used by an individual that has one or more lenses designed to correct or enhance vision,
3.14 addressing the visual needs of the individual wearer and are also known as glasses or
3.15 spectacles, including those that may be adjusted by the wearer to achieve different types or
3.16 levels of visual correction or enhancement. This excludes optical instruments or devices
3.17 not intended to correct or enhance vision or that are sold without consideration of the
3.18 visual status of the individual who will use the optical instrument or device.

3.19 Subd. 3. **Fitting.** "Fitting" means the performance of mechanical procedures and
3.20 measurements necessary to adapt and fit contact lenses after an eye examination and
3.21 supervision of the trial wearing of the contact lenses, which may require revisions during
3.22 the trial period.

3.23 Subd. 3a. **Kiosk.** "Kiosk" means automated equipment or an application designed to
3.24 be used on a phone, computer, or Internet-based device that can be used either in person
3.25 or remotely to conduct an eye examination or evaluation.

3.26 Subd. 4. **Ophthalmic goods.** "Ophthalmic goods" means eyeglasses, one or more
3.27 eyeglass components for which a prescription is required, or contact lenses.

3.28 Subd. 5. **Ophthalmic services.** "Ophthalmic services" means the measuring, fitting,
3.29 adjusting, fabricating, or prescribing of ophthalmic goods after an eye examination.

3.30 Subd. 6. **Optometrist.** "Optometrist" means an individual licensed to practice
3.31 optometry under sections 148.52 to 148.62.

3.32 Subd. 6a. **Over-the-counter spectacles.** "Over-the-counter spectacles" means
3.33 eyeglasses or lenses for the correction of vision that may be sold by any person, firm, or
3.34 corporation at retail without a prescription.

3.35 Subd. 7. **Patient.** "Patient" means a person who has had an eye examination.

4.1 Subd. 8. **Prescription.** "Prescription" means a written or electronic directive
 4.2 from an optometrist or physician for eyeglasses or contact lenses ~~that must include the~~
 4.3 ~~manufacturer's brand name, power, base curve,~~ based on an eye examination or evaluation
 4.4 that corrects refractive error. The prescription must contain the name and telephone
 4.5 number of the prescribing optometrist or physician, patient's name, and the expiration
 4.6 date of the prescription. If applicable, the prescription must include the manufacturer's
 4.7 brand name, power, base curve, and may also include diameter, axis, add power, cylinder,
 4.8 peripheral curve, optical zone, or center thickness. A prescription for eyeglasses or contact
 4.9 lenses shall not be made based on telemedicine services or based solely on the refractive
 4.10 error of the human eye or be generated by a kiosk.

4.11 Subd. 9. **Physician.** "Physician" means an individual licensed to practice medicine
 4.12 under chapter 147.

4.13 Subd. 10. **Provider.** "Provider" means an individual licensed to practice optometry
 4.14 under sections 148.52 to 148.62, or an individual licensed to practice medicine under
 4.15 chapter 147.

4.16 Sec. 3. **[145.7121] PRESCRIPTIONS; DISPENSING.**

4.17 (a) No person in this state may dispense eyeglasses or contact lenses to a patient
 4.18 without a valid prescription from a provider.

4.19 (b) A prescription for eyeglasses or contact lenses in this state shall not be made
 4.20 based on telemedicine services or based solely on the refractive error of the human eye or
 4.21 be generated by a kiosk.

4.22 (c) Providers must release a prescription to a patient. The final prescription shall
 4.23 take into consideration any medical findings and any refractive error discovered during
 4.24 the examination.

4.25 Sec. 4. **[145.7132] KIOSKS; PENALTY.**

4.26 (a) No person shall operate a kiosk in this state unless it meets the following
 4.27 requirements:

4.28 (1) the kiosk is approved by the United States Food and Drug Administration for the
 4.29 intended use;

4.30 (2) the kiosk is designed and operated in a manner that provides accommodations
 4.31 required by the Americans with Disabilities Act and the Minnesota Human Rights Act;

4.32 (3) the kiosk and accompanying technology used for the collection and transmission
 4.33 of information and data, including photographs and scans, must gather and transmit

5.1 protected health information in compliance with the federal Health Insurance Portability
 5.2 and Accountability Act;

5.3 (4) the procedure for which the kiosk is used has a recognized current procedural
 5.4 terminology (CPT) code;

5.5 (5) the physical location of the kiosk prominently displays the name and state license
 5.6 number of the individual who will read and interpret the diagnostic information and data,
 5.7 including photographs and scans;

5.8 (6) diagnostic information and data, including photographs and scans gathered by
 5.9 the automated equipment, is read and interpreted by a provider as defined in section
 5.10 145.711, subdivision 10;

5.11 (7) the owner or lessee of the automated equipment maintains liability insurance
 5.12 in an amount adequate to cover claims made by individuals diagnosed or treated based
 5.13 on information and data, including photographs and scans, generated by the automated
 5.14 equipment; and

5.15 (8) the owner or lessee of the kiosk registers in the manner required by the
 5.16 commissioner.

5.17 (b) Any person or entity who believes that a violation of this section has occurred or
 5.18 has been attempted may make a written complaint to the commissioner.

5.19 Sec. 5. Minnesota Statutes 2014, section 145.714, is amended to read:

5.20 **145.714 ENFORCEMENT.**

5.21 ~~Failure~~ (a) Health professionals who fail to comply with sections 145.711 to 145.713
 5.22 145.7132 shall be grounds for subject to disciplinary action by the Board of Optometry or
 5.23 the Board of Medical Practice.

5.24 (b) Owners and lessees who operate kiosks in this state who fail to register or fail to
 5.25 comply with the provisions of section 145.7132 shall be subject to regulatory sanctions
 5.26 imposed by the commissioner.

5.27 Sec. 6. Minnesota Statutes 2014, section 147.091, subdivision 1, is amended to read:

5.28 Subdivision 1. **Grounds listed.** The board may refuse to grant a license, may
 5.29 refuse to grant registration to perform interstate telemedicine services, or may impose
 5.30 disciplinary action as described in section 147.141 against any physician. The following
 5.31 conduct is prohibited and is grounds for disciplinary action:

5.32 (a) Failure to demonstrate the qualifications or satisfy the requirements for a license
 5.33 contained in this chapter or rules of the board. The burden of proof shall be upon the
 5.34 applicant to demonstrate such qualifications or satisfaction of such requirements.

6.1 (b) Obtaining a license by fraud or cheating, or attempting to subvert the licensing
6.2 examination process. Conduct which subverts or attempts to subvert the licensing
6.3 examination process includes, but is not limited to: (1) conduct which violates the
6.4 security of the examination materials, such as removing examination materials from the
6.5 examination room or having unauthorized possession of any portion of a future, current, or
6.6 previously administered licensing examination; (2) conduct which violates the standard of
6.7 test administration, such as communicating with another examinee during administration
6.8 of the examination, copying another examinee's answers, permitting another examinee
6.9 to copy one's answers, or possessing unauthorized materials; or (3) impersonating an
6.10 examinee or permitting an impersonator to take the examination on one's own behalf.

6.11 (c) Conviction, during the previous five years, of a felony reasonably related to the
6.12 practice of medicine or osteopathy. Conviction as used in this subdivision shall include
6.13 a conviction of an offense which if committed in this state would be deemed a felony
6.14 without regard to its designation elsewhere, or a criminal proceeding where a finding or
6.15 verdict of guilt is made or returned but the adjudication of guilt is either withheld or
6.16 not entered thereon.

6.17 (d) Revocation, suspension, restriction, limitation, or other disciplinary action
6.18 against the person's medical license in another state or jurisdiction, failure to report to the
6.19 board that charges regarding the person's license have been brought in another state or
6.20 jurisdiction, or having been refused a license by any other state or jurisdiction.

6.21 (e) Advertising which is false or misleading, which violates any rule of the board,
6.22 or which claims without substantiation the positive cure of any disease, or professional
6.23 superiority to or greater skill than that possessed by another physician.

6.24 (f) Violating a rule promulgated by the board or an order of the board, a state, or
6.25 federal law which relates to the practice of medicine, or in part regulates the practice of
6.26 medicine including without limitation sections 604.201, 609.344, and 609.345, or a state
6.27 or federal narcotics or controlled substance law.

6.28 (g) Engaging in any unethical conduct; conduct likely to deceive, defraud, or harm
6.29 the public, or demonstrating a willful or careless disregard for the health, welfare or safety
6.30 of a patient; or medical practice which is professionally incompetent, in that it may create
6.31 unnecessary danger to any patient's life, health, or safety, in any of which cases, proof
6.32 of actual injury need not be established.

6.33 (h) Failure to supervise a physician assistant or failure to supervise a physician
6.34 under any agreement with the board.

6.35 (i) Aiding or abetting an unlicensed person in the practice of medicine, except that
6.36 it is not a violation of this paragraph for a physician to employ, supervise, or delegate

7.1 functions to a qualified person who may or may not be required to obtain a license or
7.2 registration to provide health services if that person is practicing within the scope of that
7.3 person's license or registration or delegated authority.

7.4 (j) Adjudication as mentally incompetent, mentally ill or developmentally disabled,
7.5 or as a chemically dependent person, a person dangerous to the public, a sexually
7.6 dangerous person, or a person who has a sexual psychopathic personality by a court of
7.7 competent jurisdiction, within or without this state. Such adjudication shall automatically
7.8 suspend a license for the duration thereof unless the board orders otherwise.

7.9 (k) Engaging in unprofessional conduct. Unprofessional conduct shall include
7.10 any departure from or the failure to conform to the minimal standards of acceptable
7.11 and prevailing medical practice in which proceeding actual injury to a patient need not
7.12 be established.

7.13 (l) Inability to practice medicine with reasonable skill and safety to patients by
7.14 reason of illness, drunkenness, use of drugs, narcotics, chemicals or any other type of
7.15 material or as a result of any mental or physical condition, including deterioration through
7.16 the aging process or loss of motor skills.

7.17 (m) Revealing a privileged communication from or relating to a patient except when
7.18 otherwise required or permitted by law.

7.19 (n) Failure by a doctor of osteopathy to identify the school of healing in the
7.20 professional use of the doctor's name by one of the following terms: osteopathic physician
7.21 and surgeon, doctor of osteopathy, or D.O.

7.22 (o) Improper management of medical records, including failure to maintain adequate
7.23 medical records, to comply with a patient's request made pursuant to sections 144.291 to
7.24 144.298 or to furnish a medical record or report required by law.

7.25 (p) Fee splitting, including without limitation:

7.26 (1) paying, offering to pay, receiving, or agreeing to receive, a commission, rebate,
7.27 or remuneration, directly or indirectly, primarily for the referral of patients or the
7.28 prescription of drugs or devices;

7.29 (2) dividing fees with another physician or a professional corporation, unless the
7.30 division is in proportion to the services provided and the responsibility assumed by each
7.31 professional and the physician has disclosed the terms of the division;

7.32 (3) referring a patient to any health care provider as defined in sections 144.291 to
7.33 144.298 in which the referring physician has a "financial or economic interest," as defined
7.34 in section 144.6521, subdivision 3, unless the physician has disclosed the physician's
7.35 financial or economic interest in accordance with section 144.6521; and

8.1 (4) dispensing for profit any drug or device, unless the physician has disclosed the
8.2 physician's own profit interest.

8.3 The physician must make the disclosures required in this clause in advance and in writing
8.4 to the patient and must include in the disclosure a statement that the patient is free to
8.5 choose a different health care provider. This clause does not apply to the distribution
8.6 of revenues from a partnership, group practice, nonprofit corporation, or professional
8.7 corporation to its partners, shareholders, members, or employees if the revenues consist
8.8 only of fees for services performed by the physician or under a physician's direct
8.9 supervision, or to the division or distribution of prepaid or capitated health care premiums,
8.10 or fee-for-service withhold amounts paid under contracts established under other state law.

8.11 (q) Engaging in abusive or fraudulent billing practices, including violations of the
8.12 federal Medicare and Medicaid laws or state medical assistance laws.

8.13 (r) Becoming addicted or habituated to a drug or intoxicant.

8.14 (s) Prescribing a drug or device for other than medically accepted therapeutic or
8.15 experimental or investigative purposes authorized by a state or federal agency or referring
8.16 a patient to any health care provider as defined in sections 144.291 to 144.298 for services
8.17 or tests not medically indicated at the time of referral.

8.18 (t) Engaging in conduct with a patient which is sexual or may reasonably be
8.19 interpreted by the patient as sexual, or in any verbal behavior which is seductive or
8.20 sexually demeaning to a patient.

8.21 (u) Failure to make reports as required by section 147.111 or to cooperate with an
8.22 investigation of the board as required by section 147.131.

8.23 (v) Knowingly providing false or misleading information that is directly related
8.24 to the care of that patient unless done for an accepted therapeutic purpose such as the
8.25 administration of a placebo.

8.26 (w) Aiding suicide or aiding attempted suicide in violation of section 609.215 as
8.27 established by any of the following:

8.28 (1) a copy of the record of criminal conviction or plea of guilty for a felony in
8.29 violation of section 609.215, subdivision 1 or 2;

8.30 (2) a copy of the record of a judgment of contempt of court for violating an
8.31 injunction issued under section 609.215, subdivision 4;

8.32 (3) a copy of the record of a judgment assessing damages under section 609.215,
8.33 subdivision 5; or

8.34 (4) a finding by the board that the person violated section 609.215, subdivision
8.35 1 or 2. The board shall investigate any complaint of a violation of section 609.215,
8.36 subdivision 1 or 2.

- 9.1 (x) Practice of a board-regulated profession under lapsed or nonrenewed credentials.
- 9.2 (y) Failure to repay a state or federally secured student loan in accordance with
- 9.3 the provisions of the loan.
- 9.4 (z) Providing interstate telemedicine services other than according to section 147.032.
- 9.5 (aa) Operating a kiosk contrary to the requirements in section 145.7132.

9.6 Sec. 7. Minnesota Statutes 2014, section 148.56, subdivision 3, is amended to read:

9.7 Subd. 3. **Unregulated sales.** (a) Nothing in sections 148.52 to 148.62 shall

9.8 be construed to apply to the sale of toy glasses, goggles consisting of plano-white or

9.9 plano-colored lenses or ordinary colored glasses or to the replacement of duplications of

9.10 broken lenses, nor to sales upon prescription from persons legally authorized by the laws

9.11 of this state to examine eyes and prescribe glasses therefor, nor shall it apply to regularly

9.12 licensed physicians and surgeons.

9.13 (b) Sections 148.52 to 148.62 also do not apply to the sale of over-the-counter

9.14 spectacles, used for reading and containing only simple lenses having a plus power of up

9.15 to and including 3.25, if no attempt is made to test the eyes. The term "simple lenses" does

9.16 not include bifocals. The seller shall prominently display a sign on the counter or rack or

9.17 other display device where the spectacles are offered for sale in at least ten-point bold type

9.18 that reads as follows: "If you have experienced a vision loss, the selection of these glasses

9.19 should not take the place of an eye exam." "Attention: Ready-to-wear nonprescription

9.20 glasses are not intended to replace prescribed corrective lenses or examinations by an eye

9.21 care professional. If you have experienced a vision loss, the selection of these glasses

9.22 should not take the place of an eye examination. Regular eye check-ups are necessary to

9.23 determine your eye health status and vision needs."

9.24 Sec. 8. Minnesota Statutes 2014, section 148.57, subdivision 3, is amended to read:

9.25 Subd. 3. **Revocation, suspension.** The board may revoke the license or suspend

9.26 or restrict the right to practice of any person who has been convicted of any violation of

9.27 sections 148.52 to 148.62 or of any other criminal offense, or who violates any provision

9.28 of sections 148.571 to 148.576 or section 145.7132 or who is found by the board to be

9.29 incompetent or guilty of unprofessional conduct. "Unprofessional conduct" means any

9.30 conduct of a character likely to deceive or defraud the public, including, among other

9.31 things, free examination advertising, the loaning of a license by any licensed optometrist

9.32 to any person; the employment of "cappers" or "steerers" to obtain business; splitting

9.33 or dividing a fee with any person; the obtaining of any fee or compensation by fraud

9.34 or misrepresentation; employing directly or indirectly any suspended or unlicensed

10.1 optometrist to perform any work covered by sections 148.52 to 148.62; the advertising by
10.2 any means of optometric practice or treatment or advice in which untruthful, improbable,
10.3 misleading, or impossible statements are made. After one year, upon application and proof
10.4 that the disqualification has ceased, the board may reinstate such person.