



## H.B. No. 7173 (RAISED) AN ACT CONCERNING CONTRACTS BETWEEN HEALTH INSURERS AND OPTOMETRISTS

### Information to consider with regard to Eye Care Carve-outs

#### What are Eye Care Carve-outs and who are the leaders in the Insurance Industry?

##### Eye Care Carve-out defined:

- (1) A program that excludes services—usually from an organization's capitated rate—and tends to focus on one disease in depth; routine eye examinations
- (2) An arrangement in which routine vision benefits are removed from coverage provided by an insurance plan, but are provided through a contract with a separate set of providers.

#### The largest Eye Care Carve-out is VSP in the US

VSP Vision Care (VSP) is a [vision care health insurance](#) company operating in Australia, Canada, Ireland, the US, and the UK. It has about 80 million people worldwide and is the largest vision insurance company in the United States.<sup>[1]</sup> Formed in 1955 as a [nonprofit organization](#) by a group of optometrists in [Oakland, California](#), it became a national provider, and expanded internationally by 2007. In 2003 the [Internal Revenue Service](#) **revoked VSP's tax exempt status citing exclusionary, members-only practices, and high compensation to executives.**<sup>[2]</sup>

#### Non-Profit Status of VSP Revoked

*Text of Vision Service Plan v. United States is available from: [CaseText](#)*

As early as 1999, the IRS had started to look into VSP and its non-profit status.<sup>[2]</sup> It all came to a head when an article printed in *Optometric Management* revealed the financial information of VSP. The article claimed that VSP reported on its website that in 2002 revenues were \$1.86 billion and that it provided eyecare coverage for one in eight persons living in the United States. VSP said that along with this growth, payments to doctors are increasing and systems are being implemented to raise O.D. margins. However, an increasing number of O.D.s claimed that margins were actually cut and administrative requirements made so burdensome that they have or were considering dropping VSP. They wonder why financial and operational decisions that affect optometrists across the country (for example, the WellVision Savings Statement) are made without their input.

In 2005, a federal district judge in [Sacramento, California](#) found that VSP failed to prove that it is not organized for profit and that it operates primarily for promotion of the greater social welfare, as a [501\(c\)\(4\)](#) is supposed to. Instead, the district court found, VSP operates much like a for-profit (with, for example, its executives getting bonuses tied to net income) and primarily for the benefit of its own member/subscribers, not for some greater social good and, thereafter, concluded it was not entitled to tax-exempt status under 501(c)(4).<sup>4</sup>

In November 2005, the parties presented cases before a federal district judge. VSP asked to be confirmed as a social welfare organization under 26 U.S.C. §501(c)(4) and asked for return of the 2003 tax payments and an order that the United States issue it a private letter recognizing VSP's 501(c)(4) status. The government asked for summary judgment on the grounds that VSP did not qualify for tax exemption under 501(c)(4). Judge Lawrence Karlton ruled against VSP on December 12, 2005. VSP argued that it qualified for exemption under 501(c)(4) because its operations were primarily for the promotion of social welfare through direct (contracted) services to broad segments of the community as well as through charity work. While Judge Karlton described VSP's charitable work as admirable, he found that VSP failed to establish it operated primarily for the promotion of civic betterments and social improvements within the meaning of the tax regulations.

•[https://en.wikipedia.org/wiki/VSP\\_Vision\\_Care](https://en.wikipedia.org/wiki/VSP_Vision_Care)

1. ^ Strom, Stephanie (16 July 2008). "Vision Insurer to Ask Justices to Restore Its Tax Exemption". *The New York Times*. Retrieved 31 March 2016.

2. ^ Jump up to: a b Weber, Gil (2008). "Op-Ed: Vision Service Plan vs. The United States of America". *ODWire.org*. Retrieved 31 March 2016.

3. ^ Staff (18 August 2008). "VSP buys Marchon Eyewear Inc. for \$735M - Sacramento Business Journal". *Sacramento Business Journal*. Retrieved 1 April 2016.

4. ^ Weber, M.B.A., Gil; Smith, O.D., F. Mason (September 2003). "Point/Counterpoint - VSP Helps VSP; VSP is Good for Private Practice". *Optometric Management*. *PentaVision*. Retrieved 3 April 2016.

## Why are Ophthalmologists and Optometrists seeking this exemption?

- Ophthalmologists and optometrists have little choice but to accept these low paying contracts because by not participating in the contracted networks they found their fee-for-service patients taken away. Like any other plan with insurers there is no room for negotiations. Insurers provide “take it or leave it contracts”
- It is easy to see plans such as VSP, using cuts in payments and services as a means of increasing their own profitability. It is also the reason the IRS ruled against their claims for status as a “nonprofit organization.”
- Successful carve-outs must demonstrate to insurers or payors, such as Anthem, Connecticut etc., that they have a better means of delivering the care and intervening in vision management. They need to document substantive outcomes measures, and they need to demonstrate continuous quality improvement. The Eyecare provider community does not see this is being done by carve-outs like VSP.
- Each year more and more benefit are being included in “routine services”, including clauses that prohibit providers from charging customary rates for benefits not in the service contract, these are known as non-covered benefits- like the cost of contact lens, and less is being reimbursed for these services.
- Every provider in eyecare knows they have to work harder and smarter to compete and survive in healthcare, but it should not be for the benefit of VSP or its management to get wealthy, while patients in Connecticut lose their providers.



## Amendment Needed

### Substitute Language on HB7173 - An Act Concerning Contracts Between Insurers and Optometrists

Sec. 38a-472h. Fees charged by dentists, ophthalmologists and optometrists for noncovered benefits. Notice and posting required. (a) No insurer, health care center, fraternal benefit society, hospital service corporation, medical service corporation or other entity delivering, issuing for delivery, renewing, amending or continuing:

(1) An individual or a group dental plan in this state shall include in any contract with a dentist licensed pursuant to chapter 379 that is entered into, renewed or amended on or after January 1, 2012, any provision that requires such dentist to accept as payment an amount set by such insurer, center, society, corporation or entity for services or procedures provided to an insured or enrollee that are not covered benefits under such insured's or enrollee's plan; or

(2) An individual or a group vision plan in this state shall include in any contract with an optometrist licensed pursuant to chapter 380 that is entered into, renewed or amended on or after January 1, 2016, any provision that requires such optometrist to accept as payment an amount set by such insurer, center, society, corporation or entity for services, products or procedures provided to an insured or enrollee that are not covered benefits under such insured's or enrollee's plan.

(3) An individual or a group vision plan in this state shall include in any contract with an ophthalmologist licensed pursuant to chapter 370 that is entered into, renewed or amended on or after January 1, 2018, any provision that requires such ophthalmologist to accept as payment an amount set by such insurer, center, society, corporation or entity for services, products or procedures provided to an insured or enrollee that are not covered benefits under such insured's or enrollee's plan.

(b) No dentist **or optometrist** shall charge more for services or procedures that are not covered benefits than such dentist's or optometrist's usual and customary rate for such services or procedures.

(c) No optometrist or ophthalmologist shall charge more for services, products or procedures that are not covered benefits than such optometrist's or ophthalmologist's usual and customary rate for such services, products or procedures.

~~(c)~~ (1) Each evidence of coverage for an individual or a group dental plan shall include the following statement:

“IMPORTANT: If you opt to receive dental services, or procedures that are not covered benefits under this plan, a participating dental provider may charge you his or her usual and customary rate for such services, or procedures. Prior to providing you with dental services, or procedures that are not covered benefits, the dental provider should provide you with a treatment plan that includes each anticipated service, or procedure to be provided and the estimated cost of each such service, or procedure. To fully understand your coverage, you may wish to review your evidence of coverage document.”

(2) Each evidence of coverage for an individual or a group vision plan shall include the following statement:

“IMPORTANT: If you opt to receive optometric or ophthalmologic services, products or procedures that are not covered benefits under this plan, a participating optometrist or ophthalmologist may charge you his or her usual and customary rate for such services, products or procedures. Prior to providing you with optometric or ophthalmologic services, products or procedures that are not covered benefits, the optometrist or ophthalmologist should provide you with a treatment plan that includes each anticipated service, product or procedure to be provided and the estimated cost of each such service, product or procedure. To fully understand your coverage, you may wish to review your evidence of coverage document.”

~~(d)~~ (e) Each dentist **and optometrist** shall post, in a conspicuous place, a notice stating that services or procedures that are not covered benefits under an insurance policy or plan might not be offered at a discounted rate.

(f) Each optometrist or ophthalmologist shall post, in a conspicuous place, a notice stating that services, products or procedures that are not covered benefits under an insurance policy or plan might not be offered at a discounted rate.

~~(e)~~ (g) The provisions of this section shall not apply to (1) a self-insured plan that covers dental services, or optometric services, or ophthalmologic services, or (2) a contract that is incorporated in or derived from a collective bargaining agreement or in which some or all of the material terms are subject to a collective bargaining process.