

1 STATE OF OKLAHOMA

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

3 SENATE BILL 548

By: Montgomery

4  
5  
6 AS INTRODUCED

7 An Act relating to prepaid vision plans; creating the  
8 Prepaid Vision Plan Act; providing short title;  
9 defining terms; requiring certificate of authority  
10 for certain plan providers be obtained by certain  
11 date; establishing application procedures; requiring  
12 certain accompaniments with application; establishing  
13 provisions for approval of application; establishing  
14 expiration date of certificate of authority;  
15 establishing provisions for renewal of certificate of  
16 authority; requiring certain prepaid vision plan  
17 organizations respond to Insurance Commissioner by  
18 certain date; requiring certain plan organizations to  
19 maintain certain tangible net equity; requiring plan  
20 organizations with certain expenses to maintain  
21 certain tangible net equity or deposit; establishing  
22 provisions for exemption to certain deposit  
23 requirements; requiring certain plan organizations to  
24 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  
approval requirements; prohibiting disapproved  
materials from certain use; providing certain

1 exceptions; requiring certain statutory obligations  
2 apply to plan organizations; allowing Commissioner to  
3 conduct certain examinations; directing promulgation  
4 of rules; providing for codification; and providing  
5 an effective date.

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

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

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

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

15 As used in this act:

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

19 2. "Member" means an individual who is enrolled in an  
20 individual or group prepaid vision plan as a principal subscriber  
21 and any dependents entitled to vision care services under the plan  
22 solely because of their status as a dependent of the principal  
23 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  
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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 an approved application under Section 5 of this act  
18 shall establish or operate a prepaid vision plan organization in  
19 this state or sell, offer to sell, solicit offers to purchase, or  
20 receive advance or periodic consideration in conjunction with a  
21 prepaid vision plan without obtaining and maintaining a certificate  
22 of authority.

23 B. On or before February 1, 2024, every prepaid vision plan  
24 organization operating in this state shall submit an application for

1 a certificate of authority to the Insurance Commissioner. Each  
2 applicant may continue to operate as an organization until the  
3 Commissioner acts upon the application.

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

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

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

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

20 3. A list of the names, addresses, and official positions of  
21 the persons who are responsible for the conduct of the business  
22 affairs of the applicant, including all members of the board of  
23 directors, board of trustees, executive committee, or other  
24 governing board or committee, and the principal officers, in the

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;

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  
25

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

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  
24

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.

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.

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 shall 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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