



# AMERICAN OPTOMETRIC ASSOCIATION

May 30, 2024

Grace Lee  
Competition Policy and Advocacy Section  
Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W., Suite 3337  
Washington, D.C., 20530

Dear Ms. Lee,

The American Optometric Association (AOA) appreciates the opportunity to provide comment on the Department of Justice's Antitrust Division, the Federal Trade Commission and the Department of Health and Human Services "Request for Information on Consolidation in Health Care Markets." The AOA is especially concerned about transactions made by private payers in the vision care market and the impact that consolidation has on doctors and their patients.

Each year, millions of American families rely on local doctors of optometry for their comprehensive vision and eye health care needs. While many patients have coverage for medical eye care through a health plan, roughly 200 million Americans have supplemental preventive eye exam and materials (glasses/contact lenses) benefits through a vision benefit manager (VBM). The two most dominant vision benefit managers provide coverage to roughly 2/3 of Americans with this benefit. In addition to the dominance of these companies, VBMs typically enjoy special legal treatment and are not regulated as health insurers. Recently, the House Oversight Committee raised concerns with the impact of this market dominance noting:

One company, VSP Vision Care (VSP), provides vision insurance for 82 million Americans nationwide. This includes a reported 1.4 million covered lives in the Federal Employees Dental and Vision Insurance Program (FEDVIP). Several vision insurers have also sought to vertically consolidate, creating their own brick-and-mortar retail stores providing favorable copays and pricing to steer consumers to their stores and away from their competitors. Additionally, many of these insurers own lens and frame manufacturers enabling them to mark up prices by as much as 1,000 percent. VSP has also provided financial incentives to providers who push frames that VSP owns or has affiliations with without consumer's knowledge.<sup>1</sup>

The AOA often receives concerns from member doctors regarding the incentive programs that payers put into place. These incentive programs often will encourage doctors to utilize certain lens or frame types that are owned by the payer. Doctors who utilize the recommended lenses and frames are in turn provided with priority placement on the payer's doctor locator. More recently, one incentive program has offered increased reimbursement for comprehensive eye exams as a benefit of meeting the incentive program

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<sup>1</sup> [Letter-to-FTC-Khan-on-Consolidation-of-Vision-Care-Plans.pdf \(house.gov\)](#)

requirements. This creates an extremely challenging situation for doctors of optometry as reimbursement rates from VBMs have remained stagnant for many years. An AOA analysis found 70% of doctors reported not receiving an increase in the fee schedule for the largest vision plan they accept in their practice in at least five years, and, thinking back to that last increase, 69% of doctors reported that it had been at least six years or more since the previous increase. In other words, most doctors of optometry have had no increase or just one increase in payment from the largest vision plan they accept in their practice in the last decade even as cost of providing high quality eye health and vision care steadily rose (as evidenced by a 40% increase in the Medicare Economic Index since 2000).<sup>2</sup>

Essentially, a situation has been created wherein doctors have not received an increase in reimbursement in decades even as the cost of doing business has increased drastically, especially in recent years. In order to receive *any* reimbursement increase from certain VBMs, doctors are encouraged to take part in incentive programs. These programs are grounded in encouraging the use of certain lens and frame companies that the VBM owns. The combination of keeping reimbursement flat and incentivizing the use of VBM-owned frames and lens companies in order to obtain higher reimbursement has created a complete imbalance of power between the doctors who are working to care for their patients and the VBMs who typically own the VBM, frame companies, lens companies, labs where glasses are manufactured and more.

This imbalance of power is further aggravated as VBMs are now increasingly purchasing practices across the country. The AOA is following a California-based lawsuit, brought by Total Vision, which supports a group of independent optometric practices there, that accuses the country's largest vision benefits manager, VSP, of using its huge leverage to "strong arm" and bully it into accepting business conditions that threaten its very survival. The allegations mirror alarms raised by the AOA regarding VSP and other VBMs anticompetitive practices in the insurance marketplace.

The lawsuit was filed Sept. 26, 2023 in the U.S. District Court in the Central District of California.<sup>3</sup> "This case concerns a vision insurance company that seeks to wield its monopoly power to drive an innovative competitor out of business to the detriment of competition and patients," says Total Vision's lawsuit, which lays out VSP's related business interests (vertical integration) including its own independent optometry services, glasses frames and lenses, and optometric software. The suit adds: "The problem this has created is that VSP uses the power it derives from its vision insurance business mercilessly to force optometry practices to purchase glasses frames and lenses from its subsidiaries at supra-competitive prices for lower-quality products, purchase its back-office software regardless of whether they want it or not, and, perhaps most insidiously, prevent independent optometry practice groups from growing because VSP wants to dominate those services just as it does vision insurance." The suit seeks damages and an injunction barring VSP from limiting Total Vision's growth by refusing to deal with it, for instance, by removing it from VSP's network or "to force tying and other harmful anticompetitive arrangements on Total Vision."

In the lawsuit, Total Vision describes itself as providing the 59 independent practices affiliated with it with centralized nonclinical, back-office and administrative support, allowing doctors to focus on patient care and their practices and Total Vision to "achieve economies of scale." According to the suit, VSP is the largest vision insurer in the country. That ubiquity not only gives VSP "enormous leverage" over independent practices, but also makes it a "must have" for those in-network practices that want to compete for patients in the marketplace, the suit says.

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<sup>2</sup> [HPI Stagnation in Vision Plan Fee Schedules.pdf \(aoa.org\)](#)

<sup>3</sup> [https://www.aoa.org/AOA/Documents/Advocacy/state/C.D.%20Cal.%2023-cv-01805%20dckt%20000001\\_000%20filed%202023-09-26.pdf](https://www.aoa.org/AOA/Documents/Advocacy/state/C.D.%20Cal.%2023-cv-01805%20dckt%20000001_000%20filed%202023-09-26.pdf)


Total Vision alleges that when it balked at VSP's practices, their relationship turned tense under the terms of the 2019 agreement, which the suit says required Total Vision to purchase a "substantial number" of glasses frames and lenses made and sold by VSP using the VBM's practice management software. Without those restrictions, Total Vision might have negotiated better prices on materials or for labs to the benefit of its patients. The suit claims, "VSP was able to foist these anticompetitive terms on Total Vision because it controls so much of the vision insurance market that companies like Total Vision have no choice but to acquiesce to its demands, lest they risk thousands of their patients losing access to vision insurance."<sup>4</sup>

Similar to the Total Vision lawsuit, doctors of optometry have reported how the VBMs use their power over inclusion in the provider network to encourage and discourage certain business behaviors. It has been reported to AOA, anecdotally, that if a doctor who has operated as a sublease holder of a practice owned by a VBM tries to leave that sublease to begin their own practice, the VBM will make it difficult or impossible to remain on the VBMs network panel. Given the sheer market dominance of the two largest VBMs and as noted in the Total Vision lawsuit, to be out of network can threaten the viability of new private practices and can overall limit competition.

We understand that following recent practice acquisitions by VBMs, FTC has conducted outreach to individuals and doctors in the communities impacted by the acquisitions to assess how competition may have been impacted. The AOA would like to serve as a resource to the FTC as these acquisitions increasingly occur in the eye care industry and many of these acquisitions are small enough to not garner significant FTC attention.

We appreciate the FTC's exploration of the impact of increasing acquisitions in health care. As the FTC continues its work, we welcome the opportunity to provide the perspective of doctors of optometry and their patients. If additional information is needed, please contact Kara Webb at [REDACTED]

Sincerely,



Steven T. Reed, O.D.  
AOA President

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<sup>4</sup> *ibid*