

AN OPTOMETRY UNION? A Q&A BRIEF BASED ON INQUIRIES RECEIVED BY THE AOA - AUGUST 2023

As doctors are faced with abusive policies of vision plans, some have contacted the American Optometric Association (AOA) to inquire about a unionization strategy. This is an informational brief compiled by Michael Stokes, Esq., AOA general counsel, to provide key basics for informed discussion. Please do not hesitate to contact Stokes (mastokes@aoa.org) or the AOA Board of Trustees (president@aoa.org) with questions or comments on this or any issue facing your practice.

Q. Can independent doctors establish a union to negotiate with vision plans and/or insurers?

A. There is no clear pathway or current example of this, for a few reasons.

1. First, unions are designed to bargain collectively with employers over pay and working conditions, not bargain with vendors or other suppliers to a business.
2. In the absence of an employer/employee relationship, bargaining with payers is still covered by the same antitrust laws that control it now. Payer bargaining would still be the responsibility of employers, not unions, so doctors would not be able to negotiate collectively with payers, the same as now.
3. Although vision and health plans do exert a degree of control over how a physician practices, this is not enough for the doctor to be considered an “employee” of the plan. See the case *AmeriHealth Inc./Amerihealth HMO*, 329 NLRB 76, 4-RC-19260 (1999) on page 5 of the American Medical Association (AMA) [issue brief](#) addressing the topic of collective bargaining.

Q. What are examples of unionization in health care?

A. Most union members in health care are employed by large employers, such as HMOs, government agencies, or hospitals and hospital systems. Most of these union members are nurses or technicians, as well as non-health care specialists employed by health care companies. With the exception of unions consisting of government employees, union membership does not typically include higher-level managers or supervisors. This category includes many physician-level employees.

In 2019, the AMA estimated that just over 7% of practicing MDs in the United States belonged to a union. Most of these individuals are employed either in government-provided health care or education or are interns or residents undergoing the final stage of their training.

Doctors who either own their practice, or who hold a salaried job at a small- to medium-sized practice in which they are one of the most senior employees, would not typically be eligible to join a union.

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Q. How can doctors of optometry best fight back against plan abuses?

A. They can [join their state affiliate and the AOA](#) and help educate and inform policymakers about anti-doctor and anti-patient activities by plans.

Here's an overview of how together we are fighting back and standing up for full reimbursement and fair coverage policies.

- 1. Holding the National Association of Vision Care Plans (NAVCP) accountable** - Together with affiliates, the AOA has challenged and successfully blocked 2023 efforts by vision plans' lobbying group, NAVCP, to gain backing from the National Council of Insurance Legislators and other organizations that shape state health care policy.
- 2. Direct action to resolve doctor complaints** - [Some plans seek to devalue eye health and vision care](#). The AOA takes on these unfair plan policies, denials and concerns—many reported by AOA member doctors—to get answers, then provides [daily updates to members on these actions](#).
- 3. Direct dialogue with plan CEOs** - [AOA leadership maintains periodic, face-to-face dialogues with leading vision plans to educate plans](#) regarding the impact of their practices on doctors of optometry, the scope of care provided by optometrists in 2023 and the costs associated with providing that care, including the increase in practice costs due to COVID-19 or inflation. Most recent meetings include: January (Charleston, S.C.) and March 2023 (New York City). Upcoming meetings will be scheduled for fall 2023.
- 4. Updating state laws** - [Texas](#), [Nevada](#), [Georgia](#) and [Illinois](#) all enacted important state vision plan laws this year with more affiliates looking to their statehouse advocacy for solutions.
- 5. Federal regulatory crackdown and bipartisan legislation to deliver relief to doctors** - [Bipartisan legislation](#) backed by the AOA and the American Dental Association (ADA), [the Dental and Optometric Care \(DOC\) Access Act, H.R. 1385/S. 1424, remains a priority](#) to curb plan abuses at a federal level. Amid efforts to advance the legislation, the congressional panel authorized to investigate “any matter at any time”— [the U.S. House Committee on Oversight and Accountability—went public this summer with vision plan concerns and issued a request for information to the Federal Trade Commission to conduct oversight](#) of the agency's role in preventing unfair and harmful marketplace practices, especially considering consolidation in the vision insurance market.
- 6. Alliances with doctor and patient organizations** - In addition to the ADA, the AOA allied with the [Patients Rising advocacy organization](#) to help bolster calls for Congress to cease increasingly harmful vision benefits manager abuses.
 - a. [Congress can stand up to predatory vision insurers | RealClearHealth](#)
 - b. [Congress steps up to address potential abuses in vision and dental care | The Hill](#)
 - c. [Legislative solutions to overpriced eyeglasses | Washington Times](#)
- 7. Anti-trust legal review and assessment** - The AOA Board of Trustees and AOA's in-house legal team is consulting with [Mayer Brown](#), a national law firm, in the 24/7/365 fight against plan abuses. We are identifying and assessing potential and future issues, opportunities to advance new strategies and reviewing all potential anti-trust activities to determine the optimal next steps to help ensure practice success for AOA member doctors.

If you are interested in taking part in a special briefing on this area of work, please contact stopplanabuses@aoa.org.