

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/25/2009
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 2423 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bob Deuell
BOB DEUELL, CHAIR

ROBERT NILHOLS

DAN PATRICK

Florence Shapiro
FLORENCE SHAPIRO

Carlos Uresti
On the part of the Senate
CARLOS URESTI

Yvonne Gonzalez Toureilles
YVONNE GONZALEZ TOUREILLES, CHAIR

Chuck Hopson II

CHUCK HOPSON

Vernie Lopez
VERONICA GONZALEZ

John Zerwas
JOHN ZERWAS

On the part of the House
SUSAN KING

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 2423

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the transfer or sale of patient information or
3 prescription drug history by discount health care programs;
4 providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subdivisions (3) and (4), Section 76.001, Health
7 and Safety Code, are amended to read as follows:

8 (3) "Discount health care program" means a business
9 arrangement or contract in which an entity, in exchange for fees,
10 dues, charges, or other consideration, offers its members access to
11 discounts on health care services provided by health care
12 providers. The term does not include an insurance policy,
13 certificate of coverage, or other product regulated by the Texas
14 Department of Insurance or a self-funded or self-insured employee
15 benefit plan. For purposes of this subsection, consideration
16 includes patient information or patient prescription drug history
17 provided by members, if the entity engages in the transfer or sale
18 of such patient information, patient prescription drug history, or
19 drug manufacturer rebates.

20 (4) "Discount health care program operator" means a
21 person who, in exchange for fees, dues, charges, or other
22 consideration, operates a discount health care program and
23 contracts with providers, provider networks, or other discount
24 health care program operators to offer access to health care

1 services at a discount and determines the charge to members. For
2 purposes of this subsection, consideration includes patient
3 information or patient prescription drug history provided by
4 members, if the person engages in the transfer or sale of such
5 patient information, patient prescription drug history, or drug
6 manufacturer rebates.

7 SECTION 2. Section 76.053, Health and Safety Code, is
8 amended by adding Subsection (a-1) and amending Subsection (b) to
9 read as follows:

10 (a-1) If a program operator engages in the transfer or sale
11 of a member's patient information or patient prescription drug
12 history, the program operator shall, before enrollment, provide
13 each prospective member disclosure materials describing the
14 program operator's practices regarding such transfer or sale.

15 (b) A marketer shall use disclosure materials that comply
16 with this section [~~Subsection (a)~~].

17 SECTION 3. Title 21, Insurance Code, is amended by adding
18 Chapter 7002 to read as follows:

19 CHAPTER 7002. SUPPLEMENTAL PROVISIONS RELATING TO DISCOUNT HEALTH

20 CARE OPERATORS

21 Sec. 7002.001. DEFINITION. For purposes of Chapters 562
22 and 7001, Insurance Code, consideration provided to a discount
23 health care program or a discount health care program operator
24 includes patient information or patient prescription drug history
25 provided by members, if the entity engages in the transfer or sale
26 of such patient information, patient prescription drug history, or
27 drug manufacturer rebates.

1 Sec. 7002.002. REQUIRED DISCLOSURE. If a discount health
2 care program operator engages in the transfer or sale of a member's
3 patient information or patient prescription drug history, the
4 program operator shall, before enrollment, provide each
5 prospective member disclosure materials describing the program
6 operator's practices regarding such transfer or sale.

7 Sec. 7002.003. VIOLATION; PENALTIES. A violation of this
8 chapter may be enforced in the same manner as a violation of Chapter
9 562 or 7001.

10 SECTION 4. (a) Sections 1 and 2 of this Act take effect only
11 if HB 4341 or SB 2339, Acts of the 81st Legislature, Regular
12 Session, 2009, or another Act of the 81st Legislature, Regular
13 Session, 2009, enacting Chapter 562 and Title 21, Insurance Code,
14 concerning discount health care programs is not enacted or does not
15 become law.

16 (b) Section 3 of this Act takes effect only if HB 4341 or
17 SB 2339, Acts of the 81st Legislature, Regular Session, 2009, or
18 another Act of the 81st Legislature, Regular Session, 2009,
19 enacting Chapter 562 and Title 21, Insurance Code, concerning
20 discount health care programs is enacted and becomes law.

21 SECTION 5. This Act takes effect September 1, 2009.

Senate Bill 2423
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

SECTION 1. Subdivisions (3) and (4), Section 76.001, Health and Safety Code, are amended to the define "discount health care program" and "discount health care program operator." For purposes of the definition of discount health care program, clarifies that consideration includes patient information or patient prescription drug history provided by members, if an entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturers.

SECTION 2. Section 76.053, Health and Safety Code, is amended by adding Subsection (a-1) and amending Subsection (b) to require a program operator, before enrollment, to provide each prospective member disclosure materials describing the program operator's practices regarding the transfer or sale of a member's patient information or patient prescription drug history, if the program operator engages in such transfer or sale, requiring

(b)

No equivalent provision.

HOUSE VERSION

SECTION 1. Similar to Senate version, except (3) omits the clarification that consideration includes the transfer or sale of patient information or patient prescription drug history provided by members only if an entity engage in the transfer or sale such patient information for purposes of defining the term "discount health care program."

SECTION 2. Similar to Senate version except requires a program operator to provide materials containing the program operator's policy regarding access to patient information or patient prescription drug histories.

Same as Senate version.

SECTION 3. Title 21, Insurance Code, is amended by adding Chapter 7002, SUPPLEMENTAL PROVISIONS RELATING TO DISCOUNT HEALTH CARE

CONFERENCE

Same as Senate version.

Same as Senate version.

Same as Senate version.

Same as House version except as follows:

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SENATE VERSION

HOUSE VERSION

CONFERENCE

OPERATORS, as follows:

Sec. 7002.001. Clarifies for purposes of Chapters 562 and 7001, Insurance Code that "other consideration" provided to a discount health care program or a discount health care program operator includes *access* to patient information, *access* to patient prescription drug histories, and drug manufacturer rebates.

Sec. 7002.002. Requires a discount health care program operator, before enrollment, to provide each prospective member disclosure materials containing the program operator's policy regarding access to patient information or patient prescription drug histories if the program operator engages in the transfer or sale of a member's patient information or patient prescription drug history.

Sec. 7002.003. Provides that a violation of this chapter may be enforced in the same manner as a violation of Chapter 562 or 7001.

SECTION 4. (a) Sections 1 and 2 of this Act take effect only if H.B. No. 4341 or S.B. No. 2339, Acts of the 81st Legislature, Regular Session, 2009, or another Act of the 81st Legislature, Regular Session, 2009, enacting Chapter 562 and Title 21, Insurance Code, concerning discount health care programs is not enacted or does not become law.

Similar to House version except refers to "consideration" and clarifies that the term includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacture rebates.

Similar to House version except requires the operator to provide materials describing the operator's practices regarding the transfer or sale.

Same as House version.

Substantially the same as House version.

No equivalent provision.

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SENATE VERSION

HOUSE VERSION

CONFERENCE

(b) Section 3 of this Act takes effect only if H.B. No. 4341 or S.B. No. 2339, Acts of the 81st Legislature, Regular Session, 2009, or another Act of the 81st Legislature, Regular Session, 2009, enacting Chapter 562 and Title 21, Insurance Code, concerning discount health care programs is enacted and becomes law.

SECTION 3. This Act takes effect September 1, 2009.

SECTION 5. Same as Senate version.

Same as Senate version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 26, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB2423 by Deuell (Relating to the transfer or sale of patient information or prescription drug history by discount health care programs; providing penalties.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would amend the Health and Safety Code by expanding the definitions of a discount health care program and a discount care health care program operator. Enactment of certain provisions of the bill would be contingent on other legislation passing, transferring regulation of the discount health care program to the Texas Department of Insurance (TDI) from the Texas Department of Licensing and Regulation (TDLR).

Based on the analysis of the Texas Department of Licensing and Regulation, it is assumed that if the program is not transferred, there would be a small annual revenue gain because the bill would result in additional registrations from certain discount health care card operators. Since the agency is required to cover its cost of operation, this analysis assumes that any increase in revenue will be offset by the agency readjusting fees. It is also assumed that any costs realized by TDLR from implementing the provisions of the bill could be absorbed within existing resources.

If the regulation of the discount health care program is transferred to TDI, there would be a small annual revenue gain to General Revenue - Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year. It is also assumed that any costs realized by TDI from implementing the provisions of the bill could be absorbed within existing resources.

Based on analysis provided by the Texas Department of Insurance, the bill will have no fiscal impact on the agency.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation, 454 Department of Insurance

LBB Staff: JOB, CH, CL, MW

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on S. B. 2423 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

Yvonne A. Tucker
(name)

5-25-09
(date)