

1 AN ACT

2 relating to the regulation of discount health care programs by the
3 Texas Department of Insurance; providing penalties.

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

5 SECTION 1. Subtitle C, Title 5, Insurance Code, is amended
6 by adding Chapter 562 to read as follows:

7 CHAPTER 562. UNFAIR METHODS OF COMPETITION AND
8 UNFAIR OR DECEPTIVE ACTS OR PRACTICES REGARDING
9 DISCOUNT HEALTH CARE PROGRAMS
10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 562.001. PURPOSE. The purpose of this chapter is to
12 regulate trade practices in the business of discount health care
13 programs by:

14 (1) defining or providing for the determination of
15 trade practices in this state that are unfair methods of
16 competition or unfair or deceptive acts or practices; and

17 (2) prohibiting those unfair or deceptive trade
18 practices.

19 Sec. 562.002. DEFINITIONS. In this chapter:

20 (1) "Advertisement, solicitation, or marketing
21 material" means material that is made, published, disseminated,
22 circulated, or placed before the public:

23 (A) in a newspaper, magazine, or other
24 publication;

1 (B) in a notice, circular, pamphlet, letter, or
2 poster;

3 (C) over a radio or television station;

4 (D) through the Internet;

5 (E) in a telephone sales script; or

6 (F) in any other manner.

7 (2) "Discount health care program" means a business
8 arrangement or contract in which an entity, in exchange for fees,
9 dues, charges, or other consideration, offers its members access to
10 discounts on health care services provided by health care
11 providers. The term does not include an insurance policy,
12 certificate of coverage, or other product otherwise regulated by
13 the department or a self-funded or self-insured employee benefit
14 plan.

15 (3) "Discount health care program operator" means a
16 person who, in exchange for fees, dues, charges, or other
17 consideration, operates a discount health care program and
18 contracts with providers, provider networks, or other discount
19 health care program operators to offer access to health care
20 services at a discount and determines the charge to members.

21 (4) "Health care services" includes physician care,
22 inpatient care, hospital surgical services, emergency services,
23 ambulance services, laboratory services, audiology services,
24 dental services, vision services, mental health services,
25 substance abuse services, chiropractic services, and podiatry
26 services, and the provision of medical equipment and supplies,
27 including prescription drugs.

1 (5) "Marketer" means a person who sells or
2 distributes, or offers to sell or distribute, a discount health
3 care program, including a private label entity that places its name
4 on and markets or distributes a discount health care program, but
5 does not operate a discount health care program.

6 (6) "Member" means a person who pays fees, dues,
7 charges, or other consideration for the right to participate in a
8 discount health care program.

9 (7) "Person" means an individual, corporation,
10 association, partnership, or other legal entity.

11 (8) "Program operator" means a discount health plan
12 program operator.

13 (9) "Provider" means a person who is licensed or
14 otherwise authorized to provide health care services in this state.

15 Sec. 562.003. VENUE FOR ACTIONS INVOLVING DEPARTMENT OR
16 COMMISSIONER. An action under this chapter in which the department
17 or commissioner is a party must be brought in a district court in
18 Travis County.

19 Sec. 562.004. APPLICABILITY. Except as otherwise provided
20 by this chapter, a program operator, including the operator of a
21 freestanding discount health care program or a discount health care
22 program marketed by an insurer or a health maintenance
23 organization, shall comply with this chapter.

24 Sec. 562.005. LIBERAL CONSTRUCTION. This chapter shall be
25 liberally construed and applied to promote the underlying purposes
26 as provided by Section 562.001.

27 [Sections 562.006-562.050 reserved for expansion]

1 SUBCHAPTER B. UNFAIR METHODS OF COMPETITION AND

2 UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED

3 Sec. 562.051. MISREPRESENTATION REGARDING DISCOUNT HEALTH
4 CARE PROGRAM. It is an unfair method of competition or an unfair or
5 deceptive act or practice in the business of discount health care
6 programs to:

7 (1) misrepresent the price range of discounts offered
8 by the discount health care program;

9 (2) misrepresent the size or location of the program's
10 network of providers;

11 (3) misrepresent the participation of a provider in
12 the program's network;

13 (4) suggest that a discount card offered through the
14 program is a federally approved Medicare prescription discount
15 card;

16 (5) use the term "insurance," except as:

17 (A) a disclaimer of any relationship between the
18 discount health care program and insurance; or

19 (B) a description of an insurance product
20 connected with a discount health care program; or

21 (6) use the term "health plan," "coverage," "copay,"
22 "copayments," "deductible," "preexisting conditions," "guaranteed
23 issue," "premium," "PPO," or "preferred provider organization," or
24 another similar term, in a manner that could reasonably mislead an
25 individual into believing that the discount health care program is
26 health insurance or provides coverage similar to health insurance.

27 Sec. 562.052. FALSE INFORMATION AND ADVERTISING. It is an

1 unfair method of competition or an unfair or deceptive act or
2 practice in the business of discount health care programs to make,
3 publish, disseminate, circulate, or place before the public or
4 directly or indirectly cause to be made, published, disseminated,
5 circulated, or placed before the public an advertisement,
6 solicitation, or marketing material containing an untrue,
7 deceptive, or misleading assertion, representation, or statement
8 regarding the discount health care program.

9 Sec. 562.053. FAILURE TO REGISTER OR RENEW REGISTRATION;
10 FALSE REGISTRATION OR RENEWAL STATEMENT. (a) It is an unfair
11 method of competition or an unfair or deceptive act or practice in
12 the business of discount health care programs to:

13 (1) fail to register or renew registration as required
14 under Chapter 7001; or

15 (2) with intent to deceive:

16 (A) file with the department a false statement in
17 connection with an application for registration as a program
18 operator under Chapter 7001; or

19 (B) file with the department a false statement in
20 connection with an application for renewal of a registration as a
21 program operator under Chapter 7001.

22 (b) The commissioner may impose on a person operating a
23 discount health care program for the person's failure to register
24 or renew registration as required under Chapter 7001 any remedy
25 that the commissioner is authorized to impose under Chapter 101 for
26 the unauthorized business of insurance.

27 Sec. 562.054. MISREPRESENTATION OF DISCOUNT HEALTH CARE

1 PROGRAMS. It is an unfair method of competition or an unfair or
2 deceptive act or practice in the business of discount health care
3 programs to misrepresent a discount health care program by:

4 (1) making an untrue statement of material fact;

5 (2) failing to state a material fact necessary to make
6 other statements made not misleading, considering the
7 circumstances under which the statements were made;

8 (3) making a statement in a manner that would mislead a
9 reasonably prudent person to a false conclusion of a material fact;

10 (4) making a material misstatement of law; or

11 (5) failing to disclose a matter required by law to be
12 disclosed, including failing to make an applicable disclosure
13 required by this code.

14 [Sections 562.055-562.100 reserved for expansion]

15 SUBCHAPTER C. REGULATION OF PRACTICES

16 Sec. 562.101. UNFAIR METHODS OF COMPETITION AND UNFAIR OR
17 DECEPTIVE ACTS OR PRACTICES PROHIBITED. A person may not engage in
18 this state in a trade practice that is defined in this chapter as or
19 determined under this chapter to be an unfair method of competition
20 or an unfair or deceptive act or practice in the business of
21 discount health care programs.

22 Sec. 562.102. PROHIBITED CONTENT OF CERTAIN DISCOUNT HEALTH
23 CARE PROGRAM ADVERTISING, SOLICITATION, OR MARKETING.

24 Notwithstanding any other provision of this code, it is unlawful
25 for a program operator or marketer to advertise, solicit, or market
26 a discount health care program containing the words "approved by
27 the Texas Department of Insurance" or words with a similar meaning.

1 Sec. 562.103. PROGRAM OPERATOR DUTIES. (a) A program
2 operator shall:

3 (1) provide a toll-free telephone number and Internet
4 website for members to obtain information about the discount health
5 care program and confirm or find providers currently participating
6 in the program; and

7 (2) remove a provider from the discount health care
8 program not later than the 30th day after the date the program
9 operator learns that the provider is no longer participating in the
10 program or has lost the authority to provide services or products.

11 (b) A program operator shall issue at least one membership
12 card to serve as proof of membership in the discount health care
13 program that must:

14 (1) contain a clear and conspicuous statement that the
15 discount health care program is not insurance; and

16 (2) if the discount health care program includes
17 discount prescription drug benefits, include:

18 (A) the name or logo of the entity administering
19 the prescription drug benefits;

20 (B) the international identification number
21 assigned by the American National Standards Institute for the
22 entity administering the prescription drug benefits;

23 (C) the group number applicable to the member;

24 and

25 (D) a telephone number to be used to contact an
26 appropriate person to obtain information relating to the
27 prescription drug benefits provided under the program.

1 (c) Not later than the 15th day after the date of
2 enrollment, a program operator shall issue at least one set of
3 disclosure materials describing the terms and conditions of the
4 discount health care program to each household in which a person is
5 a member, including a statement that:

6 (1) the discount health care program is not insurance,
7 with the word "not" capitalized;

8 (2) the member is required to pay the entire amount of
9 the discounted rate;

10 (3) the discount health care program does not
11 guarantee the quality of the services or products offered by
12 individual providers; and

13 (4) if the member remains dissatisfied after
14 completing the discount health care program's complaint system, the
15 member may contact the member's state insurance department.

16 (d) A program operator shall ensure that an application form
17 or other membership agreement:

18 (1) clearly and conspicuously discloses the duration
19 of membership and the amount of payments the member is obligated to
20 make for the membership; and

21 (2) contains a clear and conspicuous statement that
22 the discount health care program is not insurance.

23 (e) A program operator shall allow any member who cancels a
24 membership in the discount health care program not later than the
25 30th day after the date the person becomes a member to receive a
26 refund, not later than the 30th day after the date the program
27 operator receives a valid cancellation notice and returned

1 membership card, of all periodic membership charges paid by that
2 member to the program operator and the amount of any one-time
3 enrollment fee that exceeds \$50.

4 (f) A program operator shall:

5 (1) maintain a surety bond, payable to the department
6 for the use and benefit of members in a manner prescribed by the
7 department, in the principal amount of \$50,000, except that a
8 program operator that is an insurer that holds a certificate of
9 authority under Title 6 is not required to maintain the surety bond;

10 (2) maintain an agent for service of process in this
11 state; and

12 (3) establish and operate a fair and efficient
13 procedure for resolution of complaints regarding the availability
14 of contracted discounts or services or other matters relating to
15 the contractual obligations of the discount health care program to
16 its members.

17 Sec. 562.104. MARKETING OF PROGRAM. (a) A program operator
18 may market directly or contract with marketers for the distribution
19 of the program operator's discount health care programs.

20 (b) A program operator shall enter into a written contract
21 with a marketer before the marketer begins marketing, promoting,
22 selling, or distributing the program operator's discount health
23 care program. The contract must prohibit the marketer from using an
24 advertisement, solicitation, or other marketing material or a
25 discount card that has not been approved in advance and in writing
26 by the program operator.

27 (c) A program operator must approve in writing before their

1 use all advertisements, solicitations, or other marketing
2 materials and all discount cards used by marketers to market,
3 promote, sell, or distribute the discount health care program.

4 (d) Each advertisement, solicitation, or marketing material
5 of a discount health care program must clearly and conspicuously
6 state that the discount health care program is not insurance.

7 Sec. 562.105. CONTRACT REQUIREMENTS. (a) A program
8 operator shall contract, directly or indirectly, with a provider
9 offering discounted health care services or products under the
10 discount health care program. The written contract must contain
11 all of the following provisions:

12 (1) a description of the discounts to be provided to a
13 member;

14 (2) a provision prohibiting the provider from charging
15 a member more than the discounted rate agreed to in the written
16 agreement with the provider; and

17 (3) a provision requiring the provider to promptly
18 notify the program operator if the provider no longer participates
19 in the program or loses the authority to provide services or
20 products.

21 (b) The program operator may not charge or receive from a
22 provider any fee or other compensation for entering into the
23 agreement.

24 (c) If the program operator contracts with a network of
25 providers, the program operator shall obtain written assurance from
26 the network that:

27 (1) the network has a written agreement with each

1 network provider that includes a discounted rate that is applicable
2 to a program operator's discount health care program and contains
3 all of the terms described in Subsection (a); and

4 (2) the network is authorized to obligate the network
5 providers to provide services to members of the discount health
6 care program.

7 (d) The program operator shall require the network to:

8 (1) maintain and provide the program operator on a
9 monthly basis an up-to-date list of providers in the network; and

10 (2) promptly remove a provider from its network if the
11 provider no longer participates or loses the authority to provide
12 services or products.

13 (e) The program operator shall maintain a copy of each
14 written agreement the program operator has with a provider or a
15 network for at least two years following termination of the
16 agreement.

17 Sec. 561.106. SUBMISSION OF MATERIALS. If the commissioner
18 reasonably believes that a program operator or a marketer may not be
19 operating in compliance with this chapter, the commissioner by
20 order may require the program operator or the marketer to submit to
21 the commissioner any advertisement, solicitation, or marketing
22 material, disclosure material, discount card, agreement, or other
23 document requested by the commissioner.

24 [Sections 562.107-562.150 reserved for expansion]

1 SUBCHAPTER D. DETERMINATION OF UNFAIR METHODS OF COMPETITION AND
2 UNFAIR OR DECEPTIVE ACTS OR PRACTICES; ENFORCEMENT; SANCTIONS AND
3 PENALTIES

4 Sec. 562.151. EXAMINATION AND INVESTIGATION. The
5 department may examine and investigate the affairs of a person
6 engaged in the business of discount health care programs in this
7 state to determine whether the person:

8 (1) has or is engaged in an unfair method of
9 competition or unfair or deceptive act or practice prohibited by
10 this chapter; or

11 (2) has violated Subchapter B or C.

12 Sec. 562.152. STATEMENT OF CHARGES; NOTICE OF HEARING. (a)
13 When the department has reason to believe that a person engaged in
14 the business of discount health care programs in this state has
15 engaged or is engaging in this state in an unfair method of
16 competition or unfair or deceptive act or practice defined by
17 Subchapter B or has violated Subchapter B or C and that a proceeding
18 by the department regarding the charges is in the interest of the
19 public, the department shall issue and serve on the person:

20 (1) a statement of the charges; and

21 (2) a notice of the hearing on the charges, including
22 the time and place for the hearing.

23 (b) The department may not hold the hearing before the sixth
24 day after the date the notice required by Subsection (a)(2) is
25 served.

26 Sec. 562.153. HEARING. A person against whom charges are
27 made under Section 562.152 is entitled at the hearing on the charges

1 to have an opportunity to be heard and show cause why the department
2 should not issue an order requiring the person to cease and desist
3 from:

4 (1) performing the unfair method of competition or
5 unfair or deceptive act or practice described in the charges; or

6 (2) violating Subchapter B or C.

7 Sec. 562.154. HEARING PROCEDURES. (a) Nothing in this
8 chapter requires the observance of formal rules of pleading or
9 evidence at a hearing under this subchapter.

10 (b) At a hearing under this subchapter, the department, on a
11 showing of good cause, shall permit any person to intervene,
12 appear, and be heard by counsel or in person.

13 Sec. 562.155. RECORD OF HEARING. (a) At a hearing under
14 this subchapter, the department may, and at the request of a party
15 to the hearing shall, make a record of the proceedings and the
16 evidence presented at the hearing.

17 (b) If the department does not make a record and a person
18 seeks judicial review of the decision made at the hearing, the
19 department shall prepare a statement of the evidence and proceeding
20 for use on review.

21 Sec. 562.156. COMPLIANCE WITH SUBPOENA. (a) If a person
22 refuses to comply with a subpoena issued in connection with a
23 hearing under this subchapter or refuses to testify with respect to
24 a matter about which the person may be lawfully interrogated, on
25 application of the department, a district court in Travis County or
26 in the county in which the person resides may order the person to
27 comply with the subpoena or testify.

1 (b) A court may punish as contempt a person's failure to
2 obey an order under this section.

3 Sec. 562.157. DETERMINATION OF VIOLATION. After a hearing
4 under this subchapter to determine whether a person has engaged in
5 an unfair method of competition or unfair or deceptive act or
6 practice prohibited by this chapter, the department shall determine
7 whether:

8 (1) the method of competition or the act or practice
9 considered in the hearing is defined as:

10 (A) an unfair method of competition or deceptive
11 act or practice under Subchapter B; or

12 (B) a false, misleading, or deceptive act or
13 practice under Section 17.46, Business & Commerce Code; and

14 (2) the person against whom the charges were made
15 engaged in the method of competition or act or practice in violation
16 of:

17 (A) this chapter; or

18 (B) Subchapter E, Chapter 17, Business & Commerce
19 Code, as specified in Section 17.46, Business & Commerce Code.

20 Sec. 562.158. CEASE AND DESIST ORDER. On determining that a
21 person committed a violation described by Section 562.157 or
22 committed a violation of Subchapter B or C, the department shall:

23 (1) make written findings; and

24 (2) issue and serve on the person an order requiring
25 the person to cease and desist from engaging in the method of
26 competition or act or practice determined to be a violation or the
27 violation of Subchapter B or C, as applicable.

1 Sec. 562.159. MODIFICATION OR SETTING ASIDE OF ORDER. On
2 the notice and in the manner the department determines proper, the
3 department may modify or set aside wholly or partly a cease and
4 desist order issued under Section 562.158 at any time before a
5 petition appealing the order is filed in accordance with Subchapter
6 D, Chapter 36.

7 Sec. 562.160. ADMINISTRATIVE PENALTY FOR VIOLATION OF CEASE
8 AND DESIST ORDER. (a) A person who violates a cease and desist
9 order issued under Section 562.158 is subject to an administrative
10 penalty under Chapter 84.

11 (b) In determining whether a person has violated a cease and
12 desist order, the department shall consider the maintenance of
13 procedures reasonably adapted to ensure compliance with the order.

14 (c) An administrative penalty imposed under this section
15 may not exceed:

16 (1) \$1,000 for each violation; or

17 (2) \$5,000 for all violations.

18 (d) An order of the department imposing an administrative
19 penalty under this section applies only to a violation of the cease
20 and desist order committed before the date the order imposing the
21 penalty is issued.

22 Sec. 562.161. CIVIL PENALTY FOR VIOLATION OF CEASE AND
23 DESIST ORDER. (a) A person who is found by a court to have violated
24 a cease and desist order issued under Section 562.158 is liable to
25 the state for a penalty. The state may recover the penalty in a
26 civil action.

27 (b) The penalty may not exceed \$50 unless the court finds

1 the violation to be wilful, in which case the penalty may not exceed
2 \$500.

3 [Sections 562.162-562.200 reserved for expansion]

4 SUBCHAPTER E. ENFORCEMENT BY ATTORNEY GENERAL

5 Sec. 562.201. INJUNCTIVE RELIEF. (a) The attorney general
6 may bring an action under this section if the attorney general has
7 reason to believe that:

8 (1) a person engaged in the business of discount
9 health care programs in this state is engaging in, has engaged in,
10 or is about to engage in an act or practice defined as unlawful
11 under:

12 (A) this chapter; or

13 (B) Section 17.46, Business & Commerce Code; and

14 (2) the action is in the public interest.

15 (b) The attorney general may bring the action in the name of
16 the state to restrain by temporary or permanent injunction the
17 person's use of the method, act, or practice.

18 Sec. 562.202. VENUE FOR INJUNCTIVE ACTION. An action for an
19 injunction under this subchapter may be commenced in a district
20 court in:

21 (1) the county in which the person against whom the
22 action is brought:

23 (A) resides;

24 (B) has the person's principal place of business;

25 or

26 (C) is engaging in business;

27 (2) the county in which the transaction or a

1 substantial portion of the transaction occurred; or

2 (3) Travis County.

3 Sec. 562.203. ISSUANCE OF INJUNCTION. (a) The court may
4 issue an appropriate temporary or permanent injunction.

5 (b) The court shall issue the injunction without bond.

6 Sec. 562.204. CIVIL PENALTY. In addition to requesting a
7 temporary or permanent injunction under Section 562.201, the
8 attorney general may request a civil penalty of not more than
9 \$20,000 for each violation on a finding by the court that the
10 defendant has engaged in or is engaging in an act or practice
11 defined as unlawful under this chapter or Section 17.46, Business &
12 Commerce Code.

13 Sec. 562.205. COMPENSATION OR RESTORATION. The court may
14 make an additional order or judgment as necessary to compensate an
15 identifiable person for actual damages or for restoration of money
16 or property that may have been acquired by means of an enjoined act
17 or practice.

18 Sec. 562.206. CIVIL PENALTY FOR VIOLATION OF INJUNCTION.

19 (a) A person who violates an injunction issued under this
20 subchapter is liable for and shall pay to the state a civil penalty
21 of not more than \$10,000 for each violation.

22 (b) The attorney general may, in the name of the state,
23 petition the court for recovery of the civil penalty against the
24 person who violates the injunction.

25 (c) The court shall consider the maintenance of procedures
26 reasonably adapted to ensure compliance with the injunction in
27 determining whether a person has violated an injunction.

1 (d) The court issuing the injunction retains jurisdiction
2 and the cause is continued for the purpose of assessing a civil
3 penalty under this section.

4 Sec. 562.207. REMEDIES NOT EXCLUSIVE. The remedies
5 provided by this subchapter:

6 (1) are not exclusive; and

7 (2) are in addition to any other remedy or procedure
8 provided by another law or at common law.

9 [Sections 562.208-562.250 reserved for expansion]

10 SUBCHAPTER F. ASSURANCE OF VOLUNTARY COMPLIANCE

11 Sec. 562.251. ACCEPTANCE OF ASSURANCE. (a) In
12 administering this chapter, the department may accept assurance of
13 voluntary compliance from a person who is engaging in, has engaged
14 in, or is about to engage in an act or practice in violation of this
15 chapter or Section 17.46, Business & Commerce Code.

16 (b) The assurance must be in writing and be filed with the
17 department.

18 (c) The department may condition acceptance of an assurance
19 of voluntary compliance on the stipulation that the person offering
20 the assurance restore to a person in interest money that may have
21 been acquired by the act or practice described in Subsection (a).

22 Sec. 562.252. EFFECT OF ASSURANCE. (a) An assurance of
23 voluntary compliance is not an admission of a prior violation of
24 this chapter or Section 17.46, Business & Commerce Code.

25 (b) Unless an assurance of voluntary compliance is
26 rescinded by agreement, a subsequent failure to comply with the
27 assurance is prima facie evidence of a violation of this chapter or

1 Section 17.46, Business & Commerce Code.

2 Sec. 562.253. REOPENING. A matter closed by the filing of
3 an assurance of voluntary compliance may be reopened at any time.

4 [Sections 562.254-562.300 reserved for expansion]

5 SUBCHAPTER G. CONSTRUCTION OF CHAPTER WITH OTHER LAWS

6 Sec. 562.301. LIABILITY UNDER OTHER LAW. An order of the
7 department under this chapter, or an order by a court to enforce
8 that order, does not relieve or absolve a person affected by either
9 order from liability under another law of this state.

10 Sec. 562.302. POWERS IN ADDITION TO OTHER POWERS AUTHORIZED
11 BY LAW. The powers vested in the department and the commissioner by
12 this chapter are in addition to any other powers to enforce a
13 penalty, fine, or forfeiture authorized by law with respect to a
14 method of competition or act or practice defined as unfair or
15 deceptive.

16 Sec. 562.303. DOUBLE RECOVERY PROHIBITED. A person may not
17 recover damages and penalties for the same act or practice under
18 both this chapter and another law.

19 SECTION 2. The Insurance Code is amended by adding Title 21
20 to read as follows:

21 TITLE 21. DISCOUNT HEALTH CARE PROGRAMS

22 CHAPTER 7001. REGISTRATION OF DISCOUNT HEALTH CARE

23 PROGRAM OPERATORS

24 Sec. 7001.001. DEFINITIONS. In this chapter:

25 (1) "Discount health care program" means a business
26 arrangement or contract in which an entity, in exchange for fees,
27 dues, charges, or other consideration, offers its members access to

1 discounts on health care services provided by health care
2 providers. The term does not include an insurance policy,
3 certificate of coverage, or other product otherwise regulated by
4 the department or a self-funded or self-insured employee benefit
5 plan.

6 (2) "Discount health care program operator" means a
7 person who, in exchange for fees, dues, charges, or other
8 consideration, operates a discount health care program and
9 contracts with providers, provider networks, or other discount
10 health care program operators to offer access to health care
11 services at a discount and determines the charge to members.

12 (3) "Health care services" includes physician care,
13 inpatient care, hospital surgical services, emergency services,
14 ambulance services, laboratory services, audiology services,
15 dental services, vision services, mental health services,
16 substance abuse services, chiropractic services, and podiatry
17 services, and the provision of medical equipment and supplies,
18 including prescription drugs.

19 (4) "Marketer" means a person who sells or
20 distributes, or offers to sell or distribute, a discount health
21 care program, including a private label entity that places its name
22 on and markets or distributes a discount health care program, but
23 does not operate a discount health care program.

24 (5) "Member" means a person who pays fees, dues,
25 charges, or other consideration for the right to participate in a
26 discount health care program.

27 (6) "Program operator" means a discount health plan

1 program operator.

2 (7) "Provider" means a person who is licensed or
3 otherwise authorized to provide health care services in this state.

4 Sec. 7001.002. EXEMPTION. This chapter does not apply to a
5 program operator who is an insurer and who holds a certificate of
6 authority under Title 6.

7 Sec. 7001.003. RULES. The commissioner shall adopt rules
8 in the manner prescribed by Subchapter A, Chapter 36, as necessary
9 to implement this chapter.

10 Sec. 7001.004. REGISTRATION REQUIRED. A discount health
11 care program operator may not offer a discount health care program
12 in this state unless the program operator is registered with the
13 department.

14 Sec. 7001.005. APPLICATION FOR REGISTRATION AND RENEWAL OF
15 REGISTRATION. (a) An applicant for registration under this
16 chapter or an applicant for renewal of registration under this
17 chapter whose information has changed shall submit:

18 (1) a completed registration application on the form
19 prescribed by the department indicating the program operator's
20 name, physical address, and mailing address and its agent for
21 service of process;

22 (2) a list of names, addresses, official positions,
23 and biographical information of:

24 (A) the individuals responsible for conducting
25 the program operator's affairs, including:

26 (i) each member of the board of directors,
27 board of trustees, executive committee, or other governing board or

1 committee;

2 (ii) the officers of the program operator;

3 and

4 (iii) any contracted management company
5 personnel; and

6 (B) any person owning or having the right to
7 acquire 10 percent or more of the voting securities of the program
8 operator;

9 (3) a statement generally describing the applicant,
10 its facilities and personnel, and the health care services or
11 products for which a discount will be made available under its
12 discount health care programs;

13 (4) a list of the marketers authorized to sell or
14 distribute the program operator's programs under the program
15 operator's name, a list of the marketing entities authorized to
16 private label the program operator's programs, and other
17 information about the marketers and marketing entities considered
18 necessary by the commissioner; and

19 (5) a copy of the form of all contracts made or to be
20 made between the program operator and any providers or provider
21 networks regarding the provision of health care services or
22 products to members.

23 (b) After the initial registration, if the form of a
24 contract described by Subsection (a)(5) changes, the program
25 operator must file the modified contract form with the department
26 before it may be used.

27 (c) As part of the registration required under Subsection

1 (a), and annually thereafter, the program operator shall certify in
2 writing to the department that its programs comply with the
3 requirements of this chapter and Chapter 562.

4 Sec. 7001.006. FEES. A discount health care program
5 operator shall pay the department an initial registration fee of
6 \$1,000 and an annual renewal fee in the amount set by the
7 commissioner not to exceed \$500.

8 Sec. 7001.007. DEPOSIT IN OPERATING ACCOUNT. All fees
9 collected by the department under this chapter shall be deposited
10 to the credit of the Texas Department of Insurance operating
11 account.

12 Sec. 7001.008. CRIMINAL BACKGROUND CHECK. The department
13 may conduct a criminal background check on:

14 (1) the individuals responsible for conducting the
15 program operator's affairs;

16 (2) each member of the board of directors, board of
17 trustees, executive committee, or other governing board or
18 committee;

19 (3) the officers of the program operator;

20 (4) any contracted management company personnel; and

21 (5) any person owning or having the right to acquire 10
22 percent or more of the voting securities of the program operator.

23 Sec. 7001.009. ENFORCEMENT. (a) The department may deny a
24 registration application or take any action authorized under
25 Chapters 82, 83, and 84 if the department determines that the
26 applicant or registered discount health care program operator,
27 individually or through an officer, director, or shareholder:

1 (1) has wilfully violated a provision of this code or
2 an order or rule of the commissioner;

3 (2) has intentionally made a material misstatement in
4 the registration application;

5 (3) has obtained or attempted to obtain a registration
6 by fraud or misrepresentation;

7 (4) has misappropriated, converted to the applicant's
8 or registration holder's own use, or illegally withheld money
9 belonging to a member of a discount health care program;

10 (5) has engaged in fraudulent or dishonest acts or
11 practices; or

12 (6) has been convicted of a felony.

13 (b) Chapter 2001, Government Code, applies to an action
14 taken under this section.

15 SECTION 3. Chapter 76, Health and Safety Code, is repealed.

16 SECTION 4. Not later than January 1, 2010, the commissioner
17 of insurance shall adopt the rules and procedures necessary to
18 implement Chapter 7001, Insurance Code, as added by this Act.

19 SECTION 5. (a) Notwithstanding Section 7001.004,
20 Insurance Code, as added by this Act, a person is not required to
21 register under that section before April 1, 2010, except as
22 provided by Subsection (b) of this section.

23 (b) A program operator that is registered with the Texas
24 Department of Licensing and Regulation on January 1, 2010, as
25 required by Chapter 76, Health and Safety Code, shall file an
26 application for renewal of registration with the Texas Department
27 of Insurance under Chapter 7001, Insurance Code, not later than

1 April 1, 2010.

2 SECTION 6. (a) Except as provided by Subsections (b) and
3 (c) of this section, this Act takes effect September 1, 2009.

4 (b) Section 3 of this Act takes effect April 1, 2010.

5 (c) Subchapter E, Chapter 562, Insurance Code, as added by
6 this Act, takes effect April 1, 2010.

President of the Senate

Speaker of the House

I certify that H.B. No. 4341 was passed by the House on May 6, 2009, by the following vote: Yeas 143, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 4341 on May 23, 2009, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 4341 was passed by the Senate, with amendments, on May 19, 2009, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor