

BILL ANALYSIS

Senate Research Center

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Discount health care programs are non-insurance programs that offer consumers direct access to health care products and services at discounted rates. Discount health care programs are offered by discount health care companies directly to consumers, insurance companies to subscribers, banks to customers, and non-profit organizations to members. The Consumer Health Alliance, the national trade association of discount health care companies, states that its companies serve 45 million consumers across the country, including more than three million in Texas. Discount health care programs began operating 15-20 years ago, primarily to offer access at discounted rates to those ancillary health care services not typically covered by insurance plans. These services often included dental, pharmacy, vision, chiropractic, and hearing.

In recent years, the skyrocketing cost of health care has made traditional health insurance increasingly unaffordable. This instability in the market has created an opportunity for some bad actors to exploit unwitting consumers through health care schemes that promise a lot and deliver little or nothing.

As a result, beginning in 1999, states began to enact laws regulating discount health care programs. These laws, which have now been enacted by more than half of the states, have taken several forms. At the minimum, some states have adopted simple operating rules requiring programs to make clear that they are not insurance, that the providers listed as part of the program are actually under contract to provide the discount, and that the program's advertising is not deceptive, fraudulent or misleading. Other states have adopted additional operating rules, including those covering cancellation, customer service, and marketing. Finally, a number of states have enacted a licensing or registration process for companies operating in their state. Many of those states have entrusted their department of insurance with oversight of the licensing and registration of those companies. In those states that have enacted some form of registration, having a registration process in itself has helped to reduce the number of fraudulent companies taking advantage of consumers.

Texas strives to have effective laws to regulate discount health care programs. The 80th Legislature enacted H.B. 3064 to regulate discount health care programs at the Texas Department of Licensing and Regulation. Since that time, it has become evident that the most appropriate regulatory body for these programs is the Texas Department of Insurance.

As proposed, S.B. 2339 amends current law relating to the regulation of discount health care programs by the Texas Department of Insurance and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 7001.003, Insurance Code) and SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Insurance Code by adding Title 21, as follows:

TITLE 21. DISCOUNT HEALTH CARE PROGRAMS

CHAPTER 7001. REGISTRATION AND REGULATION OF

DISCOUNT HEALTH CARE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7001.001. DEFINITIONS. Defines "discount health care program," "discount health care program operator," "health care services," "marketer," "member," "program operator," and "provider," in this chapter.

Sec. 7001.002. APPLICABILITY OF OTHER LAW. Provides that a program operator or marketer is subject to the applicable consumer protection laws under Chapter 17 (Deceptive Trade Practices), Business & Commerce Code, in addition to the requirements of this chapter.

Sec. 7001.003. RULES. Requires the commissioner of insurance (commissioner) to adopt the rules necessary to implement this chapter.

[Reserves Sections 7001.004-7001.050 for expansion.]

SUBCHAPTER B. PROGRAM REQUIREMENTS

Sec. 7001.051. PROGRAM OPERATOR. Requires a program operator, including the operator of a freestanding discount health care program or a discount health care program marketed by an insurer or a health maintenance organization, except as otherwise provided by this chapter, to comply with this chapter.

Sec. 7001.052. PROHIBITED ADVERTISEMENT, SOLICITATION, AND MARKETING. (a) Prohibits advertisements, solicitations, or marketing materials of a discount health care program from containing false, misleading, or deceptive statements, including statements that misrepresent the price range of discounts offered by the discount health care program, misrepresent the size or location of the program's network of providers, knowingly misrepresent the participation of a provider in the program's network, or suggest that a discount card offered through the program is a federally approved Medicare prescription discount card.

(b) Requires that each advertisement, solicitation, or marketing material of a discount health care program clearly and conspicuously state that the discount health care program is not insurance.

(c) Prohibits advertisements, solicitations, or marketing materials of a discount health care program from using the term "insurance," except as a disclaimer of any relationship between the discount health care program and insurance, or as a description of an insurance product connected with a discount health care program.

(d) Prohibits advertisements, solicitations, or marketing materials of a discount health care program from using the term "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," or "preferred provider organization," or another similar term, in a manner that could reasonably mislead an individual into believing that the discount health care program is health insurance or provides similar coverage.

(e) Prohibits advertisements, solicitations, or marketing materials of a discount health care program from using the term "free," "no obligation," "discounted," or "reduced," or another similar term, without disclosing clearly and conspicuously, and in close proximity to the use of the term, any and all conditions, limitations, and restrictions on the ability of the member or prospective member to obtain or use the good or service to which the term applies.

(f) Prohibits a program operator from offering a "free" trial membership in a discount health care program without disclosing clearly and conspicuously, and in close proximity to the offer, certain provisions.

Sec. 7001.053. DISCLOSURE MATERIALS REQUIRED. (a) Requires a program operator, before enrollment or with the written materials describing the terms and conditions of the program that are provided not later than the 15th day after the date of enrollment, to provide each prospective or new member disclosure materials containing information, including a general description of the services and products offered through the discount health care program and the types of providers available; a toll-free telephone number and an Internet website address through which a person may obtain information about the discount health care program and confirm or find a provider currently participating in that program; a clear and conspicuous statement that the discount health care program is not insurance, with the word "not" capitalized and the member is required to pay the entire amount of the discounted rate; a statement that a member who cancels the membership not later than the 30th day after the date the member joins the discount health care program is entitled to a refund of all periodic membership charges paid to the discount health care program and the amount of any one-time enrollment fee that exceeds \$50; a statement that the discount health care program does not guarantee the quality of the services or products offered by individual providers; a statement that a member may file a complaint under the discount health care program's complaint resolution procedure regarding the availability of contracted discounts or services or other matters relating to the contractual obligations of the program to its members; and information that, if the member remains dissatisfied after completing the discount health care program's complaint system, the member may contact the Texas Department of Insurance (TDI).

(b) Requires a marketer to use disclosure materials that comply with Subsection (a).

Sec. 7001.054. PROGRAM OPERATOR DUTIES. Requires a program operator to provide a toll-free telephone number and Internet website for members to obtain information about the discount health care program and confirm or find providers currently participating in the program; remove a provider from the discount health care program not later than the 30th day after the date the operator learns that the provider has lost the authority to provide services or products, including the suspension or revocation of the provider's license; issue at least one membership card to serve as proof of membership in the discount health care program that must contain a clear and conspicuous statement that the discount health care program is not insurance and if the discount health care program includes discount prescription drug benefits, include the name or logo of the entity administering the prescription drug benefits, the international identification number assigned by the American National Standards Institute for the entity administering the prescription drug benefits, the group number applicable to the member, and a telephone number to be used to contact an appropriate person to obtain information relating to the prescription drug benefits provided under the program; issue at least one set of disclosure materials to each household in which a person is a member; ensure that an application form or other membership agreement clearly and conspicuously discloses the duration of membership and the amount of payments the member is obligated to make for the membership and contains a clear and conspicuous statement that the discount health care program is not insurance; allow any member who cancels a membership in the discount health care program not later than the 30th day after the date the person becomes a member to receive a refund, not later than the 30th day after the date the operator receives a valid cancellation notice and returned membership card, of all periodic membership charges paid by that member to the program operator and the amount of any one-time enrollment fee that exceeds \$50; maintain a surety bond, payable to TDI for the use and benefit of members in a manner prescribed by TDI, in the principal amount of \$50,000, except that a program operator that is an insurer that holds a certificate of authority under Title 6 is not required to maintain the surety bond; maintain an agent for service of process in this state; and establish and operate a fair and efficient procedure for resolution of complaints regarding the availability of contracted discounts or services or other matters relating to the contractual obligations of the discount health care program to its members.

Sec. 7001.055. **MARKETING OF PROGRAM.** (a) Authorizes a program operator to market directly or contract with marketers for the distribution of the operator's discount health care programs.

(b) Requires a program operator to enter into a written contract with a marketer before the marketer begins marketing, promoting, selling, or distributing the program operator's discount health care program. Requires that the contract prohibit the marketer from using advertising, solicitations, or other marketing materials, or discount cards that have not been approved in advance and in writing by the program operator.

(c) Requires a program operator to approve in writing all advertisements, solicitations, or other marketing materials, and discount cards used by marketers to market, promote, sell, or distribute the discount health care program before their use.

Sec. 7001.056. **CONTRACT REQUIREMENTS.** (a) Requires a program operator to contract, directly or indirectly, with a provider offering discounted health care services or products under the discount health care program. Requires that the written contract contain all of the following provisions: a description of the discounts to be provided to a member; a provision prohibiting the provider from charging a member more than the discounted rate agreed to in the written agreement with the provider; and a provision requiring the provider to promptly notify the program operator if the provider loses the authority to provide services or products, including by suspension or revocation of the provider's license.

(b) Prohibits the program operator from charging or receiving from a provider any fee or other compensation for entering into the agreement.

(c) Requires the program operator, if the program operator contracts with a network of providers, to obtain written assurance from the network that the network has a written agreement with each network provider that includes a discounted rate that is applicable to a program operator's discount health care program, contains all of the terms described in Subsection (a), and the network is authorized to obligate the network providers to provide services to members of the discount health care program.

(d) Requires the program operator to require the network to maintain and provide the program operator on a monthly basis an up-to-date list of providers in the network and promptly remove a provider from its network if the provider loses the authority to provide services or products.

(e) Requires the program operator to maintain a copy of each written agreement the program operator has with a provider or a network for at least two years following termination of the agreement.

[Reserves Sections 7001.057-7001.100 for expansion.]

SUBCHAPTER C. REGISTRATION

Sec. 7001.101. **REGISTRATION REQUIRED; FEES.** (a) Prohibits a program operator from offering a discount health care program in this state unless the operator is registered with TDI.

(b) Requires an applicant for registration under this chapter or an applicant for renewal of registration under this chapter whose information has changed to submit:

(1) a registration form indicating the program operator's name, physical address, mailing address, and its agent for service of process;

(2) a list of names, addresses, official positions, and biographical information of the individuals responsible for conducting the program operator's affairs including each member of the board of directors, board of trustees, executive committee, or other governing board or committee; the officers of the program operator, any contracted management company personnel, and any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator;

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

(4) a list of the marketers authorized to sell or distribute the program operator's programs under the program operator's name and a list of the marketing entities authorized to private label the program operator's programs; and

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

(c) Requires the program operator, after the initial registration, if the form of a contract described by Subsection (b)(5) changes, to file the modified contract form with TDI before it may be used.

(d) Requires the program operator, as part of the registration required under Subsection (b), and annually thereafter, to certify to TDI that its programs comply with the requirements of this chapter.

(e) Requires a discount health care program operator to pay TDI an initial registration fee of \$1,000 and an annual renewal fee not to exceed \$500.

(f) Authorizes TDI to conduct a criminal background check on the individuals responsible for conducting the program operator's affairs, each member of the board of directors, board of trustees, executive committee, or other governing board or committee, the officers of the program operator, any contracted management company personnel, and any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator.

(g) Provides that this section does not apply to a program operator that is an insurer that holds a certificate of authority under Title 6.

[Reserves Sections 7001.102-7001.150 for expansion.]

SUBCHAPTER D. ENFORCEMENT

Sec. 7001.151. INVESTIGATION. Requires a program operator or marketer, if the commissioner reasonably believes that the program operator or marketer is not operating in compliance with this chapter, to submit to the commissioner any advertising, solicitations, marketing materials, disclosure materials, discount cards, agreements, or other documents requested by the commissioner.

Sec. 7001.152. CIVIL PENALTY. (a) Authorizes the attorney general to bring an action for a civil penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) Prohibits a civil penalty assessed under this section from being less than \$2,500 for each violation.

(c) Provides that a civil penalty authorized by this section is in addition to any other civil, administrative, or criminal action provided by law.

Sec. 7001.152. CRIMINAL PENALTIES. (a) Provides that a person who willfully operates as, or aids and abets another operating as, a discount health care program operator in violation of Section 7001.101 commits insurance fraud and is subject to Chapter 35 (Insurance Fraud), Penal Code, as if the unregistered discount health care program operator were an unauthorized insurer, and the fees, dues, charges, or other consideration collected from the members by the unregistered discount health care program operator or marketer were insurance premiums.

(b) Provides that a person that collects fees for purported membership in a discount health care program, but purposefully fails to provide the promised benefits commits an offense of theft and is subject to Chapter 31 (Theft), Penal Code. Requires the court on conviction, to order the person to pay restitution to persons aggrieved by the violation of this chapter. Provides that the restitution is in addition to a fine or imprisonment.

Sec. 7001.153. INJUNCTIONS. (a) Authorizes the commissioner, in addition to the penalties and other enforcement provisions of this chapter, to seek both temporary and permanent injunctive relief if a discount health care program is being operated by a person or entity that is not registered under this chapter, or a person, entity, or program operator has engaged in any activity prohibited by this chapter or a rule adopted under this chapter.

(b) Requires that an action for injunctive relief be brought in a Travis County district court.

(b) Provides that the commissioner's authority to seek injunctive relief is not conditioned on having conducted any proceeding required under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 2. Repealer: Chapter 76 (Discount Health Care Programs), Health & Safety Code.

SECTION 3. Requires the commissioner, not later than January 1, 2010, to adopt the rules and procedures necessary to implement Chapter 7001, Insurance Code, as added by this Act.

SECTION 4. (a) Provides that, notwithstanding Section 7001.101, Insurance Code, as added by this Act, a person is not required to register under that section before April 1, 2010, except as provided by Subsection (b).

(b) Requires a program operator that is registered with the Department of Licensing and Regulation on January 1, 2010, as required by Chapter 76, Health and Safety Code, to file an application for renewal of registration with TDI under Chapter 7001, Insurance Code, not later than April 1, 2010.

SECTION 5. (a) Effective date, except as provided by Subsections (b) and (c): September 1, 2009.

(b) Effective date, Section 2 of this Act: April 1, 2010.

(c) Effective date, Subchapter D, Chapter 7001, Insurance Code: April 1, 2010.