

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1142  
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Business & Commerce  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1142 aims to regulate discount drug card programs. This bill fixes three problems: (1) ensures that these cards are not misrepresented as health insurance, (2) requires that contracts with pharmacies concerning these programs are independently negotiated and not a condition of any other services, and (3) prohibits health care providers from receiving consideration in exchange for encouraging people from using these cards.

As proposed, S.B. 1142 amends current law relating to regulation of discount drug card program operators, authorizes administrative and civil penalties, authorizes fees, and expands a registration requirement.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Chapter 562, Insurance Code, to read as follows:

#### **CHAPTER 562. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES REGARDING DISCOUNT PROGRAMS**

SECTION 2. Amends Section 562.001, Insurance Code, as follows:

Sec. 562.001. **PURPOSE.** Provides that the purpose of this chapter is to regulate trade practices in the business of discount health care programs and discount drug card programs by defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices and prohibiting those unfair or deceptive trade practices.

SECTION 3. Amends Section 562.002, Insurance Code, by amending Subdivisions (5) and (8) and adding Subdivision (1-a), as follows:

(1-a) Defines "discount drug card program" and "discount drug card program operator."

(5) Redefines "marketer."

(8) Redefines "program operator."

SECTION 4. Amends Section 562.004, Insurance Code, as follows:

Sec. 562.004. **APPLICABILITY.** Requires a program operator, including the operator of a freestanding discount health care program, a freestanding discount drug card program, or a discount health care program or discount drug card program marketed by an insurer or a health maintenance organization, to comply with this chapter, except as otherwise provided by this chapter.

SECTION 5. Amends Sections 562.051, 562.052, 562.053, and 562.054, Insurance Code, as follows:

Sec. 562.051. New heading: MISREPRESENTATION REGARDING DISCOUNT PROGRAMS. Provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs or discount drug card programs to:

- (1) misrepresent the price range of discounts offered by the program, rather than the discount health care program;
- (2) misrepresent the size or location of the program's network of providers, if any;
- (3) misrepresent the participation of a provider in the program's network, if any;
- (4) makes no change to this subdivision;
- (5) use the term "insurance," except as a disclaimer of any relationship between the program, rather than the discount health care program, and insurance; or a description of an insurance product connected with a discount health care program or discount drug card program; or
- (6) use 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 program, rather than discount health care program, is health insurance or provides coverage similar to health insurance.

Sec. 562.052. FALSE INFORMATION AND ADVERTISING. Provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs or discount drug card programs to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, solicitation, or marketing material containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the program, rather than discount health care program.

Sec. 562.053. FAILURE TO REGISTER OR RENEW REGISTRATION; FALSE REGISTRATION OR RENEWAL STATEMENT. (a) Provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs or discount drug card programs to:

- (1) fail to register or renew registration as required under Chapter 7001 (Registration of Discount Program Operators); or
- (2) with intent to deceive file with the Texas Department of Insurance (TDI) a false statement in connection with an application for registration as a program operator under Chapter 7001; or file with TDI a false statement in connection with an application for renewal of a registration as a program operator under Chapter 7001.

(b) Authorizes the commissioner of insurance (commissioner) to impose on a person operating a discount health care program or discount drug card program for the person's failure to register or renew registration as required under Chapter 7001 any remedy that the commissioner is authorized to impose under Chapter 101 (Unauthorized Insurance) for the unauthorized business of insurance.

Sec. 562.054. New heading: MISREPRESENTATION OF DISCOUNT PROGRAMS. Provides that it is an unfair method of competition or an unfair or deceptive act or

practice in the business of discount health care programs or discount drug card programs to misrepresent a discount health care program or a discount drug card program by:

(1)-(5) Makes no changes to these subdivisions.

SECTION 6. Amends Sections 562.101, 562.102, 562.103, and 562.104, Insurance Code, as follows:

Sec. 562.101. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES PROHIBITED. Prohibits a person from engaging in this state in a trade practice that is defined in this chapter as or determined under this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs or discount drug card programs.

Sec. 562.102. New heading: PROHIBITED CONTENT OF CERTAIN DISCOUNT PROGRAM ADVERTISING, SOLICITATION, OR MARKETING. Provides that, notwithstanding any other provision of this code, it is unlawful for a program operator or marketer to advertise, solicit, or market a discount health care program or discount drug card program containing the words "approved by the Texas Department of Insurance" or words with a similar meaning.

Sec. 562.103. PROGRAM OPERATOR DUTIES. (a) Requires a program operator to:

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

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

(b) Requires that a discount health care program operator issue at least one membership card to serve as proof of membership in the discount health care program that must:

(1) and (2) Makes no changes to these subdivisions.

(b-1) Requires that a discount drug card issued by a discount drug card program operator to contain a clear and conspicuous statement that the discount drug card program is not insurance and does not guarantee the quality of the services or products offered by individual providers, and if an individual remains dissatisfied after completing the discount drug card program's complaint system, the cardholder may contact the cardholder's state insurance department.

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

(1)-(4) Makes no changes to these subdivisions.

(d) Requires a discount health care program operator to ensure that an application form or other membership agreement:

(1) and (2) Makes no changes to these subdivisions.

(e) Requires a discount health care program operator to 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 program 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.

(f) Requires a program operator to:

- (1) maintain a surety bond, payable to TDI for the use and benefit of members or cardholders 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;
- (2) maintain an agent for service of process in this state; and
- (3) 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 or duties of the discount drug card program to cardholders in the discount drug card program.

Sec. 562.104. **MARKETING OF PROGRAM.** (a) Authorizes a program operator to market directly or contract with marketers for the distribution of the program operator's discount health care programs or discount drug card 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 program, rather than the program operator's discount health care program.

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

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

**SECTION 7.** Requires Sections 562.105(a), (b), and (c), Insurance Code, as follows:

(a) Requires a program operator to contract, directly or indirectly, with a provider offering discounted health care services, drugs, or other products under the discount health care program or discount drug card program. Requires that the written contract contain all of the following provisions:

- (1) a description of the discounts to be provided under the program, rather than to a member;
- (2) a provision prohibiting the provider from charging under the program, rather than charging a member, more than the discounted rate agreed to in the written agreement with the provider; and
- (3) a provision requiring the provider to promptly notify the program operator if the provider no longer participates in the program or loses the authority to provide services, drugs, or other products.

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

discount drug card program operator may only charge or receive from a provider the fee established by the commissioner under Section 7001.051.

(c) Requires the program operator to obtain written assurance from the network, if the program operator contracts with a network of providers, that:

(1) the network has a written agreement with each network provider that includes a discounted rate that is applicable to a program operator's program, rather than discount health care program, and contains all of the terms described in Subsection (a); and

(2) the network is authorized to obligate the network providers to provide services, drugs, or other products to members of the discount health care program or cardholders under the discount drug card program, as applicable.

SECTION 8. Amends Section 562.151, Insurance Code, as follows:

Sec. 562.151. EXAMINATION AND INVESTIGATION. Authorizes TDI to examine and investigate the affairs of a person engaged in the business of discount health care programs or discount drug card programs in this state to determine whether the person:

(1) and (2) Makes no changes to these subdivisions.

SECTION 9. Amends Section 562.152(a), Insurance Code, as follows:

(a) Requires TDI, when TDI has reason to believe that a person engaged in the business of discount health care programs or discount drug card programs in this state has engaged or is engaging in this state in an unfair method of competition or unfair or deceptive act or practice defined by Subchapter B (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined) or has violated Subchapter B or C (Regulation of Practices) and that a proceeding by TDI regarding the charges is in the interest of the public, to issue and serve on the person a statement of the charges, and a notice of the hearing on the charges, including the time and place for the hearing.

SECTION 10. Amends Section 562.201(a), Insurance Code, as follows:

(a) Authorizes the attorney general of the state of Texas (attorney general) to bring an action under this section if the attorney general has reason to believe that:

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

(A)-(B) Makes no changes to these subdivisions.

(2) Makes no change to this subdivision.

SECTION 11. Amends Subchapter D, Chapter 4151, Insurance Code, by adding Section 4151.154, as follows:

Sec. 4151.154. DISCOUNT DRUG CARD PROGRAMS. Prohibits a pharmacy benefit manager from requiring a pharmacist or pharmacy to accept or process a claim under a discount drug card program as defined by Section 7001.001 (Definitions) unless the pharmacist or pharmacy agrees in writing to accept or process the claim; participate in a specified provider network as a condition of processing a claim under a discount drug card program; or participate in, or process claims under, a discount drug card program as a condition of participation in a provider network.

SECTION 12. Amends the heading to Title 21, Insurance Code, to read as follows:

## TITLE 21. DISCOUNT PROGRAMS

SECTION 13. Amends the heading to Chapter 7001, Insurance Code, to read as follows:

### CHAPTER 7001. REGISTRATION OF DISCOUNT PROGRAM OPERATORS

SECTION 14. Amends Chapter 7001, Insurance Code, by designating Sections 7001.001 through 7001.009 as Subchapter A and adding a subchapter heading to read as follows:

#### SUBCHAPTER A. GENERAL PROVISIONS; REGISTRATION

SECTION 15. Amends Section 7001.001, Insurance Code, by amending Subdivisions (1) and (6) and adding Subdivisions (1-a) and (1-b), as follows:

(1) Defines "discount drug card program."

(1-a) Defines "discount drug card program operator."

(1-b) Creates this subdivision from existing text defining "discount health care program."

(6) Redefines "program operator."

SECTION 16. Amends Section 7001.004, Insurance Code, as follows:

Sec. 7001.004. REGISTRATION REQUIRED. Prohibits a program operator, rather than a discount health care program operator, from offering a discount health care program or a discount drug card program in this state unless the program operator is registered with TDI.

SECTION 17. Amends Section 7001.005(a), Insurance Code, as follows:

(a) 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) and (2) Makes no changes to these subdivisions.

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

(4) makes no change to this subdivision;

(5) a copy of the form of all contracts made or to be made between the program operator and any providers, provider networks, or pharmacy benefit managers regarding the provision of health care services or products to members or regarding discount drug cards generally.

SECTION 18. Amends Section 7001.006, Insurance Code, as follows:

Sec. 7001.006. FEES. Requires a program operator, rather than a discount health care program operator, to pay TDI an initial registration fee of \$1,000 and an annual renewal fee in the amount set by the commissioner of insurance (commissioner) not to exceed \$500.

SECTION 19. Amends Section 7001.009(a), Insurance Code, as follows:

(a) Authorizes TDI to deny a registration application or take any action authorized under Chapters 82 (Sanctions), 83 (Emergency Cease and Desist Orders), and 84

(Administrative Penalties), if TDI determines that the applicant or registered program operator, rather than discount health care program operator, individually or through an officer, director, or shareholder:

(1)-(5) Makes no changes to these subdivisions.

SECTION 20. Amends Chapter 7001, Insurance Code, by adding Subchapter B, as follows:

#### SUBCHAPTER B. DISCOUNT DRUG CARD PROGRAMS

Sec. 7001.051. PROGRAM FEES. Requires the commissioner to establish a reasonable fee that a discount drug card program operator is authorized to charge a pharmacist or pharmacy to process a claim under a discount drug card program. Prohibits the fee from being computed as a percentage of the cost of a drug provided.

Sec. 7001.052. NETWORK REQUIREMENTS PROHIBITED. Prohibits a discount drug card program operator or an affiliate or agent of a discount drug card program operator from requiring a pharmacy or pharmacist to participate in a specified provider network as a condition of processing a claim in the discount drug card program, or participate in, or process claims under, a discount drug card program as a condition of participation in a provider network.

Sec. 7001.053. PROHIBITED CONDUCT. (a) Prohibits a discount drug card program operator from paying any consideration to a health care services provider or employee of a health care services provider to encourage an individual to claim a discount under a discount drug card program, or to include discount drug card program information on a prescription for a drug or in materials accompanying the prescription.

(b) Prohibits a discount drug card program operator from, directly or indirectly:

- (1) representing that a discount drug card program is a pharmacy benefit or health insurance or provides coverage similar to health insurance by any manner or method; or
- (2) providing written prescription forms that could reasonably mislead an individual to believe that the discount drug card program is health insurance or provides coverage similar to health insurance.

SECTION 21. (a) Provides that the changes in law made by this Act to Chapter 562, Insurance Code, apply only to conduct that occurs on or after the effective date of this Act. Makes application of this Act prospective.

(b) Provides that Section 562.105, Insurance Code, as amended by this Act, applies only to a contract with a pharmacy or pharmacist signed on or after the effective date of this Act. Makes application of this Act prospective.

(c) Provides that the changes in law made by this Act apply only to a claim submitted under a discount drug card program on or after the effective date of this Act. Makes application of this Act prospective.

(d) Provides that notwithstanding Section 562.053, Insurance Code, or Section 7001.004, Insurance Code, as amended by this Act, a person is not required to register as a discount drug card program operator under Chapter 7001, Insurance Code, as amended by this Act, before January 1, 2016.

SECTION 22. Effective date: September 1, 2015.