

BILL ANALYSIS

C.S.H.B. 4341
By: Truitt
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Discount health care programs are non-insurance programs that offer consumers direct access to health care products and services at discounted rates. According to the Consumer Health Alliance, the national trade association's discount health care companies serve 45 million consumers across the country, including more than three million in Texas.

Discount health care programs began operating between 15 and 20 years ago, primarily to offer access to those ancillary health care services not typically covered by insurance plans at discounted rates. These services often included dental, pharmacy, vision, chiropractic, and hearing. The increasing cost of health care has made traditional health insurance more difficult to afford and led to the emergence of exploitative health care schemes that deliver little or no services.

As a result, states have enacted laws regulating discount health care programs. These laws, which have now been enacted by more than half of the states, range from adopting simple operating rules requiring programs to state clearly that the program is not insurance to enacting a licensing or registration process for companies operating in a state. In those states that have enacted some form of registration, having a registration process has helped to reduce the number of fraudulent companies taking advantage of consumers. Many of those states have entrusted the state's department of insurance with oversight of the licensing and registration of those companies.

The 80th Legislature, Regular Session, 2007, enacted H.B. 3064 to regulate discount health care programs through the Texas Department of Licensing and Regulation. Since that time, it has become evident that the appropriate regulatory body for these programs is the Texas Department of Insurance.

C.S.H.B. 4341 provides the Texas Department of Insurance with the regulatory authority to reduce misleading, deceptive, and fraudulent activity of discount health care companies while allowing well-operated companies to continue to give Texans access to more affordable health care products and services.

C.S.H.B. 4341 regulates trade practices in the business of discount health care programs to prohibit unfair and deceptive trade practices, creates a discount health care program registration with the Texas Department of Insurance, and establishes program requirements, registration procedures, and enforcement procedures.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTIONS 2 and 4 of this bill.

ANALYSIS

C.S.H.B. 4341 amends the Insurance Code to regulate trade practices in the business of discount health care 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 by prohibiting those unfair or deceptive trade practices. The bill requires a discount health 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 to comply with requirements relating to unfair methods of competition and unfair or deceptive acts or practices by discount health care program. The bill establishes venue for a cause of action in which the Texas Department of Insurance (TDI) or the commissioner of insurance is a party and provides for the liberal construction of its provisions.

C.S.H.B. 4341 establishes actions that are to be considered unfair methods of competition or unfair or deceptive acts or practices in the business of discount health care programs relating to knowing misrepresentations regarding the program, suggestions that a program's discount card is a federally approved Medicare prescription discount card, misuse of the term "insurance," false information and advertising, failure to register or renewal registration, a false registration or renew statement, untrue statements of material fact, failing to state a material fact, and misleading statements. The bill prohibits a person from engaging in this state in a trade practice that is defined to be an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs, and prohibits a program operator or marketer from making certain advertisements, solicitations, or marketing. The bill sets forth the required duties of a program operator relating to access to information for program members, removal of nonparticipating providers, issuance of membership cards, issuance of materials describing the terms and conditions of the program, membership application forms or other membership agreements, operator surety, agent for service of process, and complaint resolution procedures. The bill authorizes a program operator to market directly or contracting with marketers for the distribution of the program operator's discount health care programs.

C.S.H.B. 4341 establishes requirements for contracts between a discount health care program and a service provider or a network of providers offering discounted health care services or products under the program. The bill prohibits a program operator from charging a provider for entering into an agreement, requires written assurances from a provider network about participating providers, includes requirements for timely updates of network provider lists, and requires a program operator to maintain written provider agreements for at least two years following termination of the agreement.

C.S.H.B. 4341 authorizes the Texas Department of Insurance (TDI) to examine and investigate the affairs of a person engaged in the business of discount health care programs in this state to make certain determinations. The bill establishes procedures regarding a hearing and statement of charges against a person engaged in the business of discount health care programs TDI has reason to believe has engaged or is engaging in an unfair method of competition or unfair or deceptive act or practice. The bill requires TDI, after a hearing, to determine whether a violation has occurred and, if a violation has occurred, to issue and serve a cease and desist order. The bill establishes procedures for the modification or setting aside of an order and immunity from prosecution. The bill establishes an administrative penalty and a civil penalty for the violation of a cease and desist order. The bill sets the maximum amount of an administrative penalty at \$1,000 for each violation and \$5,000 for all violations. The bill sets the maximum amount of a civil penalty at \$50 unless the court finds the violation to be willful, in which case the maximum amount is set at \$500.

C.S.H.B. 4341 authorizes the attorney general, effective April 1, 2010, to bring an action for injunctive relief if the attorney general has reason to believe that a person engaged in the business of discount health care programs in this state is engaging in, has engaged in, or is about to engage in an act or practice defined as unlawful or the action is in the public interest. The bill

establishes venue for such an action and provides for issuance of a temporary or permanent injunction. The bill authorizes the attorney general to request a civil penalty of not more than \$10,000 for each violation and for each violation of an injunction. The bill establishes procedures for a written assurance of voluntary compliance.

C.S.H.B. 4341 provides for a person's liability under other law, clarifies the powers vested in TDI and the commissioner to enforce a penalty, fine, or forfeiture, and prohibits a person from double recovery of damages and penalties for the same act or practice.

C.S.H.B. 4341 creates a discount health care program operator registration. The bill establishes registration application and renewal requirements. The bill requires an applicant for initial registration or an applicant for renewal registration whose information has changed to file certain information with TDI in order to offer a discount health care program and authorizes the department to conduct criminal background checks on individuals involved in the operation of a discount health care program. The bill requires a discount health care program operator to pay TDI an initial registration fee of \$1,000 and an annual renewal fee set by the commissioner not to exceed \$500.

C.S.H.B. 4341 clarifies that the registration of discount health care program operators does not apply to a program operator who is an insurer and who holds a certificate of authority for an organization of insurers and related entities.

C.S.H.B. 4341 requires the commissioner of insurance to adopt rules and procedures necessary to implement provisions relating to the unfair methods of competition and unfair or deceptive acts or practices not later than January 1, 2010. The bill provides that a person is not required to register as a program operator with the TDI before April 1, 2010, except that a program operator that is registered with the Texas Department of Licensing and Regulation on January 1, 2010, is required to file an application for renewal of registration with TDI not later than April 1, 2010.

C.S.H.B. 4341 defines "discount health care program," "discount health care program operator," "health care services," "knowingly," "marketer," "member," "person," "program operator," and "provider."

C.S.H.B. 4341 repeals Chapter 76, Health and Safety Code, relating to discount health care programs, effective April 1, 2010.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4341 differs from the original by reorganizing provisions regarding the registration and regulation of discount health care programs to reflect the construction of the Insurance Code. The substitute differs from the original by organizing and conforming provisions relating to prohibited advertisement, solicitation, and marketing under a single statutory chapter regulating the unfair methods of competition and unfair or deceptive acts or practices in the business of discount health care programs. The substitute omits provisions included in the original relating to terms prohibited from being used in advertisements, solicitations, or marketing materials and "free" trial membership offers. The substitute includes provisions not in the original relating to false information and advertising, failure to register or renew registration, a false registration or renewal statement, and misrepresentation of discount health care programs. The substitute differs from the original by setting a deadline of not later than the 15th day after the date of enrollment for the issuance by a program operator of disclosure materials about the program. The substitute differs from the original by specifying that the materials must describe the terms and conditions of the discount health care program. The substitute differs from the original by requiring a

contract between a discount health care program operator and a provider of discounted services or products to include a provision requiring the provider to promptly notify the program operator if the provider no longer participates in the program or loses authority to provide services or products, whereas the original included a clarification that the loss of authority could be from suspension or revocation of the provider's license.

C.S.H.B. 4341 differs from the original by including procedures for the determination of unfair methods of competition and unfair or deceptive acts or practices by the department. The substitute includes enforcement and penalty provisions not included in the original relating to cease and desist orders, administrative and civil penalties for violation of a cease and desist order, additional orders by a court for compensation or restoration of money or property, a civil penalty for violation of an injunction, and other available remedies. The substitute differs from the original by authorizing a court to issue an appropriate injunction, whereas the original authorized the commissioner of insurance to seek injunctive relief under certain conditions. The substitute sets the maximum amount of a civil penalty at \$10,000 for each violation relating to engaging in an unlawful act or practice, whereas the original sets the minimum amount of a civil penalty at \$2,500 for a violation of provisions relating to prohibited, advertisement, solicitation, and marketing or a rule adopted under those provisions. The substitute adds provisions not included in the original relating to written assurance of voluntary compliance, liability under other law, powers of the department and commissioner, and double recovery. The substitute omits provisions included in the original creating criminal penalties relating to insurance fraud and theft.

C.S.H.B. 4341 differs from the original by omitting provisions relating to the applicability of certain consumer protection laws. The substitute includes a provision not included in the original to specify that the completed registration application required to be submitted by a discount health care program operator registration applicant is to be submitted on the form prescribed by the department. The substitute differs from the original by clarifying that the amount of an annual discount health care program operator registration renewal fee is in the amount set by the commissioner.