

By: Truitt

H.B. No. 4341

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 562. UNFAIR METHODS OF COMPETITION AND
UNFAIR OR DECEPTIVE ACTS OR PRACTICES REGARDING
DISCOUNT HEALTH CARE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

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

(1) 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

(2) prohibiting those unfair or deceptive trade practices.

Sec. 562.002. DEFINITIONS. In this chapter:

(1) "Discount health care program" means a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, a

1 certificate of coverage, or a self-funded or self-insured employee
2 benefit plan.

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

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

16 (4) "Knowingly" means with actual awareness of the
17 falsity, unfairness, or deceptiveness of the act or practice on
18 which a claim for damages under this chapter is based. Actual
19 awareness may be inferred if any objective manifestations indicate
20 that a person acted with actual awareness.

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

26 (6) "Member" means a person who pays fees, dues,
27 charges, or other consideration for the right to participate in a

discount health care program.

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

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

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

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

Sec. 562.004. APPLICABILITY. Except as otherwise provided by this chapter, 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, shall comply with this chapter.

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

[Sections 562.006-562.050 reserved for expansion]

SUBCHAPTER B. UNFAIR METHODS OF COMPETITION AND

UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED

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

(1) knowingly misrepresent the price range of

1 discounts offered by the discount health care program;

2 (2) knowingly misrepresent the size or location of the
3 program's network of providers;

4 (3) knowingly misrepresent the participation of a
5 provider in the program's network;

6 (4) suggest that a discount card offered through the
7 program is a federally approved Medicare prescription discount
8 card;

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

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

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

14 (6) use the term "health plan," "coverage," "copay,"
15 "copayments," "deductible," "preexisting conditions," "guaranteed
16 issue," "premium," "PPO," or "preferred provider organization," or
17 another similar term, in a manner that could reasonably mislead an
18 individual into believing that the discount health care program is
19 health insurance or provides coverage similar to health insurance.

20 Sec. 562.052. FALSE INFORMATION AND ADVERTISING. (a) It
21 is an unfair method of competition or an unfair or deceptive act or
22 practice in the business of discount health care programs to make,
23 publish, disseminate, circulate, or place before the public or
24 directly or indirectly cause to be made, published, disseminated,
25 circulated, or placed before the public advertisements,
26 solicitations, or marketing materials containing an untrue,
27 deceptive, or misleading assertion, representation, or statement

1 regarding the discount health care program.

2 (b) This section applies to an advertisement, solicitation,
3 or marketing material made, published, disseminated, circulated,
4 or placed before the public:

5 (1) in a newspaper, magazine, or other publication;

6 (2) in a notice, circular, pamphlet, letter, or
7 poster;

8 (3) over a radio or television station;

9 (4) through the Internet; or

10 (5) in any other manner.

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

15 (1) fail to register or renew registration as required
16 under Chapter 7001; or

17 (2) with intent to deceive:

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

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

24 Sec. 562.054. MISREPRESENTATION OF DISCOUNT HEALTH CARE
25 PROGRAMS. It is an unfair method of competition or an unfair or
26 deceptive act or practice in the business of discount health care
27 programs to misrepresent a discount health care program by:

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

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

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

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

8 (5) failing to disclose a matter required by law to be
9 disclosed, including failing to make an applicable disclosure
10 required by this code.

11 [Sections 562.055-562.100 reserved for expansion]

12 SUBCHAPTER C. REGULATION OF PRACTICES

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

19 Sec. 562.102. PROHIBITED CONTENT OF CERTAIN DISCOUNT HEALTH
20 CARE PROGRAM ADVERTISING, SOLICITATION, OR MARKETING.
21 Notwithstanding any other provision of this code, it is unlawful
22 for a program operator or marketer to advertise, solicit, or market
23 a discount health care program containing the words "approved by
24 the Texas Department of Insurance" or words with a similar meaning.

25 Sec. 562.103. PROGRAM OPERATOR DUTIES. (a) A program
26 operator shall:

27 (1) provide a toll-free telephone number and Internet

1 website for members to obtain information about the discount health
2 care program and confirm or find providers currently participating
3 in the program; and

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

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

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

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

15 (A) the name or logo of the entity administering
16 the prescription drug benefits;

17 (B) the international identification number
18 assigned by the American National Standards Institute for the
19 entity administering the prescription drug benefits;

20 (C) the group number applicable to the member;
21 and

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

25 (c) Not later than the 15th day after the date of
26 enrollment, a program operator shall issue at least one set of
27 disclosure materials describing the terms and conditions of the

1 discount health care program to each household in which a person is
2 a member, including a statement that:

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

5 (2) the member is required to pay the entire amount of
6 the discounted rate;

7 (3) the discount health care program does not
8 guarantee the quality of the services or products offered by
9 individual providers; and

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

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

15 (1) clearly and conspicuously discloses the duration
16 of membership and the amount of payments the member is obligated to
17 make for the membership; and

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

20 (e) A program operator shall allow any member who cancels a
21 membership in the discount health care program not later than the
22 30th day after the date the person becomes a member to receive a
23 refund, not later than the 30th day after the date the program
24 operator receives a valid cancellation notice and returned
25 membership card, of all periodic membership charges paid by that
26 member to the program operator and the amount of any one-time
27 enrollment fee that exceeds \$50.

1 (f) A program operator shall:

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

7 (2) maintain an agent for service of process in this
8 state; and

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

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

17 (b) A program operator shall enter into a written contract
18 with a marketer before the marketer begins marketing, promoting,
19 selling, or distributing the program operator's discount health
20 care program. The contract must prohibit the marketer from using
21 advertising, solicitations, other marketing materials, or discount
22 cards that have not been approved in advance and in writing by the
23 program operator.

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

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

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

9 (1) a description of the discounts to be provided to a
10 member;

11 (2) a provision prohibiting the provider from charging
12 a member more than the discounted rate agreed to in the written
13 agreement with the provider; and

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

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

21 (c) If the program operator contracts with a network of
22 providers, the program operator shall obtain written assurance from
23 the network that:

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

1 (2) the network is authorized to obligate the network
2 providers to provide services to members of the discount health
3 care program.

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

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

7 (2) promptly remove a provider from its network if the
8 provider no longer participates or loses the authority to provide
9 services or products.

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

14 [Sections 562.106-562.150 reserved for expansion]

15 SUBCHAPTER D. DETERMINATION OF UNFAIR METHODS OF COMPETITION AND
16 UNFAIR OR DECEPTIVE ACTS OR PRACTICES; ENFORCEMENT; SANCTIONS AND
17 PENALTIES

18 Sec. 562.151. EXAMINATION AND INVESTIGATION. The
19 department may examine and investigate the affairs of a person
20 engaged in the business of discount health care programs in this
21 state to determine whether the person:

22 (1) has or is engaged in an unfair method of
23 competition or unfair or deceptive act or practice prohibited by
24 this chapter; or

25 (2) has violated Subchapter B or C.

26 Sec. 562.152. STATEMENT OF CHARGES; NOTICE OF HEARING. (a)
27 When the department has reason to believe that a person engaged in

1 the business of discount health care programs in this state has
2 engaged or is engaging in this state in an unfair method of
3 competition or unfair or deceptive act or practice defined by
4 Subchapter B or has violated Subchapter B or C and that a proceeding
5 by the department regarding the charges is in the interest of the
6 public, the department shall issue and serve on the person:

7 (1) a statement of the charges; and

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

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

13 Sec. 562.153. HEARING. A person against whom charges are
14 made under Section 562.152 is entitled at the hearing on the charges
15 to have an opportunity to be heard and show cause why the department
16 should not issue an order requiring the person to cease and desist
17 from:

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

20 (2) violating Subchapter B or C.

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

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

27 Sec. 562.155. RECORD OF HEARING. (a) At a hearing under

1 this subchapter, the department may, and at the request of a party
2 to the hearing shall, make a record of the proceedings and the
3 evidence presented at the hearing.

4 (b) If the department does not make a record and a person
5 seeks judicial review of the decision made at the hearing, the
6 department shall prepare a statement of the evidence and proceeding
7 for use on review.

8 Sec. 562.156. COMPLIANCE WITH SUBPOENA. (a) If a person
9 refuses to comply with a subpoena issued in connection with a
10 hearing under this subchapter or refuses to testify with respect to
11 a matter about which the person may be lawfully interrogated, on
12 application of the department, a district court in Travis County or
13 in the county in which the person resides may order the person to
14 comply with the subpoena or testify.

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

17 Sec. 562.157. DETERMINATION OF VIOLATION. After a hearing
18 under this subchapter to determine whether a person has engaged in
19 an unfair method of competition or unfair or deceptive act or
20 practice prohibited by this chapter, the department shall determine
21 whether:

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

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

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

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

4 (A) this chapter; or

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

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

10 (1) make written findings; and

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

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

21 Sec. 562.160. IMMUNITY FROM PROSECUTION. (a) This section
22 applies to a person who requests to be excused from attending and
23 testifying at a hearing under this chapter or from producing books,
24 papers, records, correspondence, or other documents at the hearing
25 on the ground that the testimony or evidence may:

26 (1) tend to incriminate the person; or

27 (2) subject the person to a penalty or forfeiture.

1 (b) A person who, notwithstanding a request described by
2 Subsection (a), is directed to provide the testimony or produce the
3 documents shall comply with that direction. Except as provided by
4 Subsection (c), the person may not be prosecuted or subjected to a
5 penalty or forfeiture for or on account of a transaction, matter, or
6 thing about which the person testifies or produces documents, and
7 the testimony or documents produced may not be received against the
8 person in a criminal action, investigation, or proceeding.

9 (c) A person who complies with a direction to testify or
10 produce documents is not exempt from:

11 (1) prosecution or punishment for perjury committed
12 while testifying, and the testimony or evidence given or produced
13 is admissible against the person in a criminal action,
14 investigation, or proceeding concerning the perjury; or

15 (2) the denial, revocation, or suspension of any
16 license, permission, or authority conferred or to be conferred
17 under this code.

18 (d) A person may waive the immunity or privilege granted by
19 this section by executing, acknowledging, and filing with the
20 department a statement expressly waiving the immunity or privilege
21 for a specified transaction, matter, or thing. On filing the
22 statement:

23 (1) the testimony or documents produced by the person
24 in relation to the transaction, matter, or thing may be received by
25 or produced before a judge or justice or a court, grand jury, or
26 other tribunal; and

27 (2) the person is not entitled to immunity or

privilege for the testimony or documents received or produced under
Subdivision (1).

Sec. 562.161. ADMINISTRATIVE PENALTY FOR VIOLATION OF CEASE
AND DESIST ORDER. (a) A person who violates a cease and desist
order issued under Section 562.158 is subject to an administrative
penalty under Chapter 84.

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

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

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

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

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

Sec. 562.162. CIVIL PENALTY FOR VIOLATION OF CEASE AND
DESIST ORDER. (a) A person who is found by a court to have violated
a cease and desist order issued under Section 562.158 is liable to
the state for a penalty. The state may recover the penalty in a
civil action.

(b) The penalty may not exceed \$50 unless the court finds
the violation to be wilful, in which case the penalty may not exceed
\$500.

[Sections 562.163-562.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT BY ATTORNEY GENERAL

Sec. 562.201. INJUNCTIVE RELIEF. (a) The attorney general may 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 in this state is engaging in, has engaged in, or is about to engage in an act or practice defined as unlawful under:

(A) this chapter; or

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

(2) the action is in the public interest.

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

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

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

(A) resides;

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

or

(C) is engaging in business;

(2) the county in which the transaction or a substantial portion of the transaction occurred; or

(3) Travis County.

Sec. 562.203. ISSUANCE OF INJUNCTION. (a) The court may

1 issue an appropriate temporary or permanent injunction.

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

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

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

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

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

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

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

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

1 Sec. 562.207. REMEDIES NOT EXCLUSIVE. The remedies
2 provided by this subchapter:

3 (1) are not exclusive; and
4 (2) are in addition to any other remedy or procedure
5 provided by another law or at common law.

6 [Sections 562.208-562.250 reserved for expansion]

7 SUBCHAPTER F. ASSURANCE OF VOLUNTARY COMPLIANCE

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

13 (b) The assurance must be in writing and be filed with the
14 department.

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

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

22 (b) Unless an assurance of voluntary compliance is
23 rescinded by agreement, a subsequent failure to comply with the
24 assurance is prima facie evidence of a violation of this chapter or
25 Section 17.46, Business & Commerce Code.

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

[Sections 562.254-562.300 reserved for expansion]

SUBCHAPTER G. CONSTRUCTION OF CHAPTER WITH OTHER LAWS

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

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

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

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

TITLE 21. DISCOUNT HEALTH CARE PROGRAMS

CHAPTER 7001. REGISTRATION OF DISCOUNT HEALTH CARE

PROGRAM OPERATORS

Sec. 7001.001. DEFINITIONS. In this chapter:

(1) "Discount health care program" means a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, a certificate of coverage, or a self-funded or self-insured employee

1 benefit plan.

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

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

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

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

23 (6) "Program operator" means a discount health plan
24 program operator.

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

27 Sec. 7001.002. EXEMPTION. This chapter does not apply to a

program operator who is an insurer and who holds a certificate of authority under Title 6.

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

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

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

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

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

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

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

(ii) the officers of the program operator;
and

(iii) any contracted management company

1 personnel; and

2 (B) any person owning or having the right to
3 acquire 10 percent or more of the voting securities of the program
4 operator;

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

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

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

17 (b) After the initial registration, if the form of a
18 contract described by Subsection (a)(5) changes, the program
19 operator must file the modified contract form with the department
20 before it may be used.

21 (c) As part of the registration required under Subsection
22 (a), and annually thereafter, the program operator shall certify in
23 writing to the department that its programs comply with the
24 requirements of this chapter and Chapter 562.

25 Sec. 7001.006. FEES. A discount health care program
26 operator shall pay the department an initial registration fee of
27 \$1,000 and an annual renewal fee in the amount set by the

1 commissioner not to exceed \$500.

2 Sec. 7001.007. CRIMINAL BACKGROUND CHECK. The department
3 may conduct a criminal background check on:

4 (1) the individuals responsible for conducting the
5 program operator's affairs;

6 (2) each member of the board of directors, board of
7 trustees, executive committee, or other governing board or
8 committee;

9 (3) the officers of the program operator;

10 (4) any contracted management company personnel; and

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

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

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

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

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

27 SECTION 6. (a) Except as provided by Subsections (b) and

1 (c) of this section, this Act takes effect September 1, 2009.

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

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