

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. The Insurance Code is amended by adding Title 21 to read 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. 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 benefit plan.

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

1           (3) "Health care services" includes physician care,  
2 inpatient care, hospital surgical services, emergency services,  
3 ambulance services, laboratory services, audiology services,  
4 dental services, vision services, mental health services,  
5 substance abuse services, chiropractic services, and podiatry  
6 services, and medical equipment and supplies.

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

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

15           (6) "Program operator" means a discount health plan  
16 program operator.

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

19           Sec. 7001.002. APPLICABILITY OF OTHER LAW. In addition to  
20 the requirements of this chapter, a program operator or marketer is  
21 subject to the applicable consumer protection laws under Chapter  
22 17, Business & Commerce Code.

23           Sec. 7001.003. RULES. The commissioner shall adopt the  
24 rules necessary to implement this chapter.

25           [Sections 7001.004-7001.050 reserved for expansion]

26           SUBCHAPTER B. PROGRAM REQUIREMENTS

27           Sec. 7001.051. PROGRAM OPERATOR. Except as otherwise

1 provided by this chapter, a program operator, including the  
2 operator of a freestanding discount health care program or a  
3 discount health care program marketed by an insurer or a health  
4 maintenance organization, shall comply with this chapter.

5 Sec. 7001.052. PROHIBITED ADVERTISEMENT, SOLICITATION, AND  
6 MARKETING. (a) Advertisements, solicitations, or marketing  
7 materials of a discount health care program may not contain false,  
8 misleading, or deceptive statements, including statements that:

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

11 (2) misrepresent the size or location of the program's  
12 network of providers;

13 (3) knowingly misrepresent the participation of a  
14 provider in the program's network; or

15 (4) suggest that a discount card offered through the  
16 program is a federally approved Medicare prescription discount  
17 card.

18 (b) Each advertisement, solicitation, or marketing material  
19 of a discount health care program must clearly and conspicuously  
20 state that the discount health care program is not insurance.

21 (c) Advertisements, solicitations, or marketing materials  
22 of a discount health care program may not use the term "insurance,"  
23 except as a disclaimer of any relationship between the discount  
24 health care program and insurance, or as a description of an  
25 insurance product connected with a discount health care program.

26 (d) Advertisements, solicitations, or marketing materials  
27 of a discount health care program may not use the term "health

1 plan," "coverage," "copay," "copayments," "deductible,"  
2 "preexisting conditions," "guaranteed issue," "premium," "PPO," or  
3 "preferred provider organization," or another similar term, in a  
4 manner that could reasonably mislead an individual into believing  
5 that the discount health care program is health insurance or  
6 provides similar coverage.

7 (e) Advertisements, solicitations, or marketing materials  
8 of a discount health care program may not use the term "free," "no  
9 obligation," "discounted," or "reduced," or another similar term,  
10 without disclosing clearly and conspicuously, and in close  
11 proximity to the use of the term, any and all conditions,  
12 limitations, and restrictions on the ability of the member or  
13 prospective member to obtain or use the good or service to which the  
14 term applies.

15 (f) A program operator may not offer a "free" trial  
16 membership in a discount health care program without disclosing  
17 clearly and conspicuously, and in close proximity to the offer:

18 (1) any obligation of the member or prospective member  
19 associated with accepting the offered trial membership, including:

20 (A) an obligation to purchase other goods and  
21 services;

22 (B) an obligation to cancel membership or take  
23 other affirmative action to avoid incurring payment obligations;  
24 and

25 (C) the manner in which a cancellation request  
26 may be submitted;

27 (2) the number of payments and the amount of each

payment that are or may be required and the circumstances under which additional payments may be required; and

(3) the conditions, limitations, and restrictions on the ability of the member or prospective member to use or cancel the offered trial membership.

Sec. 7001.053. DISCLOSURE MATERIALS REQUIRED. (a) 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, shall provide each prospective or new member disclosure materials containing the following information:

(1) a general description of the services and products offered through the discount health care program and the types of providers available;

(2) a toll-free telephone number and an Internet website address through which a person may:

(A) obtain information about the discount health care program; and

(B) confirm or find a provider currently participating in that program;

(3) a clear and conspicuous statement that:

(A) the discount health care program is not insurance, with the word "not" capitalized; and

(B) the member is required to pay the entire amount of the discounted rate;

(4) a statement that a member who cancels the membership not later than the 30th day after the date the member

1 joins the discount health care program is entitled to a refund of  
2 all periodic membership charges paid to the discount health care  
3 program and the amount of any one-time enrollment fee that exceeds  
4 \$50;

5 (5) a statement that the discount health care program  
6 does not guarantee the quality of the services or products offered  
7 by individual providers;

8 (6) a statement that a member may file a complaint  
9 under the discount health care program's complaint resolution  
10 procedure regarding the availability of contracted discounts or  
11 services or other matters relating to the contractual obligations  
12 of the program to its members; and

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

16 (b) A marketer shall use disclosure materials that comply  
17 with Subsection (a).

18 Sec. 7001.054. PROGRAM OPERATOR DUTIES. A program operator  
19 shall:

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

24 (2) remove a provider from the discount health care  
25 program not later than the 30th day after the date the operator  
26 learns that the provider has lost the authority to provide services  
27 or products, including the suspension or revocation of the

1 provider's license;

2 (3) issue at least one membership card to serve as  
3 proof of membership in the discount health care program that must:

4 (A) contain a clear and conspicuous statement  
5 that the discount health care program is not insurance; and

6 (B) if the discount health care program includes  
7 discount prescription drug benefits, include:

8 (i) the name or logo of the entity  
9 administering the prescription drug benefits;

10 (ii) the international identification  
11 number assigned by the American National Standards Institute for  
12 the entity administering the prescription drug benefits;

13 (iii) the group number applicable to the  
14 member; and

15 (iv) a telephone number to be used to  
16 contact an appropriate person to obtain information relating to the  
17 prescription drug benefits provided under the program;

18 (4) issue at least one set of disclosure materials to  
19 each household in which a person is a member;

20 (5) ensure that an application form or other  
21 membership agreement:

22 (A) clearly and conspicuously discloses the  
23 duration of membership and the amount of payments the member is  
24 obligated to make for the membership; and

25 (B) contains a clear and conspicuous statement  
26 that the discount health care program is not insurance;

27 (6) 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;

(7) maintain a surety bond, payable to the department for the use and benefit of members in a manner prescribed by the department, 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;

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

(9) 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) A program operator may market directly or contract with marketers for the distribution of the operator's discount health care programs.

(b) A program operator shall 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. The contract must prohibit the marketer from using advertising, solicitations, or other marketing materials, or discount cards that have not been approved in advance and in writing



1 by the program operator.

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

6 Sec. 7001.056. CONTRACT REQUIREMENTS. (a) A program  
7 operator shall contract, directly or indirectly, with a provider  
8 offering discounted health care services or products under the  
9 discount health care program. The written contract must contain  
10 all of the following provisions:

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

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

16 (3) a provision requiring the provider to promptly  
17 notify the program operator if the provider loses the authority to  
18 provide services or products, including by suspension or revocation  
19 of the provider's license.

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

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

26 (1) the network has a written agreement with each  
27 network provider that includes a discounted rate that is applicable

1 to a program operator's discount health care program and contains  
2 all of the terms described in Subsection (a); and

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

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

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

9 (2) promptly remove a provider from its network if the  
10 provider loses the authority to provide services or products.

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

15 [Sections 7001.057-7001.100 reserved for expansion]

16 SUBCHAPTER C. REGISTRATION

17 Sec. 7001.101. REGISTRATION REQUIRED; FEES. (a) A program  
18 operator may not offer a discount health care program in this state  
19 unless the operator is registered with the department.

20 (b) An applicant for registration under this chapter or an  
21 applicant for renewal of registration under this chapter whose  
22 information has changed must submit:

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

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

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

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

6                   (ii) the officers of the program operator;  
7 and

8                   (iii) any contracted management company  
9 personnel; and

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

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

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

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

25                  (c) After the initial registration, if the form of a  
26 contract described by Subsection (b)(5) changes, the program  
27 operator must file the modified contract form with the department

1 before it may be used.

2 (d) As part of the registration required under Subsection  
3 (b), and annually thereafter, the program operator shall certify to  
4 the department that its programs comply with the requirements of  
5 this chapter.

6 (e) A discount health care program operator shall pay the  
7 department an initial registration fee of \$1,000 and an annual  
8 renewal fee not to exceed \$500.

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

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

19 [Sections 7001.102-7001.150 reserved for expansion]

20 SUBCHAPTER D. ENFORCEMENT

21 Sec. 7001.151. INVESTIGATION. If the commissioner  
22 reasonably believes that a program operator or marketer is not  
23 operating in compliance with this chapter, the program operator or  
24 marketer must submit to the commissioner any advertising,  
25 solicitations, marketing materials, disclosure materials, discount  
26 cards, agreements, or other documents requested by the  
27 commissioner.

1       Sec. 7001.152. CIVIL PENALTY. (a) The attorney general may  
2 bring an action for a civil penalty against a person who violates  
3 this chapter or a rule adopted under this chapter.

4       (b) A civil penalty assessed under this section may not be  
5 less than \$2,500 for each violation.

6       (c) A civil penalty authorized by this section is in  
7 addition to any other civil, administrative, or criminal action  
8 provided by law.

9       Sec. 7001.152. CRIMINAL PENALTIES. (a) A person who  
10 willfully operates as, or aids and abets another operating as, a  
11 discount health care program operator in violation of Section  
12 7001.101 commits insurance fraud and is subject to Chapter 35,  
13 Penal Code, as if the unregistered discount health care program  
14 operator were an unauthorized insurer, and the fees, dues, charges,  
15 or other consideration collected from the members by the  
16 unregistered discount health care program operator or marketer were  
17 insurance premiums.

18       (b) A person that collects fees for purported membership in  
19 a discount health care program, but purposefully fails to provide  
20 the promised benefits commits an offense of theft and is subject to  
21 Chapter 31, Penal Code. On conviction, the court shall order the  
22 person to pay restitution to persons aggrieved by the violation of  
23 this chapter. The restitution is in addition to a fine or  
24 imprisonment.

25       Sec. 7001.153. INJUNCTIONS. (a) In addition to the  
26 penalties and other enforcement provisions of this chapter, the  
27 commissioner may seek both temporary and permanent injunctive

1 relief if:

2 (1) a discount health care program is being operated  
3 by a person or entity that is not registered under this chapter; or

4 (2) a person, entity, or program operator has engaged  
5 in any activity prohibited by this chapter or a rule adopted under  
6 this chapter.

7 (b) An action for injunctive relief must be brought in a  
8 Travis County district court.

9 (b) The commissioner's authority to seek injunctive relief  
10 is not conditioned on having conducted any proceeding required  
11 under Chapter 2001, Government Code.

12 SECTION 2. Chapter 76, Health & Safety Code, is repealed.

13 SECTION 3. Not later than January 1, 2010, the Commissioner  
14 of Insurance shall adopt the rules and procedures necessary to  
15 implement Chapter 7001, Insurance Code, as added by this Act.

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

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

26 SECTION 5. (a) Except as provided by Subsections (b) and  
27 (c), this Act takes effect September 1, 2009.

H.B. No. 4341

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

2           (c)   Subchapter D, Chapter 7001, Insurance Code, takes  
3 effect April 1, 2010.