

By: Williams

S.B. No. 2299

A BILL TO BE ENTITLED

1 AN ACT

2 relating to registration and regulation of certain discount health  
3 care programs.

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

5 SECTION 1. Section 76.001, Health and Safety Code, is  
6 amended by adding Subdivision (1-a) and amending Subdivision (3) to  
7 read as follows:

8 (1-a) "Controlling person" means an individual who:

9 (A) possesses the authority to set policy, direct  
10 management, and conduct the affairs of a program operator or  
11 marketer;

12 (B) is an officer, director, general partner, or  
13 a member of a governing board of a business entity that is a program  
14 operator or marketer;

15 (C) is employed, appointed, or authorized by a  
16 program operator or marketer to enter into a contract with a program  
17 operator, marketer, provider, or provider network on behalf of the  
18 program operator or marketer; or

19 (D) possesses direct or indirect control of 25  
20 percent or more of the voting securities of the program operator or  
21 marketer.

22 (3) "Discount health care program" means a business  
23 arrangement or contract in which an entity, in exchange for fees,  
24 dues, charges, or other consideration, offers its members access to

1 discounts on health care services provided by health care  
2 providers. The term does not include:

3 (A) an insurance policy, certificate of  
4 coverage, or other product regulated by the Texas Department of  
5 Insurance;

6 (B) ~~[or]~~ a self-funded or self-insured employee  
7 benefit plan; or

8 (C) a benefit program regulated by the federal  
9 government, including Medicare and Medicaid.

10 SECTION 2. Section 76.051, Health and Safety Code, is  
11 amended to read as follows:

12 Sec. 76.051. PROGRAM OPERATOR AND MARKETER COMPLIANCE. (a)  
13 Except as otherwise provided by this chapter, a program operator,  
14 including the operator of a freestanding discount health care  
15 program or a discount health care program marketed by an insurer or  
16 a health maintenance organization, shall comply with this chapter.

17 (b) Except as otherwise provided by this chapter, a  
18 marketer, including a marketer who has a contract with another  
19 marketer to sell a discount health care program, shall comply with  
20 this chapter.

21 SECTION 3. The heading to Section 76.056, Health and Safety  
22 Code, is amended to read as follows:

23 Sec. 76.056. PROVIDER CONTRACT REQUIREMENTS.

24 SECTION 4. The heading to Section 76.101, Health and Safety  
25 Code, is amended to read as follows:

26 Sec. 76.101. PROGRAM OPERATOR REGISTRATION REQUIRED; FEES.

27 SECTION 5. Section 76.101, Health and Safety Code, is

1 amended by amending Subsections (a), (b), (e), (f), and (g), and  
2 adding Subsections (h) and (i) to read as follows:

3 (a) A program operator may not offer a discount health care  
4 program in this state unless the operator is registered with the  
5 department. A registration is valid for one year.

6 (b) An applicant for registration as a program operator  
7 under this chapter or an applicant for renewal of registration as a  
8 program operator under this chapter whose information has changed  
9 must submit:

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

12 (2) a list of names, addresses, official positions,  
13 and biographical information of the program operator's controlling  
14 persons [+

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

17 [~~(i) each member of the board of directors,~~  
18 ~~board of trustees, executive committee, or other governing board or~~  
19 ~~committee,~~

20 [~~(ii) the officers of the program operator,~~  
21 ~~and~~

22 [~~(iii) any contracted management company~~  
23 ~~personnel, and~~

24 [~~(B) any person owning or having the right to~~  
25 ~~acquire 10 percent or more of the voting securities of the program~~  
26 ~~operator];~~

27 (3) a statement generally describing the applicant,

1 its facilities and personnel, and the health care services or  
2 products for which a discount will be made available under the  
3 discount health care program;

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

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

12 (e) To register or renew a registration, a program operator  
13 must pay the appropriate fees. The commission shall set by rule the  
14 amount of the fees required by this section to cover the costs of  
15 administering this chapter. These fees must include:

16 (1) a registration or renewal application fee; and

17 (2) a fee based on the number of [A] discount health  
18 care program memberships sold or issued by the program operator and  
19 in force in this state during the preceding 12-month period [~~shall~~  
20 pay the department an initial registration fee of \$1,000 and an  
21 annual renewal fee not to exceed \$500].

22 (f) The department may conduct a criminal background check  
23 on the [~~individuals responsible for conducting the~~] program  
24 operator's controlling persons [~~affairs, each member of the board~~  
25 ~~of directors, board of trustees, executive committee, or other~~  
26 ~~governing board or committee, the officers of the program operator,~~  
27 ~~any contracted management company personnel, and any person owning~~

1 ~~or having the right to acquire 10 percent or more of the voting~~  
2 ~~securities of the program operator].~~

3 (g) The department may deny or revoke a program operator's  
4 registration or renewal based on the findings of the criminal  
5 background check of the program operator's controlling persons,  
6 including a conviction or deferred adjudication of a controlling  
7 person. The commission shall establish the criteria and standards  
8 for denying or revoking a program operator's registration or  
9 renewal under this subsection.

10 (h) The department may deny or revoke a program operator's  
11 registration or renewal based on the information contained in the  
12 materials required to be filed with or reported to the department.  
13 The commission shall establish the criteria and standards for  
14 denying or revoking a program operator's registration or renewal  
15 under this subsection.

16 (i) A person or entity who is ~~[This section does not apply to~~  
17 ~~a program operator]~~ licensed under Title 6, Insurance Code, and who  
18 operates a discount health care program in this state is not  
19 required to meet the registration requirements in Subsections (a)  
20 through (h). The person or entity must notify the department that it  
21 is operating a discount health care program in this state and  
22 provide the department with the person's or entity's name, the name  
23 of a designated contact person, and the license number issued by the  
24 Texas Department of Insurance.

25 SECTION 6. Subchapter C, Chapter 76, Health and Safety  
26 Code, is amended by adding Section 76.102 to read as follows:

27 Sec. 76.102. MARKETER REGISTRATION REQUIRED; FEES. (a) A

1 marketer may not sell or distribute a discount health care program  
2 in this state unless the marketer is registered with the  
3 department. A registration is valid for one year.

4 (b) An applicant for registration as a marketer under this  
5 chapter or renewal of registration as a marketer under this chapter  
6 must submit:

7 (1) a registration form indicating the marketer's name  
8 and address and its agent for service of process; and

9 (2) a list of names, addresses, official positions,  
10 and biographical information of the marketer's controlling  
11 persons, if applicable.

12 (c) To register or renew a registration, a marketer must pay  
13 the appropriate fees. The commission by rule shall set the amount  
14 of the fees required by this section to cover the costs of  
15 administering this chapter.

16 (d) If the marketer is an individual, the department may  
17 conduct a criminal background check on the individual. If the  
18 marketer is a business entity, the department may conduct a  
19 criminal background check on the marketer's controlling persons.

20 (e) The department may deny or revoke a marketer's  
21 registration or renewal based on the findings of the criminal  
22 background check of the persons in Subsection (d), including a  
23 conviction or deferred adjudication of a person in Subsection (d).  
24 The commission shall establish the criteria and standards for  
25 denying or revoking a marketer's registration or renewal under this  
26 subsection.

27 (f) The department may deny or revoke a marketer's

1 registration or renewal based on the information contained in the  
2 materials required to be filed with or reported to the department.  
3 The commission shall establish the criteria and standards for  
4 denying or revoking a marketer's registration or renewal under this  
5 subsection.

6 SECTION 7. Section 76.151, Health and Safety Code, is  
7 amended to read as follows:

8 Sec. 76.151. DISCIPLINARY ACTION. A program operator or  
9 marketer is subject to the denial of an application, imposition of  
10 ~~[On a finding that a ground for disciplinary action exists under~~  
11 ~~this chapter, the executive director of the department may impose]~~  
12 an administrative ~~[sanction, including any administrative]~~ penalty  
13 under Subchapter F, [as provided by] Chapter 51, Occupations Code,  
14 or imposition of an administrative sanction under Section 51.353,  
15 Occupations Code, if the program operator or marketer violates this  
16 chapter or a rule or an order of the executive director of the  
17 commission.

18 SECTION 8. Sections 76.152(a), (b), (c), and (d), Health  
19 and Safety Code, are amended to read as follows:

20 (a) The attorney general or executive director of the  
21 department may institute an action against a program operator or  
22 marketer for injunctive relief under Section 51.352, Occupations  
23 Code, to restrain a violation or a threatened violation of this  
24 chapter or an order issued or rule adopted under this chapter.

25 (b) In addition to the injunctive relief provided by  
26 Subsection (a), the attorney general or executive director of the  
27 department may institute an action for a civil penalty as provided

1 by Section 51.352, Occupations Code.

2 (c) The amount of any civil penalty assessed under this  
3 section may not exceed \$5,000 [~~\$2,500~~] for each violation. Each day  
4 a violation continues is a separate violation.

5 (d) Advertising, selling, or distributing a discount health  
6 care program that violates this chapter is a false, misleading, or  
7 deceptive act or practice for purposes of Section 17.46, Business &  
8 Commerce Code. A public or private right or [~~The exclusive~~] remedy  
9 authorized by Chapter 17, Business & Commerce Code, may be used to  
10 bring an action for a [~~the~~] violation of Section 17.46, Business &  
11 Commerce Code[~~, is an action by the office of the attorney general~~  
12 ~~as provided by Section 17.46(a), Business & Commerce Code~~].

13 SECTION 9. Section 76.154, Health and Safety Code, is  
14 amended to read as follows:

15 Sec. 76.154. APPEAL. A person affected by a ruling, order,  
16 decision, or other action of the executive director of the  
17 department or the commission [~~department~~] may appeal by filing a  
18 petition in a district court in Travis County.

19 SECTION 10. Not later than January 1, 2010, the Texas  
20 Commission of Licensing and Regulation shall adopt the rules and  
21 procedures necessary to implement the changes in law made by this  
22 Act.

23 SECTION 11. (a) Except as provided by Subsection (b) of  
24 this section, this Act takes effect September 1, 2009.

25 (b) Section 76.101(e), Health and Safety Code, as amended by  
26 this Act, and Section 76.102, Health and Safety Code, as added by  
27 this Act, take effect April 30, 2010.