

By: Shapiro

S.B. No. 2339

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 distributes, or
8 offers to sell or distribute, a discount health care program,
9 including a private label entity that places its name on and markets
10 or distributes a discount health care program, but does not operate
11 a discount health care program.

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

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

17 (7) "Provider" means a person who is licensed or otherwise
18 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

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

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

6 Sec. 7001.053. DISCLOSURE MATERIALS REQUIRED. (a) A
7 program operator, before enrollment or with the written materials
8 describing the terms and conditions of the program that are
9 provided not later than the 15th day after the date of enrollment,
10 shall provide each prospective or new member disclosure materials
11 containing the following information:

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

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

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

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

21 (3) a clear and conspicuous statement that:

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

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

26 (4) a statement that a member who cancels the
27 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

1 discount health care program not later than the 30th day after the
2 date the person becomes a member to receive a refund, not later than
3 the 30th day after the date the operator receives a valid
4 cancellation notice and returned membership card, of all periodic
5 membership charges paid by that member to the program operator and
6 the amount of any one-time enrollment fee that exceeds \$50;

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

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

14 (9) establish and operate a fair and efficient
15 procedure for resolution of complaints regarding the availability
16 of contracted discounts or services or other matters relating to
17 the contractual obligations of the discount health care program to
18 its members.

19 Sec. 7001.055. MARKETING OF PROGRAM. (a) A program
20 operator may market directly or contract with marketers for the
21 distribution of the operator's discount health care programs.

22 (b) A program operator shall enter into a written contract
23 with a marketer before the marketer begins marketing, promoting,
24 selling, or distributing the program operator's discount health
25 care program. The contract must prohibit the marketer from using
26 advertising, solicitations, or other marketing materials, or
27 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.

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.