

By: Frullo

H.B. No. 3028

A BILL TO BE ENTITLED

1 AN ACT
2 relating to regulation of discount drug card program operators;
3 authorizing administrative and civil penalties; authorizing fees;
4 expanding a registration requirement.

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

6 SECTION 1. The heading to Chapter 562, Insurance Code, is
7 amended to read as follows:

8 CHAPTER 562. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
9 ACTS OR PRACTICES REGARDING DISCOUNT [~~HEALTH CARE~~] PROGRAMS

10 SECTION 2. Section 562.001, Insurance Code, is amended to
11 read as follows:

12 Sec. 562.001. PURPOSE. The purpose of this chapter is to
13 regulate trade practices in the business of discount health care
14 programs and discount drug card programs by:

15 (1) defining or providing for the determination of
16 trade practices in this state that are unfair methods of
17 competition or unfair or deceptive acts or practices; and

18 (2) prohibiting those unfair or deceptive trade
19 practices.

20 SECTION 3. Section 562.002, Insurance Code, is amended by
21 amending Subdivisions (5) and (8) and adding Subdivision (1-a) to
22 read as follows:

23 (1-a) "Discount drug card program" and "discount drug
24 card program operator" have the meanings assigned by Section

1 7001.001.

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

9 (8) "Program operator" means a discount health care
10 program operator or a discount drug card [plan] program operator.

11 SECTION 4. Section 562.004, Insurance Code, is amended to
12 read as follows:

13 Sec. 562.004. APPLICABILITY. Except as otherwise provided
14 by this chapter, a program operator, including the operator of a
15 freestanding discount health care program, a freestanding discount
16 drug card program, or a discount health care program or discount
17 drug card program marketed by an insurer or a health maintenance
18 organization, shall comply with this chapter.

19 SECTION 5. Sections 562.051, 562.052, 562.053, and 562.054,
20 Insurance Code, are amended to read as follows:

21 Sec. 562.051. MISREPRESENTATION REGARDING DISCOUNT
22 PROGRAMS [~~HEALTH CARE PROGRAM~~]. It is an unfair method of
23 competition or an unfair or deceptive act or practice in the
24 business of discount health care programs or discount drug card
25 programs to:

26 (1) misrepresent the price range of discounts offered
27 by the [~~discount health care~~] program;

1 (2) misrepresent the size or location of the program's
2 network of providers, if any;

3 (3) misrepresent the participation of a provider in
4 the program's network, if any;

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

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

9 (A) a disclaimer of any relationship between the
10 [~~discount health care~~] program and insurance; or

11 (B) a description of an insurance product
12 connected with a discount health care program or discount drug card
13 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
19 is health insurance or provides coverage similar to health
20 insurance.

21 Sec. 562.052. FALSE INFORMATION AND ADVERTISING. It is an
22 unfair method of competition or an unfair or deceptive act or
23 practice in the business of discount health care programs or
24 discount drug card programs to make, publish, disseminate,
25 circulate, or place before the public or directly or indirectly
26 cause to be made, published, disseminated, circulated, or placed
27 before the public an advertisement, solicitation, or marketing

1 material containing an untrue, deceptive, or misleading assertion,
2 representation, or statement regarding the [~~discount health care~~]
3 program.

4 Sec. 562.053. FAILURE TO REGISTER OR RENEW REGISTRATION;
5 FALSE REGISTRATION OR RENEWAL STATEMENT. (a) It is an unfair
6 method of competition or an unfair or deceptive act or practice in
7 the business of discount health care programs or discount drug card
8 programs to:

9 (1) fail to register or renew registration as required
10 under Chapter 7001; or

11 (2) with intent to deceive:

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

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

18 (b) The commissioner may impose on a person operating a
19 discount health care program or discount drug card program for the
20 person's failure to register or renew registration as required
21 under Chapter 7001 any remedy that the commissioner is authorized
22 to impose under Chapter 101 for the unauthorized business of
23 insurance.

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 or discount drug card programs to misrepresent a discount

1 health care program or a discount drug card program by:

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

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

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

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

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

12 SECTION 6. Sections 562.101, 562.102, 562.103, and 562.104,
13 Insurance Code, are amended to read as follows:

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

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

27 Sec. 562.103. PROGRAM OPERATOR DUTIES. (a) A program

1 operator shall:

2 (1) provide a toll-free telephone number and Internet
3 website for members or cardholders to obtain information about the
4 [~~discount health care~~] program and confirm or find providers
5 currently participating in the program; and

6 (2) remove a provider from the [~~discount health care~~]
7 program not later than the 30th day after the date the program
8 operator learns that the provider is no longer participating in the
9 program or has lost the authority to provide services, drugs, or
10 other products.

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

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

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

18 (A) the name or logo of the entity administering
19 the prescription drug benefits;

20 (B) the international identification number
21 assigned by the American National Standards Institute for the
22 entity administering the prescription drug benefits;

23 (C) the group number applicable to the member;

24 and

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

1 (b-1) A discount drug card issued by a discount drug card
2 program operator must contain a clear and conspicuous statement
3 that:

4 (1) the discount drug card program is not insurance
5 and does not guarantee the quality of the services or products
6 offered by individual providers; and

7 (2) if an individual remains dissatisfied after
8 completing the discount drug card program's complaint system, the
9 cardholder may contact the cardholder's state insurance
10 department.

11 (c) Not later than the 15th day after the date of
12 enrollment, a discount health care program operator shall issue at
13 least one set of disclosure materials describing the terms and
14 conditions of the discount health care program to each household in
15 which a person is a member, including a statement that:

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

18 (2) the member is required to pay the entire amount of
19 the discounted rate;

20 (3) the discount health care program does not
21 guarantee the quality of the services or products offered by
22 individual providers; and

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

26 (d) A discount health care program operator shall ensure
27 that an application form or other membership agreement:

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

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

6 (e) A discount health care program operator shall allow any
7 member who cancels a membership in the discount health care program
8 not later than the 30th day after the date the person becomes a
9 member to receive a refund, not later than the 30th day after the
10 date the program operator receives a valid cancellation notice and
11 returned membership card, of all periodic membership charges paid
12 by that member to the program operator and the amount of any
13 one-time enrollment fee that exceeds \$50.

14 (f) A program operator shall:

15 (1) maintain a surety bond, payable to the department
16 for the use and benefit of members or cardholders in a manner
17 prescribed by the department, in the principal amount of \$50,000,
18 except that a program operator that is an insurer that holds a
19 certificate of authority under Title 6 is not required to maintain
20 the surety bond;

21 (2) maintain an agent for service of process in this
22 state; and

23 (3) establish and operate a fair and efficient
24 procedure for resolution of complaints regarding the availability
25 of contracted discounts or services or other matters relating to
26 the contractual obligations of the discount health care program to
27 its members or duties of the discount drug card program to

1 cardholders in the discount drug card program.

2 Sec. 562.104. MARKETING OF PROGRAM. (a) A program
3 operator may market directly or contract with marketers for the
4 distribution of the program operator's discount health care
5 programs or discount drug card programs.

6 (b) A program operator shall enter into a written contract
7 with a marketer before the marketer begins marketing, promoting,
8 selling, or distributing the program operator's [~~discount health~~
9 ~~care~~] program. The contract must prohibit the marketer from using
10 an advertisement, solicitation, or other marketing material or a
11 discount card that has not been approved in advance and in writing
12 by the program operator.

13 (c) A program operator must approve in writing before their
14 use all advertisements, solicitations, or other marketing
15 materials and all discount cards used by marketers to market,
16 promote, sell, or distribute the [~~discount health care~~] program.

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

20 SECTION 7. Sections 562.105(a), (b), and (c), Insurance
21 Code, are amended to read as follows:

22 (a) A program operator shall contract, directly or
23 indirectly, with a provider offering discounted health care
24 services, drugs, or other products under the discount health care
25 program or discount drug card program. The written contract must
26 contain all of the following provisions:

27 (1) a description of the discounts to be provided

1 under the program [~~to a member~~];

2 (2) a provision prohibiting the provider from charging
3 under the program [~~a member~~] more than the discounted rate agreed to
4 in the written agreement with the provider; and

5 (3) a provision requiring the provider to promptly
6 notify the program operator if the provider no longer participates
7 in the program or loses the authority to provide services, drugs,
8 or other products.

9 (b) The discount health care program operator may not charge
10 or receive from a provider any fee or other compensation for
11 entering into the agreement. The discount drug card program
12 operator may only charge or receive from a provider the fee
13 established by the commissioner under Section 7001.051.

14 (c) If the program operator contracts with a network of
15 providers, the program operator shall obtain written assurance from
16 the network that:

17 (1) the network has a written agreement with each
18 network provider that includes a discounted rate that is applicable
19 to a program operator's [~~discount health care~~] program and contains
20 all of the terms described in Subsection (a); and

21 (2) the network is authorized to obligate the network
22 providers to provide services, drugs, or other products to members
23 of the discount health care program or cardholders under the
24 discount drug card program, as applicable.

25 SECTION 8. Section 562.151, Insurance Code, is amended to
26 read as follows:

27 Sec. 562.151. EXAMINATION AND INVESTIGATION. The

1 department may examine and investigate the affairs of a person
2 engaged in the business of discount health care programs or
3 discount drug card programs in this state to determine whether the
4 person:

5 (1) has or is engaged in an unfair method of
6 competition or unfair or deceptive act or practice prohibited by
7 this chapter; or

8 (2) has violated Subchapter B or C.

9 SECTION 9. Section 562.152(a), Insurance Code, is amended
10 to read as follows:

11 (a) When the department has reason to believe that a person
12 engaged in the business of discount health care programs or
13 discount drug card programs in this state has engaged or is engaging
14 in this state in an unfair method of competition or unfair or
15 deceptive act or practice defined by Subchapter B or has violated
16 Subchapter B or C and that a proceeding by the department regarding
17 the charges is in the interest of the public, the department shall
18 issue and serve on the person:

19 (1) a statement of the charges; and

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

22 SECTION 10. Section 562.201(a), Insurance Code, is amended
23 to read as follows:

24 (a) The attorney general may bring an action under this
25 section if the attorney general has reason to believe that:

26 (1) a person engaged in the business of discount
27 health care programs or discount drug card programs in this state is

1 engaging in, has engaged in, or is about to engage in an act or
2 practice defined as unlawful under:

3 (A) this chapter; or

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

5 (2) the action is in the public interest.

6 SECTION 11. Subchapter D, Chapter 4151, Insurance Code, is
7 amended by adding Section 4151.154 to read as follows:

8 Sec. 4151.154. DISCOUNT DRUG CARD PROGRAMS. A pharmacy
9 benefit manager may not require a pharmacist or pharmacy to:

10 (1) accept or process a claim under a discount drug
11 card program as defined by Section 7001.001 unless the pharmacist
12 or pharmacy agrees in writing to accept or process the claim;

13 (2) participate in a specified provider network as a
14 condition of processing a claim under a discount drug card program;
15 or

16 (3) participate in, or process claims under, a
17 discount drug card program as a condition of participation in a
18 provider network.

19 SECTION 12. The heading to Title 21, Insurance Code, is
20 amended to read as follows:

21 TITLE 21. DISCOUNT [~~HEALTH CARE~~] PROGRAMS

22 SECTION 13. The heading to Chapter 7001, Insurance Code, is
23 amended to read as follows:

24 CHAPTER 7001. REGISTRATION OF DISCOUNT [~~HEALTH CARE~~] PROGRAM
25 OPERATORS

26 SECTION 14. Chapter 7001, Insurance Code, is amended by
27 designating Sections 7001.001 through 7001.009 as Subchapter A and

1 adding a subchapter heading to read as follows:

2 SUBCHAPTER A. GENERAL PROVISIONS; REGISTRATION

3 SECTION 15. Section 7001.001, Insurance Code, is amended by
4 amending Subdivisions (1) and (6) and adding Subdivisions (1-a) and
5 (1-b) to read as follows:

6 (1) "Discount drug card program" means a business
7 arrangement or contract in which an entity, in exchange for
8 consideration paid by the entity, or a third party administrator,
9 health benefit plan issuer, pharmacy benefit manager, or other
10 business entity, directly or indirectly, provides an individual
11 access, without charge to the individual, to discounts on drugs
12 provided by a pharmacist or pharmacy, or makes, publishes,
13 disseminates, circulates, or places before the public, or causes to
14 be made, published, disseminated, circulated, or placed before the
15 public, an advertisement, solicitation, or offer of access without
16 charge to discounts on drugs provided by a pharmacist or pharmacy.
17 The term does not include an insurance policy, certificate of
18 coverage, or other product otherwise regulated by the department or
19 a self-funded or self-insured employee benefit plan.

20 (1-a) "Discount drug card program operator" means a
21 person who operates a discount drug card program.

22 (1-b) "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
25 discounts on health care services provided by health care
26 providers. The term does not include an insurance policy,
27 certificate of coverage, or other product otherwise regulated by

1 the department or a self-funded or self-insured employee benefit
2 plan.

3 (6) "Program operator" means:

4 (A) a discount health care [plan] program
5 operator; or

6 (B) a discount drug card program operator.

7 SECTION 16. Section 7001.004, Insurance Code, is amended to
8 read as follows:

9 Sec. 7001.004. REGISTRATION REQUIRED. A [~~discount health~~
10 ~~care~~] program operator may not offer a discount health care program
11 or a discount drug card program in this state unless the program
12 operator is registered with the department.

13 SECTION 17. Section 7001.005(a), Insurance Code, is amended
14 to read as follows:

15 (a) An applicant for registration under this chapter or an
16 applicant for renewal of registration under this chapter whose
17 information has changed shall submit:

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

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

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

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

1 committee;

2 (ii) the officers of the program operator;

3 and

4 (iii) any contracted management company
5 personnel; and

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

9 (3) a statement generally describing the applicant,
10 its facilities and personnel, and the health care services, drugs,
11 or other products for which a discount will be made available under
12 its discount health care programs or discount drug card programs;

13 (4) a list of the marketers authorized to sell or
14 distribute the program operator's programs under the program
15 operator's name, a list of the marketing entities authorized to
16 private label the program operator's programs, and other
17 information about the marketers and marketing entities considered
18 necessary by the commissioner; and

19 (5) a copy of the form of all contracts made or to be
20 made between the program operator and any providers, ~~or~~ provider
21 networks, or pharmacy benefit managers regarding the provision of
22 health care services or products to members or regarding discount
23 drug cards generally.

24 SECTION 18. Section 7001.006, Insurance Code, is amended to
25 read as follows:

26 Sec. 7001.006. FEES. A [~~discount health care~~] program
27 operator shall pay the department an initial registration fee of

1 \$1,000 and an annual renewal fee in the amount set by the
2 commissioner not to exceed \$500.

3 SECTION 19. Section 7001.009(a), Insurance Code, is amended
4 to read as follows:

5 (a) The department may deny a registration application or
6 take any action authorized under Chapters 82, 83, and 84 if the
7 department determines that the applicant or registered [~~discount~~
8 ~~health-care~~] program operator, individually or through an officer,
9 director, or shareholder:

10 (1) has wilfully violated a provision of this code or
11 an order or rule of the commissioner;

12 (2) has intentionally made a material misstatement in
13 the registration application;

14 (3) has obtained or attempted to obtain a registration
15 by fraud or misrepresentation;

16 (4) has misappropriated, converted to the applicant's
17 or registration holder's own use, or illegally withheld money
18 belonging to a member of a discount health care program;

19 (5) has engaged in fraudulent or dishonest acts or
20 practices; or

21 (6) has been convicted of a felony.

22 SECTION 20. Chapter 7001, Insurance Code, is amended by
23 adding Subchapter B to read as follows:

24 SUBCHAPTER B. DISCOUNT DRUG CARD PROGRAMS

25 Sec. 7001.051. PROGRAM FEES. The commissioner shall
26 establish a reasonable fee that a discount drug card program
27 operator may charge a pharmacist or pharmacy to process a claim

1 under a discount drug card program. The fee may not be computed as a
2 percentage of the cost of a drug provided.

3 Sec. 7001.052. NETWORK REQUIREMENTS PROHIBITED. A
4 discount drug card program operator or an affiliate or agent of a
5 discount drug card program operator may not require a pharmacy or
6 pharmacist to:

7 (1) participate in a specified provider network as a
8 condition of processing a claim in the discount drug card program;
9 or

10 (2) participate in, or process claims under, a
11 discount drug card program as a condition of participation in a
12 provider network.

13 Sec. 7001.053. PROHIBITED CONDUCT. (a) A discount drug
14 card program operator may not pay any consideration to a health care
15 services provider or employee of a health care services provider:

16 (1) to encourage an individual to claim a discount
17 under a discount drug card program; or

18 (2) to include discount drug card program information
19 on a prescription for a drug or in materials accompanying the
20 prescription.

21 (b) A discount drug card program operator may not, directly
22 or indirectly:

23 (1) represent that a discount drug card program is a
24 pharmacy benefit or health insurance or provides coverage similar
25 to health insurance by any manner or method; or

26 (2) provide written prescription forms that could
27 reasonably mislead an individual to believe that the discount drug

1 card program is health insurance or provides coverage similar to
2 health insurance.

3 SECTION 21. (a) The changes in law made by this Act to
4 Chapter 562, Insurance Code, apply only to conduct that occurs on or
5 after the effective date of this Act. Conduct that occurs before the
6 effective date of this Act is governed by the law as it existed when
7 the conduct occurred, and the former law is continued in effect for
8 that purpose.

9 (b) Section 562.105, Insurance Code, as amended by this Act,
10 applies only to a contract with a pharmacy or pharmacist signed on
11 or after the effective date of this Act. A contract signed before
12 the effective date of this Act is governed by the law as it existed
13 immediately before the effective date of this Act, and that law is
14 continued in effect for that purpose.

15 (c) The changes in law made by this Act apply only to a claim
16 submitted under a discount drug card program on or after the
17 effective date of this Act. A claim filed before the effective date
18 of this Act is governed by the law as it existed immediately before
19 the effective date of this Act, and that law is continued in effect
20 for that purpose.

21 (d) Notwithstanding Section 562.053, Insurance Code, or
22 Section 7001.004, Insurance Code, as amended by this Act, a person
23 is not required to register as a discount drug card program operator
24 under Chapter 7001, Insurance Code, as amended by this Act, before
25 January 1, 2016.

26 SECTION 22. This Act takes effect September 1, 2015.