

By: Lucio III

H.B. No. 2118

A BILL TO BE ENTITLED

AN ACT

relating to deceptive marketing of certain health plans, programs, and arrangements; authorizing an administrative penalty.

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

SECTION 1. Subtitle C, Title 5, Insurance Code, is amended by adding Chapter 564 to read as follows:

CHAPTER 564. PROHIBITED PRACTICES RELATING TO MARKETING OF CERTAIN HEALTH PLANS, PROGRAMS, AND ARRANGEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 564.0001. APPLICABILITY. This chapter applies to a health benefit plan, health care program, or health expense arrangement that provides health benefit coverage or otherwise pays for, reimburses, or discounts health care expenses and that excludes or limits coverage for preexisting conditions, discriminates based on health-status related factors, or does not provide essential health benefits required under 42 U.S.C. Section 18022, including:

(1) an individual accident and health insurance policy governed by Chapter 1201;

(2) a group accident and health insurance policy governed by Chapter 1251;

(3) a short-term limited-duration insurance policy governed by Chapter 1509;

(4) a health care sharing ministry operated under

1 Chapter 1681;

2 (5) a discount health care program governed by Chapter
3 7001; or

4 (6) a direct primary care arrangement governed by
5 Subchapter F, Chapter 162, Occupations Code.

6 Sec. 564.0002. RULES. The commissioner may adopt rules
7 necessary to implement this chapter.

8 SUBCHAPTER B. DECEPTIVE MARKETING PROHIBITED

9 Sec. 564.0101. PROHIBITED MARKETING TECHNIQUES. A person
10 who issues or operates a plan, program, or arrangement to which this
11 chapter applies or an agent or third party marketing the plan,
12 program, or arrangement on behalf of the issuer or operator may not:

13 (1) represent that a plan, program, or arrangement
14 provides benefits that it does not provide;

15 (2) sell or offer multiple plans, programs, or
16 arrangements to an individual as part of a single transaction in a
17 manner that is false, misleading, or deceptive;

18 (3) use terms associated with health coverage
19 regulated under the Patient Protection and Affordable Care Act
20 (Pub. L. No. 111-148) in a manner that is false, misleading, or
21 deceptive;

22 (4) use terms associated with major medical coverage
23 in a manner that is false, misleading, or deceptive;

24 (5) represent that the federal open enrollment period
25 applies to an excepted benefit plan or discount health care
26 program;

27 (6) misrepresent that a health insurance rate will

1 change if the consumer does not make an immediate purchase;

2 (7) fail to explain the difference in an excepted
3 benefit plan and major medical coverage to a consumer;

4 (8) solicit the sale of an insurance product to which
5 this chapter applies through an Internet website, e-mail, printed
6 advertisement, text message, phone call, or other means without
7 identifying the agent's name and national producer number in a
8 visible manner;

9 (9) contact a prospective purchaser or participant
10 without disclosing the employee's, agent's, or third party's name
11 and national producer number, if applicable, at the start of the
12 contact;

13 (10) try to contact a prospective purchaser or
14 participant by phone and fail to leave a voice mail message if it is
15 possible to leave a voice mail message; or

16 (11) use marketing media that has not been filed with
17 the department.

18 Sec. 564.0102. DUTY TO RECORD MARKETING CALLS. (a) An agent
19 shall make an audio recording of each phone call marketing an
20 insurance product to which this chapter applies.

21 (b) An issuer of an insurance product to which this chapter
22 applies shall retain the recording made under Subsection (a) for a
23 time period determined by the department.

24 Sec. 564.0103. REQUIREMENT TO PROVIDE CERTAIN INFORMATION.
25 An issuer of an insurance product to which this chapter applies
26 shall provide to the department on request:

27 (1) a recording or a transcript of a recording made

1 under Section 564.0102; or

2 (2) a copy of a written communication soliciting the
3 sale of a product to which this chapter applies sent by e-mail,
4 text, Internet website, or other means.

5 Sec. 564.0104. ADVERTISING FILING REQUIREMENTS. An issuer
6 of an insurance product to which this chapter applies shall file for
7 informational purposes with the department a copy of any sales or
8 marketing materials for the product that the issuer intends to use
9 in this state.

10 Sec. 564.0105. VIOLATION. (a) If an issuer or operator
11 holding a certificate of authority or license under this code or an
12 agent or third party acting on behalf of the issuer or operator
13 violates this chapter or a rule adopted under this chapter, the
14 issuer or operator and the agent or third party commit an unfair
15 practice in violation of Chapter 541 and the issuer or operator is
16 subject to administrative penalties and other sanctions under
17 Chapter 82.

18 (b) If an issuer or operator that does not hold a
19 certificate of authority or license under this code or an agent or
20 third party acting on behalf of the issuer or operator violates this
21 chapter or a rule adopted under this chapter, the issuer or operator
22 and the agent or third party commit a false, misleading, or
23 deceptive act or practice under Section 17.46, Business & Commerce
24 Code.

25 SECTION 2. This Act takes effect September 1, 2021.