

1 **HEALTH DISCOUNT PROGRAM CONSUMER**

2 **PROTECTION ACT**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: James A. Dunnigan**

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Health Discount Program Consumer Protection Act in the Insurance
10 Code to regulate the offer and marketing of health discount programs.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ describes the general scope and purposes of the act;
- 15 ▶ requires a license to operate a health discount program unless the operator is already
16 a licensed insurer in the state, and designates the term of the license;
- 17 ▶ requires:
 - 18 • operators of health discount programs to disclose certain information to the
19 commissioner prior to offering discount programs in the state;
 - 20 • disclosure of terms to enrollees prior to accepting money from the enrollees;
 - 21 • certain record keeping by operators of health discount programs; and
 - 22 • notice to the commissioner when certain information changes;
- 23 ▶ creates certain advertising restrictions and requirements;
- 24 ▶ makes health discount program operators subject to the provisions of:
 - 25 • Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups;
 - 26 and
 - 27 • Chapter 31, Insurance Fraud Act; and



28 ▶ enacts a provision in Chapter 31, Insurance Fraud Act, to designate certain
29 intentional acts a felony.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill takes effect on July 1, 2005.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **31A-2-308**, as last amended by Chapter 298, Laws of Utah 2003

37 **31A-15-102**, as last amended by Chapter 298, Laws of Utah 2003

38 ENACTS:

39 **31A-8a-101**, Utah Code Annotated 1953

40 **31A-8a-102**, Utah Code Annotated 1953

41 **31A-8a-103**, Utah Code Annotated 1953

42 **31A-8a-201**, Utah Code Annotated 1953

43 **31A-8a-202**, Utah Code Annotated 1953

44 **31A-8a-203**, Utah Code Annotated 1953

45 **31A-8a-204**, Utah Code Annotated 1953

46 **31A-8a-205**, Utah Code Annotated 1953

47 **31A-8a-206**, Utah Code Annotated 1953

48 **31A-8a-207**, Utah Code Annotated 1953

49 **31A-8a-208**, Utah Code Annotated 1953

50 **31A-8a-209**, Utah Code Annotated 1953

51 **31A-8a-210**, Utah Code Annotated 1953

52 **31A-31-111**, Utah Code Annotated 1953



54 *Be it enacted by the Legislature of the state of Utah:*

55 Section 1. Section **31A-2-308** is amended to read:

56 **31A-2-308. Enforcement penalties and procedures.**

57 (1) (a) A person who violates any insurance statute or rule or any order issued under
58 Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from

59 the violation, in addition to any other forfeiture or penalty imposed.

60 (b) (i) The commissioner may order an individual producer, limited line producer,
61 customer service representative, managing general agent, reinsurance intermediary, adjuster, or
62 insurance consultant who violates an insurance statute or rule to forfeit to the state not more
63 than \$2,500 for each violation.

64 (ii) The commissioner may order any other person who violates an insurance statute or
65 rule to forfeit to the state not more than \$5,000 for each violation.

66 (c) (i) The commissioner may order an individual producer, limited line producer,
67 customer service representative, managing general agent, reinsurance intermediary, adjuster, or
68 insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to
69 the state not more than \$2,500 for each violation. Each day the violation continues is a
70 separate violation.

71 (ii) The commissioner may order any other person who violates an order issued under
72 Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each
73 day the violation continues is a separate violation.

74 (d) The commissioner may accept or compromise any forfeiture under this Subsection
75 (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only
76 the attorney general may compromise the forfeiture.

77 (2) When a person fails to comply with an order issued under Subsection
78 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of
79 competent jurisdiction or obtain a court order or judgment:

80 (a) enforcing the commissioner's order;

81 (b) (i) directing compliance with the commissioner's order and restraining further
82 violation of the order; and

83 (ii) subjecting the person ordered to the procedures and sanctions available to the court
84 for punishing contempt if the failure to comply continues; or

85 (c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each
86 day the failure to comply continues after the filing of the complaint until judgment is rendered.

87 (3) The Utah Rules of Civil Procedure govern actions brought under Subsection (2),
88 except that the commissioner may file a complaint seeking a court-ordered forfeiture under
89 Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's

90 intention to proceed under Subsection (2)(c). The commissioner's order issued under
91 Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if
92 the commissioner's order is disobeyed.

93 (4) If, after a court order is issued under Subsection (2), the person fails to comply with
94 the commissioner's order or judgment:

95 (a) the commissioner may certify the fact of the failure to the court by affidavit; and

96 (b) the court may, after a hearing following at least five days written notice to the
97 parties subject to the order or judgment, amend the order or judgment to add the forfeiture or
98 forfeitures, as prescribed in Subsection (2)(c), until the person complies.

99 (5) (a) The proceeds of all forfeitures under this section, including collection expenses,
100 shall be paid into the General Fund.

101 (b) The expenses of collection shall be credited to the Insurance Department's budget.

102 (c) The attorney general's budget shall be credited to the extent the Insurance
103 Department reimburses the attorney general's office for its collection expenses under this
104 section.

105 (6) (a) Forfeitures and judgments under this section bear interest at the rate charged by
106 the United States Internal Revenue Service for past due taxes on the:

107 (i) date of entry of the commissioner's order under Subsection (1); or

108 (ii) date of judgment under Subsection (2).

109 (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the
110 forfeiture and accrued interest are fully paid.

111 (7) A forfeiture may not be imposed under Subsection (2)(c) if:

112 (a) at the time the forfeiture action is commenced, the person was in compliance with
113 the commissioner's order; or

114 (b) the violation of the order occurred during the order's suspension.

115 (8) The commissioner may seek an injunction as an alternative to issuing an order
116 under Subsection 31A-2-201(4).

117 (9) (a) A person is guilty of a class B misdemeanor if that person:

118 (i) intentionally violates:

119 (A) an insurance statute or rule of this state; or

120 (B) an order issued under Subsection 31A-2-201(4);

- 121 (ii) intentionally permits a person over whom that person has authority to violate:
122 (A) an insurance statute or rule of this state; or
123 (B) an order issued under Subsection 31A-2-201(4); or
124 (iii) intentionally aids any person in violating:
125 (A) an insurance statute or rule of this state; or
126 (B) an order issued under Subsection 31A-2-201(4).
127 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may
128 be fined not more than:
129 (i) \$10,000 if a corporation; or
130 (ii) \$5,000 if a person other than a corporation.
131 (c) If the person is an individual, the person may, in addition, be imprisoned for up to
132 one year.
133 (d) As used in this Subsection (9), "intentionally" has the same meaning as under
134 Subsection 76-2-103(1).
135 (10) (a) A person who knowingly and intentionally violates Section 31A-4-102,
136 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this
137 Subsection (10).
138 (b) When the value of the property, money, or other things obtained or sought to be
139 obtained in violation of Subsection (10)(a):
140 (i) is less than \$5,000, a person is guilty of a third degree felony; or
141 (ii) is or exceeds \$5,000, a person is guilty of a second degree felony.
142 ~~[(10)]~~ (11) (a) After a hearing, the commissioner may, in whole or in part, revoke,
143 suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of
144 authority:
145 (i) when a licensee of the department, other than a domestic insurer:
146 (A) persistently or substantially violates the insurance law; or
147 (B) violates an order of the commissioner under Subsection 31A-2-201(4);
148 (ii) if there are grounds for delinquency proceedings against the licensee under Section
149 31A-27-301 or Section 31A-27-307; or
150 (iii) if the licensee's methods and practices in the conduct of the licensee's business
151 endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate

152 interests of the licensee's customers and the public.

153 (b) Additional license termination or probation provisions for licensees other than
154 insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112,
155 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

156 [(H)] (12) The enforcement penalties and procedures set forth in this section are not
157 exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to
158 applicable law.

159 Section 2. Section 31A-8a-101 is enacted to read:

160 **CHAPTER 8a. HEALTH DISCOUNT PROGRAM CONSUMER PROTECTION ACT**

161 **Part 1. General Provisions**

162 **31A-8a-101. Title.**

163 This chapter is known as the "Health Discount Program Consumer Protection Act."

164 Section 3. Section 31A-8a-102 is enacted to read:

165 **31A-8a-102. Definitions.**

166 For purposes of this chapter:

167 (1) "Health care provider" means any person that has agreed either directly or
168 indirectly, by contract or any other arrangement with a health discount program operator, to
169 provide a discount to enrollees of a health discount program.

170 (2) "Health discount program" means a business arrangement or contract in which a
171 person pays fees, dues, charges, or other consideration in exchange for a program that provides
172 access to health care providers who agree to provide a discount for medical services.

173 (3) "Operates a health discount program" or "health discount program operator" means
174 to:

175 (a) enter into a contract or agreement either directly or indirectly with a health care
176 provider in this state which the health care provider agrees to provide discounts to enrollees of
177 the health discount program;

178 (b) enter into a contract or agreement either directly or indirectly with a person in this
179 state to provide access to more than one health care provider who has agreed to provide
180 discounts for medical services to enrollees of the health discount program;

181 (c) sell or distribute a health discount program in this state; or

182 (d) place your name on and market or promote a health discount program in this state.

183 Section 4. Section **31A-8a-103** is enacted to read:

184 **31A-8a-103. Scope and purposes.**

185 (1) A person shall comply with the provisions of this chapter if the person operates a
186 health discount program in this state.

187 (2) Notwithstanding any provision in this title, a person who only operates or markets a
188 health discount program is exempt from:

189 (a) Section 31A-4-113;

190 (b) Section 31A-4-113.5;

191 (c) Chapter 6a, Service Contracts;

192 (d) Chapter 7, Nonprofit Health Service Insurance Corporations;

193 (e) Section 31A-8-209;

194 (f) Section 31A-8-211;

195 (g) Section 31A-8-214;

196 (h) Chapters 9 through 12;

197 (i) Chapters 17 and 18;

198 (j) Chapter 19a, Utah Rate Regulation Act;

199 (k) Sections 31A-23a-103 and 31A-23a-104;

200 (l) Chapters 25 and 26;

201 (m) Chapters 28 and 29;

202 (n) Chapter 33, Workers' Compensation Fund; and

203 (o) Chapters 35 through 38.

204 (3) A person licensed under this title as an accident and health insurer or health
205 maintenance organization:

206 (a) is not required to obtain a license as required by Section 31A-8a-201 to operate a
207 health discount program; and

208 (b) is required to comply with all other provisions of this chapter.

209 (4) The purposes of this chapter include:

210 (a) full disclosure in the sale of health discount programs;

211 (b) reasonable regulation of the marketing and disclosure practices of health discount
212 program operators; and

213 (c) licensing standards for health discount programs.

214 Section 5. Section **31A-8a-201** is enacted to read:

215 **Part 2. Licensure**

216 **31A-8a-201. License required.**

217 (1) Except as provided in Subsection 31A-8a-103(3), prior to operating a health
218 discount program, a person must:

219 (a) be authorized to transact business in this state; and

220 (b) be licensed by the commissioner.

221 (2) (a) An application for licensure under this chapter must be filed with the
222 commissioner on a form prescribed by the commissioner.

223 (b) The application shall be sworn to by an officer or authorized representative of the
224 health discount program and shall include:

225 (i) articles of incorporation with bylaws or other enabling documents that establish the
226 organizational structure;

227 (ii) information required by the commissioner by administrative rule which the
228 commissioner determines is necessary to:

229 (A) identify and locate principals, operators, and marketers involved with the health
230 discount program; and

231 (B) protect the interests of enrollees of health discount programs, health care providers,
232 and consumers;

233 (iii) biographical information and a criminal background check when requested by the
234 commissioner under the provisions of Subsection 31A-23a-105(3);

235 (iv) the disclosures required in Section 31A-8a-203; and

236 (v) the fee established in accordance with Section 31A-3-103.

237 Section 6. Section **31A-8a-202** is enacted to read:

238 **31A-8a-202. Commissioner to issue license -- Renewals.**

239 (1) The commissioner may issue a license to a person:

240 (a) who files an application and pays the fee in accordance with Section 31A-8a-201;

241 and

242 (b) who the commissioner determines is in compliance with this chapter.

243 (2) (a) A license issued under this chapter is valid until the immediately following

244 December 31st and may be renewed in accordance with Subsection (2)(b).

- 245 (b) A license may be renewed if:
- 246 (i) the commissioner finds that the person operating the health discount program is in
- 247 compliance with this chapter;
- 248 (ii) the operator of the health discount program pays any applicable fees for renewal;
- 249 and
- 250 (iii) the operator of the health discount program certifies that the information in the
- 251 application for renewal is accurate.

252 Section 7. Section **31A-8a-203** is enacted to read:

253 **31A-8a-203. Information filed with the department.**

254 (1) Prior to operating a health discount program, a person must submit the following to

255 the commissioner:

- 256 (a) a copy of contract forms used by the health discount program for:
- 257 (i) health care providers or health care provider networks participating in the health
- 258 discount program, including the discounts for medical services provided to enrollees;
- 259 (ii) marketing;
- 260 (iii) administration of the health discount program;
- 261 (iv) enrollment;
- 262 (v) investment management for the health discount programs; and
- 263 (vi) subcontracts for any services;
- 264 (b) the program's proposed marketing plan; and
- 265 (c) dispute resolution procedures for program holders.

266 (2) The commissioner must approve:

- 267 (a) the form of contracts used by the health discount program operator;
- 268 (b) the marketing plan; and
- 269 (c) dispute resolution procedures.

270 (3) The commissioner may adopt rules in accordance with Title 63, Chapter 46a, Utah

271 Administrative Rulemaking Act, to implement this section.

272 Section 8. Section **31A-8a-204** is enacted to read:

273 **31A-8a-204. Advertising restrictions and requirements.**

274 (1) An operator of a health discount program may not:

- 275 (a) use any form of words or terms that may confuse health discount programs with

276 other types of health insurance in advertising or marketing such as "health plan," "health
277 benefit plan," "coverage," "copay," "copayments," "preexisting conditions," "guaranteed issue,"
278 "premium," "enrollment," and "preferred provider";

279 (b) use other terms as designated by the commissioner by administrative rule in
280 advertisement or marketing that could reasonably mislead a consumer to believe that a discount
281 health program is any other form of health insurance; or

282 (c) refer to sales representatives as "agents," "producers," or "consultants."

283 (2) A health discount program operator:

284 (a) must have a written agreement with any marketer of the health discount program
285 prior to marketing, selling, promoting, or distributing the health discount programs;

286 (b) must approve in writing all advertisement, marketing materials, brochures, and
287 discount programs prior to their use or distribution;

288 (c) is liable for any act or omission of its marketer or distributor; and

289 (d) must make the following disclosures:

290 (i) in writing in at least 12-point type or no smaller than the largest type on the page if
291 type appears on the page that is larger than 12-point type; and

292 (ii) with any marketing or advertising to the public and with any enrollment forms
293 given to an enrollee:

294 (A) the program is not a comprehensive health insurance policy;

295 (B) the program provides discounts only at certain health care providers for health care
296 services;

297 (C) the program holder is obligated to pay for all health care services but will receive a
298 discount from those health care providers who have contracted with the health discount
299 program; and

300 (D) the corporate name and the location of the health discount program operator.

301 (3) A health discount program operator or marketer who sells the health discount
302 program with another product must provide the consumer a written itemization of the fees of
303 the health discount program separate from any fees or charges for the other product.

304 Section 9. Section **31A-8a-205** is enacted to read:

305 **31A-8a-205. Disclosure of health discount program terms.**

306 (1) Health discount program operators must provide to each potential enrollee a copy

307 of the terms of the discount program prior to purchase.

308 (2) The disclosure required by Subsection (1) should be clear and thorough and should
309 include any administrative or monthly fees, trial periods, procedures for securing discounts,
310 methods for calculating discounts, cancellation procedures and corresponding refund requests,
311 and procedures for filing disputes.

312 (3) A contract must be signed by the enrollee acknowledging the terms before any fees
313 are collected.

314 Section 10. Section **31A-8a-206** is enacted to read:

315 **31A-8a-206. Provider agreements -- Record keeping.**

316 (1) A health discount program operator may not place any restrictions on an enrollee's
317 access to health care providers such as waiting periods or notification periods.

318 (2) A health discount program operator may not reimburse health care providers for
319 services rendered to an enrollee.

320 (3) (a) A health discount program operator must have a written agreement with a health
321 care provider who agrees to provide discounts to health discount program enrollees.

322 (b) If the written agreement is with a provider network, the health discount plan must
323 require the provider network to have written agreements with each of its health care providers.

324 (4) The health discount program operator shall maintain a copy of each active health
325 care provider agreement.

326 Section 11. Section **31A-8a-207** is enacted to read:

327 **31A-8a-207. Notice of change.**

328 (1) A health discount program operator must provide the commissioner notice of:

329 (a) any change in the health discount program's organizational name, change of
330 business or mailing address, or change in ownership or principals; and

331 (b) any change in the information submitted in accordance with Section 31A-8a-203.

332 (2) (a) The notice required by Subsection (1) should be submitted 30 days prior to any
333 change.

334 (b) The commissioner must approve any changes in forms that required approval under
335 Section 31A-8a-203.

336 Section 12. Section **31A-8a-208** is enacted to read:

337 **31A-8a-208. Representing or aiding an unauthorized insurer.**

338 (1) The provisions of this chapter and Chapter 15, Unauthorized Insurers, Surplus
339 Lines, and Risk Retention Groups, apply to the activities of an unlicensed health discount
340 program operator as if the health discount program was an unauthorized insurance contract and
341 the unlicensed health discount program operator was an unauthorized insurer.

342 (2) A person who knowingly and intentionally represents or aids an unauthorized
343 insurer in violation of the provisions of this chapter or Chapter 15, Unauthorized Insurers,
344 Surplus Lines, and Risk Retention Groups, is guilty of a third degree felony.

345 Section 13. Section **31A-8a-209** is enacted to read:

346 **31A-8a-209. Health discount program fraud.**

347 For purposes of Chapter 31, Insurance Fraud Act, a health discount program operator is
348 an insurer as defined in Section 31A-31-102 and is subject to the provisions of Chapter 31,
349 Insurance Fraud Act.

350 Section 14. Section **31A-8a-210** is enacted to read:

351 **31A-8a-210. Rulemaking authority.**

352 The commissioner has authority to adopt administrative rules in accordance with Title
353 63, Chapter 46a, Utah Administrative Rulemaking Act:

354 (1) to enforce this chapter; and

355 (2) as necessary to protect the public interest.

356 Section 15. Section **31A-15-102** is amended to read:

357 **31A-15-102. Assisting unauthorized insurers.**

358 (1) No person may do any act enumerated under Subsection (2) who knows or should
359 know that the act may assist in the illegal placement of insurance with an unauthorized insurer
360 or the subsequent servicing of an insurance policy illegally placed with an unauthorized
361 insurer.

362 (2) An act performed by mail is performed both at the place of mailing and at the place
363 of delivery. Any of the following acts, whether performed by mail or otherwise, fall within the
364 prohibition of Subsection (1):

365 (a) soliciting, making, or proposing to make an insurance contract;

366 (b) taking, receiving, or forwarding an application for insurance;

367 (c) collecting or receiving, in full or in part, an insurance premium;

368 (d) issuing or delivering an insurance policy or other evidence of an insurance contract

369 except as a messenger not employed by the insurer, or an insurance producer;

370 (e) doing any of the following in connection with the solicitation, negotiation,
371 procuring, or effectuation of insurance coverage for another: inspecting risks, setting rates,
372 advertising, disseminating information, or advising on risk management;

373 (f) publishing or disseminating any advertisement encouraging the placement or
374 servicing of insurance that would violate Subsection (1); however this provision does not apply
375 to publication or dissemination to an audience primarily outside Utah that also reaches persons
376 in Utah unless the extension to persons inside Utah can be conveniently avoided without
377 substantial expense other than loss of revenue; nor does it apply to regional or national network
378 programs on radio or television unless they originate in Utah;

379 (g) investigating, settling, adjusting, or litigating claims; or

380 (h) representing or assisting any person to do an unauthorized insurance business or to
381 procure insurance from an unauthorized insurer.

382 (3) Subsection (1) does not prohibit:

383 (a) an attorney acting for a client;

384 (b) a full-time salaried employee of an insured acting in the capacity of an insurance
385 buyer or manager; or

386 (c) insurance activities described under Section 31A-15-103.

387 (4) Any act performed in Utah which is prohibited under this section constitutes
388 appointment of the commissioner or the lieutenant governor as agent for service of process
389 under Sections 31A-2-309 and 31A-2-310.

390 (5) Any person or entity who knows or should know that the person's or entity's actions
391 assist in the illegal placement of insurance in violation of this section is guilty of a third degree
392 felony.

393 Section 16. Section **31A-31-111** is enacted to read:

394 **31A-31-111. Health discount program fraud.**

395 (1) In addition to any other fraudulent acts prohibited by this chapter, a person commits
396 a fraudulent insurance act if that person with intent to deceive or defraud:

397 (a) accepts fees, dues, charges, or other consideration for providing a health discount
398 program as defined in Section 31A-8a-102 without having health care providers under contract
399 who have agreed to provide the discounts promised to enrollees; or

400 (b) operates a health discount program without complying with the provisions of
401 Section 31A-8a-201.

402 (2) In addition to any other civil penalties or remedies provided by law, a person who
403 violates this section is guilty of a third degree felony.

404 Section 17. **Effective date.**

405 This bill takes effect on July 1, 2005.

Legislative Review Note
as of 12-17-04 9:45 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

The additional duties can be handled within existing budgets. If 20 plans apply for an initial discount license, new revenues would be about \$10,000.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$0	\$0	\$10,000	\$10,000
TOTAL	\$0	\$0	\$10,000	\$10,000

Individual and Business Impact

Businesses that comply with the law will incur a \$252 initial license fee, a \$200 annual service fee, and a \$50 e-commerce fee or a total startup cost of \$502 per application. The total cost to renew would be \$452 for each renewal and a fraud assessment based on direct premium written. No estimate is made on costs or benefits to consumers.

Office of the Legislative Fiscal Analyst