

**Chapter 8a**  
**Health Discount Program Consumer Protection Act**

**Part 1**  
**General Provisions**

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

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

Enacted by Chapter 58, 2005 General Session

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

For purposes of this chapter:

- (1) "Fee" means any periodic charge for use of a discount program.
- (2) "Health care provider" means a health care provider as defined in Section 78B-3-403, with the exception of "licensed athletic trainer," who:
  - (a) is practicing within the scope of the provider's license; and
  - (b) has agreed either directly or indirectly, by contract or any other arrangement with a health discount program operator, to provide a discount to enrollees of a health discount program.
- (3)
  - (a) "Health discount program" means a business arrangement or contract in which a person pays fees, dues, charges, or other consideration in exchange for a program that provides access to health care providers who agree to provide a discount for health care services.
  - (b) "Health discount program" does not include a program that does not charge a membership fee or require other consideration from the member to use the program's discounts for health services.
- (4) "Health discount program marketer" means a person, including a private label entity, that markets, promotes, sells, or distributes a health discount program but does not operate a health discount program.
- (5) "Health discount program operator" means a person that provides a health discount program by entering into a contract or agreement, directly or indirectly, with a person or persons in this state who agree to provide discounts for health care services to enrollees of the health discount program and determines the charge to members.
- (6) "Value-added benefit" means a discount offering with no additional charge made by a health insurer or health maintenance organization that is licensed under this title, in connection with existing contracts with the health insurer or health maintenance organization.

Amended by Chapter 104, 2013 General Session

Amended by Chapter 135, 2013 General Session

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

- (1) A person shall comply with the provisions of this chapter if the person operates a health discount program in this state.
- (2) Notwithstanding any provision in this title, a person who only operates or markets a health discount program is exempt from:
  - (a) Section 31A-4-113;
  - (b) Section 31A-4-113.5;

- (c) Chapter 6a, Service Contracts;
  - (d) Chapter 7, Nonprofit Health Service Insurance Corporations;
  - (e) Section 31A-8-209;
  - (f) Section 31A-8-211;
  - (g) Section 31A-8-214;
  - (h) Chapter 9, Insurance Fraternal, Chapter 10, Annuities, Chapter 11, Motor Clubs, and Chapter 12, State Risk Management Fund;
  - (i) Chapter 17, Determination of Financial Condition, and Chapter 18, Investments;
  - (j) Chapter 19a, Utah Rate Regulation Act;
  - (k) Sections 31A-23a-103 and 31A-23a-104;
  - (l) Chapter 25, Third Party Administrators, and Chapter 26, Insurance Adjusters;
  - (m) Chapter 28, Guaranty Associations, and Chapter 29, Comprehensive Health Insurance Pool Act; and
  - (n) Chapter 35, Bail Bond Act, Chapter 36, Life Settlements Act, Chapter 37, Captive Insurance Companies Act, and Chapter 38, Federal Health Care Tax Credit Program Act.
- (3) A person licensed under this title as an accident and health insurer or health maintenance organization:
- (a) is not required to obtain a license as required by Section 31A-8a-201 to operate a health discount program; and
  - (b) is required to comply with all other provisions of this chapter.
- (4) The purposes of this chapter include:
- (a) full disclosure in the sale of health discount programs;
  - (b) reasonable regulation of the marketing and disclosure practices of health discount program operators; and
  - (c) licensing standards for health discount programs.
- (5) Nothing in this chapter prohibits a health discount program operator from marketing a health discount program operator's own services without a health discount program marketer license.

Amended by Chapter 258, 2015 General Session

## **Part 2 Licensure**

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

- (1) Except as provided in Subsection 31A-8a-103(3), prior to operating or marketing a health discount program, a person shall:
- (a) be authorized to transact business in this state; and
  - (b) be licensed by the commissioner.
- (2)
- (a) An application for licensure under this chapter shall be filed with the commissioner on a form prescribed by the commissioner.
  - (b) The application shall be sworn to by an officer or authorized representative of the health discount program and shall include:
    - (i) articles of incorporation with bylaws or other enabling documents that establish the organizational structure;

- (ii) information required by the commissioner by administrative rule which the commissioner determines is necessary to:
  - (A) identify and locate principals, operators, and marketers involved with the health discount program; and
  - (B) protect the interests of enrollees of health discount programs, health care providers, and consumers;
- (iii) biographical information, and when requested by the commissioner, a criminal background check, under the provisions of Subsection 31A-23a-105(3);
- (iv) the disclosures required in Section 31A-8a-203; and
- (v) the fee established in accordance with Section 31A-3-103.

Amended by Chapter 135, 2013 General Session

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

- (1) The commissioner may issue a license to a person:
  - (a) who files an application and pays the fee in accordance with Section 31A-8a-201; and
  - (b) who the commissioner determines is in compliance with this chapter.
- (2)
  - (a) A license issued under this chapter is valid until the immediately following December 31 and may be renewed in accordance with Subsection (2)(b).
  - (b) A license may be renewed if:
    - (i) the commissioner finds that the person operating the health discount program is in compliance with this chapter;
    - (ii) the health discount program operator or health discount program marketer submits the appropriate renewal application and pays any applicable fees for renewal; and
    - (iii) the health discount program certifies that the information in the application for renewal is accurate.

Amended by Chapter 135, 2013 General Session

**31A-8a-202.5 Reporting of administrative actions and criminal prosecution.**

- (1) A health discount program operator or health discount program marketer shall report to the commissioner any administrative action or criminal prosecution brought against the health discount program operator, health discount program marketer, or an owner, officer, or principal of the health discount program operator or health discount program marketer, other than an administrative action brought by the department.
- (2) The health discount program operator or health discount program marketer shall file the report described in Subsection (1):
  - (a) at the time the health discount program operator or health discount program marketer files an application for licensure or renewal; and
  - (b)
    - (i) for an administrative action that occurs on or after the day on which the health discount program operator or health discount program marketer files an application for licensure or renewal, within 30 days after the day on which the final disposition of the administrative action is issued; or
    - (ii) for a criminal prosecution, within 30 days after the health discount program operator's or health discount program marketer's initial appearance before a court.
- (3) The report described in Subsection (1) shall include:

- (a) a copy of the complaint or other relevant legal documents related to the administrative action or criminal prosecution; and
- (b) an explanation or other information that the health discount program operator or health discount program marketer desires to submit in relation to the action or charge.

Enacted by Chapter 135, 2013 General Session

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

- (1) Prior to operating a health discount program, a person shall submit the following to the commissioner:
  - (a) a copy of contract forms used by the health discount program for:
    - (i) health care providers or health care provider networks participating in the health discount program, including the discounts for medical services provided to enrollees;
    - (ii) marketing;
    - (iii) administration of the health discount program;
    - (iv) enrollment;
    - (v) investment management for the health discount programs; and
    - (vi) subcontracts for any services;
  - (b) the program's proposed marketing plan; and
  - (c) dispute resolution procedures for program holders.
- (2) The company shall file prior to use:
  - (a) the form of contracts used by the health discount program operator;
  - (b) the marketing plan; and
  - (c) dispute resolution procedures.
- (3) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

Amended by Chapter 297, 2011 General Session

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

- (1) An operator of a health discount program may not:
  - (a) use any form of words or terms that may confuse health discount programs with other types of health insurance in advertising or marketing such as "health plan," "health benefit plan," "coverage," "copay," "copayments," "preexisting conditions," "guaranteed issue," "premium," and "preferred provider";
  - (b) use other terms as designated by the commissioner by administrative rule in advertisement or marketing that could reasonably mislead a consumer to believe that a discount health program is any other form of health insurance; or
  - (c) refer to sales representatives as "agents," "producers," or "consultants."
- (2) A health discount program operator:
  - (a) shall have a written agreement with any marketer of the health discount program prior to marketing, selling, promoting, or distributing the health discount programs;
  - (b) shall file with the commissioner all advertisement, marketing materials, brochures, and discount programs prior to their use or distribution; and
  - (c) shall make the following disclosures:
    - (i) in writing in at least 10-point type and bolded; and
    - (ii) with any marketing or advertising to the public and with any enrollment forms given to an enrollee:

- (A) the program is not a health insurance policy;
  - (B) the program provides discounts only at certain health care providers for health care services;
  - (C) the program holder is obligated to pay for all health care services but will receive a discount from those health care providers who have contracted with the health discount program; and
  - (D) the corporate name and the location of the health discount program operator.
- (3) A health discount program operator or marketer who sells the health discount program with another product shall provide the consumer a written itemization of the fees of the health discount program separate from any fees or charges for the other product, which can be purchased separately.

Amended by Chapter 297, 2011 General Session

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

- (1)
- (a) Health discount program operators shall provide to each purchaser or potential purchaser a copy of the terms of the discount program at the time of purchase.
  - (b) For purposes of this section "purchaser" means the employer in an employer sponsored plan, or an individual purchasing outside of an employer relationship.
- (2) The disclosure required by Subsection (1) should be clear and thorough and should include any administrative or monthly fees, trial periods, procedures for securing discounts, cancellation procedures and corresponding refund requests, and procedures for filing disputes.
- (3)
- (a) A contract shall be signed by the purchaser acknowledging the terms before any fees are collected and shall include notice of the purchaser's 30-day free look rights.
  - (b) For purposes of this Subsection (3) and Section 46-4-201, when a contract is entered into via telephone, facsimile transmission or the Internet, the following is considered a signing of the contract:
    - (i) if via the Internet, the online application form is completed and sent by the purchaser to the health discount program operator;
    - (ii) if via facsimile transmission, the application is completed, signed and faxed to the health discount program operator; or
    - (iii) if via telephone, the script used by the health discount program operator to solicit the purchaser shall include any limitations or exclusions to the program, and the contract shall be provided to the purchaser via facsimile, mail, or email within 10 working days of the purchaser consenting to enrolling over the telephone.

Amended by Chapter 135, 2013 General Session

**31A-8a-205.5 Free look right.**

- (1) Except as provided in Subsection (2), a person that purchases a health discount program may, with or without cause, within 30 days after the day on which the purchase contract is signed, cancel the contract without payment, damages, penalty, or liability of any kind by giving written notice of cancellation to the other party to the contract.
- (2) A person may not exercise the right of cancellation described in Subsection (1) if the person has used the services of the health discount program under the contract.

- (3) If a person cancels a contract under Subsection (1), the other party to the contract shall refund all money and other consideration paid in relation to the health discount program, less a maximum of \$25 of any enrollment charge, regardless of whether the enrollment charge was designated as nonrefundable.

Enacted by Chapter 135, 2013 General Session

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

- (1) A health discount program operator may not place any restrictions on an enrollee's access to health care providers such as waiting periods or notification periods.
- (2) A health discount program operator may not reimburse health care providers for services rendered to an enrollee, unless the health discount program operator is a licensed third party administrator.
- (3)
  - (a) A health discount program operator shall have a written agreement with a health care provider who agrees to provide discounts to health discount program enrollees.
  - (b) If the written agreement is with a provider network, the health discount plan shall require the provider network to have written agreements with each of its health care providers.
- (4) The health discount program operator shall maintain a copy of each active health care provider agreement.

Amended by Chapter 297, 2011 General Session

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

- (1) A health discount program operator shall provide the commissioner notice of:
  - (a) any change in the health discount program's organizational name, change of business or mailing address, or change in ownership or principals; and
  - (b) any change in the information submitted in accordance with Section 31A-8a-203.
- (2)
  - (a) The notice required by Subsection (1) shall be submitted 30 days prior to any change.
  - (b) Approval by the commissioner is required for any changes in forms that required approval under Section 31A-8a-203.
- (3) A health insurer or health maintenance organization licensed under this title shall annually file with the Accident and Health Data Survey, a list of all value-added benefits offered at no cost to its enrollees.

Amended by Chapter 297, 2011 General Session

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

- (1) The provisions of this chapter and Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups, apply to the activities of an unlicensed health discount program operator as if the health discount program was an unauthorized insurance contract and the unlicensed health discount program operator was an unauthorized insurer.
- (2) A person who knowingly and intentionally represents or aids an unauthorized insurer in violation of the provisions of this chapter or Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups, is guilty of a third degree felony.

Enacted by Chapter 58, 2005 General Session

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

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

Enacted by Chapter 58, 2005 General Session

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

The commissioner has authority to adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (1) to enforce this chapter; and
- (2) as necessary to protect the public interest.

Amended by Chapter 382, 2008 General Session