

**HEALTH DISCOUNT PROGRAM CONSUMER
PROTECTION ACT**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

intentional acts a felony.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on September 1, 2005.

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

31A-31-111, Utah Code Annotated 1953

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

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

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

(1) (a) A person who violates any insurance statute or rule or any order issued under Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

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

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

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

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

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

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

(a) enforcing the commissioner's order;

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

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

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

(3) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's intention to proceed under Subsection (2)(c). The commissioner's order issued under Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) intentionally violates:

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

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

(ii) intentionally permits a person over whom that person has authority to violate:

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

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

(iii) intentionally aids any person in violating:

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

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

(b) Unless a specific criminal penalty is provided elsewhere in this title, the person may be fined not more than:

(i) \$10,000 if a corporation; or

(ii) \$5,000 if a person other than a corporation.

(c) If the person is an individual, the person may, in addition, be imprisoned for up to one year.

(d) As used in this Subsection (9), "intentionally" has the same meaning as under Subsection 76-2-103(1).

(10) (a) A person who knowingly and intentionally violates Section 31A-4-102, 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this Subsection (10).

(b) When the value of the property, money, or other things obtained or sought to be obtained in violation of Subsection (10)(a):

(i) is less than \$5,000, a person is guilty of a third degree felony; or

(ii) is or exceeds \$5,000, a person is guilty of a second degree felony.

~~[(10)]~~ (11) (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

(i) when a licensee of the department, other than a domestic insurer:

(A) persistently or substantially violates the insurance law; or

(B) violates an order of the commissioner under Subsection 31A-2-201(4);

(ii) if there are grounds for delinquency proceedings against the licensee under Section 31A-27-301 or Section 31A-27-307; or

(iii) if the licensee's methods and practices in the conduct of the licensee's business endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate interests of the licensee's customers and the public.

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

~~[(11)]~~ (12) The enforcement penalties and procedures set forth in this section are not exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.

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

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."

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

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 78-14-3

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) "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.

(4) "Operates a health discount program" or "health discount program operator" means to:

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

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

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

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

(5) "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.

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

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) Chapters 9 through 12;
 - (i) Chapters 17 and 18;
 - (j) Chapter 19a, Utah Rate Regulation Act;
 - (k) Sections 31A-23a-103 and 31A-23a-104;
 - (l) Chapters 25 and 26;
 - (m) Chapters 28 and 29; and
 - (n) Chapters 35 through 38.
- (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.

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

Part 2. Licensure

31A-8a-201. License required.

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

(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 must 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.

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

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 operator of the health discount program pays any applicable fees for renewal; and

(iii) the operator of the health discount program certifies that the information in the application for renewal is accurate.

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

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

(1) Prior to operating a health discount program, a person must 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 must 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 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement this section.

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

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

(b) must file with the commissioner all advertisement, marketing materials, brochures, and discount programs prior to their use or distribution; and

(c) must 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 must 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.

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

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

(1) (a) Health discount program operators must 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 must be signed by the purchaser acknowledging the terms before any fees are collected and must include notice of the purchaser's ten-day recision 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 must include any limitations or exclusions to the program, and the contract must be provided to the purchaser via facsimile, mail, or e-mail within ten working days of the purchaser consenting to enrolling over the telephone.

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

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 must 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 must 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.

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

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

(1) A health discount program operator must 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) should be submitted 30 days prior to any change.

(b) The commissioner must approve 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.

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

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.

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

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.

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

31A-8a-210. Rulemaking authority.

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

(1) to enforce this chapter; and

(2) as necessary to protect the public interest.

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

31A-15-102. Assisting unauthorized insurers.

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

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

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

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

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

(d) issuing or delivering an insurance policy or other evidence of an insurance contract except as a messenger not employed by the insurer, or an insurance producer;

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

(f) publishing or disseminating any advertisement encouraging the placement or servicing of insurance that would violate Subsection (1); however this provision does not apply to publication or dissemination to an audience primarily outside Utah that also reaches persons in

Utah unless the extension to persons inside Utah can be conveniently avoided without substantial expense other than loss of revenue; nor does it apply to regional or national network programs on radio or television unless they originate in Utah;

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

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

(3) Subsection (1) does not prohibit:

(a) an attorney acting for a client;

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

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

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

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

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

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

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

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

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

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

Section 17. **Effective date.**

This bill takes effect on September 1, 2005.