

1 **HEALTH DISCOUNT PROGRAM REVISIONS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the definitions and license renewal provisions of the Health Discount
10 Program Consumer Protection Act and directs health discount program operators or
11 marketers to report their involvement in any administrative action or criminal
12 prosecutions to the insurance commissioner.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ requires the operator or marketer of a health discount program to submit a license
17 renewal application in addition to applicable renewal fees;
- 18 ▶ requires a health discount program operator or marketer to report to the insurance
19 commissioner any:
 - 20 • administrative action taken against the operator or marketer; or
 - 21 • criminal prosecution instituted against the operator or marketer;
- 22 ▶ provides that a purchaser of a health discount program has 30 calendar days to
23 cancel the contract and receive a reimbursement of money paid, unless the
24 purchaser has used services provided by the health discount program under the
25 contract; and
- 26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **31A-8a-102**, as last amended by Laws of Utah 2008, Chapter 3

34 **31A-8a-103**, as enacted by Laws of Utah 2005, Chapter 58

35 **31A-8a-201**, as last amended by Laws of Utah 2011, Chapter 297

36 **31A-8a-202**, as enacted by Laws of Utah 2005, Chapter 58

37 **31A-8a-205**, as last amended by Laws of Utah 2011, Chapter 297

38 ENACTS:

39 **31A-8a-202.5**, Utah Code Annotated 1953

40 **31A-8a-205.5**, Utah Code Annotated 1953



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

43 Section 1. Section **31A-8a-102** is amended to read:

44 **31A-8a-102. Definitions.**

45 For purposes of this chapter:

46 (1) "Fee" means any periodic charge for use of a discount program.

47 (2) "Health care provider" means a health care provider as defined in Section

48 78B-3-403 who:

49 (a) is practicing within the scope of the provider's license; and

50 (b) has agreed either directly or indirectly, by contract or any other arrangement with a
51 health discount program operator, to provide a discount to enrollees of a health discount
52 program.

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

56 [~~(4) "Operates a health discount program" or "health discount program operator" means~~
57 ~~to:]~~

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

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

64 ~~[(c) sell or distribute a health discount program in this state; or]~~

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

66 (b) "Health discount program" does not include a program that does not charge a
67 membership fee or require other consideration from the member to use the program's discounts
68 for health services.

69 (4) "Health discount program marketer" means a person, including a private label
70 entity, that markets, promotes, sells, or distributes a health discount program but does not
71 operate a health discount program.

72 (5) "Health discount program operator" means a person that provides a health discount
73 program by entering into a contract or agreement, directly or indirectly, with a person or
74 persons in this state who agree to provide discounts for health care services to enrollees of the
75 health discount program and determines the charge to members.

76 ~~[(5)]~~ (6) "Value-added benefit" means a discount offering with no additional charge
77 made by a health insurer or health maintenance organization that is licensed under this title, in
78 connection with existing contracts with the health insurer or health maintenance organization.

79 Section 2. Section **31A-8a-103** is amended to read:

80 **31A-8a-103. Scope and purposes.**

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

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

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

- 86 (b) Section 31A-4-113.5;
 - 87 (c) Chapter 6a, Service Contracts;
 - 88 (d) Chapter 7, Nonprofit Health Service Insurance Corporations;
 - 89 (e) Section 31A-8-209;
 - 90 (f) Section 31A-8-211;
 - 91 (g) Section 31A-8-214;
 - 92 (h) Chapters 9 through 12;
 - 93 (i) Chapters 17 and 18;
 - 94 (j) Chapter 19a, Utah Rate Regulation Act;
 - 95 (k) Sections 31A-23a-103 and 31A-23a-104;
 - 96 (l) Chapters 25 and 26;
 - 97 (m) Chapters 28 and 29; and
 - 98 (n) Chapters 35 through 38.
- 99 (3) A person licensed under this title as an accident and health insurer or health

100 maintenance organization:

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

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

104 (4) The purposes of this chapter include:

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

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

108 (c) licensing standards for health discount programs.

109 (5) Nothing in this chapter prohibits a health discount program operator from
110 marketing a health discount program operator's own services without a health discount program
111 marketer license.

112 Section 3. Section **31A-8a-201** is amended to read:

113 **31A-8a-201. License required.**

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

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

117 (b) be licensed by the commissioner.

118 (2) (a) An application for licensure under this chapter shall be filed with the
119 commissioner on a form prescribed by the commissioner.

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

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

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

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

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

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

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

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

134 Section 4. Section **31A-8a-202** is amended to read:

135 **31A-8a-202. Commissioner to issue license -- Renewals.**

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

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

138 and

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

140 (2) (a) A license issued under this chapter is valid until the immediately following
141 December 31 and may be renewed in accordance with Subsection (2)(b).

142 (b) A license may be renewed if:

143 (i) the commissioner finds that the person operating the health discount program is in
144 compliance with this chapter;

145 (ii) the ~~[operator of the health discount program]~~ health discount program operator or
146 health discount program marketer submits the appropriate renewal application and pays any
147 applicable fees for renewal; and

148 (iii) ~~[the operator of]~~ the health discount program certifies that the information in the
149 application for renewal is accurate.

150 Section 5. Section ~~31A-8a-202.5~~ is enacted to read:

151 **31A-8a-202.5. Reporting of administrative actions and criminal prosecution.**

152 (1) A health discount program operator or health discount program marketer shall
153 report to the commissioner any administrative action or criminal prosecution brought against
154 the health discount program operator, health discount program marketer, or an owner, officer,
155 or principal of the health discount program operator or health discount program marketer, other
156 than an administrative action brought by the department.

157 (2) The health discount program operator or health discount program marketer shall
158 file the report described in Subsection (1):

159 (a) at the time the health discount program operator or health discount program
160 marketer files an application for licensure or renewal; and

161 (b) (i) for an administrative action that occurs on or after the day on which the health
162 discount program operator or health discount program marketer files an application for
163 licensure or renewal, within 30 days after the day on which the final disposition of the
164 administrative action is issued; or

165 (ii) for a criminal prosecution, within 30 days after the health discount program
166 operator's or health discount program marketer's initial appearance before a court.

167 (3) The report described in Subsection (1) shall include:

168 (a) a copy of the complaint or other relevant legal documents related to the
169 administrative action or criminal prosecution; and

170 (b) an explanation or other information that the health discount program operator or
171 health discount program marketer desires to submit in relation to the action or charge.

172 Section 6. Section **31A-8a-205** is amended to read:

173 **31A-8a-205. Disclosure of health discount program terms.**

174 (1) (a) Health discount program operators shall provide to each purchaser or potential
175 purchaser a copy of the terms of the discount program at the time of purchase.

176 (b) For purposes of this section "purchaser" means the employer in an employer
177 sponsored plan, or an individual purchasing outside of an employer relationship.

178 (2) The disclosure required by Subsection (1) should be clear and thorough and should
179 include any administrative or monthly fees, trial periods, procedures for securing discounts,
180 cancellation procedures and corresponding refund requests, and procedures for filing disputes.

181 (3) (a) A contract shall be signed by the purchaser acknowledging the terms before any
182 fees are collected and shall include notice of the purchaser's [~~10-day~~ 30-day free look
183 rights.

184 (b) For purposes of this Subsection (3) and Section 46-4-201, when a contract is
185 entered into via telephone, facsimile transmission or the Internet, the following is considered a
186 signing of the contract:

187 (i) if via the Internet, the online application form is completed and sent by the
188 purchaser to the health discount program operator;

189 (ii) if via facsimile transmission, the application is completed, signed and faxed to the
190 health discount program operator; or

191 (iii) if via telephone, the script used by the health discount program operator to solicit
192 the purchaser shall include any limitations or exclusions to the program, and the contract shall
193 be provided to the purchaser via facsimile, mail, or email within 10 working days of the
194 purchaser consenting to enrolling over the telephone.

195 Section 7. Section **31A-8a-205.5** is enacted to read:

196 **31A-8a-205.5. Free look right.**

197 (1) Except as provided in Subsection (2), a person that purchases a health discount

198 program may, with or without cause, within 30 days after the day on which the purchase
199 contract is signed, cancel the contract without payment, damages, penalty, or liability of any
200 kind by giving written notice of cancellation to the other party to the contract.

201 (2) A person may not exercise the right of cancellation described in Subsection (1) if
202 the person has used the services of the health discount program under the contract.

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