STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 729

By: Lamb, Leftwich, Garrison and Lawler of the Senate

and

Staggs of the House

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2001, Section 1219.4, as amended by Section 12, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2004, Section 1219.4), which relates to discount cards; expanding definitions; deleting provisions related to unlawfulness of certain acts related to discount cards; stating requirements for specified organizations to transact business in this state; requiring filing of application; providing list of documents to accompany application; providing for registration; providing duration of registration; requiring registration by affiliates; providing duration of affiliate registration; requiring establishment of Internet website at specified time; establishing certain fees and providing for deposit of specified amounts; construing provision; deleting penalties; authorizing examination or investigation of specified organization; allowing the Insurance Department of the State of Oklahoma to order production of certain information and to make certain statements; providing for payment of examination or investigation expenses and conduct of examinations and investigations; providing for governance of certain organizations and exemption from the Insurance Code; establishing grounds for registration denial or revocation; providing for certain processing fee and periodic charge; providing for partial reimbursement of fees upon cancellation within specified time frame; providing procedure for cancellation; providing for a pro rata reimbursement of certain charges under certain conditions; prohibiting certain actions by a discount medical plan organization; specifying disclosures to be made and method of making such disclosures; requiring certain providers to provide services pursuant to a written agreement; specifying conditions of agreement; providing for approval of certain charges by the Insurance Department of the State of Oklahoma; requiring annual report and specifying contents; providing for forfeiture for failure to file; requiring maintenance of specified net worth; specifying conditions for suspension of authority of discount medical plan organization; providing for written notice of suspension or revocation; providing

for activities of discount medical plan organization upon surrender, suspension or revocation of registration; providing for period of suspension and specifying certain conditions; providing for notice of change in specified information; requiring maintenance of certain list; establishing procedures for use of certain materials; providing for publication of fees; providing for promulgation and content of rules; applying Administrative Procedures Act to directed discount medical plan organization; requiring surety bond for certain purpose; providing penalties, remedies and injunctive relief for commission of certain acts; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2001, Section 1219.4, as amended by Section 12, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2004, Section 1219.4), is amended to read as follows:

Section 1219.4 A. As used in this section:

1. "Direct contract" means a contractual arrangement tying the ultimate seller purporting to offer discounts through the discount card to the health care provider, which expressly states the intent of this agreement to be used for the purpose of offering discounts on health-related purchases to uninsured or noncovered persons;

2. "Discount card" means a card or any other purchasing mechanism or device, which is not insurance, that purports to offer discounts or access to discounts in health-related purchases from health care providers;

3. <u>"Discount medical plan" means a business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. The term discount medical plan does not include any product regulated as an insurance product, group health service product or health maintenance organization (HMO) product in the State of Oklahoma or discounts provided by an insurer, group health service, or health maintenance organizations</u>

(HMOs) where those discounts are provided at no cost to the insured or member and are offered due to coverage with a licensed insurer, group health service, or HMO;

4. "Discount medical plan organization" means a person or an entity which, in exchange for fees, dues, charges or other consideration, offers or provides access for plan members to providers of medical services, and the right to receive medical services from such providers at a discount. The term discount medical plan organization does not include any insurance company, health maintenance organization (HMO), group health service organization or motor service club licensed in this state and, except with respect to the provisions of subsections B, C, D, E and K of this section, does not include an affiliate of a licensed insurance company, HMO, group health service organization or motor service club. For the purposes of this paragraph, "affiliate" means a person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with an insurance company, HMO, group health service organization or motor service club licensed in this state;

5. "Health care provider" means any person or entity licensed by this state to provide health care services including, but not limited to, physicians, hospitals, home health agencies, pharmacies, and dentists; ~~and~~

~~4.~~ 6. "Health care provider network" means an entity which directly contracts with physicians and hospitals and has contractual rights to negotiate on behalf of those health care providers with a discount medical plan organization to provide medical services to members of the discount medical plan organization;

7. "Marketer" means a person or entity who markets, promotes, sells or distributes a discount medical plan, including a private label entity that places its name on and markets or distributes a discount medical plan but does not operate a discount medical plan;

8. "Medical services" means any care, service or treatment of illness or dysfunction of, or injury to, the human body including, but not limited to, physician care, inpatient care, hospital surgical services, emergency services, ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, laboratory services, and medical equipment and supplies. The term does not include pharmaceutical supplies or prescriptions;

9. "Member" means any person who pays fees, dues, charges, or other consideration for the right to receive the purported benefits of a discount medical plan; and

10. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, or any other government or commercial entity.

B. ~~It shall be unlawful for any person to sell, market, promote, advertise or otherwise distribute any discount card if:~~

~~1. Any discount offered by such discount card is not specifically authorized by contractual arrangements tying the ultimate seller of the discount card to the health care providers;~~

~~2. The discount card does not expressly state in bold and prominent type that such discount is not insurance; and~~

~~3. The discount or range of discounts offered by such discount card are misleading, deceptive or fraudulent, regardless of the literal wording used on such discount card~~

1. Before doing business in this state as a discount medical plan organization, an entity shall be a corporation, limited liability corporation, partnership, limited liability partnership or other legal entity, organized under the laws of this state or, if a foreign entity, authorized to transact business in this state, and shall be registered as a discount medical plan organization with the Insurance Department of the State of Oklahoma or be licensed by the Insurance Department of the State of Oklahoma as a licensed

insurance company, licensed HMO, licensed group health service organization or motor service club.

2. To register as a discount medical plan organization, an applicant shall:

a. file with the Insurance Department of the State of Oklahoma an application on the form that the Insurance Commissioner requires, and

b. pay to the Department an application fee of Two Hundred Fifty Dollars ($250.00).

3. A registration is valid for a two-year term.

4. A registration expires on the second June 30 following the registration unless it is renewed as provided in this subsection.

5. Before it expires, a registrant may renew the registration for an additional two-year term if the registrant:

a. otherwise is entitled to be registered,

b. files with the Department a renewal application on the form that the Insurance Commissioner requires, and

c. pays to the Department a renewal fee of Two Hundred Fifty Dollars ($250.00).

6. The Insurance Commissioner may deny a registration to an applicant or refuse to renew, suspend, or revoke the registration of a registrant if the applicant or registrant, or an officer, director, or employee of the applicant or registrant:

a. makes a material misstatement or misrepresentation in an application for registration,

b. fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or registrant or for another,

c. in connection with the administration of a healthcare discount program, commits fraud or engages in illegal or dishonest activities, or

d. has violated any provisions of this section.

7. Prior to registration by the Insurance Department of the State of Oklahoma, each discount medical plan organization shall establish an Internet website.

8. All amounts collected as registration or renewal fees shall be deposited into the General Revenue Fund.

9. Nothing in this subsection shall require a provider who provides discounts to his or her own patients to obtain and maintain a registration as a discount medical plan organization.

10. a. Nothing in this subsection shall apply to an affiliate of a licensed insurance company, HMO, group health service organization or motor service club, provided that the affiliate registers with and maintains registration in good standing with the Insurance Department of the State of Oklahoma in accordance with subparagraphs b and c of this paragraph.

b. An affiliate shall register as a discount plan organization on a form prescribed by the Insurance Commissioner prior to the sale, marketing or solicitation of a discount medical plan and pay an application fee of One Hundred Dollars ($100.00).

c. A registration shall expire one (1) year after the date of registration, and each year on that date thereafter a registrant may renew the registration if the registrant pays an annual registration fee of One Hundred Dollars ($100.00) and remains in good standing with the Insurance Department of the State of Oklahoma.

C. ~~The penalty for a person who violates the provisions of this section may include:~~

~~1. A full repayment of all funds collected from individuals which purchased or incurred expenses as a result of buying or using the discount card;~~

~~2. Payment to health care providers for services provided to any person who defaulted on payment of claims related to their use of the discount card;~~

~~3. An amount equal to One Hundred Dollars ($100.00) per discount card sold, marketed, promoted, advertised or otherwise distributed within the State of Oklahoma, or Ten Thousand Dollars ($10,000.00), whichever is greater;~~

~~4. Three times the amount of the actual damages, if any, sustained;~~

~~5. Reasonable attorney's fees;~~

~~6. Costs; and~~

~~7. Any other relief which the court deems proper~~

1. The Department may examine or investigate the business and affairs of any discount medical plan organization. The Department may order any discount medical plan organization or applicant to produce any records, books, files, advertising and solicitation materials, or other information and may take statements under oath to determine whether the discount medical plan organization or applicant is in violation of the law or is acting contrary to the public interest. The expenses incurred in conducting any examination or investigation shall be paid by the discount medical plan organization or applicant. Examinations and investigations shall be conducted as provided in Section 309.1 et seq. of this title. Discount medical plan organizations shall be governed by the provisions of this section and shall not be subject to the provisions of the Insurance Code unless specifically referenced.

2. Failure by the discount medical plan organization to pay the expenses incurred under paragraph 1 of this subsection shall be grounds for denial or revocation of the discount medical plan organization's registration.

D. 1. A discount medical plan organization may charge a reasonable one-time processing fee and a periodic charge.

2. If the member cancels the membership within the first ten (10) days after receipt of the discount card and other membership materials, the member shall receive a reimbursement of one-half (1/2) of the total one-time processing fee and all periodic charges paid. The return of one-half (1/2) of the processing fee and all periodic charges shall be made within thirty (30) days of the date of the cancellation. If one-half (1/2) of the processing fee and all of the periodic charges have not been paid within thirty (30) days, interest shall be assessed and paid on the proceeds at a rate of the Treasury Bill rate of the preceding calendar year, plus two (2) percentage points.

3. The right of cancellation shall be set out in the contract on the first page, in ten-point type or larger.

4. If a discount medical plan charges for a time period in excess of one (1) month, the plan shall, in the event of cancellation of the membership by either party, make a pro rata reimbursement of all periodic charges to the member.

E. 1. A discount medical plan organization may not:

a. use in its advertisements, marketing material, brochures, and discount cards the term "insurance" except as otherwise provided in this section,

b. use in its advertisements, marketing material, brochures, and discount cards the terms "health plan", "coverage", "copay", "copayments", "preexisting conditions", "guaranteed issue", "premium", "PPO", "preferred provider organization", or other terms in a manner that could reasonably mislead a person to believe that the discount medical plan is health insurance,

c. except for hospital services, have restrictions on free access to plan providers including, but not

limited to, waiting periods and notification periods, or

d. pay providers any fees for medical services.

2. A discount medical plan organization may not collect or accept money from a member for payment to a provider for specific medical services furnished or to be furnished to the member unless the organization has an active license from the Insurance Department of the State of Oklahoma to act as an administrator.

F. The following disclosures, to be printed in not less than twelve-point type, shall be made in writing to any prospective member and shall appear on the first page of any advertisements, marketing materials or brochures relating to a discount medical plan:

1. That the plan is not insurance;

2. That the plan provides discounts with certain health care providers for medical services;

3. That the plan does not make payments directly to the providers of medical services;

4. That the plan member is obligated to pay for all health care services but will receive a discount from those health care providers who have contracted with the discount plan organization; and

5. The name and the locations of the registered discount medical plan organization, including the current telephone number of the registered discount medical plan organization and other entity responsible for customer service for the plan, if different from the registered discount medical plan organization.

G. 1. All providers offering medical services to members under a discount medical plan shall provide such services pursuant to a written agreement. The agreement may be entered into directly by the health care provider or by a health care provider network to which the provider belongs if the provider network has direct

contracts with the health care provider that allow the provider network to contract on behalf of the health care provider.

2. A health care provider agreement shall provide the following:

a. a description of the services and products to be provided at a discount,

b. the amount or amounts of the discounts or, alternatively, a fee schedule which reflects the health care provider's discounted rates, and

c. a provision that the health care provider will not charge members more than the discounted rates.

3. A health care provider agreement between a discount medical plan organization and a health care provider network shall require that the health care provider network have written agreements with its health care providers that:

a. contain the terms described in paragraph 2 of this subsection,

b. authorize the health care provider network to contract with the discount medical plan organization on behalf of the provider, and

c. require the network to maintain an up-to-date list of its contracted health care providers and to provide that list on a quarterly basis to the discount medical plan organization.

4. The discount medical plan organization shall maintain a copy of each active health care provider agreement.

H. 1. All charges to members shall be filed with the Department.

2. There shall be a written agreement between the discount medical plan organization and the member specifying the benefits under the discount medical plan and complying with the disclosure requirements of this section.

3. All forms used, including the written agreement pursuant to the provisions of paragraph 2 of this subsection, shall first be filed with and approved by the Department. Every form filed shall be identified by a unique form number placed in the lower left corner of each form. A filing fee of Twenty-five Dollars ($25.00) per form shall be payable to the Insurance Department of the State of Oklahoma for deposit into the General Revenue Fund.

4. A filing is considered approved on the sixtieth day after its date of filing unless it has been previously approved or disapproved by the Department. The Department shall disapprove any form that does not meet the requirements of this section or that is unreasonable, contrary to the public interest, discriminatory, misleading or unfair.

5. If such filings are disapproved, the Department shall notify the discount medical plan organization and shall specify in the notice the reasons for disapproval. The discount medical plan organization shall have sixty (60) days from the date of the disapproval to make the changes required to modify the filing as required in the disapproval notice.

I. 1. Each discount medical plan organization shall file with the Insurance Department of the State of Oklahoma, within three (3) months after the end of each fiscal year, an annual report.

2. Such reports shall be on forms prescribed by the Commission and shall include:

a. financial statements prepared in accordance with generally accepted accounting principles, including the organization's balance sheet, income statement and statement of changes in cash flow for the preceding year,

b. a list of the names and residence addresses of all persons responsible for the conduct of the organization's affairs, together with a disclosure of

the extent and nature of any contracts or arrangements between such persons and the discount medical plan organization, including any possible conflicts of interest,

c. the number of discount medical plan members, and

d. such other information relating to the performance of the discount medical plan organization as is reasonably required by the Insurance Department of the State of Oklahoma.

3. Every discount medical plan organization that fails to file an annual report in the form and within the time required by this section shall forfeit up to Five Hundred Dollars ($500.00) for each day for the first ten (10) days during which the neglect continues, and shall forfeit up to One Thousand Dollars ($1,000.00) for each day after the first ten (10) days during which the neglect continues; and, upon notice by the Insurance Department of the State of Oklahoma to that effect, the organization's authority to enroll new members or to do business in this state ceases while such default continues. The Department shall deposit all sums collected by the Department under the provisions of this section to the credit of the General Revenue Fund. The Insurance Department of the State of Oklahoma shall not collect more than One Hundred Thousand Dollars ($100,000.00) for each report.

J. 1. Each discount medical plan organization shall, at all times, maintain a net worth of at least One Hundred Fifty Thousand Dollars ($150,000.00).

2. The Insurance Department of the State of Oklahoma may not issue a registration unless the discount medical plan organization has a net worth of at least One Hundred Fifty Thousand Dollars ($150,000.00).

K. 1. The Insurance Department of the State of Oklahoma may suspend the authority of a discount medical plan organization to

enroll new members, revoke any registration issued to a discount medical plan organization, or order compliance if the Department finds that any of the following conditions exist:

a. the organization is not operating in compliance with the provisions of this section,

b. the organization does not have the minimum net worth as required by this section,

c. the organization has advertised, merchandised or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading or unfair practices with respect to advertising or merchandising,

d. the organization is not fulfilling its obligations as a discount medical plan organization, and

e. the continued operation of the organization would be hazardous to its members.

2. If the Insurance Department of the State of Oklahoma has cause to believe that grounds for the suspension or revocation of a registration exist, the Department shall notify the discount medical plan organization in writing, specifically stating the grounds for suspension or revocation, and shall pursue a hearing on the matter in accordance with the provisions of Articles 12 and 12A of this title.

3. When the registration of a discount medical plan organization is surrendered or revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs transacted under the registration. The organization may not engage in any further advertising, solicitation, collecting of fees, or renewal of contracts.

4. The Insurance Department of the State of Oklahoma shall, in its order suspending the authority of a discount medical plan organization to enroll new members, specify the period during which the suspension is to be in effect and the conditions, if any, which shall be met by the discount medical plan organization prior to reinstatement of its registration to enroll new members. The order of suspension is subject to rescission or modification by further order of the Department prior to the expiration of the suspension period. Reinstatement may not be made unless requested by the discount medical plan organization; however, the Department may not grant reinstatement if it finds that the circumstances for which the suspension occurred still exist or are likely to reoccur.

L. Each discount medical plan organization shall provide the Insurance Department of the State of Oklahoma at least thirty (30) days' advance notice of any change in the discount medical plan organization's name, address, principal business address, or mailing address.

M. Each discount medical plan organization shall maintain an up-to-date list of the names and addresses of the providers with which it has contracted on an Internet website page, the address of which shall be prominently displayed on all its advertisements, marketing materials, brochures, and discount cards. This section applies to those providers with whom the discount medical plan organization has contracted directly, as well as those who are members of a provider network with which the discount medical plan organization has contracted.

N. 1. All advertisements, marketing materials, brochures and discount cards used by marketers shall be approved in writing for such use by the discount medical plan organization.

2. The discount medical plan organization shall have an executed written agreement with a marketer prior to the marketer's

marketing, promoting, selling, or distributing the discount medical plan.

O. When a marketer or discount medical plan organization sells a discount medical plan together with any other product, the fees for each individual product shall be provided in writing to the member and itemized.

P. The Insurance Commissioner may promulgate rules to administer the provisions of this section including, but not limited to:

1. Rules for the registration of discount medical plan organizations;

2. Establishing standards for evaluating forms, advertisements, marketing materials, brochures, and discount cards;

3. Providing for the collection of data;

4. Relating disclosures to plan members; and

5. Refining terms used in this section.

Q. The Administrative Procedures Act shall apply to a discount medical plan organization as if the discount medical plan organization were an insurer.

R. 1. A registered discount medical plan organization shall maintain a surety bond with the Insurance Department of the State of Oklahoma, having at all times a value of not less than Thirty-five Thousand Dollars ($35,000.00), for use by the Department in protecting plan members.

2. No judgment creditor or other claimant of a discount medical plan organization, other than the Insurance Department of the State of Oklahoma, shall have the right to levy upon any of the assets or securities held in this state as a deposit pursuant to the provisions of paragraph 1 of this subsection.

S. 1. A person who operates as or aids and abets another operating as a discount medical plan organization in violation of subsection B of this section commits a felony, punishable as

provided for in Oklahoma law, as if the discount medical plan organization were an unauthorized insurer, and the fees, dues, charges, or other consideration collected from the members by the discount medical plan organization or marketer were insurance premium.

2. A person who collects fees for purported membership in a discount medical plan but fails to provide the promised benefits commits a theft, punishable as provided in Oklahoma law.

T. 1. In addition to the penalties and other enforcement provisions of this section, the Department may seek both temporary and permanent injunctive relief if:

a. a discount medical plan organization is being operated by any person or entity that is not registered pursuant to this section, or

b. any person, entity, or discount medical plan organization has engaged in any activity prohibited by this section or any rule adopted pursuant to this section.

2. The venue for any proceeding brought pursuant to the provisions of this section shall be in the district court of Oklahoma County.

U. 1. The provisions of this section apply to the activities of a discount medical plan organization that is not registered pursuant to this section as if the discount medical plan organization were an unauthorized insurer.

2. A discount medical plan organization being operated by any person or entity that is not registered pursuant to this section, or any person, entity or discount medical plan organization that has engaged or is engaging in any activity prohibited by this section or any rules adopted pursuant to this section shall be subject to the Unauthorized Insurer Act as if the discount medical plan organization were an unauthorized insurer, and shall be subject to

all the remedies available to the Insurance Commissioner under the Unauthorized Insurer Act.

SECTION 2. This act shall become effective November 1, 2005.

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