

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 729

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

and

Staggs, Terrill, Peterson
(Ron) and Wesselhoft of the
House

CONFERENCE 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 registration; providing for registration; providing duration of registration; requiring registration by affiliates; providing duration of affiliate registration; requiring establishment of Internet web site at specified time; establishing certain fees and providing for deposit of fees; 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 reimbursement of certain 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; 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; amending 36 O.S. 2001, Section 1616, as amended by Section 12 of Enrolled House Bill No. 1535 of the 1st Session of the 50th Oklahoma Legislature, which relates to insurance; correcting term; amending Section 1 of Enrolled House Bill No. 1536 of the 1st Session of the 50th Oklahoma Legislature, which relates to insurance; clarifying use of machines and equipment; 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. "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 (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 operates a discount medical plan;

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 one-year term.

4. A registration expires one year 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 one-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 health care 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 web site.

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 medical 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.

d. For purposes of this section, "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.

~~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 require 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 Sections 309.1 and 309.3 through 309.7 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 thirty (30) days after receipt of the discount card and other membership

materials, the member shall receive a reimbursement of all periodic charges paid. The return of all periodic charges shall be made within thirty (30) days of the date of the cancellation. If 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 terms "insurance", "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,
- b. except for hospital services, have restrictions on free access to plan providers including waiting periods and notification periods, or
- c. 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. 1. 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:

- a. that the plan is not insurance,
- b. that the plan provides discounts with certain health care providers for medical services,
- c. that the plan does not make payments directly to the providers of medical services,
- d. 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
- e. the name and the location of the registered discount medical plan organization, including the current telephone number of the registered discount medical plan organization or other entity responsible for customer service for the plan, if different from the registered discount medical plan organization.

2. If the discount medical plan is sold, marketed, or solicited by telephone, the disclosures required by this section shall be made orally and provided in the initial written materials that describe the benefits under the discount medical plan provided to the prospective or new member.

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 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 with 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 into which it has entered.

H. 1. 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.

2. All forms used, including the written agreement pursuant to the provisions of paragraph 2 of this subsection, shall first be filed with 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.

I. 1. Each discount medical plan organization required to be registered pursuant to this section except an affiliate 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 allow a registration unless the discount medical plan organization has a net worth of at least One Hundred Fifty Thousand Dollars (\$150,000.00).

J. 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, or
- 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 provide opportunity for a hearing on the matter in accordance with the Administrative Procedures Act and the Oklahoma Insurance Code.

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.

K. Each discount medical plan organization required to be registered pursuant to this section 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.

L. 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 web site 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.

M. 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.

N. The Insurance Commissioner may promulgate rules to administer the provisions of this section.

O. Regulation of discount medical plan organizations shall be done pursuant to the Administrative Procedures Act.

P. 1. A discount medical plan organization required to be registered pursuant to this section except an affiliate 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 the surety bond held pursuant to the provisions of paragraph 1 of this subsection.

Q. 1. A person who knowingly and wilfully 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.

R. 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.

S. 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. AMENDATORY 36 O.S. 2001, Section 1616, as amended by Section 12 of Enrolled House Bill No. 1535 of the 1st Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 1616. A. Any domestic insurer, in addition to other investments permitted by this article, may invest in common stock, preferred stock, debt obligations, and other securities of one or more ~~subsidiaries~~ subsidiaries, excluding investments in insurance ~~subsidiaries~~ subsidiaries, in amounts which do not exceed the lesser of ten percent (10%) of the assets of the insurer or fifty percent (50%) of the surplus of the insurer in regard to policyholders except instances where a greater investment has been approved by the Commissioner.

B. Except with the consent of the Insurance Commissioner, no domestic life insurer shall, in addition to other investments permitted by this article, invest an amount equal in the aggregate to more than ten percent (10%) of its assets, or in the case of a domestic nonlife insurer, an amount equal in the aggregate to more than twenty percent (20%) of its assets in the shares of solvent corporations created or existing under the laws of the United States or of any state, including the shares of a substantially owned or wholly owned subsidiary corporation. Investing in the shares of mutual funds that invest only in bonds or preferred stocks shall be considered as investing in bonds or preferred stocks, and investing in mutual funds that invest in common stocks shall be considered as investing in common stocks. However, investments in the shares of subsidiaries or companion insurance companies shall be governed by paragraph A of this section.

C. For the purpose of determining the investment limitation imposed by this article, the insurer shall value securities

purchased pursuant to the provisions of this article at the cost of the security or at the market value of the security, whichever is lower.

SECTION 3. AMENDATORY Section 1 of Enrolled House Bill No. 1536 of the 1st Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 1. Any domestic company, in addition to the investments permitted by this article, may invest in electronic machines constituting a data processing system, or systems, and other office equipment, furniture and machines, and such other property, machines and equipment already purchased or purchased in the future for use in connection with the data processing of the transaction of the business of an insurance company and may further invest in property, which shall not be included in calculating the limitation in Section 1624 of Title 36 of the Oklahoma Statutes, used for recreational, hospitalization, convalescent and/or retirement purposes for its employees, to the extent that the total market value of all such property, which shall be depreciated over its useful life in accordance with standard accounting procedures, constitutes less than three percent (3%) of its otherwise admitted assets.

SECTION 4. This act shall become effective November 1, 2005.

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