

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1613

6 By: Sullivan

7 COMMITTEE SUBSTITUTE

8 An Act relating to insurance; amending 36 O.S. 2001,
9 Section 309.4, which relates to Insurance
10 Commissioner examination report review procedures;
11 expanding confidential treatment of certain business
12 work papers; amending Section 15, Chapter 176, O.S.L.
13 2009 (36 O.S. Supp. 2009, Section 311A.13), which
14 relates to work papers; specifying that Commissioner
15 may conduct certain reviews; expanding scope of
16 confidentiality; amending Section 29, Chapter 264,
17 O.S.L. 2006 (36 O.S. Supp. 2009, Section 1126), which
18 relates to public access to certain documents;
19 expanding confidential treatment of certain work
20 papers; amending 36 O.S. 2001, Section 1219.4, as
21 last amended by Section 23, Chapter 176, O.S.L. 2009
22 (36 O.S. Supp. 2009, Section 1219.4), which relates
23 to discount medical plan requirements; providing for
24 confidentiality; providing that certain documents and
information are not subject to subpoena or public
inspection; allowing access by certain national
organization; requiring written agreement for certain
access; providing exception; amending 36 O.S. 2001,
Section 1443, which relates to certain insurance
administrator agreements; providing for
confidentiality; providing that certain documents and
information are not subject to subpoena or public
inspection; allowing access by certain national
organization; requiring written agreement for certain
access; providing exception; providing for
confidentiality for certain documents and
information; providing exception; requiring written
agreement for certain access; amending Section 45,
Chapter 197, O.S.L. 2003 (36 O.S. Supp. 2009, Section

1 6945), which relates to confidentiality of certain
2 risk-based capital reports; specifying that
3 confidential treatment shall be extended to certain
4 work papers; authorizing access to certain
5 documentation by certain national organization;
6 requiring written agreement for certain access;
7 providing exception; providing for codification; and
8 providing an effective date.

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

10 SECTION 1. AMENDATORY 36 O.S. 2001, Section 309.4, is
11 amended to read as follows:

12 Section 309.4 A. All examination reports shall be comprised of
13 only facts appearing upon the books, records, or other documents of
14 the company, its agents or other persons examined, or as ascertained
15 from the testimony of its officers or agents or other persons
16 examined concerning its affairs, and such conclusions and
17 recommendations as the examiners find reasonably warranted from such
18 facts.

19 B. No later than thirty (30) days following completion of the
20 examination, the examiner in charge shall file with the Insurance
21 Department a verified written report of examination under oath.
22 Upon receipt of the verified report, the Department shall transmit
23 the report to the company examined, together with a notice which
24 shall afford such company examined a reasonable opportunity of not
more than twenty (20) days to make a written submission or written

1 rebuttal with respect to any matters contained in the examination
2 report.

3 C. Within twenty (20) days of the end of the period allowed for
4 the receipt of written submissions or written rebuttals, the
5 Insurance Commissioner shall fully consider and review the report,
6 together with any written submissions or written rebuttals and any
7 relevant portions of the examiners' ~~workpapers~~ work papers and enter
8 an order:

9 1. Adopting the examination report as filed or with
10 modification or corrections. If the examination report reveals that
11 the company is operating in violation of any law, regulation or
12 prior order of the Commissioner, the Commissioner may order the
13 company to take any action the Commissioner considers necessary and
14 appropriate to cure such violation;

15 2. Rejecting the examination report with directions to the
16 examiners to reopen the examination for purposes of obtaining
17 additional data, documentation or information, and refileing pursuant
18 to subsection A of this section; or

19 3. Calling for an investigatory hearing with notice pursuant to
20 the Administrative Procedures Act to the company for purposes of
21 obtaining additional documentation, data, information and testimony.

22 D. 1. All orders entered pursuant to paragraph 1 of subsection
23 C of this section shall be accompanied by findings and conclusions
24 resulting from the Commissioner's consideration and review of the

1 examination report, relevant examiner ~~workpapers~~ work papers and any
2 written submissions or rebuttals. Any such order shall be
3 considered a final administrative decision and may be appealed
4 pursuant to the Administrative Procedures Act, and shall be served
5 upon the company by certified mail, together with a copy of the
6 adopted examination report. Within thirty (30) days of the issuance
7 of the adopted report, the company shall file affidavits executed by
8 each of its directors stating under oath that they have received a
9 copy of the adopted report and related orders. Upon proper order of
10 the Commissioner, the company shall deliver by mail or otherwise,
11 within thirty (30) days of the date of the order, a copy of the
12 adopted report and related orders to all states and jurisdictions in
13 which the company is licensed to transact the business of insurance.

14 2. Any hearing conducted pursuant to paragraph 3 of subsection
15 C of this section by the Commissioner or authorized representative,
16 shall be conducted as a nonadversarial confidential investigatory
17 proceeding as necessary for the resolution of any inconsistencies,
18 discrepancies or disputed issues apparent upon the face of the filed
19 examination report or raised by or as a result of the Commissioner's
20 review of relevant ~~workpapers~~ work papers or by the written
21 submission or rebuttal of the company. Within thirty (30) days of
22 the conclusion of any such hearing, the Commissioner shall enter an
23 order pursuant to paragraph 1 of subsection C of this section.

24

1 3. The Commissioner shall not appoint an examiner as an
2 authorized representative to conduct the hearing. The Commissioner
3 or a representative of the Commissioner may issue subpoenas for the
4 attendance of any witnesses or the production of any documents
5 deemed relevant to the investigation whether under the control of
6 the Department, the company or other persons. The documents
7 produced shall be included in the record, and testimony taken by the
8 Commissioner or representative of the Commissioner shall be under
9 oath and preserved for the record.

10 4. Nothing contained in this section shall require the
11 Department to disclose any information or records which would
12 indicate or show the existence or content of any investigation or
13 activity of a criminal justice agency.

14 5. The hearing shall proceed with the Commissioner or a
15 representative of the Commissioner posing questions to the persons
16 subpoenaed. Thereafter the company and the Department may present
17 testimony relevant to the investigation. The company and the
18 Department shall be permitted to make closing statements and may be
19 represented by counsel of their choice.

20 E. 1. Upon the adoption of the examination report under
21 paragraph 1 of subsection C of this section, the Commissioner shall
22 continue to hold the content of the examination report as private
23 and confidential information for a period of two (2) days except to
24 the extent provided in subsection B of this section and subsection F

1 of Section 309.3 of this title. Thereafter, the Commissioner may
2 open the report for public inspection so long as no court of
3 competent jurisdiction has stayed its publication.

4 2. Nothing contained in Sections 309.1 through 309.7 of this
5 title shall prevent or be construed as prohibiting the Commissioner
6 from disclosing the content of an examination report, preliminary
7 examination report or results, or any matter relating thereto, to
8 the insurance department of this or any other state or country, or
9 to law enforcement officials of this or any other state or agency of
10 the federal government at any time, so long as such agency or office
11 receiving the report or matters relating thereto agrees in writing
12 to hold it confidential and in a manner consistent with Sections
13 309.1 through 309.7 of this title.

14 3. In the event the Commissioner determines that regulatory
15 action is appropriate as a result of any examination, the
16 Commissioner may initiate any proceedings or actions as provided by
17 law.

18 F. All working papers, recorded information, documents and
19 copies thereof produced by, obtained by or disclosed to the
20 Commissioner or any other person in the course of an examination
21 made under Sections 309.1 through 309.7 of this title, or in the
22 course of analysis by the Commissioner or any other person of the
23 financial condition or market conduct of a company, shall be given
24 confidential treatment and are not subject to subpoena and may not

1 be made public by the Commissioner or any other person, except to
2 the extent provided in subsection E of this section and subsection F
3 of Section 309.3 of this title. Access may also be granted to the
4 National Association of Insurance Commissioners. Such parties shall
5 agree in writing prior to receiving the information to provide to it
6 the same confidential treatment as required by this section, unless
7 the prior written consent of the company to which it pertains has
8 been obtained.

9 SECTION 2. AMENDATORY Section 15, Chapter 176, O.S.L.
10 2009 (36 O.S. Supp. 2009, Section 311A.13), is amended to read as
11 follows:

12 Section 311A.13 A. Work papers are the records kept by the
13 independent certified public accountant of the procedures followed,
14 the tests performed, the information obtained, and the conclusions
15 reached pertinent to the audit by the accountant of the financial
16 statements of an insurer. Work papers, accordingly, may include
17 audit planning documentation, work programs, analyses, memoranda,
18 letters of confirmation and representation, abstracts of company
19 documents, and schedules or commentaries prepared or obtained by the
20 independent certified public accountant in the course of the audit
21 of the financial statements of an insurer and which support the
22 opinion of the accountant.

23 B. Every insurer required to file an audited financial report
24 pursuant to the Oklahoma Annual Financial Report Act, shall require

1 the accountant to make available for review by Insurance Department
2 examiners, all work papers prepared in the conduct of the audit by
3 the accountant and any communications related to the audit between
4 the accountant and the insurer, at the offices of the insurer, at
5 the offices of the Insurance Department, or at any other reasonable
6 place designated by the Insurance Commissioner. The insurer shall
7 require that the accountant retain the audit work papers and
8 communications until the Insurance Department has filed a report on
9 examination covering the period of the audit but no longer than
10 seven (7) years from the date of the audit report.

11 C. In the conduct of the aforementioned periodic review by the
12 Commissioner or Insurance Department examiners, it shall be agreed
13 that photocopies of pertinent audit work papers may be made and
14 retained by the Insurance Department. Such reviews by the
15 Commissioner or Insurance Department examiners shall be considered
16 investigations and all working papers, recorded information,
17 documents, copies thereof and communications obtained during the
18 course of such investigations shall be afforded the same
19 confidentiality as other examination work papers generated by the
20 Insurance Department pursuant to subsection F of Section 309.4 of
21 ~~Title 36 of the Oklahoma Statutes~~ this title.

22 SECTION 3. AMENDATORY Section 29, Chapter 264, O.S.L.
23 2006 (36 O.S. Supp. 2009, Section 1126), is amended to read as
24 follows:

1 Section 1126. A. The Statement of Actuarial Opinion shall be
2 provided with the annual statement in accordance with the
3 appropriate ~~NAIC~~ National Associations of Insurance Commissioners
4 Property and Casualty Annual Statement Instructions and shall be
5 treated as a public document.

6 B. 1. Documents, materials or other information in the
7 possession or control of the Insurance Department that are
8 considered an actuarial report, ~~workpapers~~ work papers or actuarial
9 opinion summary provided in support of the opinion, and any other
10 material provided by the company to the Insurance Commissioner in
11 connection with the actuarial report, ~~workpapers~~ work papers or
12 actuarial opinion summary, and any work papers used by the
13 Commissioner or any other person in the analysis of the actuarial
14 report, work papers, other material or actuarial opinion summary
15 provided in support of the opinion, shall be confidential by law and
16 privileged, shall not be subject to the Oklahoma Open Records Act,
17 shall not be subject to subpoena, and shall not be subject to
18 discovery or admissible in evidence in any private civil action.

19 2. This provision shall not be construed to limit the
20 Commissioner's authority to release the documents to the Actuarial
21 Board for Counseling and Discipline (ABCD) so long as the material
22 is required for the purpose of professional disciplinary proceedings
23 and the ABCD establishes procedures satisfactory to the Commissioner
24 for preserving the confidentiality of the documents, nor shall this

1 section be construed to limit the Commissioner's authority to use
2 the documents, materials or other information in furtherance of any
3 regulatory or legal action brought as part of the Commissioner's
4 official duties.

5 C. Neither the Commissioner nor any person who received
6 documents, materials or other information while acting under the
7 authority of the Commissioner shall be permitted or required to
8 testify in any private civil action concerning any confidential
9 documents, materials or information subject to subsection B of this
10 section.

11 D. In order to assist in the performance of the Commissioner's
12 duties, the Commissioner:

13 1. May share documents, materials or other information,
14 including the confidential and privileged documents, materials or
15 information subject to subsection B of this section with other
16 state, federal and international regulatory agencies, with the
17 National Association of Insurance Commissioners and its affiliates
18 and subsidiaries, and with state, federal and international law
19 enforcement authorities; provided, that the recipient agrees to
20 maintain the confidentiality and privileged status of the document,
21 material or other information and has the legal authority to
22 maintain confidentiality;

23 2. May receive documents, materials or information, including
24 otherwise confidential and privileged documents, materials or

1 information, from the National Association of Insurance
2 Commissioners and its affiliates and subsidiaries, and from
3 regulatory and law enforcement officials of other foreign or
4 domestic jurisdictions, and shall maintain as confidential or
5 privileged any document, material or information received with
6 notice or the understanding that it is confidential or privileged
7 under the laws of the jurisdiction that is the source of the
8 document, material or information; and

9 3. May enter into agreements governing sharing and use of
10 information consistent with subsections B through D of this section.

11 E. No waiver of any applicable privilege or claim of
12 confidentiality in the documents, materials or information shall
13 occur as a result of disclosure to the Commissioner under this
14 section or as a result of sharing as authorized in subsection D of
15 this section.

16 SECTION 4. AMENDATORY 36 O.S. 2001, Section 1219.4, as
17 last amended by Section 23, Chapter 176, O.S.L. 2009 (36 O.S. Supp.
18 2009, Section 1219.4), is amended to read as follows:

19 Section 1219.4 A. As used in this section:

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

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

5 3. "Discount medical plan" means a business arrangement or
6 contract in which a person, in exchange for fees, dues, charges, or
7 other consideration, provides access for plan members to providers
8 of medical services and the right to receive medical services from
9 those providers at a discount. The term discount medical plan does
10 not include any product regulated as an insurance product, group
11 health service product or health maintenance organization (HMO)
12 product in the State of Oklahoma or discounts provided by an
13 insurer, group health service, or health maintenance organizations
14 (HMOs) where those discounts are provided at no cost to the insured
15 or member and are offered due to coverage with a licensed insurer,
16 group health service, or HMO;

17 4. "Discount medical plan organization" means a person or an
18 entity which operates a discount medical plan;

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

23 6. "Health care provider network" means an entity which
24 directly contracts with physicians and hospitals and has contractual

1 rights to negotiate on behalf of those health care providers with a
2 discount medical plan organization to provide medical services to
3 members of the discount medical plan organization;

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

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

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

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

22 B. 1. Before doing business in this state as a discount
23 medical plan organization, an entity shall be a corporation, limited
24 liability corporation, partnership, limited liability partnership or

1 other legal entity, organized under the laws of this state or, if a
2 foreign entity, authorized to transact business in this state, and
3 shall be registered as a discount medical plan organization with the
4 Insurance Department of the State of Oklahoma or be licensed by the
5 Insurance Department of the State of Oklahoma as a licensed
6 insurance company, licensed HMO, licensed group health service
7 organization or motor service club.

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

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

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

15 3. A registration is valid for a one-year term.

16 4. A registration expires one year following the registration
17 unless it is renewed as provided in this subsection.

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

20 a. otherwise is entitled to be registered,

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

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

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

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

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

10 c. in connection with the administration of a health care
11 discount program, commits fraud or engages in illegal
12 or dishonest activities, or

13 d. has violated any provisions of this section.

14 7. Prior to registration by the Insurance Department of the
15 State of Oklahoma, each discount medical plan organization shall
16 establish an Internet web site.

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

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

22 10. a. Nothing in this subsection shall apply to an affiliate
23 of a licensed insurance company, HMO, group health
24 service organization or motor service club, provided

1 that the affiliate registers with and maintains
2 registration in good standing with the Insurance
3 Department of the State of Oklahoma in accordance with
4 subparagraphs b and c of this paragraph.

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

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

17 d. For purposes of this section, "affiliate" means a
18 person that, directly or indirectly through one or
19 more intermediaries, controls or is controlled by or
20 is under common control with an insurance company,
21 HMO, group health service organization or motor
22 service club licensed in this state.

23 C. 1. The Department may examine or investigate the business
24 and affairs of any discount medical plan organization. The

1 Department may require any discount medical plan organization or
2 applicant to produce any records, books, files, advertising and
3 solicitation materials, or other information and may take statements
4 under oath to determine whether the discount medical plan
5 organization or applicant is in violation of the law or is acting
6 contrary to the public interest. The expenses incurred in
7 conducting any examination or investigation shall be paid by the
8 discount medical plan organization or applicant. Examinations and
9 investigations shall be conducted as provided in Sections 309.1 and
10 309.3 through 309.7 of this title. Discount medical plan
11 organizations shall be governed by the provisions of this section
12 and shall not be subject to the provisions of the Insurance Code
13 unless specifically referenced.

14 2. All work papers, recorded information, documents, books,
15 files, advertising and solicitation materials, copies or other
16 information produced by, obtained by or disclosed to the
17 Commissioner or any other person in the course of an examination or
18 investigation made pursuant to this section or in the course of
19 analysis by the Commissioner or other person, shall be given
20 confidential treatment and shall not be subject to subpoena and may
21 not be made public by the Commissioner or any other person, except
22 to the extent provided in this section. Access may be granted to
23 the National Associations of Insurance Commissioners. The parties
24 shall agree in writing prior to receiving the information to provide

1 to it the same confidential treatment as required by this section,
2 unless the prior written consent of the company to which it pertains
3 has been obtained.

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

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

10 2. If the member cancels the membership within the first thirty
11 (30) days after receipt of the discount card and other membership
12 materials, the member shall receive a reimbursement of all periodic
13 charges paid. The return of all periodic charges shall be made
14 within thirty (30) days of the date of the cancellation. If all of
15 the periodic charges have not been paid within thirty (30) days,
16 interest shall be assessed and paid on the proceeds at a rate of the
17 Treasury Bill rate of the preceding calendar year, plus two (2)
18 percentage points.

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

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

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

- 2 a. use in its advertisements, marketing material,
3 brochures, and discount cards the terms "insurance",
4 "health plan", "coverage", "copay", "copayments",
5 "preexisting conditions", "guaranteed issue",
6 "premium", "PPO", "preferred provider organization",
7 or other terms in a manner that could reasonably
8 mislead a person to believe that the discount medical
9 plan is health insurance,
- 10 b. except for hospital services, have restrictions on
11 free access to plan providers including waiting
12 periods and notification periods, or
- 13 c. pay providers any fees for medical services.

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

19 F. 1. The following disclosures, to be printed in not less
20 than twelve-point type, shall be made in writing to any prospective
21 member and shall appear on the first page of any advertisements,
22 marketing materials or brochures relating to a discount medical
23 plan:

- 24 a. that the plan is not insurance,

- 1 b. that the plan provides discounts with certain health
2 care providers for medical services,
3 c. that the plan does not make payments directly to the
4 providers of medical services,
5 d. that the plan member is obligated to pay for all
6 health care services but will receive a discount from
7 those health care providers who have contracted with
8 the discount plan organization, and
9 e. the name and the location of the registered discount
10 medical plan organization, including the current
11 telephone number of the registered discount medical
12 plan organization or other entity responsible for
13 customer service for the plan, if different from the
14 registered discount medical plan organization.

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

20 3. The discount card provided to members shall prominently
21 display the words "This is not insurance".

22 G. 1. All providers offering medical services to members under
23 a discount medical plan shall provide such services pursuant to a
24 written agreement. The agreement may be entered into directly by

1 the health care provider or by a health care provider network to
2 which the provider belongs if the provider network has contracts
3 with the health care provider that allow the provider network to
4 contract on behalf of the health care provider.

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

- 7 a. a description of the services and products to be
8 provided at a discount,
- 9 b. the amount or amounts of the discounts or,
10 alternatively, a fee schedule which reflects the
11 health care provider's discounted rates, and
- 12 c. a provision that the health care provider will not
13 charge members more than the discounted rates.

14 3. A health care provider agreement with a health care provider
15 network shall require that the health care provider network have
16 written agreements with its health care providers that:

- 17 a. contain the terms described in paragraph 2 of this
18 subsection,
- 19 b. authorize the health care provider network to contract
20 with the discount medical plan organization on behalf
21 of the provider, and
- 22 c. require the network to maintain an up-to-date list of
23 its contracted health care providers and to provide
24

1 that list on a quarterly basis to the discount medical
2 plan organization.

3 4. The discount medical plan organization shall maintain a copy
4 of each active health care provider agreement into which it has
5 entered.

6 H. 1. There shall be a written agreement between the discount
7 medical plan organization and the member specifying the benefits
8 under the discount medical plan and complying with the disclosure
9 requirements of this section.

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

17 I. 1. Each discount medical plan organization required to be
18 registered pursuant to this section except an affiliate shall, at
19 all times, maintain a net worth of at least One Hundred Fifty
20 Thousand Dollars (\$150,000.00).

21 2. The Insurance Department of the State of Oklahoma may not
22 allow a registration unless the discount medical plan organization
23 has a net worth of at least One Hundred Fifty Thousand Dollars
24 (\$150,000.00).

1 J. 1. The Insurance Department of the State of Oklahoma may
2 suspend the authority of a discount medical plan organization to
3 enroll new members, revoke any registration issued to a discount
4 medical plan organization, or order compliance if the Department
5 finds that any of the following conditions exist:

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

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

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

16 d. the organization is not fulfilling its obligations as
17 a discount medical plan organization, or

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

20 2. If the Insurance Department of the State of Oklahoma has
21 cause to believe that grounds for the suspension or revocation of a
22 registration exist, the Department shall notify the discount medical
23 plan organization in writing, specifically stating the grounds for
24 suspension or revocation, and shall provide opportunity for a

1 hearing on the matter in accordance with the Administrative
2 Procedures Act and the Oklahoma Insurance Code.

3 3. When the certificate of registration of a discount medical
4 plan organization is nonrenewed, surrendered or revoked, such
5 organization shall proceed, immediately following the effective date
6 of the order of revocation, or in the case of nonrenewal, the date
7 of expiration of the certificate of registration, to wind up its
8 affairs transacted under the certificate of registration. The
9 organization may not engage in any further advertising,
10 solicitation, collecting of fees, or renewal of contracts.

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

23 K. Each discount medical plan organization required to be
24 registered pursuant to this section shall provide the Insurance

1 Department of the State of Oklahoma at least thirty (30) days'
2 advance notice of any change in the discount medical plan
3 organization's name, address, principal business address, or mailing
4 address.

5 L. Each discount medical plan organization shall maintain an
6 up-to-date list of the names and addresses of the providers with
7 which it has contracted on an Internet web site page, the address of
8 which shall be prominently displayed on all its advertisements,
9 marketing materials, brochures, and discount cards. This section
10 applies to those providers with whom the discount medical plan
11 organization has contracted directly, as well as those who are
12 members of a provider network with which the discount medical plan
13 organization has contracted.

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

17 2. The discount medical plan organization shall have an
18 executed written agreement with a marketer prior to the marketer's
19 marketing, promoting, selling, or distributing the discount medical
20 plan.

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

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

1 P. 1. A discount medical plan organization required to be
2 registered pursuant to this section except an affiliate shall
3 maintain a surety bond with the Insurance Department of the State of
4 Oklahoma, having at all times a value of not less than Thirty-five
5 Thousand Dollars (\$35,000.00), for use by the Department in
6 protecting plan members.

7 2. No judgment creditor or other claimant of a discount medical
8 plan organization, other than the Insurance Department of the State
9 of Oklahoma, shall have the right to levy upon the surety bond held
10 pursuant to the provisions of paragraph 1 of this subsection.

11 Q. 1. A person who knowingly and willfully operates as or aids
12 and abets another operating as a discount medical plan organization
13 in violation of subsection B of this section commits a felony,
14 punishable as provided for in Oklahoma law, as if the discount
15 medical plan organization were an unauthorized insurer, and the
16 fees, dues, charges, or other consideration collected from the
17 members by the discount medical plan organization or marketer were
18 insurance premium.

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

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

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

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

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

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

15 2. A discount medical plan organization being operated by any
16 person or entity that is not registered pursuant to this section, or
17 any person, entity or discount medical plan organization that has
18 engaged or is engaging in any activity prohibited by this section or
19 any rules adopted pursuant to this section shall be subject to the
20 Unauthorized Insurer Act as if the discount medical plan
21 organization were an unauthorized insurer, and shall be subject to
22 all the remedies available to the Insurance Commissioner under the
23 Unauthorized Insurer Act.

1 T. If the Insurance Commissioner finds that a discount medical
2 plan organization has violated any provision of this section or that
3 grounds exist for the discretionary revocation or suspension of a
4 registration, the Commissioner, in lieu of such revocation or
5 suspension, may impose a fine upon the discount medical plan
6 organization in an amount not to exceed One Thousand Dollars
7 (\$1,000.00) per violation.

8 SECTION 5. AMENDATORY 36 O.S. 2001, Section 1443, is
9 amended to read as follows:

10 Section 1443. A. No person shall act as an administrator
11 without a written agreement between that person and an insurer. The
12 written agreement shall be retained as part of the official records
13 of both the insurer and the administrator for the duration of the
14 agreement and for five (5) years thereafter.

15 B. The written agreement required by the provisions of
16 subsection A of this section shall contain provisions stating any of
17 the requirements of Sections ~~4~~ 1444 through ~~8~~ 1448 of ~~the Third-~~
18 ~~party Administrator Act~~ this title which apply to the functions
19 performed by the administrator.

20 C. If a policy is issued to a trustee, a copy of the trust
21 agreement and any amendments to the agreement shall be furnished to
22 the insurer by the administrator and shall be retained as part of
23 the official records of both the insurer and the administrator for
24 the duration of the policy and for five (5) years thereafter.

1 D. Every administrator shall maintain at the principal
2 administrative office of the administrator for the duration of the
3 agreement and for five (5) years thereafter the written agreement
4 required by the provisions of this section and records of all
5 transactions among the administrator, insurers or trusts, and
6 insured persons.

7 E. 1. For the purposes of examination, audit, and inspection,
8 the Commissioner or any other person in the course of examination,
9 audit and inspection shall have access to books and records
10 maintained by the administrator. Any trade secrets contained in
11 these books and records, including the identity and addresses of
12 policyholders and certificate holders, shall be confidential.

13 2. All work papers, recorded information, documents and copies
14 thereof produced or obtained by or disclosed to the Commissioner or
15 other person in the course of examination, audit and inspection made
16 pursuant to this section, or in the course of analysis by the
17 Commissioner or other person in the course of examination, audit and
18 inspection, shall be given confidential treatment and are not
19 subject to subpoena and may not be made public by the Commissioner
20 or any other person, except to the extent provided in this section.
21 Access may be granted to the National Association of Insurance
22 Commissioners. The parties shall agree in writing prior to
23 receiving the information to provide to it the same confidential

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1 treatment as required by this section, unless the prior written
2 consent of the company to which it pertains has been obtained.

3 3. The Commissioner may use this information in any proceedings
4 instituted against the administrator.

5 F. The insurer or trust shall have the right of continuing
6 access to books and records maintained by the administrator
7 sufficient to permit the insurer or trust to fulfill all of its
8 contractual obligations to insured persons, subject to any
9 restriction in the written agreement between the insurer or trust
10 and the administrator concerning the proprietary rights of the
11 parties to said books and records.

12 G. The agreement required by the provisions of this section
13 shall include provisions stating the underwriting standards or other
14 standards pertaining to the business underwritten by the insurer or
15 trust.

16 SECTION 6. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1509.1 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 All work papers, recorded information, documents and copies of
20 materials associated with, produced, obtained by or disclosed to the
21 Commissioner or any other person in the course of review or analysis
22 pursuant to Sections 1801 through 1938 of Title 36 of the Oklahoma
23 Statutes shall be given confidential treatment and may not be made
24 public by the Commissioner or any other person, except to the extent

1 provided in Sections 1801 through 1938 of Title 36 of the Oklahoma
2 Statutes, unless prior written consent of the company to which it
3 pertains has been obtained.

4 SECTION 7. AMENDATORY Section 45, Chapter 197, O.S.L.
5 2003 (36 O.S. Supp. 2009, Section 6945), is amended to read as
6 follows:

7 Section 6945. A. All Risk-Based Capital (RBC) reports, to the
8 extent the information is not required to be provided in a publicly
9 available annual statement schedule, and RBC plans, including the
10 work papers produced, obtained by or disclosed to the Commissioner
11 or any other person in the course of any examination or analysis and
12 the results or report of any examination or analysis of a health
13 maintenance organization performed pursuant to this statute and any
14 corrective order issued by the Commissioner pursuant to examination
15 or analysis, with respect to a domestic health maintenance
16 organization or foreign health maintenance organization that are in
17 the possession or control of the Insurance Commissioner shall, by
18 law, be confidential and privileged, shall not be subject to the
19 provisions of the Oklahoma Open Records Act or the Administrative
20 Procedures Act, shall not be subject to subpoena, and shall not be
21 subject to discovery or admissible in evidence in any private civil
22 action; provided, however, the Commissioner is authorized to use the
23 documents, materials or other information in the furtherance of any

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1 regulatory or legal action brought as a part of the Commissioner's
2 official duties.

3 B. Access to the documentation provided for in subsection A of
4 this section may be granted to the National Association of Insurance
5 Commissioners. The parties shall agree in writing prior to
6 receiving information to provide to it the same confidential
7 treatment as required by this section, unless the prior written
8 consent of the company to which it pertains has been obtained.

9 C. Neither the Commissioner nor any person who received
10 documents, materials or other information while acting under the
11 authority of the Commissioner shall be permitted or required to
12 testify in any private civil action concerning any confidential
13 documents, materials or information subject to the provisions of
14 subsection A of this section.

15 ~~C.~~ D. In order to assist in the performance of the
16 Commissioner's duties, the Commissioner:

17 1. May share documents, materials or other information,
18 including the confidential and privileged documents, materials or
19 information subject to the provisions of subsection A of this
20 section, with other state, federal and international regulatory
21 agencies, with the NAIC and its affiliates and subsidiaries, and
22 with state, federal and international law enforcement authorities;
23 provided, that the recipient agrees to maintain the confidentiality

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1 and privileged status of the document, material or other
2 information;

3 2. May receive documents, materials or information, including
4 otherwise confidential and privileged documents, materials or
5 information, from the NAIC and its affiliates and subsidiaries, and
6 from regulatory and law enforcement officials of other foreign or
7 domestic jurisdictions, and shall maintain as confidential or
8 privileged any document, material or information received with
9 notice or the understanding that it is confidential or privileged
10 under the laws of the jurisdiction that is the source of the
11 document, material or information; and

12 3. May enter into agreements governing the sharing and use of
13 information consistent with this subsection.

14 ~~D.~~ E. No waiver of any applicable privilege or claim of
15 confidentiality in the documents, materials or information shall
16 occur as a result of disclosure to the Commissioner under this
17 section or as a result of sharing as authorized in paragraph 3 of
18 subsection C of this section.

19 ~~E.~~ F. Except as otherwise required under the provisions of this
20 act, the making, publishing, disseminating, circulating or placing
21 before the public, or causing, directly or indirectly to be made,
22 published, disseminated, circulated or placed before the public, in
23 a newspaper, magazine or other publication, or in the form of a
24 notice, circular, pamphlet, letter or poster, or over a radio or

1 television station, or in any other way, an advertisement,
2 announcement or statement containing an assertion, representation or
3 statement with regard to the RBC levels of any health maintenance
4 organization, or of any component derived in the calculation, by any
5 health maintenance organization, agent, broker or other person
6 engaged in any manner in the insurance business would be misleading
7 and is therefore prohibited. Provided, however, that if any
8 materially false statement with respect to the comparison regarding
9 a health maintenance organization's total adjusted capital to its
10 RBC levels, or any of them, or an inappropriate comparison of any
11 other amount to the health maintenance organization's RBC levels is
12 published in any written publication and the health maintenance
13 organization is able to demonstrate to the Commissioner with
14 substantial proof the falsity or inappropriateness of the statement,
15 the health maintenance organization may publish an announcement in a
16 written publication if the sole purpose of the announcement is to
17 rebut the materially false statement.

18 ~~F.~~ G. RBC instructions, RBC reports, adjusted RBC reports, RBC
19 plans and revised RBC plans shall be used by the Commissioner solely
20 in monitoring the solvency of health maintenance organizations and
21 the need for possible corrective action with respect to health
22 maintenance organizations. Such instructions, reports and plans
23 shall not be used by the Commissioner for ratemaking, considered or
24 introduced as evidence in any rate proceeding, or used by the

1 Commissioner to calculate or derive any elements of an appropriate
2 premium level or rate of return for any line of insurance that a
3 health maintenance organization or any affiliate is authorized to
4 write.

5 SECTION 8. This act shall become effective November 1, 2010.

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