

SENATE BILL NO. 154

BY SENATORS CRAVINS AND THOMPSON

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AN ACT

To enact Part XII-C of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:2037.1 through 2037.11, relative to discount medical plans; to provide for definitions; to provide for regulation by the commissioner of insurance, including the requirement for registration by discount medical plan organizations; to provide for application for registration; to provide for expiration and renewal of registration; to provide for denial, nonrenewal, suspension, or revocation of registration; to provide for penalties; to provide for marketers; to provide for the powers of the commissioner of insurance, including the authority to adopt reasonable regulations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part XII-C of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:2037.1 through 2037.11, is hereby enacted to read as follows:

PART XII-C. THE LOUISIANA DISCOUNT MEDICAL PLAN ACT

§2037.1. Purpose

The purpose of this Part shall be to protect the public from inappropriate, unfair, and deceptive marketing, sales or enrollment practices and to facilitate consumer understanding of the role and function of discount medical plan organizations in providing access to medical services.

§2037.2. Definitions

As used in this Part, unless the context clearly indicates otherwise, the following definitions shall apply:

1 (1) "Affiliate" shall mean a person that, directly or indirectly through
2 one or more intermediaries, controls or is controlled by or is under common
3 control with an insurance company or health maintenance organization licensed
4 by this state.

5 (2) "Commissioner" shall mean the commissioner of insurance.

6 (3) "Discount medical plan card" shall mean a card or any other
7 purchasing mechanism or device, which is not insurance, that purports to offer
8 discounts or access to discounts in health-related purchases from health care
9 providers.

10 (4) "Discount medical plan" shall mean a business arrangement or
11 contract in which a person, in exchange for fees, dues, charges or other valuable
12 consideration, provides access for plan members to providers of medical
13 services and the right to receive medical services from those providers at a
14 discount. This term shall not include any plan that does not charge a
15 membership or other fee to use the plan's discount medical card or discount
16 medical plan provided by an insurer or health maintenance organization where
17 the discount plan is provided at no cost to the insured or member and is offered
18 due to coverage with the insurer or health maintenance organization. This term
19 shall not include any agreements related to medical services which are provided
20 to injured workers under the requirements of Chapter 10 of Title 23 of the
21 Louisiana Revised Statutes of 1950, or ambulance membership service
22 agreements.

23 (5) "Discount medical plan organization" shall mean any person or
24 organization that operates a discount medical plan and contracts with
25 providers, provider networks or other discount medical plan organizations to
26 offer access to medical services at a discount and determines the charge to
27 discount medical plan members. Entities that are licensed pursuant to this Title
28 shall not be subject to the provisions of R.S. 22:2037.3, 2037.4 and 2037.8.

29 (6) "Discount medical plan provider" shall mean any person that has
30 contracted directly or indirectly with a discount medical plan organization to

1 provide medical services.

2 (7) "Entity" shall mean a corporation, association, partnership, limited
3 liability company, limited liability partnership or other legal entity.

4 (8) "Facility" shall mean an institution providing medical services or a
5 health care setting, to include, but not be limited to, a hospital or other licensed
6 inpatient center, an ambulatory surgical or treatment center, a skilled nursing
7 center, a residential treatment center, a rehabilitation center and a diagnostic,
8 laboratory or imaging center.

9 (9) "Health care provider" shall mean any person licensed, certified, or
10 registered in this state to provide health care services, including but not limited
11 to physicians, hospitals, home health agencies, chiropractors, pharmacies and
12 dentists.

13 (10) "Health care provider network" shall mean an entity which directly
14 or indirectly contracts with a health care provider and has contractual rights
15 to negotiate on behalf of those health care providers with a discount medical
16 plan organization to provide medical services to members of a discount medical
17 plan.

18 (11) "Individual" shall mean a natural person.

19 (12) "Marketer" shall mean any person who markets, promotes, sells or
20 distributes a discount medical plan, including but not limited to a private label
21 entity that places its name on and markets or distributes a discount medical
22 plan.

23 (13) "Medical services" shall mean any care, service, or treatment of
24 illness or dysfunction of, or injury to, the human body, including but not limited
25 to physician care, inpatient care, outpatient care, hospital surgical services,
26 emergency services, ambulance services, chiropractic services, dental services,
27 audiology services, vision care services, mental health services, substance abuse
28 services, podiatric care services, laboratory services and medical equipment and
29 supplies.

30 (14) "Member" shall mean any individual who pays valuable

1 consideration to receive the purported benefits of a discount medical plan.

2 (15) "Person" shall mean an individual or an entity.

3 §2037.3. Registration

4 No discount medical plan organization shall conduct business or
5 otherwise operate in this state unless it is registered with the commissioner.

6 §2037.4. Procedure for registration

7 A. An applicant for registration shall submit an application to the
8 commissioner and pay the application fee of two hundred fifty dollars.

9 B. The application shall be on a form prescribed by the commissioner,
10 accompanied by any supporting documentation and shall be signed and verified
11 by the applicant. The information required by the application shall include the
12 following items:

13 (1) The articles of incorporation or articles of organization and name of
14 the entity operating the discount medical plan and any trade or business names
15 used by that entity in connection with the operation of the discount medical
16 plan.

17 (2) The names and addresses of every officer and director of the entity
18 operating the discount medical plan as well as the name and address of the
19 corporate officer designated by the plan as the corporate representative to
20 receive, review, and resolve all grievances addressed to the plan.

21 (3) The name and address of every person owning, directly or indirectly,
22 ten percent or more of the entity operating the discount medical plan.

23 (4) The principal place of business of the discount medical plan.

24 (5) A general description of the operation of the discount medical plan
25 which includes a statement that the plan does not provide indemnity insurance
26 coverage for medical services.

27 (6) A sample copy of a contract with a member which includes a general
28 description of the member's rights under the discount medical plan.

29 (7) A sample copy of a contract, absent the fee schedule, with a health
30 care provider which includes a general description of the health care provider's

1 rights under the discount medical plan.

2 (8) A description of the proposed methods of marketing, including, but
3 not limited to, describing the use of marketers, the use of the Internet, sales by
4 telephone, and use of salespersons to market the discount medical plan benefits.

5 (9) A description of the member complaint procedures to be established
6 and maintained by the applicant.

7 (10) The name and address of the applicant's Louisiana statutory agent
8 for service of process, notice of demand, or if not domiciled in this state, a power
9 of attorney executed by the applicant, appointing the commissioner as the true
10 and lawful attorney of the applicant in and for this state upon whom all law
11 process in any legal action or proceeding against the discount medical plan
12 organization on a cause of action arising in this state may be served.

13 C. A registration for purposes of this Section shall be effective for two
14 years, unless the registration is renewed, suspended or revoked.

15 D. To renew the registration, no later than ninety days before its
16 registration expires, the discount medical plan organization shall submit a
17 renewal application on the form that the commissioner requires and the renewal
18 fee of two hundred fifty dollars.

19 E. The commissioner may suspend the authority of a discount medical
20 plan organization to enroll new members or refuse to renew or revoke a
21 registration if the commissioner finds that any of the following conditions exist:

22 (1) The discount medical plan organization is not operating in
23 compliance with this Part.

24 (2) The discount medical plan organization has advertised,
25 merchandised or attempted to merchandise its services in such a manner as to
26 misrepresent its services or capacity for service or has engaged in deceptive,
27 misleading or unfair practices with respect to advertising or merchandising.

28 (3) The discount medical plan organization is not fulfilling its obligations
29 as a discount medical plan organization.

30 (4) The continued operation of the discount medical plan organization

1 would be hazardous to its members.

2 F. Whenever the discount medical plan organization has been found to
3 have violated any provision of this Part, the commissioner may:

4 (1) Issue or cause to be served upon the organization charged with the
5 violation a copy of the findings and an order requiring the organization to cease
6 and desist from engaging in the act or practice that constitutes the violation.

7 (2) Impose a monetary penalty of not more than two thousand five
8 hundred dollars for each violation, but not to exceed an aggregate penalty of
9 seventy-five thousand dollars.

10 (3) Nothing in this Section shall affect the authority of the commissioner
11 to impose any other penalties provided for in this Title, or by rule, regulation,
12 or order.

13 G. Each registered discount medical plan organization shall notify the
14 commissioner immediately whenever the discount medical plan organization's
15 registration, or other form of authority, to operate as a discount medical plan
16 organization in another state is suspended, revoked or non-renewed in that
17 state.

18 H. A provider who provides discounts to his own patients without any
19 cost or fee of any kind to the patient is not required to maintain a registration
20 under this Part as a discount medical plan organization.

21 I. Nothing in this Part shall be construed to apply to a customer discount
22 or membership card issued by a store or buying club for use at the store or
23 buying club exclusively.

24 J. Any decision pursuant to this Part shall be subject to the provisions
25 of Part XXIX of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950.
26 §2037.5. Charges and fees; refund requirements; bundling of services

27 A. A discount medical plan organization may charge a periodic charge
28 as well as a reasonable one-time processing fee for a discount medical plan.

29 B.(1) If a member cancels his membership in the discount medical plan
30 organization within the first thirty days after the date of receipt of the written

1 document for a discount medical plan as described in R.S. 22:2037.7, the
2 member shall receive a reimbursement of all periodic charges and the amount
3 of any one-time processing fee that exceeds thirty dollars upon return of the
4 discount medical plan card to the discount medical plan organization.

5 (2)(a) Cancellation occurs when notice of cancellation is given to the
6 discount medical plan organization.

7 (b) Notice of cancellation is deemed given when delivered by hand or
8 deposited in a mailbox, properly addressed and postage prepaid to the mailing
9 address of the discount medical plan organization or emailed to the email
10 address of the discount medical plan organization.

11 (c) A discount medical plan organization shall return any periodic
12 charge charged or collected after the member has returned the discount medical
13 plan card or given the discount medical plan organization notice of cancellation.

14 C. If the discount medical plan organization cancels a membership for
15 any reason other than nonpayment of charges by the member, the discount
16 medical plan organization shall make a pro rata reimbursement of all periodic
17 charges to the member.

18 §2037.6. Provider listing requirements

19 Each discount medical plan organization shall maintain an up-to-date
20 list of the names and addresses of the providers with which it has contracted
21 directly or through a provider network. This Section applies to those providers
22 with which the discount medical plan organization has contracted with directly
23 as well as those providers that are members of a provider network with which
24 the discount medical plan organization has contracted.

25 §2037.7. Marketing restrictions and disclosure requirements

26 A.(1) The name of the discount medical plan and the address shall be
27 prominently displayed on all of its advertisements, marketing materials and
28 brochures.

29 (2) All advertisements, marketing materials, brochures, discount
30 medical plan cards and any other communications of a discount medical plan

1 organization provided to prospective members and members shall be truthful
2 and not misleading in either fact or implication.

3 (3) Upon request, a discount medical plan organization shall submit to
4 the commissioner all advertising, marketing materials and brochures regarding
5 a discount medical plan.

6 B. A discount medical plan organization shall not do any of the
7 following:

8 (1) Except as otherwise provided in this Part or as a disclaimer of any
9 relationship between discount medical plan benefits and insurance, or as a
10 description of an insurance product connected with a discount medical plan, use
11 in its advertisements, marketing material, brochures and discount medical plan
12 cards the term "insurance."

13 (2) Except as otherwise provided in the laws of this state, describe or
14 characterize the discount medical plan as being insurance whenever a discount
15 medical plan is bundled with an insured product and the insurance benefits are
16 incidental to the discount medical plan benefits.

17 (3) Use in its advertisements, marketing material, brochures and
18 discount medical plan cards the terms "health plan," "coverage," "copay,"
19 "copayments," "deductible," "preexisting conditions," "guaranteed issue,"
20 "premium," "PPO," "preferred provider organization," or other terms in a
21 manner that could mislead an individual into believing that the discount
22 medical plan is health insurance.

23 (4) Use language in its advertisements, marketing material, brochures
24 and discount medical plan cards with respect to being "registered" by the
25 department in a manner that could mislead an individual into believing that the
26 discount medical plan is insurance or has been endorsed by this state.

27 (5) Make misleading, deceptive or fraudulent representations regarding
28 the discount or range of discounts offered by the discount medical plan card or
29 the access to any range of discounts offered by the discount medical plan card
30 or the access to any range of discounts offered by the discount medical plan

1 card.

2 (6) Have restrictions on access to health care providers who have
3 contracted with a discount medical plan, except for hospital services.

4 C.(1) Each discount medical plan organization shall, in writing that is
5 not less than twelve-point font, disclose on the first content page of any
6 advertisements, marketing materials or brochures made available to the public
7 relating to a discount medical plan and any enrollment forms given to a
8 prospective member:

9 (a) That the plan is a discount plan and is not insurance coverage.

10 (b) That the range of discounts for medical services provided under the
11 plan will vary depending on the type of provider and medical service received.

12 (c) That the plan member is obligated to pay for all medical services, but
13 will receive a discount from those providers that have contracted with the
14 discount medical plan organization.

15 (d) The toll-free telephone number and Internet website address for the
16 registered discount medical plan organization for prospective members to
17 obtain information about and assistance on the discount medical plan and up-
18 to-date list of providers participating in the discount medical plan.

19 (2) If the initial contact with a prospective member is made by
20 telephone, the disclosures required under Paragraph (1) of this Subsection shall
21 be made orally and included in the written materials that describe the benefits
22 under the discount medical plan provided to the prospective or new member.

23 D.(1) In addition to the general disclosures required under Subsection
24 C of this Section, each discount medical plan shall provide the following:

25 (a) To each new member, at the time of enrollment, information that
26 describes the terms and conditions of the discount medical plan, including any
27 limitations or restrictions on the refund of any processing fees or periodic
28 charges associated with the discount medical plan.

29 (b) To each new member a written document that contains the terms and
30 conditions of the discount medical plan.

1 (2) The written document required under Subparagraph (1)(b) of this
2 Subsection shall include information on the following:

3 (a) The name of the member.

4 (b) The benefits to be provided under the discount medical plan.

5 (c) Any processing fees and periodic charges associated with the
6 discount medical plan, including any limitations or restrictions on the refund
7 of any processing fees and periodic charges.

8 (d) The mode of payment of any processing fees and periodic charges
9 and procedure for changing the mode of payment.

10 (e) Any limitations, exclusions or exceptions regarding the receipt of
11 discount medical plan benefits.

12 (f) Any waiting periods for certain medical services under the discount
13 medical plan.

14 (g) Procedures for obtaining discounts under the discount medical plan,
15 such as requiring members to contact the discount medical plan organization
16 to make an appointment with a provider on the member's behalf.

17 (h) Cancellation procedures, including information on the member's
18 thirty-day cancellation rights and refund requirements and procedures for
19 obtaining refunds.

20 (i) Renewal, termination and cancellation terms and conditions.

21 (j) Procedures for adding new members to a family discount medical
22 plan, if applicable.

23 (k) Procedures for filing complaints under the discount medical plan
24 organization's complaint system and information that, if the member remains
25 dissatisfied after completing the organization's complaint system, the plan
26 member may contact his state insurance department.

27 (l) The name and mailing address of the registered discount medical
28 plan organization or other entity where the member can make inquiries about
29 the plan, send cancellation notices and file complaints.

30 §2037.8. Notice of change in name or address

1 Each discount medical plan organization shall provide the commissioner
2 at least thirty days advance notice of any change in the discount medical plan
3 organization's name, address, principal business address, mailing address or
4 Internet website address.

5 §2037.9. Penalties

6 A. In addition to the penalties and other enforcement provisions of this
7 Part, any person who willfully violates the provisions of this Part shall be
8 subject to civil penalties of up to two thousand five hundred dollars per
9 violation.

10 B. A person that willfully operates as or aids and abets another person's
11 operating as a discount medical plan organization in violation of R.S.
12 22:2037.7(B) commits insurance fraud and shall be subject to payment of a
13 monetary penalty of not more than one thousand dollars for each and every act
14 or violation, but not to exceed one hundred thousand dollars, unless the person
15 knew or reasonably should have known he was in violation of R.S. 22:2037.7(B),
16 in which case the penalty shall not be more than twenty-five thousand dollars
17 for each and every violation not to exceed an aggregate penalty of two hundred-
18 fifty thousand dollars in any six-month period, as if the unregistered discount
19 medical plan organization were an unauthorized insurer, and the fees, dues,
20 charges or other consideration collected from the members by the unregistered
21 discount medical plan organization or marketer were insurance premium.

22 C. A person that collects fees for purported membership in a discount
23 medical plan, but purposefully fails to provide the promised benefits commits
24 a theft and upon conviction is subject to the criminal penalties for theft
25 enumerated in R.S. 14:67. In addition, upon conviction, the person shall be
26 ordered to pay restitution to persons aggrieved by the violation of this Part.
27 Restitution shall be ordered in addition to a fine or imprisonment, but not in
28 lieu of a fine or imprisonment.

29 §2037.10. Injunctions

30 A. In addition to the penalties and other enforcement provisions of this

1 Part, the commissioner may seek both temporary and permanent injunctive
2 relief when any of the following occur:

3 (1) A discount medical plan is being operated by a person or entity that
4 is not registered pursuant to this Part.

5 (2) Any person, entity or discount medical plan organization has
6 engaged in any activity prohibited by this Part or any regulation adopted
7 pursuant to this Part.

8 B. The commissioner's authority to seek injunctive relief is not
9 conditioned on having conducted any proceeding pursuant to the Louisiana
10 Administrative Procedure Act.

11 §2037.11. Regulations

12 The commissioner may, after notice and hearing, promulgate such rules
13 and regulations as may be necessary or proper to carry out the provisions of
14 this Part. The rules and regulations shall be promulgated and adopted in
15 accordance with the Administrative Procedure Act.

16 Section 2. The provisions of this Act shall become effective on January 1, 2009. A
17 person doing business in or from this state as a discount medical plan organization before
18 the effective date shall have until July 1, 2009, to come into compliance with the
19 requirements of this Act

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____