

BILL ANALYSIS

Senate Research Center

H.B. 3064
By: Delisi (Nelson)
Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Discount health care programs (program) are non-insurance programs that offer consumers direct access to health care products and services at discount rates. Programs are offered by discount health care companies directly to consumers, insurance companies to subscribers, banks to customers, and non-profit organizations to members. The Consumer Health Alliance, the national trade association of discount health care companies, states that its companies serve 28 million customers across the country, including more than two million in Texas. Texas currently does not have any laws to effectively regulate these programs.

H.B. 3064 provides for certain regulations relating to these programs in order to reduce misleading, deceptive, and fraudulent activity while allowing well-operated companies to continue to give Texas residents access to more affordable health care products and services.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 2 (Section 76.003, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subtitle C, Title 2, Health and Safety Code, to read as follows:

SUBTITLE C. PROGRAMS PROVIDING HEALTH CARE BENEFITS AND SERVICES

SECTION 2. Amends Subtitle C, Title 2, Health and Safety Code, by adding Chapter 76, as follows:

CHAPTER 76. DISCOUNT HEALTH CARE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 76.001. DEFINITIONS. Defines "commission," "department," "discount health care program," "discount health care program operator," "division," "marketer," "member," "program operator," and "provider."

Sec. 76.002. APPLICABILITY OF OTHER LAW. Provides that a discount health care program operator (operator) or marketer is subject to the applicable consumer protection laws under Chapter 17 (Deceptive Trade Practices), Business & Commerce Code, in addition to the requirements of this chapter.

Sec. 76.003. RULES. Requires the Texas Commission of Licensing and Regulation (commission) to adopt rules necessary to implement this chapter.

[Reserves Sections 76.004-76.050 for expansion.]

SUBCHAPTER B. PROGRAM REQUIREMENTS

Sec. 76.051. PROGRAM OPERATOR. Requires an operator, including the operator of a freestanding discount health care program or a discount health care program marketed by an insurer or a health maintenance organization (HMO), to comply with this chapter.

Sec. 76.052. PROHIBITED ADVERTISEMENT, SOLICITATION, AND MARKETING. (a) Prohibits any advertisement, solicitation, or marketing material of a discount health care program (program) from containing false, misleading, or deceptive statements, including certain statements set forth in this subsection.

(b) Requires any advertisement, solicitation, or marketing material of a program to clearly and conspicuously state that the program is not insurance.

(c) Prohibits any advertisement, solicitation, or marketing material of a program from using the term "insurance," except as a disclaimer of any relationship between the program and insurance or as a description of an insurance product connected with a program.

(d) Prohibits any advertisement, solicitation, or marketing material of a program from using certain terms in a manner that could reasonably mislead an individual into believing that the program is health insurance or provides similar coverage.

(e) Prohibits any advertisement, solicitation, or marketing material of a program from using certain terms without disclosing, clearly and conspicuously and in close proximity to the use of such a term, any and all conditions, limitations, and restrictions on the ability of the member or prospective member to obtain or use the good or service to which the term applies.

(f) Prohibits an operator from offering a "free" trial membership in a program without disclosing certain obligations, payments, or conditions for cancellation of the membership.

Sec. 76.053. DISCLOSURE MATERIALS REQUIRED. (a) Requires an operator to provide each prospective or new member disclosure materials containing certain information before enrollment or with the written materials describing the terms that are provided after enrollment.

(b) Requires a marketer to use disclosure materials that comply with Subsection (a).

Sec. 76.054. PROGRAM OPERATOR DUTIES. Sets forth certain duties of an operator.

Sec. 76.055. MARKETING OF PROGRAM. (a) Authorizes an operator to market directly or contract with marketers for the distribution of the operator's program.

(b) Requires an operator to enter into a written contract with a marketer before the marketer begins marketing, promoting, selling, or distributing the operator's program. Requires the contract to prohibit the marketer from using advertising, solicitations, or other marketing materials, or discount cards that have not been approved in advance and in writing by the operator.

(c) Requires an operator to approve in writing all advertisements, solicitations, or other marketing materials, and discount cards used by marketers to market, promote, sell, or distribute the program before the cards' use.

Sec. 76.056. CONTRACT REQUIREMENTS. (a) Requires an operator to contract, directly or indirectly, with a provider offering discounted health care services or products under the program. Sets forth certain provisions to be contained in such a contract.

(b) Prohibits an operator from charging or receiving from a provider any fee or other compensation for entering into the agreement.

(c) Requires an operator who contracts with a network of providers to obtain written assurance from the network that the network has a written agreement with each network provider that includes a discounted rate that is applicable to an operator's program and contains all of the terms described in Subsection (a) and that the network is authorized to obligate network providers to provide services to members of the program.

(d) Requires the operator to require the network to maintain and provide the operator an up-to-date list of providers in the network on a monthly basis and to promptly remove a provider from the network if the provider loses the authority to provide services or products.

(e) Requires the operator to maintain a copy of each written agreement that the operator has with a provider or a network.

[Reserves Sections 76.057-76.100 for expansion.]

SUBCHAPTER C. REGISTRATION

Sec. 76.101. REGISTRATION REQUIRED; FEES. (a) Prohibits an operator from offering a program in this state unless the operator is registered with the Texas Department of Licensing and Regulation (department).

(b) Sets forth certain information required to be submitted by an applicant for registration under this chapter.

(c) Requires the operator to file the contract form described by Subsection (b)(5) that has been modified after initial registration with the department before it may be used.

(d) Requires the operator to certify to the department that its programs comply with the requirements of this chapter as part of the registration required under Subsection (b) and annually thereafter.

(e) Requires a program to pay the department an initial registration fee of \$500 and an annual renewal fee not to exceed \$200.

(f) Provides that this section does not apply to a program operator licensed under Title 6 (Organization of Insurers and Related Entities), Insurance Code.

[Reserves Sections 76.102-76.150 for expansion.]

SUBCHAPTER D. DISCIPLINARY ACTION; PENALTIES

Sec. 76.151. DISCIPLINARY ACTION. (a) Authorizes the department to suspend or revoke the certificate of registration of the operator or marketer who fails to comply with this chapter or the rules adopted under this chapter, and who does not correct the failure before the 30th day following the day the person receives notification of the failure by the department. Authorizes the antitrust and consumer protection division of the attorney general's office (division) to bring an action to impose civil penalties against the operator or marketer for such a failure under this subchapter.

(b) Authorizes the executive director of the department (executive director) to impose an administrative sanction, including any administrative penalty, as provided by Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code, on a finding that a ground for disciplinary action exists under this chapter.

Sec. 76.152. INJUNCTIVE RELIEF; CIVIL PENALTY; DAMAGES. (a) Authorizes the executive director or the division to institute an action against an operator or marketer

for injunctive relief under Section 51.352 (Injunctive Relief; Civil Penalty), Occupations Code, to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) Authorizes the executive director or the division to institute an action for a civil penalty as provided by Section 51.352, Occupations Code, in addition to the injunctive relief provided by Subsection (a).

(c) Prohibits the amount of any civil penalty assessed under this section from exceeding \$2,500 for each violation.

(d) Provides that advertising, selling, or distributing of a program that violates this chapter is a false, misleading, or deceptive act or practice for purposes of Section 17.46 (Deceptive Trade Practices Unlawful), Business & Commerce Code, and the exclusive remedy for the violation is an action by the office of attorney general as provided by Subsection (a) of that section.

Sec. 76.153. ADMINISTRATIVE PROCEDURE. Provides that Sections 51.310 (Administrative Procedure), 51.353 (Administrative Sanctions), and 51.354 (Right to Hearing; Administrative Procedure), Occupations Code, apply to a disciplinary action taken under this chapter.

Sec. 76.154. APPEAL. Authorizes a person affected by a ruling, order, decision, or other action of the executive director or the department to appeal by filing a petition in a Travis County district court.

SECTION 3. Requires the commission to adopt the rules and procedures necessary to implement Chapter 76, Health and Safety Code, as added by this Act, not later than December 1, 2007.

SECTION 4. Provides that a person is not required to register under Section 76.101, Health and Safety Code, before January 1, 2008, notwithstanding that section.

SECTION 5. Effective date: September 1, 2007.