

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3064
By: Delisi (Nelson)
Health & Human Services
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Committee Report (Substituted)

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.

C.S.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," "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, except as otherwise provided by 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, and 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 use or 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 their 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 required 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, if the operator 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 on a monthly basis an up-to-date list of providers in the network and to promptly remove a provider from its network if the provider loses the authority to provide services or products.

(e) Requires the operator to maintain a copy of each written agreement 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 or an applicant for renewal of registration under this chapter whose information has changed.

(c) Requires the operator to file the modified contract, if the form of a contract described by Subsection (b)(5) changes, after the 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 \$1,000 and an annual renewal fee not to exceed \$500.

(f) Authorizes the department to conduct a criminal background check on certain persons involved with the program.

(g) 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. 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 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 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 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. Provides that the exclusive remedy for the violation of that section is an action by the office of the attorney general as provided by Subsection (a) of that section.

(e) Prohibits the office of the attorney general from bringing an action under Section 17.46, Business & Commerce Code, for a violation arising out of the same act or failure to act for which an administrative or civil penalty has been assessed in accordance with Section 76.151 or this 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 district court in Travis County.

Sec. 76.155. SUBPOENAS. (a) Authorizes the department to issue a subpoena as provided by this section.

(b) Authorizes the department to request and, if necessary, compel by subpoena certain relevant documents and the attendance of a witness for examination.

(c) Authorizes a subpoena under this section to be issued throughout this state and to be served by any person designated by the commission or the executive director.

(d) Authorizes the department, acting through the attorney general, to bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(e) Provides that venue for an action brought under this section is in a district court in Travis County or any county in which the department is authorized to hold a hearing.

(f) Requires the court to order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Sec. 76.156. CEASE AND DESIST ORDERS. Authorizes the executive director to issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of this chapter or a rule adopted or order issued by the commission or the executive director.

Sec. 76.157. EMERGENCY ORDERS. (a) Authorizes the executive director, if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety, to issue an emergency order to suspend or revoke a registration or to halt operation of a person subject to regulation by the department under this chapter.

(b) Authorizes the executive director to issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) Requires the executive director, if an emergency order is issued under this section without a hearing, to set the time and place for a hearing to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued.

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 January 1, 2008.

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

SECTION 5. Effective date: September 1, 2007.