Subchapter A. Discount Health Care Program Principles of Regulation
28 TAC §§24.1 - 24.4

1. INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts new Chapter 24, §§24.1 - 24.4, concerning the principles of conduct for how entities and individuals within the discount health care program industry must conduct their business practices. The new sections are adopted without changes to the proposed text published in the June 4, 2010 issue, of the *Texas Register* (35 TexReg 4611).

2. REASONED JUSTIFICATION. The new sections are necessary to implement SECTIONS 1 and 2 of House Bill (HB) 4341, 81st Legislature, Regular Session, and Senate Bill (SB) 2423, 81st Legislature, Regular Session. HB 4341 transferred the regulation of discount health care programs from the Texas Department of Licensing and Regulation (TDLR) to the Texas Department of Insurance (Department) effective April 1, 2010. HB 4341: (i) amends the Insurance Code to add new Title 21, Chapter 7001, relating to the regulation of discount health care programs by the Department, effective September 1, 2009; (ii) amends the Insurance Code to add a new Chapter 562, relating to unfair methods of competition and unfair or deceptive acts or practices regarding discount health care programs, effective September 1, 2009, with the exception of Subchapter E, relating to the enforcement by the Attorney General, which took effect April 1, 2010; and (iii) repeals Chapter 76 of the Health and Safety Code, relating to the regulation of discount health care programs by the TDLR, effective April 1, 2010.

SB 2423, 81st Legislature, Regular Session, effective September 1, 2009, amends the Insurance Code to add new Chapter 7002, relating to supplemental provisions regarding discount health care operators. Under §7002.001, for purposes of the Insurance Code, Chapter 562 (relating to Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Regarding Discount Health Care Programs) and Chapter 7001 (relating to Registration of Discount Health Care Program Operators), consideration provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. Therefore, for example, such discount health care programs or program operators that do not charge fees for their programs, but that receive consideration in the form of access to patient information that is then transferred or sold, or that receive drug manufacturer rebates, that are then transferred or sold, are subject to the same regulation as those programs regulated under Chapter 7001 that do charge fees for their programs.

This adoption order is a complement to three other Department adoption orders to implement new Insurance Code Chapters 562, 7001 and 7002. The other three adoption orders are: (i) amendments to §§1.501 - 1.503 and 1.507, concerning fingerprint requirements for certain individuals related to the operation of discount health care programs; (ii) new §19.1601 and §19.1602, relating to discount health care program registration and renewal requirements, and amendments to §19.802, relating to amount of fees; and (iii) amendments to §§21.101 - 21.103, 21.108, 21.112 - 21.114,

and 21.116 - 21.122, relating to insurance advertising; and proposed new §§21.151 - 21.154, relating to discount health care program advertising. Notice of these three adoption orders is also published in this issue of the *Texas Register*.

On September 14, 2009, the Department posted on its website informal drafts of these four rules for public comment. The Department held a stakeholder meeting on September 18, 2009, to discuss the informal draft rules prior to the informal comment period ending on September 24, 2009. The Department received comments on all four draft rules, including the principles of conduct for how entities and individuals within the discount health care program industry must conduct their business practices, which the Department considered in preparing the proposal. The proposal was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4611). The proposal comment period ended on July 5, 2010.

Effective Dates. Pursuant to SECTION 5(b) of HB 4341, a discount health care program operator that was registered with the TDLR on January 1, 2010, as required by Chapter 76 of the Health and Safety Code, must file an application for renewal of registration with the Department under the Insurance Code, Chapter 7001, not later than April 1, 2010. In order for any discount health care program regulated pursuant to the Insurance Code, Chapter 7001 and 7002, to lawfully operate in Texas on or after April 1, 2010, the discount health care program operator must be registered with the Department.

The new sections state certain principles that are of prime importance in the discount health care program industry. The Department's purpose in adopting

principles-based regulations is to reduce unnecessary regulatory and administrative burdens by allowing the regulated individual or entity to determine the most appropriate manner by which they should operate their businesses to achieve the stated outcomes. Principles-based regulation aims to ensure that the enforcement of the principles is proportionate to the anticipated outcomes stated by the principles. The Department believes that this regulatory approach is reasonable, necessary and appropriate to benefit the needs of the consumers of discount health care programs.

Principles-based regulation originated in the United Kingdom with the Financial Services Authority. The aim of the Department is to adopt principles that should result in better protection for consumers and others interacting with discount health care professionals by providing a concise point of reference for business conduct. While this adoption states certain principles for the conduct of the discount health care program industry, it does not exhaust the legal or ethical requirements that govern their actions.

3. HOW THE SECTIONS WILL FUNCTION.

§24.1. Purpose, Scope, and Construction. New §24.1(a) explains the purpose of the chapter. New §24.1(b) provides that a program operator, including the operator of a freestanding discount health care program, or a discount health care program operated and marketed by an insurer or a health maintenance organization, shall comply with this chapter. New §24.1(c) provides that this chapter construes and applies the principles of conduct embodied in the Insurance Code, Chapter 562, for the regulation of trade practices in the business of discount health care programs; Chapter

7001 for the registration of discount health care program operators; and Chapter 7002 for the supplemental provisions relating to discount health care program operators.

§24.2. Definitions. New §24.2(1) references the Insurance Code §562.002 and §7001.001 to provide the definition of "discount health care program." The Insurance Code §562.002(2) and §7001.001(1) define a "discount health care program" as a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, certificate of coverage, or other product otherwise regulated by the Department or a self-funded or self-insured employee benefit plan. New §24.2(2) references the Insurance Code, §562.002 and §7001.001, to provide the definition of "discount health care program operator." The Insurance Code, §562.002(3) and §7001.001(2), define a "discount health care program operator" to mean a person who, in exchange for fees, dues, charges, or other consideration, operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount and determines the charges to members. New §24.2(3) references the Insurance Code, §562.002 and §7001.001, to provide the definition of "member." The Insurance Code, §562.002(6) and §7001.001(5), define a "member" to mean a person who pays fees, dues, charges, or other consideration for the right to participate in a discount health care program. Proposed new §24.2(4) references the Insurance Code, §562.002 and §7001.001, to provide the definition of "provider." The Insurance Code §562.002(9) and §7001.001(7)

define “provider” to mean a person who is licensed or otherwise authorized to provide health services in the state of Texas.

§24.3. Principles. New §24.3 provides the principles of conduct by which a discount health care program operator must act. Specifically, new §24.3 provides that a discount health care program operator shall: (i) comply with all applicable statutes of the State of Texas and with all applicable Department rules, including amendments to Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct); new Chapter 19, Subchapter Q of this title (relating to Discount Health Care Program Registration); the amendment to §19.802 of this title (relating to Amount of Fees); and new Chapter 21, Subchapter B, Division 2 of this title (relating to Discount Health Care Program Advertising); (ii) lawfully conduct its business with integrity and diligence; (iii) organize and control its affairs responsibly and effectively, with adequate risk management systems; (iv) maintain adequate financial resources to enable it to satisfy its obligations as they are incurred or become due; (v) pay due regard to the interests of its prospective members, members, and providers by treating them fairly; (vi) pay due regard to the needs of its prospective members, members, and providers by communicating information to them in a way that is clear, fair and not misleading; (vii) manage conflicts fairly, between, as applicable, the discount health care program operator and its members; the discount health care program operator and its providers; and members and providers; and (viii) interact with the Commissioner in an open and cooperative way and promptly disclose to the Commissioner any significant information

relating to its ability to continue as a going concern or as a registered discount health care program operator and to its continued financial stability.

§24.4. Severability. New §24.4 provides that if a court of competent jurisdiction holds that any provision of this chapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this chapter will remain in effect.

4. SUMMARY OF COMMENTS. The Department did not receive any timely filed comments on the published proposal.

5. STATUTORY AUTHORITY. The new sections are adopted pursuant to the Insurance Code Chapters 562, 7001, and 7002, including §§562.001, 562.004, 562.005, 7001.003, 7002.001, and 36.001. Section 562.001 provides that the purpose of the Insurance Code, Chapter 562, is to regulate trade practices in the business of discount health care programs by defining or providing for the determination of trade practices in the state that are unfair methods of competition or unfair or deceptive acts or practices in this state, and prohibiting those unfair or deceptive trade practices. Section 562.004 provides that except as otherwise provided by this chapter, a program 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, shall comply with this chapter. Section 562.005 provides that Chapter 562 shall be liberally construed and applied to promote the underlying purposes as provided by the Insurance

Code, §562.001. Section 7001.003 requires the Commissioner to adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement this chapter. Section 7002.001 provides that for purposes of the Insurance Code Chapters 562 and 7001, “consideration” provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. TEXT.

§24.1. Purpose, Scope, and Construction.

(a) The purpose of this chapter is to implement the Insurance Code, Chapters 562, 7001, and 7002 by establishing the principles of conduct applicable to a discount health care program operator in its business activities.

(b) A discount health care program operator, including the operator of a freestanding discount health care program or a discount health care program operated and marketed by an insurer or a health maintenance organization, shall comply with this chapter.

(c) This chapter construes and applies the principles of conduct embodied in the Insurance Code Chapter 562 for the regulation of trade practices in the business of

discount health care programs; Chapter 7001 for the registration of discount health care program operators; and Chapter 7002 for the supplemental provisions relating to discount health care program operators.

§24.2. Definitions. In this chapter, the following terms have the meanings assigned by the Insurance Code, §562.002 and §7001.001:

(1) Discount health care program;

(2) Discount health care program operator;

(3) Member; and

(4) Provider.

§24.3. Principles. A discount health care program operator shall:

(1) comply with all applicable statutes of the State of Texas and with all applicable department rules, including Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct); Chapter 19, Subchapter Q of this title (relating to Discount Health Care Program Registration); §19.802 of this title (relating to Amount of Fees); and Chapter 21, Subchapter B, Division 2 of this title (relating to Discount Health Care Program Advertising);

(2) lawfully conduct its business with integrity and diligence;

(3) organize and control its affairs responsibly and effectively, with adequate risk management systems;

(4) maintain adequate financial resources to enable it to satisfy its obligations as they are incurred or become due;

(5) pay due regard to the interests of its prospective members, members, and providers by treating them fairly;

(6) pay due regard to the information needs of its prospective members, members, and providers by communicating information to them in a way that is clear, fair, and not misleading;

(7) manage conflicts fairly, between, as applicable:

(A) the discount health care program operator and its members;

(B) the discount health care program operator and its providers; and

(C) members and providers; and

(8) interact with the commissioner in an open and cooperative way and promptly disclose to the commissioner any significant information relating to its ability to continue as a going concern or as a registered discount health care program operator and to its continued financial stability.

§24.4. Severability. If a court of competent jurisdiction holds that any provision of this chapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this chapter shall remain in effect.

CERTIFICATION. This agency hereby certifies that the adopted new sections have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued at Austin, Texas, on August 11, 2010.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that new Chapter 24, §§24.1 - 24.4 specified herein, concerning the principles of conduct for how entities and individuals within the discount health care program industry must conduct their business practices, is adopted.

AND IT IS SO ORDERED.

MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:

Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. 10-0768
AUG 18 2010