

SUBCHAPTER I. LICENSING FEES
28 TAC §19.802

SUBCHAPTER Q. DISCOUNT HEALTH CARE PROGRAM REGISTRATION AND
RENEWAL REQUIREMENTS
28 TAC §§19.1601 - 19.1606

1. INTRODUCTION. The Texas Department of Insurance (Department) proposes amendments to §19.802, concerning the registration and renewal fees for discount health care program operators, and new Subchapter Q, §§19.1601 - §19.1606, concerning the registration and renewal requirements for discount health care program operators. The proposed amendments and new sections are necessary to implement (i) House Bill (HB) 4341, 81st Legislature, Regular Session, relating to the regulation of discount health care programs by the Texas Department of Insurance and (ii) Senate Bill (SB) 2423, 81st Legislature, Regular Session, relating to the transfer or sale of patient information or prescription drug history by discount health care programs.

HB 4341 transferred the regulation of discount health care programs from the Texas Department of Licensing and Regulation (TDLR) to the 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 takes 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 and Chapter 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. 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 proposal is a complement to three other Department proposals to implement new Insurance Code Chapters 562, 7001 and 7002. The other three proposals are (i) proposed 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) proposed 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; and (iii) proposed new §§24.1 - 24.4, relating to discount health care program principles of regulation. These three proposals are 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 registration and renewal fees for discount health care program operators, and the registration and renewal requirements for discount health care program operators. The Department has considered the comments in preparing this proposal.

The Insurance Code §7001.003 requires the Commissioner to adopt rules as necessary to implement the Insurance Code Chapter 7001 for the registration of discount health care program operators. The Insurance Code §7001.004 further provides that a discount health care program operator may not offer a discount health care program in the state of Texas unless the program operator is registered with the Department. However, the Insurance Code §7001.002 provides that new Chapter 7001 does not apply to a program operator who is an insurer and who holds a certificate of authority under Title 6. Therefore, a program operator who is an insurer and who holds a certificate of authority under Title 6 is exempt from the discount health care program operator registration requirements as provided by the Insurance Code §7001.002.

The proposed new sections are necessary to establish the registration and renewal requirements for discount health care programs at the Department. The Insurance Code §562.002(3) and §7001.001(2) define a "discount health care program operator" as 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. The Insurance Code §562.002(7) defines a "person" to mean an

individual, corporation, association, partnership, or other legal entity. Therefore, an individual or a legal entity may apply for registration, or apply to renew registration, with the Department as a discount health care program operator.

Effective Dates. HB 4341, SECTIONS 3 and 6(b), repeals the Health and Safety Code Chapter 76 provisions concerning discount health care programs under the regulation of the TDLR, to take effect on April 1, 2010. Pursuant to SECTION 5(b) of HB 4341, a discount health care program operator that is 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 Chapters 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.

Section-by-Section Summary. The following paragraphs provide a summary as well as an analysis of the reasons for the proposed amendments and new sections.

The proposed amendment to §19.802(a) deletes “or” and adds “or registration or renewal of registration” and “or registrant” after “licensee.” These changes are necessary as a result of the requirement for a discount health care program operator to pay an initial registration fee and an annual renewal fee as required by the Insurance Code §7001.006. These changes further reflect that fees required by the Department include registration fees and are not limited to licensing fees.

Pursuant to the Insurance Code §7001.006, proposed new §19.802(b)(24)(A) requires a discount health care program operator to pay an initial registration fee of

\$1,000 and an annual renewal registration fee of \$500. Proposed new §19.802(b)(24)(B), requiring an annual renewal fee in the amount of \$500, is necessary to maintain effective regulation of the discount health care program registrants by establishing an annual renewal registration fee sufficient to cover Department administration costs, including registration, enforcement, processing intake of renewal applications, creating and maintaining a database for storage and retrieval of required information about registrants, creating and maintaining a database for the storage and retrieval of information related to the list of marketers that the registrants are required to provide to the Department, and personnel time to manage the processes.

Proposed new “Subchapter Q. Discount Health Care Program Registration and Renewal Requirements,” §§19.1601 – 19.1606 is necessary to implement the Insurance Code Chapter 7001 by establishing the registration requirements of discount health care program operators. The Insurance Code §7001.003 provides that the Commissioner is required to adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement Chapter 7001. Proposed new §19.1601(1) defines “individuals responsible for conducting the program operator’s affairs” to mean individuals with the power to direct or cause the direction of the management and policies of a discount health care program, whether directly or indirectly. Because the phrase “individuals responsible for conducting the program operator’s affairs” is not defined by the Insurance Code, this proposed new paragraph is necessary to inform the applicant for registration or renewal as a discount health care program operator regarding whose biographical information and criminal background information is required for submission to the Department under the Insurance Code §7001.005(a)(2)(A) and §7001.008(1).

Proposed new §19.1601(2) provides that the definition of “person” means “an individual, corporation, association, partnership, or other legal identity as provided by the Insurance Code §562.002(7).”

Proposed new §19.1602(a) provides the information that an applicant for registration as a discount health care program operator must submit to the Department. Proposed new §19.1602(a)(1) provides that an applicant for registration to offer a discount health care program in this state is required to submit the initial registration fee of \$1,000 as provided in the Insurance Code §7001.006 and proposed §19.802-(relating to Amount of Fees). Proposed new §19.1602(a)(1) also provides that the initial registration fee of \$1,000 is nonrefundable and nontransferable. This provision is necessary because the Department will not otherwise recoup the administrative costs and personnel time that the Department will incur to process the initial registration as a discount health care program operator. Based on proposed new §19.1602(a)(1), the Department will not transfer an initial registration fee to be used to process a different application for licensure or registration. Proposed new §19.1602(a)(2) provides that a discount health care program operator applicant is required to submit a complete application for registration which contains all the information required by the Insurance Code §7001.005 and the proposed new section. Specifically, proposed new §19.1602(a)(2)(A) requires an applicant to submit to the Department the applicant’s full legal name and federal employer identification number or social security number; daytime telephone number with extension; toll free telephone number; Internet website address; physical address, including city, state, and ZIP code; mailing address, including the city, state, and ZIP code; a contact person’s name, including the title,

telephone number, and email address; the applicant's agent for service of process, including the physical address, city, state, and ZIP code. The Insurance Code §7001.005(a)(1) provides that an applicant for registration under Chapter 7001 or an applicant for renewal of registration under Chapter 7001 whose information has changed is required to submit a completed registration application on the form prescribed by the Department indicating the program operator's name, physical address, mailing address, and its agent for service of process. The applicant's federal employer identification number is necessary to identify the corporation, association, partnership, or other legal entity. Further, pursuant to the Insurance Code §201.054(b), the Department is required to maintain a record of the federal identification number of each entity subject to regulation under the Insurance Code or another insurance law of this state and is further required to include the appropriate number in any communication to or information shared with the Comptroller relating to that entity. If the applicant is an individual, the applicant's social security number is required for submission to the Department under the Family Code §231.302. The Family Code §231.302 provides that for the purpose of assisting in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act, 42 U.S.C. §§601 - 617 and 651 – 669, each licensing authority is required to request and each applicant for a license is required to provide the applicant's social security number. The Family Code §232.001(1) defines a "license" to mean a license, certificate, registration, permit, or other authorization that: (i) is issued by a licensing authority; (ii) is subject before expiration to renewal, suspension, revocation, forfeiture, or termination by a licensing authority; and (iii) a person must obtain to practice or

engage in a particular business, occupation, or profession; operate a motor vehicle on a public highway in this state; or engage in any other regulated activity, including hunting, fishing, or other recreational activity for which a license or permit is required. The physical address, city, state, and ZIP code for the applicant's agent for service of process is information necessary to serve a citation, a subpoena, an order, or any other document required or appropriate under law to be served a party. The physical address, city, state, and ZIP code for the applicant's agent for service of process is also necessary to determine whether the applicant is maintaining an agent for service of process in the State of Texas as required by the Insurance Code §562.103(f)(2). The Insurance Code §562.103(a)(1) requires a program operator to provide a toll-free telephone number and Internet website for members to obtain information about the discount health care program and confirm or find providers currently participating in the program. The Insurance Code §562.103(b)(2)(D) provides that if the discount health care program includes discount prescription drug benefits, a program operator is required to include a telephone number to be used to contact an appropriate person to obtain information relating to the prescription drug benefits provided under the program on its membership card. Therefore, the Department determines that it is necessary to require submission of the applicant's daytime telephone number with extension, toll-free telephone number, Internet website, and a contact person's name, including the title, telephone number, and email address on the application to satisfy statutory requirements and to provide the Department with information necessary to respond to consumer inquiries regarding the discount health care program.

Proposed new §19.1602(a)(2)(B) requires the applicant to identify whether it is a corporation, association, limited partnership, limited liability company, limited liability partnership, sole proprietorship, or other legal entity. Proposed new §19.1602(a)(2)(B) is necessary for the Department to determine the type of legal entity that is requesting registration as a discount health care program operator.

Proposed new §19.1602(a)(2)(C) requires the applicant to provide any and all assumed names to be used by the applicant in operating a discount health care program. Proposed new §19.1602(a)(2)(C) further provides that if a filing is required under the Assumed Business or Professional Name Act pursuant to the Texas Business Corporation Act and Commerce Code, or any similar statute, the discount health care program operator applicant for registration shall provide the Department with a copy of the assumed name certificate reflecting the registration of each assumed name used by the discount health care program operator applicant. Proposed new §19.1602(a)(2)(C) is necessary to determine which discount health care program operator is responsible for a particular discount health care program. The TDLR, which regulated the discount health care program industry from September 1, 2008 through March 31, 2010, reported that Texas consumers are confused concerning the individual or entity responsible for a particular program since consumers may only know the name of the marketer selling the discount health care program.

Proposed new §19.1602(a)(2)(D) requires the applicant to provide a statement generally describing the applicant, its facilities, personnel, and the health care services or products for which a discount will be made available under its discount health care

programs. Proposed new §19.1602(a)(2)(D) is a restatement of the Insurance Code §7001.005(a)(3).

Proposed new §19.1602(a)(2)(E) requires the applicant to provide a copy of the form of all contracts made or to be made between the applicant and any providers or provider networks regarding the provision of health care services or products to members. Proposed new §19.1602(a)(2)(E) is a restatement of the Insurance Code §7001.005(a)(5).

Proposed new §19.1602(a)(2)(F) requires the applicant to provide a copy of the applicant's charter, certificate of authority, or registration obtained from the Texas Secretary of State's office. Proposed new §19.1602(a)(2)(G) requires the applicant to provide a copy of the documentation issued by a federal or Texas state agency authorizing the entity to do business in Texas if the applicant is an entity subject to the bank or farm credit administration. This organizational information is necessary to confirm that the applicant is in fact a legal entity.

Proposed new §19.1602(a)(2)(H) requires the applicant to provide an original surety bond payable to the Department for the use and benefit of members in the principal amount of \$50,000, as required by the Insurance Code §562.103(f)(1) and §19.1603 of proposed new Subchapter Q (relating to Financial Responsibility Requirement), except that an insurer that holds a certificate of authority under the Texas Insurance Code Title 6 is not required to maintain the surety bond.

Proposed new §19.1602(a)(2)(I) requires the applicant to provide lists of marketers, both entities and individuals, separated as follows: (i) a list of the marketers, both entities and individuals, authorized to sell or distribute the program

operator's programs under the program operator's name; and (ii) a list of the marketers, both entities and individuals, authorized to private label the program operator's programs. The Insurance Code §7001.005(a)(4) provides that an applicant for registration under Chapter 7001 or an applicant for renewal of registration under Chapter 7001 whose information has changed is required to submit to the Department a list of the marketers authorized to sell or distribute the program operator's programs under the program operator's name, a list of the marketing entities authorized to private label the program operator's programs, and other information about the marketers and marketing entities considered necessary by the Commissioner. The Department considers it necessary to clarify that the Department intends to receive marketing lists concerning both individuals and entities that are authorized to sell or distribute the program operator's programs and to private label the program operator's programs.

Proposed new §19.1602(a)(2)(J) requires an applicant to certify in writing to the Department that its programs comply with the requirements of the Insurance Code Chapters 7001 and 562. Proposed new §19.1602(a)(2)(J) is a restatement of the Insurance Code §7001.005(c).

Proposed new §19.1602(a)(2)(K) requires an applicant to provide a list of names, addresses, official positions, and biographical information of: (i) the individuals responsible for conducting the applicant's affairs; (ii) each member of the board of directors, board of trustees, executive committee, or other governing board or committee; (iii) the officers; (iv) any contracted management company personnel; and (v) any person owning or having the right to acquire 10 percent or more of the voting securities of the applicant, as required by the Insurance Code §7001.005(a)(2).

Proposed new §19.1602(a)(2)(L) requires the applicant for registration as a discount health care program operator to provide to the Department a complete biographical certificate concerning each individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and the proposed new section. The Department also considers the information in proposed new §19.1602(L) necessary biographical information to provide to the Department concerning each individual listed under the Insurance Code §7001.005(a)(2) and information necessary for the Department to conduct a criminal background check on those same individuals as provided by the Insurance Code §7001.008. The requested information is necessary to allow the Department to determine whether it will accept or deny the registration application or take any action authorized under the Insurance Code Chapters 82, 83, and 84 if the Department determines that the applicant or registered discount health care program operator, individually, or through an officer, director, or shareholder has willfully violated a provision of the Insurance Code or an order or rule of the Commissioner; has intentionally made a material misstatement in the registration application; has obtained or attempted to obtain a registration by fraud or misrepresentation; has misappropriated, converted to the applicant's or registration holder's own use, or illegally withheld money belonging to a member of a discount health care program; has engaged in fraudulent or dishonest acts or practices; or has been convicted of a felony as provided under the Insurance Code §7001.009. Therefore, proposed new §19.1602(a)(2)(L) requires the applicant for registration as a discount health care program operator to provide to the Department: (i) the identification of the individual's relationship to the applicant; (ii) the name of the

applicant; (iii) the full name, title, social security number, date of birth, mailing address, including the city, state, and ZIP code; telephone number, fax number, and email address of the individual; (iv) excluding traffic violations and a first DWI offense, a response to the following questions: (I) whether the individual has any pending misdemeanor or felony charges by indictment, information or any other instrument filed in Texas or in any other state or by the federal government; (II) whether the individual has ever been convicted of any misdemeanor or felony offense in Texas, in any other state, or by the federal government; (III) whether the individual has ever had deferred adjudication on any misdemeanor or felony charge or offense in Texas, in any other state, or by the federal government; and (IV) whether the person has ever served any period of probation for any misdemeanor or felony offense in Texas, in any other state, or by the federal government; (v) if the response is positive to any question under subsection (a)(2)(L)(iv)(I) – (IV) of the proposed new section, the applicant for registration as a discount health care program operator is required to provide to the Department original certified copies of the charging document, indictment, information, or any other charging document, any judgment of conviction, deferred adjudication order, or probation order, and any order terminating probation, community supervision certificate, or parole certificate for each offense. If the court does not maintain the record, the submission of a letter on the court's letterhead will be required. If the arrest did not result in a prosecution, the submission of a records search from the appropriate jurisdiction indicating a final disposition will be required. A statement describing the circumstances leading to the offense and the individual's age at the time of the offense will be required. Letters of recommendation from any person aware of a particular

criminal history may be provided; (vi) a response to the question whether the individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and the proposed new section, or any entity in which the individual served as a director, officer, shareholder, manager, member or partner, has ever been the subject of an administrative or legal action filed by the Department, or any other insurance department, financial regulatory agency, or of an action filed on behalf of the State of Texas or any other state or by the federal government based on alleged violations of state or federal insurance, securities or financial regulatory laws that the individual has not previously reported to the Department. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the Department a description of the circumstances regarding the administrative or legal action and a copy of any document sent to the individual to commence the administrative or legal action that described the nature of the action; (vii) a response to the question whether the individual, whose biographical information is required under the Insurance Code §7001.005(a)(2) and the proposed new section, is indebted to any discount health care program operator, policyholder, insurance or reinsurance company, insurance agency, general agent, managing general agency, premium finance company or court-appointed liquidator for membership refunds, premiums collected or commissions retained, or has any claims or judgments filed against the individual for membership refunds, retaining premiums or commissions. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the Department a description of the circumstances regarding the indebtedness including the name and contact information of the person or entity to

whom the individual is indebted; (viii) a response to the question whether the individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and the proposed new section, has ever been the cause of having a discount health care program contract cancelled for cause, such as for obtaining or attempting to obtain a registration by fraud or misrepresentation; misappropriating, or converting to the applicant's or registration holder's own use, or illegally withholding money belonging to a member of a discount health care program; or engaging in fraudulent or dishonest acts or practices. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the Department a description of the circumstances regarding the cancellation including the name and contact information of the individual or entity that cancelled the contract. Such contracts may include a membership agreement with a consumer; a contract with a marketer, or a contract with a provider who is licensed or otherwise authorized to provide health care services in this state; (ix) a copy of a fingerprint receipt from the state authorized fingerprint collection vendor for each individual that uses the electronic fingerprint process; (x) an acknowledgment from each individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and the new proposed section that the fingerprints provided will be used to check criminal history records of the Texas Department of Public Safety and the Federal Bureau of Investigation; and (xi) compliance with the requirements of Chapter 1, Subchapter D of Title 28 (relating to Effect of Criminal Conduct), relating to fingerprint requirements for a criminal background check under the Insurance Code §7001.008.

Proposed new §19.1602(b) states that the discount health care program operator registration application forms are available at <http://www.tdi.state.tx.us> and at the Texas Department of Insurance, Licensing Division, 333 Guadalupe, Austin, Texas 78701. Proposed new §19.1602(c) provides the submission information of the discount health care program operator registration application forms. Specifically, proposed new §19.1602(c)(1) provides that except for the list of marketers required under the Insurance Code §7001.005(a)(4) and the proposed new section, a discount health care program operator shall submit the registration application forms by: (i) mail, to the Texas Department of Insurance, Licensing Division, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104; (ii) fax, to (512) 490-1052; (iii) e-mail, to TDI-DiscountHealth@tdi.state.tx.us; or (iv) in other formats that are acceptable to the Department including an electronic format. As information technology advances, the Department may determine that other formats are also acceptable methods to submit the discount health care program operator application forms. Proposed new §19.1602(c)(2) provides that a discount health care program operator is required to submit the list of the marketers in the format found on the Department's website via email to TDI-DiscountHealth@tdi.state.tx.us. Proposed new §19.1602(c)(3) states that assistance with applying for registration as a discount health care program operator is available at the Department's Licensing Division Customer Service phone line at (512) 322-3503; email address at License@tdi.state.tx.us; and the Department's web site at www.tdi.state.tx.us. Proposed new §19.1602(d) states that the registration is valid for one year from the date issued by the Department and is required to be renewed

annually. New §19.1602(d) implements the Insurance Code §7001.005(c) and the Insurance Code §7001.006.

Proposed new §19.1603 provides the financial responsibility requirements of a discount health care program operator applicant for registration or renewal. Proposed new §19.1603(a) references and restates the Insurance Code §562.103(f)(1) to provide that a discount health care program operator, as a condition of being registered and continuing such registration, shall maintain a surety bond payable to the Department for the use and benefit of members, in the principal amount of \$50,000, except that a discount health care program operator that is an insurer that holds a certificate of authority under Title 6 is not required to maintain the surety bond. Proposed new §19.1603(b) provides that each discount health care program operator must obtain separate proof of financial responsibility and may not rely on the bond of any other discount health care program operator to demonstrate proof of financial responsibility. Proposed new §19.1603(c) provides that the discount health care program operator applicant or registrant shall demonstrate proof of financial responsibility by providing to the department the original surety bond upon application, renewal, or replacement of the bond. Proposed new §19.1603(d) provides that a surety bond used to maintain and demonstrate proof of financial responsibility under the proposed new section must: (i) be issued by a company authorized, or eligible, to do business as a surety in the State of Texas; (ii) be in compliance with all applicable provisions of the Insurance Code and applicable Department rules; (iii) be on a form filed with and approved by the Department; (iv) be consistent with the Insurance Code §562.103(f), to be payable to the Texas Department of Insurance for the use and benefit of members; (1) on the

determination by the Department that funds are necessary for the payment of claims following compliance with all applicable provisions of the Insurance Code and applicable rules of the Department; or (2) upon final judgment against the Principal arising from a claim; (v) provide that the issuing company will provide the Department and the registrant at least 30 days prior written notice of its intent to cancel the bond; (vi) be effective for the entire time period of the registration; (vii) be separate from any other financial obligation; and (viii) not be used to demonstrate professional responsibility for any other registration or individual or entity. Proposed new §19.1603(e) provides that the Department may make claims against the bond for one year after the program operator ceases to be registered in the state, or for one year after the bond is terminated, based on actions within the registration and bond period. Proposed new §19.1603(e) is necessary for the Department to consider claims based on actions within the registration period. The aggregate liability of the surety shall be limited to the penal sum of the bond. Proposed new §1603(f) further provides that failure to maintain the bond for the entire period required by the new proposed section and the Insurance Code §562.103(f)(1) will be cause for the Department to institute action pursuant to Chapters 82, 83, and 84 of the Insurance Code. The Insurance Code §7001.009(a)(1) provides that the Department may deny a registration application or take any action authorized under Chapters 82, 83, and 84 if the Department determines that the applicant or registered discount health care program operator, individually, or through an officer, director, or shareholder has willfully violated a provision of the Insurance Code or an order or rule of the Commissioner.

Proposed new §19.1604 provides the renewal requirements of a discount health care program operator. A discount health care program operator seeking to continue offering a discount health care program in this state will need to renew its registration annually with the Department by the submission of an application and the payment of a renewal fee as required by the Insurance Code §7001.005 and §7001.006. Proposed new §19.1604(a) provides that not later than 60 days before the date a person's registration as a discount health care program operator expires, the Department will send a written registration renewal notice to the discount health care program operator's last known mailing address according to the Department's records. Proposed new §19.1604(b) provides that in the absence of the submission of a written request to change the mailing address of a registered discount health care program operator as required by the Insurance Code §7001.005(a)(1) and §19.1605 of the proposed new subchapter (relating to Requirements Related to Discount Health Care Program Information), the discount health care program operator's current address is presumed to be the address provided on the most recent registration application or renewal of registration application. The Insurance Code §7001.005(a)(1) provides, in relevant part, that an applicant for registration under Chapter 7001 or an applicant for renewal of registration under Chapter 7001 whose information has changed shall submit "...the program operator's...mailing address..." Proposed new §19.1604 further provides that such address shall be considered the discount health care program operator's last known mailing address for the purpose of the Department sending a registration renewal notice to the discount health care program operator.

Proposed new §19.1604(c)(1) provides that a discount health care program operator may renew a registration to offer a discount health care program in this state by returning the payment coupon attached to the registration renewal notice sent by the Department to the discount health care program operator with a nonrefundable and nontransferable check made payable to the Department in the amount of \$500 as required by the Insurance Code §7001.006 and §19.802. Proposed new §19.1604(c)(1) provides that the renewal fee of \$500 is nonrefundable and nontransferable. An applicant for renewal of registration as a discount health care program operator may not subsequently request the Department to transfer the renewal fee to process a different application or renewal for licensure or registration. Therefore, due to the administrative costs and personnel time that the Department will incur to process the application to renew registration as a discount health care program operator, the renewal fee of \$500 is nonrefundable and nontransferable. Proposed new §19.1604(c)(1) further provides that the discount health care program operator may submit the renewal notice and payment to the Texas Department of Insurance, Licensing Division, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104. Additionally, proposed new §19.1604(c)(2) provides that a discount health care program operator may renew a registration to offer a discount health care program in this state by certifying in writing to the Department that its programs comply with the requirements of the Insurance Code Chapters 7001 and 562, Proposed new §19.1604(c)(2) is consistent with the Insurance Code §7001.005(c). Proposed new §19.1604(d) provides that a discount health care program operator renewing a registration shall submit a written communication to the Department of any information provided to the Department that has changed since the

initial registration or subsequent renewals as provided in the Insurance Code §7001.005(a) and §19.1605. Proposed new §19.1604(e) provides that the renewal of the registration is valid for one year from the date issued by the Department and is required to be renewed annually. Proposed new §19.1604(e) is consistent with the Insurance Code §7001.005(c) and §7001.006.

Proposed new §19.1604(f) provides that except as provided by the Occupations Code §55.003 (relating to Extension of Certain Deadlines for Active Duty Military Personnel), a discount health care program operator whose registration has expired may not renew the registration. The Occupations Code §55.003 provides that a person who holds a license, is a member of the state military forces of the United States, or a reserve component of the armed forces of the United States, and is ordered to active duty by proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete any continuing education requirements; and any other requirement related to the renewal of the person's license. For an individual that would not meet the requirements of the Occupations Code §55.003, the discount health care program operator may obtain a new registration by complying with the registration requirements as provided by the Insurance Code §7001.005(a) and §19.1602 (relating to Registration Requirement). Additionally, the Insurance Code §562.053(a)(1) provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to fail to register or renew registration as required under Chapter 7001.

Proposed new §19.1605(a) provides that, except for changes in the form of contracts as provided in the Insurance Code §7001.005(b) and subsection (b) of the

proposed new section, a registered discount health care program operator whose registration or renewal information has changed since the initial registration or renewal pursuant to the Insurance Code §7001.005(a) and the proposed new section shall notify the Department in writing of a change not later than the 30th day after the effective date of the change by: (i) mail, to the Texas Department of Insurance, Licensing Division, MC-107-1A, P.O. Box 149104, Austin, Texas 78714-9104; (ii) fax, to (512) 490-1052; (iii) e-mail, to TDI-DiscountHealth@tdi.state.tx.us; or (iv) in other formats that are acceptable to the Department, including an electronic format. As information technology advances, the Department may determine that other formats are also acceptable methods to submit the discount health care program operator application forms. Additionally, the Department considers 30 days after the effective date of a change in information as a reasonable amount of time to notify the Department in writing of such a change.

Proposed new §19.1605(b) provides that after the initial registration, if the form of a contract described by the Insurance Code §7001.005(a)(5) and §19.1602(a)(2)(C) (relating to Registration Requirement) changes, the program operator is required to file the modified contract with the Department before it may be used. Proposed new §19.1605(b) is consistent with the Insurance Code 7001.005(a)(5).

Proposed new §19.1605(c) provides that after the initial registration, a discount health care program operator shall comply with the requirements of the Insurance Code §7001.005(a)(4) and the proposed new section to submit to the Department on a quarterly basis, not later than each June 30, September 30, December 31 and March 31, lists of marketers, both entities and individuals, separated as follows: (i) a list of the

marketers, both entities and individuals, authorized to sell or distribute the program operator's programs under the program operator's name; and (ii) a list of the marketers, both entities and individuals, authorized to private label the program operator's programs. Proposed new §19.1605(c) is necessary to inform the Department as to which marketers are associated with a particular program operator and to respond to consumer inquiries regarding a discount health care program.

Proposed new §19.1605(d) provides that a discount health care program operator is required to submit the quarterly list of the marketers to TDI-DiscountHealth@tdi.state.tx.us.

Proposed new §19.1605(e) provides that assistance with notifying the Department in writing of a change in information or with submitting the quarterly list of marketers is available at the Licensing Division Customer Service phone line at 512-322-3503, email address at License@tdi.state.tx.us and the Department's web site at www.tdi.state.tx.us.

Proposed new §19.1606 provides that if a court of competent jurisdiction holds that any provision of the proposed new subchapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of the subchapter shall remain in effect.

2. FISCAL NOTE. Matt Ray, Deputy Commissioner, Licensing Division, Life Health & Licensing, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be an estimated increase in revenue to state government. Each year, Mr. Ray estimates that at least five new

discount program operators will register as a discount health care program operator. For the first year that the Department will regulate the registration and renewal to function as a discount health care program operator in Texas, the estimated increase in revenue to the Department as a result of this proposal concerning the payment of a renewal fee, is in the approximate amount of \$18,000. This amount is based on the anticipated renewal of the 36 registered discount health care program operators that the Department anticipates will pay a renewal fee to continue as a discount health care program operator in the state of Texas. For the second year, the estimated increase in revenue to the Department as a result of this proposal concerning the payment of a renewal fee, is in the approximate amount of \$20,500 based on the anticipated renewal of 41 registered discount health care program operators. For the third year, the estimated increase in revenue to the Department as a result of this proposal concerning the payment of a renewal fee is in the approximate amount of \$23,000, based on the anticipated renewal of 46 registered discount health care program operators. For the fourth year, the estimated increase in revenue to the Department as a result of this proposal concerning the payment of a renewal fee is in the approximate amount of \$25,500, based on the anticipated renewal of 51 registered discount health care program operators. For the fifth year, the estimated increase in revenue to the Department as a result of this proposal concerning the payment of a renewal fee is in the approximate amount of \$28,000, based on the anticipated renewal of 56 registered discount health care program operators. Additionally, Mr. Ray has determined that for each year of the first five years the proposed amendment concerning the renewal fee will be in effect, there will be no fiscal impact to local governments as a result of the

enforcement or administration of this proposed amendment. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Ray also has determined that for each year of the first five years the proposed amendments and new sections are in effect, there will be public benefits anticipated as a result of the proposal. These benefits include rules that implement the Insurance Code Chapter 7001 as added by HB 4341, 81st Legislature, and that provide guidance to discount health care programs about registration and reporting procedures.

The Department does not anticipate any additional cost as a result of the proposed amendments to currently registered programs required to comply with the submission of a renewal fee in the amount of \$500. The Department proposes to exercise its statutory discretion to set the fee for renewal at \$500. Repealed 16 TAC §84.80, adopted pursuant to the Health and Safety Code Chapter 76, required that all discount health care programs pay a renewal application fee of \$500. Pursuant to HB 4341, 81st Legislature, Regular Session, the Health and Safety Code Chapter 76 was repealed effective April 1, 2010.

New applicants for registration as a discount health care program operator will be subject to the \$500 renewal fee annually. The basis for the fee is the cost to the Department for the intake of renewal applications, creation and maintenance of a database for storage and retrieval of required information about registrants, creation and maintenance of a database for storage and retrieval of information related to marketers, and cost of personnel time to manage the processes.

Currently registered applicants and new applicants for registration will be required to report certain information to the Department. The cost to submit the required registration applications, renewal application, marketing reports, and changes in information will result in the cost of personnel time to collect, review, and enter the information. The total cost of personnel time will vary between program operators. Additionally, the cost to submit the required registration application and renewal application in hard copy is estimated at \$.44 to \$.95 annually for postage. The cost to submit the required marketing reports in hard copy is estimated at \$.44 to \$.95 per quarter for postage. The cost to submit the changes in information in hard copy is estimated at \$.44 to \$.95 per submission for postage. The cost to print the registration applications, renewal application, marketing reports, and changes in information is approximately \$.07 per page, with the total cost dependent upon the amount of information to be printed, which will vary between program operators. If the program submits its reports electronically, there will be no postage or printing cost to do so. Such reporting includes submission of a list of marketers, both entities and individuals, authorized to sell or distribute the program operator's programs under the program operator's name; and a list of the marketers, both entities and individuals, authorized to private label the program operator's programs, on a quarterly basis. Additionally, the proposed rule requires a discount health care program operator applicant for registration, or an applicant for renewal of registration, whose information has changed after submitting the initial registration or renewal application, to file specified information with the Department not later than 30 days after the change occurs.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that this proposal may have an adverse economic effect on small or micro businesses that are required to comply with the proposal. On September 29, 2009, the Department conducted a survey of the 36 then registered discount health care program operators to determine whether any of them met the requirement of being a small business or a micro business. As of September 30, 2009, 23 out of the 36 discount health care program operators had responded to the Department. The responses reflected that 10 out of the 23, or 43 percent of the respondents, met the requirement of being a small business, and 8 out of the 10, or 80 percent of the small business respondents, met the requirement of being a micro business. The Department anticipates that five new discount health care program operators each year will register. Based on the results of the survey, the Department estimates that per year 43 percent of the discount health care program operators would meet the requirements of being a small business, and 80 percent of the small businesses would meet the requirements of being a micro business. Therefore, as required by the Government Code, §2006.002(c), the Department has determined that for the first year that this proposal will be in effect approximately 36 registrants will need to renew their registrations. Approximately 16 of those registrants will be subject to this proposal as a small business, and approximately 13 will be subject to this proposal as a micro business. For the second year that this proposal will be in effect, approximately 41 registrants will need to renew their registrations. Approximately 18 of those registrants will be subject to this proposal as a small business, and approximately 15

will be subject to this proposal as a micro business. For the third year that this proposal will be in effect, approximately 46 registrants will need to renew their registrations. Approximately 20 of those registrants will be subject to this proposal as a small business, and approximately 16 will be subject to this proposal as a micro business. For the fourth year that this proposal will be in effect, approximately 51 registrants will need to renew their registrations. Approximately 22 of those registrants will be subject to this rule as a small business, and approximately 18 will be subject to this rule as a micro business. For the fifth year that this proposal will be in effect, approximately 56 registrants will need to renew their registrations. Approximately 25 of those registrants will be subject to this proposal as a small business, and approximately 20 will be subject to this proposal as a micro business. Thus, this proposal imposes costs with which businesses, regardless of size, must comply. In accordance with the Government Code §2006.002(c), the Department has, therefore, considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of proposed new §19.802(b)(24)(B) is to promulgate a renewal fee, as required by HB 4341, for a discount health care program operator under the Insurance Code §7001.006 that is sufficient to cover the Department's cost for registration, enforcement, the intake of renewal applications, creation and maintenance of a database for storage and retrieval of required information about registrants, creation and maintenance of a database for storage and retrieval of information related to marketers, and cost of personnel time to manage the processes.

The other regulatory methods considered by the Department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed regulation and (ii) waiving or reducing the registration renewal fee for small or micro businesses.

Not adopting the proposed regulation. If this proposal is not adopted, the Department would not have the means to recover its administrative costs. The Department rejected this approach because it would not accomplish the objective of the statute and would not be consistent with the intent of the legislature in requiring payment of the annual renewal fee.

Waiving or reducing the registration renewal fee for small or micro businesses.

The Department considered whether waiving or reducing the registration renewal fee would be a feasible approach for small or micro businesses. It found that the application form and required information is the same for small and large businesses. The cost to the Department to receive the information, create and maintain a database and manage the process is the same. Therefore, there is no difference in the costs of compliance between a large and a small or micro business as a result of the proposed amendments and new sections. The purpose of the statute and this proposal is to provide a streamlined, efficient registration process for program operator applicants and to establish an annual renewal fee to cover the cost to the state for managing the process. The Department does not believe that this regulatory alternative of waiving or reducing the registration renewal fee is viable because of inconsistency with the purpose of the statute and this proposal, and it is not sufficiently protective of the economic welfare of citizens in the state.

Because the list of information regarding the identity of the marketers is necessary for the Department to handle complaints and enforcement cases, and because it will be made available to the public to assist them in deciding whether to purchase a discount health care program, collecting a reduced amount of information would frustrate the purpose of the data collection. Further, the Insurance Code §7001.006 requires the Department to set an annual renewal fee in an amount not to exceed \$500. The Department rejected the approach of waiving or reducing the proposed renewal fee for small or micro businesses because doing so would either significantly and unjustly increase renewal costs for individuals and entities that do not qualify as small or micro businesses under the Government Code §2006.001, or would result in the Department collecting inadequate renewal fees for implementation.

There is no disproportionate economic impact to small and micro businesses; the cost is the same for large businesses. For these reasons, the Department has determined, in accordance with the Government Code §2006.002(c-1), that there are no regulatory alternatives to the proposed amendments that will sufficiently protect the health, safety, environmental and economic interests of Texas consumers and the welfare of the state.

5. TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on July 5, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Life, Health & Licensing, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The amendments and new sections are proposed pursuant to the Family Code Chapter 231, including §231.302, the Insurance Code Chapters 201, 562, 7001, and 7002, including 201.054(b); 562.103(f)(1); 7001.003; 7001.004; 7001.005(a) - (c); 7001.006; 7001.008; 7001.009; 7002.001; and 36.001. The Family Code §231.302 provides that for the purpose of assisting in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act, 42 U.S.C. §§601 - 617 and 651 - 669, each licensing authority is required to request and each applicant for a license is required to provide the applicant's social security number. The Insurance Code §201.054(b) provides that the Department is required to maintain a record of the federal identification number of each entity subject to regulation under the Insurance Code or another

insurance law of this state and is further required to include the appropriate number in any communication to or information shared with the Comptroller relating to that entity. The Insurance Code §562.053 provides that the Commissioner may impose on a person operating a discount health care program for the person's failure to register or renew registration as required under Chapter 7001 any remedy that the Commissioner is authorized to impose under Chapter 101 for the unauthorized business of insurance. The Insurance Code §562.103(f)(1) provides that a program operator shall maintain a surety bond, payable to the Department for the use and benefit of members in a manner prescribed by the Department, in the principal amount of \$50,000, except that a program operator that is an insurer that holds a certificate of authority under Title 6 is not required to maintain the surety bond. The Insurance Code §7001.003 provides that the Commissioner shall adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement Chapter 7001. The Insurance Code §7001.004 provides that a discount health care program operator may not offer a discount health care program in this state unless the program operator is registered with the Department. The Insurance Code §7001.005(a) provides that an applicant for registration under this chapter or an applicant for renewal of registration under this chapter whose information has changed shall submit a completed registration application on the form prescribed by the Department indicating the program operator's name, physical address, and mailing address and its agent for service of process; a list of names, addresses, official positions, and biographical information of the individuals responsible for conducting the program operator's affairs, including each member of the board of directors, board of trustees, executive committee, or other governing board or committee; the officers of

the program operator; any contracted management company personnel; and any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator; a statement generally describing the applicant, its facilities and personnel, and the health care services or products for which a discount will be made available under its discount health care programs; a statement generally describing the applicant, its facilities and personnel, and the health care services or products for which a discount will be made available under its discount health care programs; a list of the marketers authorized to sell or distribute the program operator's programs under the program operator's name, a list of the marketing entities authorized to private label the program operator's programs, and other information about the marketers and marketing entities considered necessary by the Commissioner; and a copy of the form of all contracts made or to be made between the program operator and any providers or provider networks regarding the provision of health care services or products to members. The Insurance Code §7001.005(b) provides that after the initial registration, if the form of a contract described by Subsection (a)(5) changes, the program operator must file the modified contract form with the Department before it may be used. The Insurance Code §7001.005(c) provides that as part of the registration required under Subsection (a), and annually thereafter, the program operator shall certify in writing to the Department that its programs comply with the requirements of Chapter 7001 and Chapter 562. The Insurance Code §7001.006 provides that a discount health care program operator is required to pay the Department an initial registration fee of \$1,000 and an annual renewal fee in the amount set by the Commissioner not to exceed \$500. The Insurance Code §7001.008 provides that the Department may conduct a criminal

background check on the individuals responsible for conducting the program operator's affairs, each member of the board of directors, board of trustees, executive committee, or other governing board or committee; the officers of the program operator; any contracted management company personnel; and any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator. The Insurance Code §7001.009(a) provides that the Department may deny a registration application or take any action authorized under the Insurance Code Chapters 82, 83, and 84 if the Department determines that the applicant or registered discount health care program operator, individually or through an officer, director, or shareholder: (i) has willfully violated a provision of this code or an order or rule of the Commissioner; (ii) has intentionally made a material misstatement in the registration application; (iii) has obtained or attempted to obtain a registration by fraud or misrepresentation; (iv) has misappropriated, converted to the applicant's or registration holder's own use, or illegally withheld money belonging to a member of a discount health care program; (v) has engaged in fraudulent or dishonest acts or practices; or (vi) has been convicted of a felony. The Insurance Code §7001.009(b) provides that the Government Code, Chapter 2001, applies to an action taken under this section. The Insurance Code §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 information provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. The Insurance Code §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.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

<u>Rule:</u>	<u>Statute:</u>
§19.1602	Family Code §231.302 and Insurance Code §201.054
§19.1604	Occupations Code §55.003
§§19.802 and 19.1601 - 19.1606	Insurance Code Chapters 562, 7001, and 7002

9. TEXT.

SUBCHAPTER I. LICENSING FEES

§19.802. Amount of Fees.

(a) With each application for original license or renewal, notice of appointment, [ø] request for qualifying examination, or registration or renewal of registration, the applicant, [ø] licensee, or registrant shall submit the amount shown in this section. The fees for qualifying examinations and reexaminations only apply if the Texas Department of Insurance does not contract with a testing service for the provisions of these examinations.

(b) The amounts of fees are as follows:

(1) - (23) (No change.)

(24) Discount health care program operator:

(A) initial registration fee--\$1,000; or

(B) renewal registration fee--\$500.

(c) - (e) (No change.)

**SUBCHAPTER Q. DISCOUNT HEALTH CARE PROGRAM REGISTRATION AND
RENEWAL REQUIREMENTS**

§19.1601. Definitions. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

(1) Individuals responsible for conducting the program operator's affairs--
Individuals with the power to direct or cause the direction of the management and
policies of a discount health care program, whether directly or indirectly.

(2) Person--An individual, corporation, association, partnership, or other
legal entity as provided by the Insurance Code §562.002(7).

§19.1602. Registration Requirement.

(a) Registration Requirement. An applicant for registration to offer a discount
health care program in this state is required to submit all of the following to the
department:

(1) the initial registration fee of \$1,000 as provided in the Insurance Code
§7001.006 and §19.802 of this chapter (relating to Amount of Fees) that is
nonrefundable and nontransferable;

(2) a complete application for registration which contains all the information required by the Insurance Code §7001.005 and this section, including:

(A) the applicant's full legal name and federal employer identification number or social security number; daytime telephone number with extension; toll free telephone number; internet website address; physical address, including city, state, and ZIP code; mailing address, including the city, state, and ZIP code; a contact person's name, including the title, telephone number, and email address; the applicant's agent for service of process, including the physical address, city, state, and ZIP code;

(B) identification of whether the applicant is a corporation, association, limited partnership, limited liability company, limited liability partnership, sole proprietorship, or other legal entity;

(C) any and all assumed names to be used by the applicant in operating a discount health care program. If a filing is required under the Assumed Business or Professional Name Act pursuant to the Texas Business and Commerce Code, or any similar statute, the discount health care program operator applicant for registration shall provide the department with a copy of the assumed name certificate reflecting the registration of each assumed name used by the discount health care program operator applicant;

(D) a statement generally describing the applicant, its facilities, personnel, and the health care services or products for which a discount will be made available under its discount health care programs;

(E) a copy of the form of all contracts made or to be made between the applicant and any providers or provider networks regarding the provision of health care services or products to members;

(F) a copy of the applicant's charter, certificate of authority, or registration obtained from the Texas Secretary of State's office;

(G) if the applicant is an entity subject to the bank or farm credit administration, a copy of the documentation issued by a federal or Texas state agency authorizing the entity to do business in Texas;

(H) an original surety bond payable to the department for the use and benefit of members in the principal amount of \$50,000, as required by the Insurance Code §562.1034(f)(1) and §19.1603 of this subchapter (relating to Financial Responsibility Requirement), except that an insurer that holds a certificate of authority under the Texas Insurance Code Title 6 is not required to maintain the surety bond;

(I) lists of marketers, both entities and individuals, separated as follows:

(i) a list of the marketers, both entities and individuals, authorized to sell or distribute the program operator's programs under the program operator's name; and

(ii) a list of the marketers, both entities and individuals, authorized to private label the program operator's programs;

(J) a certification in writing to the department that its programs comply with the requirements of the Insurance Code Chapters 7001 and 562;

(K) a list of names, addresses, official positions, and biographical information of:

(i) the individuals responsible for conducting the applicant's affairs;

(ii) each member of the board of directors, board of trustees, executive committee, or other governing board or committee;

(iii) the officers;

(iv) any contracted management company personnel; and

(v) any person owning or having the right to acquire 10 percent or more of the voting securities of the applicant;

(L) a complete biographical certificate concerning each individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, including:

(i) the identification of the individual's relationship to the applicant;

(ii) the name of the applicant;

(iii) the full name, title, social security number, date of birth, mailing address, including the city, state, and ZIP code; telephone number, fax number, and email address of the individual;

(iv) excluding traffic violations and a first DWI offense, a response to the following questions:

(I) whether the individual has any pending misdemeanor or felony charges by indictment, information or any other instrument filed in Texas or in any other state or by the federal government;

(II) whether the individual has ever been convicted of any misdemeanor or felony offense in Texas, in any other state, or by the federal government;

(III) whether the individual has ever had deferred adjudication on any misdemeanor or felony charge or offense in Texas, in any other state, or by the federal government; and

(IV) whether the person has ever served any period of probation for any misdemeanor or felony offense in Texas, in any other state, or by the federal government;

(v) if the response is positive to any question under clause (iv)(I) – (IV) of this subparagraph , the applicant for registration as a discount health care program operator is required to provide to the department original certified copies of the charging document, indictment, information, or any other charging document, any judgment of conviction, deferred adjudication order, or probation order, and any order terminating probation, community supervision certificate, or parole certificate for each offense. If the court does not maintain the record, the submission of a letter on the court's letterhead will be required. If the arrest did not result in a prosecution, the submission of a records search from the appropriate jurisdiction indicating a final disposition will be required. A statement describing the circumstances leading to the offense and the individual's age at the time of the offense will be required. Letters of

recommendation from any person aware of a particular criminal history may be provided;

(vi) a response to the question whether the individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, or any entity in which the individual served as a director, officer, shareholder, manager, member or partner, has ever been the subject of an administrative or legal action filed by the department, or any other insurance department, financial regulatory agency, or of an action filed on behalf of the State of Texas or any other state or by the federal government based on alleged violations of state or federal insurance, securities or financial regulatory laws that the individual has not previously reported to the department. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the department a description of the circumstances regarding the administrative or legal action and a copy of any document sent to the individual to commence the administrative or legal action that described the nature of the action;

(vii) a response to the question whether the individual, whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, is indebted to any discount health care program operator, policyholder, insurance or reinsurance company, insurance agency, general agent, managing general agency, premium finance company or court appointed liquidator for membership refunds, premiums collected or commissions retained, or have any claims or judgments filed against the individual for membership refunds, retaining premiums or commissions. If the response is positive, the applicant for registration as a discount health care

program operator is required to provide to the department a description of the circumstances regarding the indebtedness including the name and contact information of the person or entity to whom the individual is indebted;

(viii) a response to the question whether the individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, has ever had a discount health care program contract cancelled for cause, such as for misrepresentation or misappropriation. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the department a description of the circumstances regarding the cancellation including the name and contact information of the individual or entity that cancelled the contract;

(ix) a copy of a fingerprint receipt from the state authorized fingerprint collection vendor for each individual that uses the electronic fingerprint process;

(x) an acknowledgment from each individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, that the fingerprints provided will be used to check criminal history records of the Texas Department of Public Safety and the Federal Bureau of Investigation; and.

(xi) compliance with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct) relating to fingerprint requirements for a criminal background check under the Insurance Code §7001.008.

(b) Registration Application Forms. The discount health care program operator registration application forms are available at <http://www.tdi.state.tx.us> and at the Texas Department of Insurance, Licensing Division, 333 Guadalupe, Austin, Texas 78701.

(c) Submission of Registration Application Forms. The following paragraphs apply to the submission of discount health care program operator registration application forms.

(1) Except for the list of marketers required under the Insurance Code §7001.005(a)(4) and this section, a discount health care program operator shall submit the registration application forms by:

(A) mail, to the Texas Department of Insurance, Licensing Division, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104;

(B) fax, to (512) 490-1052;

(C) e-mail, to TDI-DiscountHealth@tdi.state.tx.us; or

(D) in other formats that are acceptable to the department including an electronic format.

(2) A discount health care program operator shall submit the list of the marketers in the format found on the department's website via email to TDI-DiscountHealth@tdi.state.tx.us.

(3) Assistance with applying for registration as a discount health care program operator is available at the department's Licensing Division Customer Service phone line at (512) 322-3503, email address at License@tdi.state.tx.us. and the department's web site at www.tdi.state.tx.us.

(d) The registration is valid for one year from the date issued by the department and is required to be renewed annually.

§19.1603. Financial Responsibility Requirement.

(a) As required by the Insurance Code §562.103(f)(1), a discount health care program operator, as a condition of being registered and continuing such registration, shall maintain a surety bond payable to the department, for the use and benefit of members, in the principal amount of \$50,000, except that a discount health care program operator that is an insurer that holds a certificate of authority under Title 6 is not required to maintain the surety bond.

(b) Each discount health care program operator is required to obtain separate proof of financial responsibility and may not rely on the bond of any other discount health care program operator to demonstrate proof of financial responsibility.

(c) The discount health care program operator applicant or registrant is required to demonstrate proof of financial responsibility by providing to the department the original surety bond upon application, renewal, or replacement of the bond.

(d) A surety bond used to maintain and demonstrate proof of financial responsibility under this section is required to:

(1) be issued by a company authorized, or eligible, to do business as a surety in the State of Texas;

(2) be in compliance with all applicable provisions of the Insurance Code and applicable department rules;

(3) be on a form filed with and approved by the department;

(4) be consistent with the Insurance Code §562.103(f), to be payable to the Texas Department of Insurance for the use and benefit of members:

(A) on the determination by the department that funds are necessary for the payment of such claims following compliance with all applicable provisions of the Insurance Code and applicable rules of the department; or

(B) upon final judgment against the Principal arising from such a claim.

(5) provide that the issuing company will provide the department and the registrant at least 30 days prior written notice of its intent to cancel the bond;

(6) be effective for the entire time period of the registration;

(7) be separate from any other financial obligation; and

(8) not be used to demonstrate professional responsibility for any other registration or individual or entity.

(e) The department may make claims against the bond for one year after the program operator ceases to be registered in the state, or for one year after the bond is terminated, based on actions within the registration and bond period. The aggregate liability of the surety shall be limited to the penal sum of the bond.

(f) Failure to maintain the bond for the entire period required by this section and the Insurance Code §562.103(f)(1) will be cause for the department to institute action pursuant to Chapters 82, 83, and 84 of the Insurance Code.

§19.1604. Renewal.

(a) Not later than 60 days before the date a person's registration as a discount health care program operator expires, the department shall send a written registration renewal notice to the discount health care program operator's last known mailing address according to the department's records.

(b) In the absence of the submission of a written request to change the mailing address of a registered discount health care program operator as required by the Insurance Code §7001.005(a)(1) and §19.1605 of this subchapter (relating to Requirements Related to Discount Health Care Program Information), the discount health care program operator's current address is presumed to be the address provided on the most recent registration application or renewal of registration application. Such address shall be considered the discount health care program operator's last known mailing address for the purpose of the department sending a registration renewal notice to the discount health care program operator.

(c) A discount health care program operator may renew a registration to offer a discount health care program in this state by:

(1) returning the payment coupon attached to the registration renewal notice sent by the department to the discount health care program operator with a check made payable to the department in the amount of \$500 as required by the Insurance Code §7001.006 and §19.802 of this chapter (relating to Amount of Fees). A renewal fee paid under this section is nonrefundable and nontransferable. The discount health care program operator may submit the renewal notice and payment to the Texas Department of Insurance, Licensing Division, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104; and

(2) certifying in writing to the department that its programs comply with the requirements of the Insurance Code Chapters 7001 and 562.

(d) A discount health care program operator renewing a registration shall submit a written communication to the department of any information provided to the department that has changed since the initial registration or subsequent renewals as provided in the Insurance Code §7001.005(a) and §19.1605 of this subchapter.

(e) The renewal of the registration is valid for one year from the date issued by the department and is required to be renewed annually.

(f) Except as provided by the Occupations Code §55.003 (relating to Extension of Certain Deadlines for Active Duty Military Personnel), a discount health care program operator whose registration has been expired may not renew the registration. The discount health care program operator may obtain a new registration by complying with the registration requirements as provided by the Insurance Code §7001.005(a) and §19.1602 of this subchapter (relating to Registration Requirement).

§19.1605. Requirements Related to Discount Health Care Program Information.

(a) Except for changes in the form of contracts as provided in the Insurance Code §7001.005(b) and subsection (b) of this section, a registered discount health care program operator whose registration or renewal information has changed since the initial registration or renewal pursuant to the Insurance Code §7001.005(a) and this section shall notify the department in writing of a change not later than the 30th day after the effective date of the change by:

(1) mail, to the Texas Department of Insurance, Licensing Division, MC-107-1A, P.O. Box 149104, Austin, Texas 78714-9104;

(2) fax, to (512) 490-1052;

(3) e-mail, to TDI-DiscountHealth@tdi.state.tx.us; or

(4) in other formats that are acceptable to the department including an electronic format.

(b) After the initial registration, if the form of a contract described by the Insurance Code §7001.005(a)(5) and §19.1602(a)(2)(C) of this subchapter (relating to Registration Requirement) changes, the program operator is required to file the modified contract with the department before it may be used.

(c) After the initial registration, a discount health care program operator shall comply with the requirements of the Insurance Code §7001.005(a)(4) and this section to submit to the department on a quarterly basis, not later than each June 30, September 30, December 31 and March 31, lists of marketers, both entities and individuals, separated as follows:

(1) a list of the marketers, both entities and individuals, authorized to sell or distribute the program operator's programs under the program operator's name; and

(2) a list of the marketers and individuals authorized to private label the program operator's programs.

(d) A discount health care program operator shall submit the quarterly list of the marketers to TDI-DiscountHealth@tdi.state.tx.us.

(e) Assistance with notifying the department in writing of a change in information or with submitting the quarterly list of marketers is available at the Licensing Division

Customer Service phone line at (512)322-3503, email address at License@tdi.state.tx.us, and the department's web site at www.tdi.state.tx.us.

§19.1606. Severability. If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this subchapter shall remain in effect.