

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 Commissioner of Insurance (Commissioner) adopts 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 amendments and new sections are adopted without changes to the proposed text published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4591).

2. REASONED JUSTIFICATION. The 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 (Department); 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

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TITLE 28. INSURANCE
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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 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 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

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fingerprint requirements for certain individuals related to the operation of discount health care programs; (ii) amendments to §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122, relating to insurance advertising; and new §§21.151 - 21.154, relating to discount health care program advertising; and (iii) new §§24.1 - 24.4, relating to discount health care program principles of regulation. Notice of these three adoption orders 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, which the Department considered in preparing the proposal. The proposal was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4591). The proposal comment period ended on July 5, 2010.

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 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 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 Chapters 7001 and 7002 to lawfully operate

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in Texas on or after April 1, 2010, the discount health care program operator must be registered with the Department.

Amendments to §19.802(a) delete “or” and add “or registration or renewal of registration” after “examination” and adds “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 including registration, are not limited to licensing fees. Pursuant to the Insurance Code §7001.006, 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. 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.

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.

3. HOW THE SECTIONS WILL FUNCTION.

§19.802. Amount of Fees. Section 19.802(a) provides that with each application for original license or renewal, notice of appointment, request for qualifying examination, or registration or renewal of registration, the applicant, 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. Section 19.802(b)(24) adds the amount of fees required for a discount health care program operator registration or renewal of registration. Section 19.802(b)(24)(A) provides that the amount of an initial registration fee for a discount health care program operator is \$1,000. Section 19.802(b)(24)(B) provides that the amount of a renewal registration fee for a discount health care program operator is \$500.

§19.1601. Definitions. Section 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. Section 19.1601(2) defines “person” to mean an

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

§19.1602. Registration Requirement. Section 19.602(a) provides that 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: (i) 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; (ii) a complete application for registration which contains all the information required by the Insurance Code §7001.005 and this section, including 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; identification of whether the applicant is a corporation, association, limited partnership, limited liability company, limited liability partnership, sole proprietorship, or other legal entity; 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

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care program operator applicant; 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; 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; a copy of the applicant's charter, certificate of authority, or registration obtained from the Texas Secretary of State's office; 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; 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; lists of marketers, both entities and individuals, separated as follows: 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 a list of the marketers, both entities and individuals, authorized to private label the program operator's programs; a certification in writing to the Department that its programs comply with the requirements of the Insurance Code Chapters 7001 and 562; a list of names, addresses, official positions, and biographical information of the individuals responsible for conducting the applicant's affairs; each member of the board of directors, board of trustees, executive committee, or other governing board or

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committee; the officers; 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 applicant; a complete biographical certificate concerning each individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, including, the identification of the individual's relationship to the applicant; the name of the applicant; 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; excluding traffic violations and a first DWI offense, a response to the following questions: 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; whether the individual has ever been convicted of any misdemeanor or felony offense in Texas, in any other state, or by the federal government; 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 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; 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

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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; and 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; 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; and 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; a copy of a fingerprint receipt from the state authorized fingerprint collection vendor for each individual that uses the electronic fingerprint process; 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. 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. Section 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. Section 19.1602(c) states that the following requirements apply to the submission of discount health care program operator registration application forms: (i) 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 mail, to the Texas Department of Insurance, Licensing Division, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104; fax, to (512) 490-1052; e-mail, to TDI-DiscountHealth@tdi.state.tx.us; or in other formats that are acceptable to the Department including an electronic format; (ii) 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; and (iii) 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. Section 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.

§19.1603. Financial Responsibility Requirement. Section 19.1603(a) provides that 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

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program operator that is an insurer that holds a certificate of authority under Title 6 is not required to maintain the surety bond. Section 19.1603(b) provides that 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. Section 19.1603(c) states that 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. Section 19.1603(d) states that a surety bond used to maintain and demonstrate proof of financial responsibility under this section is required to: (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 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 upon final judgment against the Principal arising from such 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

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entity. Section 19.1603(e) states 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. The aggregate liability of the surety shall be limited to the penal sum of the bond. Section 19.1603(f) states that the 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. Section 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 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. Section 19.1604(b) states 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 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. Section 19.1604(b) 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. Section 19.1604(c) states that a discount health care

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program operator may renew a registration to offer a discount health care program in this state by: (i) 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 (ii) certifying in writing to the Department that its programs comply with the requirements of the Insurance Code Chapters 7001 and 562. Section 19.1604(d) states 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 of this subchapter. Section 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. Section 19.1604(f) states 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 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. Section 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 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: (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. Section 19.1605(b) states 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) 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. Section 19.1605(c) states 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 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:

(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 and individuals authorized to private label the program operator's programs. Section 19.1605(d) states that a discount health care program operator shall submit the quarterly list of the marketers to TDI-DiscountHealth@tdi.state.tx.us. Section 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.

§19.1606. Severability. Section 19.1606 provides that 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.

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

5. STATUTORY AUTHORITY. The amendments and new sections are adopted pursuant to the Family Code Chapter 231, including §231.302, and 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

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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

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Chapter 7001 or an applicant for renewal of registration under Chapter 7001 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,

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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.

6. TEXT.**SUBCHAPTER I. LICENSING FEES****§19.802. Amount of Fees.**

(a) With each application for original license or renewal, notice of appointment, request for qualifying examination, or registration or renewal of registration, the applicant, 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.

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(b) The amounts of fees are as follows:

(1) General life, accident, and health insurance agent:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) additional appointment--\$10;
- (D) qualifying examination--\$50;

(2) County mutual agent:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) additional appointment--\$10.

(3) Insurance adjuster:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) qualifying examination--\$50.

(4) Insurance adjuster (emergency license): original application--\$20.

(5) General property and casualty agent:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) additional appointment--\$10;
- (D) qualifying examination--50;
- (E) emergency application for license issued under Insurance

Code §4051.054--\$50 (for original application with no additional charge for renewal).

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(6) Full-time home office salaried employee registration: original application--\$50.

(7) Insurance service representative:

(A) original application--\$50;

(B) renewal--\$50;

(C) qualifying examination--\$50;

(D) appointment of a currently licensed insurance service representative--\$10.

(8) Managing general agent:

(A) original application--\$50;

(B) renewal--\$50;

(C) additional appointment--\$10;

(D) qualifying examination--\$50;

(E) emergency application for license issued under Insurance Code §4053.052--\$50.

(9) Limited lines agent (includes agents licensed under Insurance Code Chapter 4051, Subchapter C and Chapter 4054, Subchapter C):

(A) original application--\$50;

(B) renewal--\$50;

(C) additional appointment--\$10;

(D) qualifying examination--\$50.

(10) Surplus lines agent:

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- (A) original application--\$50;
- (B) renewal--\$50;
- (C) qualifying examination--\$50.

(11) Specialty insurance agent:

- (A) original application--\$50 (per license authority);
- (B) renewal--\$50 (per license authority);
- (C) additional appointment--\$10.

(12) Title attorney:

- (A) original application--\$50;
- (B) renewal--\$48.

(13) Life insurance not exceeding \$15,000:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) additional appointment--\$10.

(14) Risk manager:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) qualifying examination--\$50.

(15) Life and health insurance counselor:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) qualifying examination--\$50.

(16) Funeral prearrangement life insurance agent:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) additional appointment--\$10.

(17) Reinsurance intermediary:

- (A) original application--\$500;
- (B) renewal--\$500.

(18) Temporary license application--For license types authorized by Insurance Code Chapter 4001, Subchapter D to be issued on a temporary basis, \$100 in addition to the original license application fee for each license type.

(19) Utilization review agent:

- (A) original application--\$2,150;
- (B) renewal--\$545.

(20) Public insurance adjuster:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) qualifying examination--\$50.

(21) Public insurance adjuster temporary training certificate:

- (A) training certificate--\$50;
- (B) renewal--\$50.

(22) Life agent:

- (A) original application--\$50;

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- (B) renewal--\$50;
- (C) additional appointment--\$10;
- (D) qualifying examination--\$50.

(23) Personal lines property and casualty agent:

- (A) original application--\$50;
- (B) renewal--\$50;
- (C) additional appointment--\$10;
- (D) qualifying examination--\$50;

(24) Discount health care program operator:

- (A) initial registration fee--\$1,000; or
- (B) renewal registration fee--\$500.

(c) The limited lines agent license is a single license type that is authorized under Insurance Code Chapters 4051 and 4054. Persons licensed as limited lines agents may be appointed to sell or solicit any line authorized by Insurance Code Chapter 4051, Subchapter C and Chapter 4054, Subchapter C without payment of additional license fees or examinations other than the necessary additional company appointment fees.

(d) A general agent, personal lines property and casualty agent, or life agent appointed as subagent by another general agent, personal lines property and casualty agent, or life agent is not a separate license type. All fees are the same for a general agent, personal lines property and casualty agent, or life agent appointed as subagents,

as are the fees for a general agent, personal lines property and casualty agent, or life agent appointed by insurance companies.

(e) All fees are the same for both residents and nonresidents. Insurance Code Chapter 4056 does not create an additional license type for nonresidents, but designates a procedure for licensing nonresidents under appropriate Texas license types.

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:

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(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;

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(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

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(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

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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.

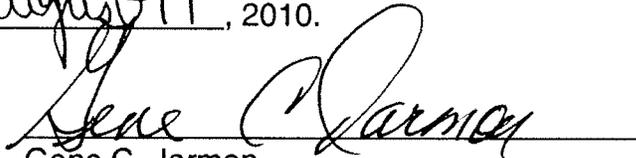
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TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 19. Agents' Licensing

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

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



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

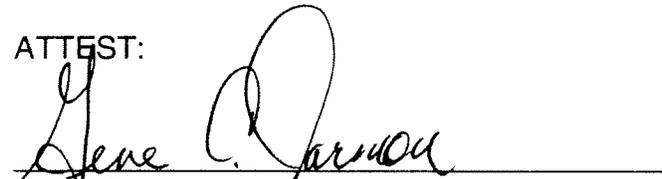
IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to §19.802 and new §§19.1601 - 19.1606 specified herein, concerning the registration and renewal fees for discount health care program operators, and the registration and renewal requirements for discount health care program operators, are adopted.

AND IT IS SO ORDERED.



MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:



Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. 10-0766
AUG 18 2010