

Medical Discount Plan Update

REGULATORY AND LEGISLATIVE DEVELOPMENTS

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IN THIS ISSUE:

Arkansas Attorney General Files Suit Against DMPO

Massachusetts Attorney General Enacts Final Regulations Governing DMPOs

Illinois Enacts Modified Licensing and Disclosure Requirements for DMPOs, Page 2

Texas Department of Insurance Takes Control of Regulating Discount Health Care Card Program Operators, Page 2

Rhode Island Legislature Proposes Bill Regulating Discount Medical Plans, Page 3

Medical Discount Plan Client Spotlight, Page 3

Medical Discount Plan Compliance and Regulatory Services, Page 4

For additional information about our Medical Discount Plan Compliance & Regulatory Services or the contents of this Update, please contact



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Arkansas Attorney General Files Suit Against DMPO

On March 11, 2010, the Arkansas Attorney General filed a lawsuit against Consumer Health Benefits Association (CHBA), alleging that the company claims to offer health insurance, but instead only offers a health discount card with limited benefits.

The Attorney General's lawsuit alleges that CHBA falsely implies that the card they offer is health insurance. Additionally, the lawsuit alleges that CHBA overstated the benefits available to Arkansas consumers and also states that many medical providers accept the card as a discount for services, for which the Arkansas Attorney General alleges that many providers do not have agreements with CHBA to honor the card.

The lawsuit seeks an injunction to stop the deceptive solicitations in Arkansas, as well as restitution for Arkansas consumers who purchased the discount card. The Attorney General also seeks civil penalties against CHBA under the Arkansas Deceptive Trade Practices Act and the Arkansas Health Related Cash Discount Card Act.

Massachusetts Attorney General Enacts Final Regulations Governing DMPOs

As noted in the last Medical Discount Plan Update, the Massachusetts Attorney General's Office was in the process of promulgating new regulations addressing the marketing of medical discount plans. Effective January 22, 2010, the Massachusetts Attorney General's Office issued its final regulations governing medical discount plans operating in Massachusetts.

The Massachusetts regulations do not impose a licensure or registration requirement, nor do they establish financial requirements such as minimum net worth or surety bond requirements. Rather, the regulations, adopted pursuant to the authority of the Massachusetts General Unfair and Deceptive Trade Practices Act, focus on the marketing practices of medical discount plans. There is also a unique requirement that plan operators disclose that the plan does not qualify as minimum creditable coverage, which Massachusetts

residents are generally required to maintain under health insurance reforms in Massachusetts. The new regulations also mandate that provider network agreements include certain provisions such as fee schedules and language prohibiting providers from charging members more than the discounted rates.

Any violations of the new Massachusetts regulations could be treated as an unfair or deceptive trade practice under M.G.L. c 93A § 2(a) and enforced by the Massachusetts Attorney General's Office.

Illinois Enacts Modified Licensing and Disclosure Requirements for DMPOs

Since announcing in its April 2004 Illinois Insurance newsletter that medical discount plans fall within the definition of a preferred provider program administrator (PPPA), the Illinois Division of Insurance (Division) has been regulating medical discount plans under a subset of the requirements applicable to traditional PPPAs pursuant to informal internal guidelines. A PPPA is defined by statute to include any person that arranges, contracts with, or administers contracts with providers whereby beneficiaries are provided an incentive to use the services of such providers. As of December 16, 2009, the Division adopted new PPPA regulations that include a section to formally register and regulate "discounted health care service plan administrators."

Under the new law, a discounted health care services plan administrator (discount plan administrator) is defined as "any person ... that arranges, contracts with, or administers contracts with a provider whereby insureds or beneficiaries are provided an incentive to use health care services ... under a discounted health care services plan in which there are no other incentives, such as co-payment, coinsurance or any other reimbursement differential."

The new regulation contains many provisions that are consistent with other states' medical discount plan laws and with which medical discount plans are familiar, including disclosure requirements. However, the regulation also imposes a number of unique requirements. For example, it authorizes the Division to take administrative action against a discount plan administrator due to the administrator's actions in states other than Illinois. For another example, before entering into a contract with another PPPA or discount plan administrator,

the new regulation requires a discount plan administrator to perform due diligence to ensure that the other entity is properly registered or licensed under Illinois law. Finally, discount plan administrators must annually file a list of their private label marketers and update that list within 30 days after any change. The new regulation also requires any unlisted private label marketer to become registered as a discount plan administrator in its own right.

Texas Department of Insurance Takes Control of Regulating Discount Health Care Card Program Operators

As reported in the last Medical Discount Plan Update, the complete transfer of responsibility for regulating discount health care card program operators from the Texas Department of Licensing and Regulation (TDLR) to the Texas Department of Insurance (TDI) is effective on April 1, 2010. As part of that transfer, program operators registered with the (TDLR) as of January 1, 2010, must renew their registration with the TDI no later than April 1, 2010. As of the date this article was drafted, however, the TDI has not issued final regulations to implement its regulation of the medical discount plan industry. Nevertheless, in early March the TDI issued renewal notices and forms to registered program operators to provide a process for the program operators to comply with the April 1 renewal requirement.

According to the TDI, a \$500 annual renewal fee will apply once the TDI's final regulations are issued. The TDI's renewal notice advises that the \$500 renewal fee need not be submitted until the regular renewal date in the TDLR's database for each program operator. However, program operators with TDLR renewal dates in April or May have the option to pay the fee with the April 1st renewal.

Initial program operator registration applications are to continue being submitted to the TDLR until April 1, 2010. It is our understanding that the TDLR and TDI are continuing to coordinate on how to process initial applications that are still pending before the TDLR by April 1st.

Rhode Island Legislature Proposes Bill Regulating Discount Medical Plans

On February 25, 2010, the Rhode Island legislature introduced House and Senate bills to regulate discount medical plan organizations. The current draft of these bills appears to largely follow the NAIC's Discount Medical Plan Organization Model Act and the Washington Medical Discount Plan Statutes enacted in 2009.

The Rhode Island bills define a "discount medical plan organization" as an "entity that, in exchange for fees, dues, charges or other consideration, provides access for discount medical plan members to providers of medical or ancillary services and the right to receive medical or ancillary services from those providers at a discount. It is the organization that contracts with providers, provider networks or other discount medical plan organizations to offer access to medical or ancillary services at a discount and determines the charge to discount medical plan members."

The Rhode Island bills also have a marketer exemption for an entity that markets, promotes, sells or distributes a discount medical plan, including a private label entity that places its name on and markets or distributes a discount medical plan pursuant to a marketing agreement with a discount medical plan organization, but which is not a discount medical plan organization.

Additionally, the proposed bills require:

- Members to receive a full refund if they cancel within 30 days of enrollment, but the plan is permitted to keep up to a one-time \$10.00 processing fee
- A discount medical plan organization to include certain information in its contracts with provider networks and providers
- Certain marketing requirements to be complied with, including requirements pertaining to the medical discount plan organization's contracts with marketers, and disclosure requirements pertaining to plan's advertisements, marketing materials, brochures, discount medical plan cards and any other communications of a discount medical plan organization provided to prospective members and members
- Annual reports to be filed
- Medical discount plans to obtain a \$100,000 surety bond

Violations of the proposed bills would carry penalties of up to \$10,000 per violation, in addition to potential additional penalties or injunctive relief.

As noted, the Rhode Island legislature's House and Senate Bills were introduced on February 25, 2010, and have not passed or become law in Rhode Island as of the date of this Medical Discount Plan Update.

Medical Discount Plan Client Spotlight

This section of our Medical Discount Plan Update highlights our medical discount plan clients, and we will continue to feature a number of our medical discount plan clients in future newsletters. In this issue, we will focus on Association Health Care Management, Inc. d/b/a Family Care.

Family Care is one of the oldest and preeminent medical discount plans in the country. It was founded by a group of physicians in 1983 and currently operates in 48 states. Family Care is managed by Dr. Michael Rabie, the Chief Executive Officer and President of Family Care, and is headquartered in Houston, Texas. Under Dr. Rabie's leadership, Family Care's provider network (PPNI) has become one of the fastest growing medical networks in the country and has grown to more than 400,000 physicians and over 35,000 health care facilities nationwide. Over the past 27 years, Family Care has significantly saved tens of thousands of households and individuals across the country on their medical, prescription, vision, dental, and chiropractic expenses.

Family Care is licensed or registered as a medical discount plan in Connecticut, Florida, Indiana, Illinois, Kansas, Louisiana, Maryland, Missouri, Nebraska, Nevada, New Hampshire, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia. Additionally, Family Care is the only multiple product medical discount plan that is licensed by the California Department of Managed Health Care ("DMHC") under the Knox-Keene Act. Companies interested in marketing Family Care's approved plan in California, or in utilizing their PPO network to assist them with complying with the Knox Keene Act's difficult requirements relating to Preferred Provider Networks utilized by medical discount plans during their licensure process in California, may wish to contact Family Care.

Polsinelli Shughart PC is extremely proud of its association with Family Care. If you are interested in receiving more information on Family Care, please contact Dr. Michael Rabie, CEO, at mar@familycarecard.com or (713) 414-5634.

Medical Discount Plan Compliance & Regulatory Services

There are currently 22 states that license or register medical discount plans, and an additional 12 states that have enacted state-specific laws regulating medical discount plans in some fashion. Our Medical Discount Plan Compliance Program can assist your company with its compliance needs and provide the following services to medical discount plans, private label organizations and marketers:

- Licensing and registering medical discount plans with the appropriate state government agencies in California, Connecticut, Florida, Illinois, Indiana, Kansas, Louisiana, Maryland, Missouri, Montana, Nebraska, Nevada, New Hampshire, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington and West Virginia;
- Review of sales and marketing materials, Internet Web sites, and membership materials for compliance with state medical discount plan laws;
- Assist medical discount plans responding to regulatory investigations or regulatory actions;
- Drafting of Marketer Agreements between medical discount plans and marketers and review of Marketer Agreements for compliance with state laws;
- Licensing and registering private label organizations and marketers with the appropriate state agencies that license and register marketers;
- Assisting with foreign qualifications and medical discount plan annual reports.

Special thanks to Polsinelli Shughart attorneys Brandon L. Kane and Justin T. Liby for their contributions to this newsletter.



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Justin T. Liby

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