

Medical Discount Plan Update

REGULATORY AND LEGISLATIVE DEVELOPMENTS

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Massachusetts Attorney General Files Lawsuit Against Medical Discount Plan Companies and Proposes Regulations For Medical Discount Plans Operating in Massachusetts

Over the past several months, the Massachusetts Attorney General's Office filed a lawsuit against several companies selling medical discount plans in Massachusetts and also has proposed regulations regarding medical discount plan companies operating in Massachusetts.

Lawsuit. The Massachusetts Attorney General's Office filed a lawsuit on October 13, 2009 against several companies alleging that they were involved in deceptively marketing and selling a medical discount plan to Massachusetts residents. The lawsuit alleged that Consumer Health Benefit Association, National Benefits, Consultants LLC and Vantage American Solutions, Inc. sold their discount medical plans in an unfair and deceptive manner.

The Massachusetts Attorney General's lawsuit alleged that these companies used high-pressure sales tactics and targeted sales of their medical discount plan to Massachusetts residents with pre-existing conditions who were seeking information about health insurance on the internet. The complaint also alleged that the companies used health insurance terms that allegedly misled Massachusetts residents to believe they were purchasing health insurance.

The Massachusetts Attorney General is seeking penalties and restitution for consumers, and a court order prohibiting the companies from engaging in the alleged deceptive practices that are the subject of the lawsuit in Massachusetts.

According to a press release from the Massachusetts Attorney General's Office, the lawsuit is part of the Massachusetts Attorney General's "multi-pronged approach to address the increasing problem of deceptive marketing of medical discount plans" in Massachusetts.

Proposed Regulations. In addition to this lawsuit, on September 14, 2009, the Massachusetts Attorney General's Office proposed new

regulations addressing the marketing of medical discount plans. The proposed regulations would require marketers to fully disclose how the plans work and include disclosures regarding whether the plan is limited to certain services or products from certain providers. The proposed regulations would also require the medical discount plan to clarify that the discount plan is not insurance and that the consumer will be required to pay for any services or products. Additionally, the proposed regulations would require the medical discount plan to maintain lists of providers who have agreed to offer the medical discount plan's members discounts.

The Massachusetts Attorney General held a public hearing on the proposed regulations on October 13, 2009. As of the date of this Update, these regulations have not been enacted. ■

Minnesota Attorney General Files Lawsuit Against Medical Discount Plan Company

In September 2009, the Minnesota Attorney General filed a lawsuit against Consumer Health Benefits Association (CHBA), a company operating a medical discount plan in Minnesota. The lawsuit seeks injunctive relief, restitution for consumers and civil penalties.

According to the press release from the Minnesota Attorney General's Office, CHBA is accused of allegedly targeting people looking for affordable health insurance and misleading them into paying an enrollment fee of \$129.90 and a monthly fee of between \$129.95 to \$149.95 by misrepresenting that it offered health insurance or the equivalent of health insurance. The lawsuit alleges that during sales calls, CHBA, misrepresented its "New Choice Health Plan" as being insurance or just like insurance, covering medical expenses, requiring only minimum co-pays for doctor and hospital visits and having a vast network of hospitals. The Minnesota Attorney General's press release goes on to

state that "In reality, CHBA is a so-called health discount plan which does not provide insurance coverage or otherwise cover claims but instead purports to offer certain discounts off the retail price charged by certain doctors and clinics." While medical discount plans are not licensed in Minnesota, the Minnesota Attorney General's lawsuit against CHBA alleges that it violated Minnesota's consumer fraud and deceptive trade practices laws. ■

Washington Office of the Insurance Commissioner Establishes Permanent Rules Governing Discount Health Plans

The Washington Office of the Insurance Commissioner (Washington OIC) recently adopted permanent rules governing medical discount plans operating in Washington. These new rules became effective December 3, 2009. These rules are substantively the same as the emergency rules that were previously adopted in July 2009, but are numbered differently.

In our previous Medical Discount Plan Update (2009, vol. 2), we notified recipients of the enactment of Senate Substitute Bill 5480, which became effective on July 26, 2009, and which required medical discount plans operating in Washington to become licensed within six months of the effective date. This law, the Health Care Discount Plan Organization Act, is codified at Chapter 48.155 R.C.W.

The new regulations recently promulgated by the Washington OIC address the following:

- The filing procedures for such applications
- Requirements applicable to the submission of audited financial statements
- Indemnity requirements
- Records availability requirements and form and report filing requirements. ■

Texas Department of Licensing and Regulation Begins Transfer of Processing of Discount Health Care Card Program Operator Registrations and Renewals to the Texas Department of Insurance

On December 15, 2009, the Texas Department of Licensing and Regulation (TDLR) sent an update regarding new procedures for initial and renewal program operator registrations.

According to this notice, the TDLR will continue to receive and process initial program operator registration applications for the Texas Discount Health Care Card (DHCC) Program. However, the Texas Department of Insurance (TDI) is currently developing rules and procedures to process initial program operator applications. The specific date that the TDI will begin receiving initial registration applications has yet to be determined, but it will be no later than April 1, 2010. Therefore, for program operators that file initial registration applications with TDLR between January 1, 2010 and the date that TDI begins accepting applications, TDLR and TDI will coordinate on processing the applications and transferring any new registrations that are issued.

Regarding renewal registrations, any program operators that are currently registered with the TDLR as of January 1, 2010 will file renewal applications with the TDI. H.B. 4341 requires these program operators to file their renewal applications with the TDI before April 1, 2010, even if their TDLR registrations are not due to expire until after this date. The program operators must renew their registrations with TDI before this date because the TDLR DHCC Program statute will be repealed effective April 1, 2010.

The TDI is currently developing rules and procedures to process renewal registration applications. ■

Medical Discount Plan Client Spotlight

Polsinelli Shughart is proud to offer a new section in our medical discount plan Newsletter that highlights our medical discount plan clients. We will feature a number of our medical discount plan clients in our future newsletters.

Agelity, Inc., based out of Melville, New York, is a leader in the Pharmacy Benefit Service Industry. Founded in 1999 by a diversified team of IT, finance and pharmacy benefit professionals, Agelity provides prescription drug discounts to approximately 6,800,000 consumers.

Agelity's pharmacy network is one of the largest pharmacy discount networks in the country with over 53,000 participating pharmacies, including major pharmacy chains such as CVS and Wal-Mart.

To complement its pharmacy discount network, Agelity has also created a suite of advanced "user friendly" Web-based pharmacy tools. The following are some of the online pharmacy tools and features Agelity has built into its Web site:

- Participating Pharmacy Locator
 - provides pharmacy drug price comparison
 - identifies pharmacy services such as home delivery, 24 hour drive through service
 - automatically identifies generic alternatives to brand drugs
 - provides drug education information such as side effects, precautions, drug interactions, storage recommendations, etc.
 - provides drug image display which is useful when purchasing particular drugs that are produced by multiple manufacturers and vary in appearance
- Mail Order Pricing and Enrollment
- Online Enrollment
- Converts entire Web site to Spanish with a single click

Polsinelli Shughart is extremely proud of its association with Agelity. If you are interested in receiving more information on Agelity, please contact Robert Duggan, the President and CEO of Agelity, Inc. at RDuggan@agelity.com or (631) 479-2250. ■

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.



Brandon L. Kane



Justin T. Liby

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