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Health Care Discount Plans: State Roles and Regulation

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In recent years, a growing number of commercial companies have initiated and marketed Health Discount Plans to the general public. Commonly, these discount plans include features such as the following:

- An affordable monthly enrollment fee ranging, for example, from \$8 to \$25 or \$45 per month.
- Access to a wide variety of health services including doctor and clinic visits, specialist visits and treatment, hospital services, prescription medications and medical devices, all at reduced rates. Some include dental, vision and alternative health services.
- The freedom to pick and choose among thousands of different providers.
- Discounts ranging from 5 percent to 70 percent on various services.
- Simple paperwork - "just show your card" with no waiting for reimbursement from an insurance company.
- No medical exam may be needed to qualify and pre-existing conditions may not be restricted or excluded.

The sponsors and proponents of such plans describe them as filling an important gap in the health market. For those families with some health insurance coverage, the discount cards can provide a kind of supplement, especially for non-covered services like eye glasses, or the option of seeing another practitioner that may not be included in insurance.

For some who are uninsured (upward of 47 million nationwide in 2008) or underinsured (another 30 million), the cards and plans can be a kind of financial cushion, giving them access to discounted health care, with prices more like a large employer might pay.



At the same time, it is widely agreed that Health Discount Plans are not insurance and therefore may not fall under the regulatory or enforcement role of a state insurance department. Since they never actually provide a health service, plans may not be within the jurisdiction of a health or human services agency either.

What happens when a company advertises in a misleading manner, or takes money but does not deliver promised benefits, or otherwise acts against the interests of consumers,

providers, health insurers or the state itself? As one California state agency described it, "companies offering the cards have been accused of making exaggerated or false claims as to the benefits provided by these cards, which typically come for an annual fee of less than \$100." Even when services are satisfactory, should the state require an application or registration process, public reporting of plan structures, proof of future financial stability, perhaps including annual fees payable to the state?

Because health care and health coverage is a significant state interest, almost half the states have enacted laws specifically regulating Health Discount Plans. These laws generally have a consumer protection goal and may include features such as:

- Requiring plans to have individual signed contracts with health providers before they can list them as part of the plan;
- Regulating or restricting the types of claims that can be made in ads, often requiring a visible disclaimer that the plan "is not health insurance"
- Requiring a "lemon-law" like guarantee that consumers can cancel their enrollment, and/or receive a refund if they are dissatisfied, sometimes during the first 30 days.
- Granting regulatory or enforcement power to a state agency such as an Insurance Department or Attorney General's office.
- Requiring registration, proof or reporting of financial stability and/or an annual payment to the state for the privilege of operating a discount plan business.

As is often the case, state roles vary considerably on this topic. 25 states have enacted statutes providing a regulatory structure, with details listed in Table 1 below. An additional six states have alternative actions ranging from consumer alert notices (Iowa) to state-sponsored benefit programs (Vermont).

Typical definition: "A health discount plan is a card, program, device, arrangement, contract, or mechanism that purports to offer discounts or access to discounts on health care services or supplies and that is not insurance." – *Alaska § 21.36.030*

Pharmaceutical Card Discounts: Five states, Minnesota (SB 2579), New Hampshire (HB 591), Oregon (HB 2520), South Carolina (HB 3971), South Dakota (S 88) enacted laws, all in 1999-2001, to regulate or restrict pharmacy discount cards or buyers clubs. Texas (SB 893) also examines this issue. These laws are coded "Rx" in the table below.

Table 1 below describes the 24 states with enacted **laws regulating health discount plans**, including live links to the laws (when available) and key features. Material includes excerpts from material compiled by the National Association of Insurance Commissioners (www.naic.org) as well as original research completed by NCSL staff. , In 2007 the latest enacted laws include Maryland and Oregon.

Table 2 lists six additional states with **Regulatory Advice without Legislation**.

Table 3 lists several state **examples of 2006-08 Actions, Not Enacted**.

Table 1: State Laws Regulating Health Discount Plans

STATE Statute	DESCRIPTION	Contract w/Pro-vider	Ad restriction	Cancel
Alaska § 21.36.030 et seq.	Makes it an unfair trade practice to misrepresent the advantages and conditions of a discount health plan or that it is a form of insurance. Regulated by the Insurance Director	Y	Y	

Arkansas § 4-106-201 (1999)	Requires disclosures by sellers of health related cash discount cards, requires cancellation period for the purchase of health related discount cards. Enforced by AG Consumer Protection.	Y	Y	30 days
California Agency regs. (Oct. 2006)	Department of Managed Healthcare will issue licenses to discount health cards			
Colorado § 6-1-102; § 6-1-712 (2004)	Establishes what constitutes deceptive trade practices with regard to discount health plans and cards. Cancellation in 30 days. Brochure "Discount Health Plans: What Consumers Should Know About Discount Health Plans" Enforced by AG/ Consumer Protection Act	Y	Y	30 days; refund
Connecticut § 38a-479qq et seq.	Establishes standards and licensing requirements for medical discount plan organizations that market medical discount plans in this state. Enforced by Insurance Commissioner	Y	Y	30 days; refund
Florida §§ 636.202 et seq. (2004, 2005)	Establishes a comprehensive regulatory scheme for "Discount Medical Plan Organizations." Creates standards for discount medical plans, covering contracts, the form and content of advertisements and merchandising materials, and filing procedures	Y	Y	-
Georgia § 10-1-393 (32)	Prohibits the selling, marketing, promoting, advertising, providing or distributing any card or other purchasing mechanism that is not insurance that purports to offer or provide discounts on purchases of health care from providers when the card does not contain a disclosure that card is not insurance.	Y	-	-
Idaho §§ 48-1601 et seq.	Prohibits the selling, marketing, promoting, advertising, providing or distributing any card or other purchasing mechanism that is not insurance or evidence of insurance coverage and that purports to offer or provide discounts on purchases of health care goods or services from providers when the card does not contain a disclosure that card is not insurance.	Y	Y	-
Illinois 815 ILCS 505/2B.	Must state the card is not insurance in bold, prominent type	Y	Y	-
Indiana §§ 27-17-1-1 et seq. (2006)	Specifies requirements for establishment, registration, regulation and conduct of a discount medical card program organization. (see HB 1097 signed 3/17/06)	Y	Y	30 days
Kansas §§50-1,100 et seq.	Prohibits the selling of discount card when the card does not contain a disclosure that card is not insurance or when discounts are not authorized under separate contract with providers.	Y	Y	-
Kentucky § 367.828	Prohibits the selling, marketing, promoting, advertising, providing or distributing a health discount plan unless it contains a disclosure that the card is not insurance; discounts or range of discounts must be clearly and conspicuously disclosed to the consumer.	Y*	Y	-
Maryland § 14-610 HB 847 Del. Bromwell (2007)	Provides for the regulation by the Maryland Insurance Commissioner of specified discount medical plan organizations and discount drug plan organizations; requiring the registration of such entities as discount medical plan organizations or discount drug plan organizations including application and renewal process for registration. <i>(signed into law by governor as Chapter 629, 5/17/07)</i>	Y	Y	30 days
Minnesota § 325F.784 (2000)	Pharmacies: Prohibits the selling, marketing, promoting, advertising, providing or distributing any card or other purchasing mechanism that is not insurance or evidence of insurance coverage and that purports to offer or	Y, Rx	-	-

	provide discounts on purchases of health care goods or services from pharmacies when the card does not contain a disclosure that card is not insurance or when discounts are not authorized under separate contract with pharmacies. <i>(SF 2579, signed into law by governor as Ch 303, 3/31/2000)</i>			
Montana § 33-38-101 et seq.	Provides regulation of medical discount cards and pharmacy discount cards; specifies unlawful acts; provides a right to return and requires notice of the right to return cards; requires registration of supplies of medical care discount cards; provides exceptions including a waiver for preferred provider organizations; requires a care education program; prohibits fraud concerning cards.	Y	Y	30 days
Nevada Uncodified Ch. 456 §§ 3 to 16	Regulates the content and marketing of discount medical plans; plans must register with the commissioner before marketing and pay a \$500 annual fee to Insurance Commissioner.	Y	Y	-
New Hampshire §§ 358-R:1 to 3 (1999)	<u>Pharmacies</u> : Regulates entities that propose to offer a prescription discount cards which is not an insurance card and which is defined as a card or other mechanism that advertises discounts or access to discounts on prescription drug purchases. <i>(HB 591 signed into law by governor 1999)</i>	Y, Rx	Y	-
New Hampshire H 858 Rep. McLeod (2008) NEW	<u>General</u> : Establishes registration and operational requirements for discount medical plan organizations. This bill is a request of the insurance department. <i>(Passed House 1/2/08; signed into law by governor as Chapter 206, 6/26/2008)</i>	Y		
North Dakota §§ 26.1-53-01 et seq.	Sets the definitions and duties of providers and marketers of discount medical plans and cards.	Y	Y	30 days; refund
Oklahoma tit. 36 § 1219.4 SB 1022 Sen. Brown (2009) NEW	Establishes standards and requires discount medical plan organizations to get licensed before selling in the state. "Before doing business in this state as a discount medical plan organization, an entity shall be a corporation, limited liability corporation, partnership, limited liability partnership or other legal entity... and shall be registered as a discount medical plan organization with the Insurance Department" or licensed as an insurer.... The Department may require any discount medical plan organization or applicant to produce any records, books, files, advertising and solicitation materials, or other information and may take statements under oath..." <i>(Signed into law by governor as Chapter 176, 5/11/2009)</i>	Y	Y	30 days; refund
Oregon § 689.565 (1999)	<u>Pharmacies</u> : Prohibits the selling, marketing, promoting, advertising, providing or distributing any card or other purchasing mechanism that is not insurance or evidence of insurance coverage and that purports to offer or provide discounts from pharmacies for prescription drug purchases when the card does not contain a disclosure that card is not insurance or when discounts are not authorized under separate contract with pharmacies. <i>(HB 2520 of 1999, signed as Chapter 874)</i>	Y, Rx	Y	30 days; refund
Oregon HB 2221	Establishes licensing requirements for persons marketing, offering for sale or selling, promoting, distributing or	Y	Y	

Gov. Kulongoski (2007)	administering discount medical plans; prohibits operation of discount medical plan organizations, including discount prescription drug plans, without license and without contract or agreement with service provider or service provider network. <i>(Signed into law by governor as Chapter 272, 6/1/07)</i>			
South Carolina § 37-17-10 ; (2001) HB 3711 of 2006	Plan must state that it is not insurance in bold, prominent type. Provides for registration with the Department of Consumer Affairs of persons and representatives engaged in the sale, marketing, promotion, advertisement, or distribution of prescription drug discount cards or other purchasing devices. Enforced by Dept. of Consumer Affairs. Exempts Rx brand manufacturer programs. Pharmacies: Provides that violators are subject to civil and administrative remedies. <i>(HB 3971 signed into law by governor, 8/19/01)</i>	Y Y, Rx	Y	-
South Dakota §§ 58-17E-1 to §46 (2006, Ch. 257) § 37-24-6.12 (Rx) (2001)	Requires plan or program that offers discounts on healthcare and are not offered in conjunction with health benefit plan to register, provide appropriate disclosure, meet advertising requirements, and provide free-look period. <u>Pharmacies</u> : SB 88 Prohibits deceptive practices to "sell, market, promote, advertise, or otherwise distribute any card or other purchasing mechanism or device that is not insurance that purports to offer discounts or access to discounts from pharmacies for prescription drug purchases". Cards must state that discounts are not insurance; discounts must be specifically authorized by a separate contract with each pharmacy listed. Exempts single store cards. SB 88 signed into law by governor 2/9/01) <i>(Expanded by SB 49, signed 2/28/06)</i>	Y Y, Rx	Y Y	30 days; refund
Texas Bus. & C. §17.46(b)(18)	Makes it a deceptive act or practice to advertise, sell, or distribute a card which purports to be a prescription drug identification card, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage unless discount is authorized under separate contract with providers. Pharmacies: SB 893 - Required an evaluation of existing drug purchasing cooperatives that purchase drugs on behalf of consumers. Provides for a consumer evaluation survey and a public report from the TX Health Care Information Council. <i>(SB 893 signed by Governor, 6/15/01)</i>	Y	-	-
Utah §§31A-8a-101	The current provisions exempt providers of certain medical discount programs from regulation; enacts the Health Discount Program Consumer Protection Act to regulate the offer and marketing of health discount programs.	Y	Y	-
West Virginia SB 278; HB 2417 Sen. Minard (2009)	Relates to the criminal offenses of collecting fees for purported membership in a discount medical plan or discount prescription drug plan and knowingly and willfully failing to provide benefits of the plan; clarifies that the severity of the offense is dependent on the total of fees collected; provides for an alternate sentence upon conviction of the felony offense. <i>(SB 278 signed into law by governor 5/7/2009)</i> NEW			

Table 2: Regulatory Advice without Legislation

Iowa -	IA Attorney General Consumer Advisory online, " Health "Discount Cards" -- A Prescription for Wasting Money??" "	-	-	-
Maryland	" Questionable Health Discount Cards " online publication by MD Attorney General. (2004) Also see: new statute enacted in 2007	-	-	-
Missouri	Bulletin 05-03. Warns consumers that health discount plans are not health insurance, and urges them to call the department of insurance to get information on the company before purchasing in order to avoid scams.	-	-	-
New York no law	NY A.G. Provides opinion and guidelines on whether membership discount cards for prescription medicine would be considered the business of insurance. The guidelines are voluntary and reflect the Attorney General's suggestions to the industry to assist the industry in advertising and marketing discount NY Attorney General's Discount Card Consumer brochure	-	Y	-
Vermont Tit. 33 § 2003	<u>Rx</u> : 2003 law established a state pharmacy discount plan; by Office of Vermont Health Access.	-	-	-
Wisconsin	DOI website has a consumer alert regarding discount card programs.	-	-	-
Wyoming	DOI website has a consumer alert regarding discount card programs	-	-	-

Table 3: Examples of 2006-2008 Actions, Not Enacted

Delaware SB 369 (Filed 6/14/2006; failed to pass 6/27/06)	Would establish a regulatory system for the sale of medical discount plans. Enforced by Insurance Commissioner website "Prescription Drug and Medical Services Discount Cards."	Y	Y	30 days; refund
Illinois HB 1525 Did not pass by end of session, 12/31/08)	Would prohibit selling health-related cash discount cards without registering with the Illinois Division of Insurance. Prohibits a health-related discount card organization from engaging in specific activities. Provides that it is an unlawful practice.	Y	Y	-
Maryland SB 596 passed Senate & House (2007)	Would establish standards for the regulation of discount medical plans and discount drug plan organizations. (<u>Vetoed</u> by Governor as duplicative)	Y	Y	30 days

Sources: National Association of Insurance Commissioners, August, 2006. www.naic.org
NCSL 2007-09 legislative research for CA, DE, IL, MD, MN, NH, NY, OK, OR, SD, TX & WV.

RESOURCES:

- "Health Care Discount Plans", National Association of Insurance Commissioners, 8/06.
- [CA begins health discount card licensing](#), from LA Times, 10/12/06
- Covering the Uninsured in 2008. Online at <http://www.kff.org/uninsured/7809.cfm>

This report was compiled by Richard Cauchi, NCSL Health Program, Denver; initial edition January 31, 2007; updated May 29, 2009.