

SENATE BILL REPORT

SB 5480

As of February 3, 2009

Title: An act relating to creating the Washington health care discount plan organization act.

Brief Description: Creating the Washington health care discount plan organization act.

Sponsors: Senators Delvin, Franklin, Fairley, Keiser and Shin; by request of Insurance Commissioner.

Brief History:

Committee Activity: Health & Long-Term Care: 2/02/09.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Staff: Mich'l Needham (786-7442)

Background: Discount health plans are membership organizations that charge a fee for a list of providers that offer discounted health care services or products. The discount plans are not insurance products, but many consumers have been confused by the product marketing, as evidenced by increasing consumer complaints to the Office of Insurance Commissioner (OIC). The discount health plans are currently unregulated and have no disclosure or marketing standards to ensure consumer protection.

Summary of Bill: A new chapter is added to Title 48 RCW requiring discount plans to obtain a license from OIC to do business in Washington. Discount plan means a business arrangement or contract in which a person or organization provides discounts on charges by providers for health care services in exchange for fees or dues. Newly defined discount plans do not include discount plans offered by regulated insurance carriers, a Medicare prescription drug plan, or a patient access program sponsored by a pharmaceutical manufacturer that provides free or discounted products to the low-income or uninsured.

Each application for a license to operate as a discount plan organization requires an application fee of \$250 and business documentation including copies of contracts with providers or health care provider networks, contracts with persons or firms that will market each plan or administer any functions, a description of the marketing methods, a description of the member complaint procedures, and other information OIC may require. Upon receipt of a complete application packet, OIC must issue a license within 90 days if OIC is satisfied the application conditions have been met. The license is effective for one year unless

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suspended or revoked. OIC may suspend or revoke a license if the organization falls out of compliance, does not have the minimum net worth required, has misrepresented its services or engaged in deceptive, misleading, or unfair advertising, or the continued operation would be hazardous to its members. OIC may conduct investigations to ensure discount organizations are in compliance.

Marketing standards are established. Marketing materials must disclose all charges that a member must pay for each discount plan. If a member cancels his or her membership within the first 30 days, a full reimbursement of all charges must be provided. If notice of cancellation is made later, the discount plan must return any charges collected after the notice of cancellation. Discount organizations may market directly to consumers or contract with marketers. All advertising materials must be truthful and not misleading in fact or implication. The products may not be described as insurance nor use terms commonly associated with insurance, such as "health plan," "coverage," "copay," etc.

Each discount plan organization must have a written agreement with all health care providers for whom the discount offers services. The agreement must detail the list of services or products to be provided at a discount, the amount of the discount, and a requirement that the provider may not charge members more than the discounted rates.

In lieu of or in addition to suspending or revoking a discount plan organization's license, OIC may issue a cease and desist order if there is cause to believe there is a violation of this act. After a hearing OIC may impose a penalty of \$100 to \$10,000 per violation. A person that collects fees for membership as a discount plan but willfully fails to provide the promised benefits commits a theft and is subject to the Washington Criminal Code in Title 9A RCW. OIC may seek both temporary and permanent injunctive relief when a discount plan is being operated by an unlicensed person or entity, or if a discount plan has engaged in any activity prohibited by this act. OIC may adopt rules to implement this chapter.

Discount plans in operation prior to the effective date of this act have six months following the effective date to submit a substantially complete application for a license and come into compliance with requirements of this chapter.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill has been in the works for several years and stems from a constituent complaint we received and asked the OIC to follow up on. The OIC could not intervene or respond to the misleading marketing in any way. No one regulates or oversees these products today. The OIC has received over 400 complaints about these products and believes this to be the tip of the iceberg. The bill is based on a model from the National Association of Insurance Commissioners (NAIC) that 33 states have in

place to ensure consumer protection. The underwriters that market true products are professionals that have completed training and licensing and remain accountable for the products they sell. The companies marketing these discounts are not following the same standards and consumers are being misled. Reputable discount plans have been offered for 20 years and many states have put good standards in place to ensure consumer protections. There are fraudulent actors selling these products now and those of us with legitimate products support licensing and regulatory standards that will help clean up the business and chase out the bad actors.

Persons Testifying: PRO: Senator Delvin, prime sponsor; Commissioner Kriedler, Washington State Office of the Insurance Commissioner; Mel Sorenson, Washington Health Underwriters; Allen Erenbaum, Consumer Health Alliance.