

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5480

61st Legislature
2009 Regular Session

Passed by the Senate March 9, 2009
YEAS 43 NAYS 3

President of the Senate

Passed by the House April 13, 2009
YEAS 69 NAYS 29

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5480** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5480

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Delvin, Franklin, Fairley, Keiser, and Shin; by request of Insurance Commissioner)

READ FIRST TIME 02/10/09.

1 AN ACT Relating to creating the Washington health care discount
2 plan organization act; adding a new chapter to Title 48 RCW; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
6 Washington health care discount plan organization act.

7 NEW SECTION. **Sec. 2.** The purposes of this chapter are to promote
8 the public interest by establishing standards for discount plan
9 organizations, to protect consumers from unfair or deceptive marketing,
10 sales, or enrollment practices, and to facilitate consumer
11 understanding of the role and function of discount plan organizations
12 in providing discounts on charges for health care services.

13 NEW SECTION. **Sec. 3.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "Affiliate" means a person that directly, or indirectly through
16 one or more intermediaries, controls, or is controlled by, or is under
17 common control with, the person specified.

1 (2) "Commissioner" means the Washington state insurance
2 commissioner.

3 (3)(a) "Control" or "controlled by" or "under common control with"
4 means the possession, direct or indirect, of the power to direct or
5 cause the direction of the management and policies of a person, whether
6 through the ownership of voting securities, by contract other than a
7 commercial contract for goods or nonmanagement services, or otherwise,
8 unless the power is the result of an official position with or
9 corporate office held by the person.

10 (b) Control exists when any person, directly or indirectly, owns,
11 controls, holds with the power to vote, or holds proxies representing
12 ten percent or more of the voting securities of any other person. A
13 presumption of control may be rebutted by a showing made in the manner
14 provided by RCW 48.31B.005(2) and 48.31B.025(11) that control does not
15 exist in fact. The commissioner may determine, after furnishing all
16 persons in interest notice and opportunity to be heard and making
17 specific findings of fact to support the determination, that control
18 exists in fact, notwithstanding the absence of a presumption to that
19 effect.

20 (4)(a) "Discount plan" means a business arrangement or contract in
21 which a person or organization, in exchange for fees, dues, charges, or
22 other consideration, provides or purports to provide discounts to its
23 members on charges by providers for health care services.

24 (b) "Discount plan" does not include:

25 (i) A plan that does not charge a membership or other fee to use
26 the plan's discount card;

27 (ii) A patient access program as defined in this chapter;

28 (iii) A medicare prescription drug plan as defined in this chapter;
29 or

30 (iv) A discount plan offered by a health carrier authorized under
31 chapter 48.20, 48.21, 48.44, or 48.46 RCW.

32 (5)(a) "Discount plan organization" means a person that, in
33 exchange for fees, dues, charges, or other consideration, provides or
34 purports to provide access to discounts to its members on charges by
35 providers for health care services. "Discount plan organization" also
36 means a person or organization that contracts with providers, provider
37 networks, or other discount plan organizations to offer discounts on

1 health care services to its members. This term also includes all
2 persons that determine the charge to or other consideration paid by
3 members.

4 (b) "Discount plan organization" does not mean:

5 (i) Pharmacy benefit managers;

6 (ii) Health care provider networks, when the network's only
7 involvement in discount plans is contracting with the plan to provide
8 discounts to the plan's members;

9 (iii) Marketers who market the discount plans of discount plan
10 organizations which are licensed under to this chapter as long as all
11 written communications of the marketer in connection with a discount
12 plan clearly identify the licensed discount plan organization as the
13 responsible entity; or

14 (iv) Health carriers, if the discount on health care services is
15 offered by a health carrier authorized under chapter 48.20, 48.21,
16 48.44, or 48.46 RCW.

17 (6) "Health care facility" or "facility" has the same meaning as in
18 RCW 48.43.005(15).

19 (7) "Health care provider" or "provider" has the same meaning as in
20 RCW 48.43.005(16).

21 (8) "Health care provider network," "provider network," or
22 "network" means any network of health care providers, including any
23 person or entity that negotiates directly or indirectly with a discount
24 plan organization on behalf of more than one provider to provide health
25 care services to members.

26 (9) "Health care services" has the same meaning as in RCW
27 48.43.005(17).

28 (10) "Health carrier" or "carrier" has the same meaning as in RCW
29 48.43.005(18).

30 (11) "Marketer" means a person or entity that markets, promotes,
31 sells, or distributes a discount plan, including a contracted marketing
32 organization and a private label entity that places its name on and
33 markets or distributes a discount plan pursuant to a marketing
34 agreement with a discount plan organization.

35 (12) "Medicare prescription drug plan" means a plan that provides
36 a medicare part D prescription drug benefit in accordance with the
37 requirements of the federal medicare prescription drug improvement and
38 modernization act of 2003.

1 (13) "Member" means any individual who pays fees, dues, charges, or
2 other consideration for the right to receive the benefits of a discount
3 plan, but does not include any individual who enrolls in a patient
4 access program.

5 (14) "Patient access program" means a voluntary program sponsored
6 by a pharmaceutical manufacturer, or a consortium of pharmaceutical
7 manufacturers, that provides free or discounted health care products
8 for no additional consideration directly to low-income or uninsured
9 individuals either through a discount card or direct shipment.

10 (15) "Person" means an individual, a corporation, a governmental
11 entity, a partnership, an association, a joint venture, a joint stock
12 company, a trust, an unincorporated organization, any similar entity,
13 or any combination of the persons listed in this subsection.

14 (16)(a) "Pharmacy benefit manager" means a person that performs
15 pharmacy benefit management for a covered entity.

16 (b) For purposes of this subsection, a "covered entity" means an
17 insurer, a health care service contractor, a health maintenance
18 organization, or a multiple employer welfare arrangement licensed,
19 certified, or registered under the provisions of this title. "Covered
20 entity" also means a health program administered by the state as a
21 provider of health coverage, a single employer that provides health
22 coverage to its employees, or a labor union that provides health
23 coverage to its members as part of a collective bargaining agreement.

24 NEW SECTION. **Sec. 4.** (1) This chapter applies to all discount
25 plans and all discount plan organizations doing business in or from
26 this state or that affect subjects located wholly or in part or to be
27 performed within this state, and all persons having to do with this
28 business.

29 (2) A discount plan organization that is a health carrier with a
30 license, certificate of authority, or registration under RCW 48.05.030
31 or chapter 48.31C RCW:

32 (a) Is not required to obtain a license under section 5 of this
33 act, except that any of its affiliates that operate as a discount plan
34 organization in this state must obtain a license under section 5 of
35 this act and comply with all other provisions of this chapter;

36 (b) Is required to comply with sections 9 through 12 of this act

1 and report, in the form and manner as the commissioner may require, any
2 of the information described in section 14(2) (b), (c), or (d) of this
3 act that is not otherwise already reported; and

4 (c) Is subject to sections 16 and 17 of this act.

5 NEW SECTION. **Sec. 5.** (1) Before conducting discount plan business
6 to which this chapter applies, a person shall obtain a license from the
7 commissioner to operate as a discount plan organization.

8 (2) Except as provided in subsection (3) of this section, each
9 application for a license to operate as a discount plan organization:

10 (a) Must be in a form prescribed by the commissioner and verified
11 by an officer or authorized representative of the applicant; and

12 (b) Must demonstrate, set forth, or be accompanied by the
13 following:

14 (i) The two hundred fifty dollar application fee, which must be
15 deposited into the general fund;

16 (ii) A copy of the organization documents of the applicant, such as
17 the articles of incorporation, including all amendments;

18 (iii) A copy of the applicant's bylaws or other enabling documents
19 that establish organizational structure;

20 (iv) The applicant's federal identification number, business
21 address, and mailing address;

22 (v)(A) A list of names, addresses, official positions, and
23 biographical information of the individuals who are responsible for
24 conducting the applicant's affairs, including all members of the board
25 of directors, board of trustees, executive committee, or other
26 governing board or committee, the officers, contracted management
27 company personnel, and any person or entity owning or having the right
28 to acquire ten percent or more of the voting securities of the
29 applicant; and

30 (B) A disclosure in the listing of the extent and nature of any
31 contracts or arrangements between any individual who is responsible for
32 conducting the applicant's affairs and the discount plan organization,
33 including all possible conflicts of interest;

34 (vi) A complete biographical statement, on forms prescribed by the
35 commissioner, with respect to each individual identified under (b)(v)
36 of this subsection;

1 (vii) A statement generally describing the applicant, its
2 facilities and personnel, and the health care services for which a
3 discount will be made available under the discount plan;

4 (viii) A copy of the form of all contracts made or to be made
5 between the applicant and any health care providers or health care
6 provider networks regarding the provision of health care services to
7 members and discounts to be made available to members;

8 (ix) A copy of the form of any contract made or arrangement to be
9 made between the applicant and any individual listed in (b)(v) of this
10 subsection;

11 (x) A list identifying by name, address, telephone number, and e-
12 mail address all persons who will market each discount plan offered by
13 the applicant. If the person who will market a discount plan is an
14 entity, only the entity must be identified. This list must be
15 maintained and updated within sixty days of any change in the
16 information. An updated list must be sent to the commissioner as part
17 of the discount plan organization's renewal application under (b)(vii)
18 of this subsection;

19 (xi) A copy of the form of any contract made or to be made between
20 the applicant and any person, corporation, partnership, or other entity
21 for the performance on the applicant's behalf of any function,
22 including marketing, administration, enrollment, and subcontracting for
23 the provision of health care services to members and discounts to be
24 made available to members;

25 (xii) A copy of the applicant's most recent financial statements
26 audited by an independent certified public accountant, except that,
27 subject to the approval of the commissioner, an applicant that is an
28 affiliate of a parent entity that is publicly traded and that prepares
29 audited financial statements reflecting the consolidated operations of
30 the parent entity may submit the audited financial statement of the
31 parent entity and a written guaranty that the minimum capital
32 requirements required under section 6 of this act will be met by the
33 parent entity instead of the audited financial statement of the
34 applicant;

35 (xiii) A description of the proposed methods of marketing
36 including, but not limited to, describing the use of marketers, use of
37 the internet, sales by telephone, electronic mail, or facsimile
38 machine, and use of salespersons to market the discount plan benefits;

1 (xiv) A description of the member complaint procedures which must
2 be established and maintained by the applicant;

3 (xv) The name and address of the applicant's Washington statutory
4 agent for service of process, notice, or demand or, if not domiciled in
5 this state, a power of attorney duly executed by the applicant,
6 appointing the commissioner and duly authorized deputies as the true
7 and lawful attorney of the applicant in and for this state upon whom
8 all law process in any legal action or proceeding against the discount
9 plan organization on a cause of action arising in this state may be
10 served; and

11 (xvi) Any other information the commissioner may reasonably
12 require.

13 (3)(a) Upon application to and approval by the commissioner and
14 payment of the applicable fees, a discount plan organization that holds
15 a current license or other form of authority from another state to
16 operate as a discount plan organization, at the commissioner's
17 discretion, may not be required to submit the information required
18 under subsection (2) of this section in order to obtain a license under
19 this section if the commissioner is satisfied that the other state's
20 requirements, at a minimum, are equivalent to those required under
21 subsection (2) of this section or the commissioner is satisfied that
22 the other state's requirements are sufficient to protect the interests
23 of the residents of this state.

24 (b) Whenever the discount plan organization loses its license or
25 other form of authority in that other state to operate as a discount
26 plan organization, or is the subject of any disciplinary administrative
27 proceeding related to the organization's operating as a discount plan
28 organization in that other state, the discount plan organization shall
29 immediately notify the commissioner.

30 (4) After the receipt of an application filed under subsection (2)
31 or (3) of this section, the commissioner shall review the application
32 and notify the applicant of any deficiencies in the application.

33 (5)(a) Within ninety days after the date of receipt of a completed
34 application, the commissioner shall:

35 (i) Issue a license if the commissioner is satisfied that the
36 applicant has met the following:

37 (A) The applicant has fulfilled the requirements of this section

1 and the minimum capital requirements in accordance with section 6 of
2 this act; and

3 (B) The persons who own, control, and manage the applicant are
4 competent and trustworthy and possess managerial experience that would
5 make the proposed operation of the discount plan organization
6 beneficial to discount plan members; or

7 (ii) Disapprove the application and state the grounds for
8 disapproval.

9 (b) In making a determination under (a) of this subsection, the
10 commissioner may consider, for example, whether the applicant or an
11 officer or manager of the applicant: (i) Is not financially
12 responsible; (ii) does not have adequate expertise or experience to
13 operate a medical discount plan organization; or (iii) is not of good
14 character. Among the factors that the commissioner may consider in
15 making the determination is whether the applicant or an affiliate or a
16 business formerly owned or managed by the applicant or an officer or
17 manager of the applicant has had a previous application for a license,
18 or other authority, to operate as any entity regulated by the
19 commissioner denied, revoked, suspended, or terminated for cause, or is
20 under investigation for or has been found in violation of a statute or
21 regulation in another jurisdiction within the previous five years.

22 (6) Prior to licensure by the commissioner, each discount plan
23 organization shall establish an internet web site in order to conform
24 to the requirements of section 10(2) of this act.

25 (7)(a) A license is effective for one year, unless prior to its
26 expiration the license is renewed in accordance with this subsection or
27 suspended or revoked in accordance with subsection (8) of this section.

28 (b) At least ninety days before a license expires, the discount
29 plan organization shall submit:

30 (i) A renewal application form; and

31 (ii) A two hundred dollar renewal application fee for deposit into
32 the general fund.

33 (c) The commissioner shall renew the license of each holder that
34 meets the requirements of this chapter and pays the appropriate renewal
35 fee required.

36 (8)(a) The commissioner may suspend the authority of a discount
37 plan organization to enroll new members or refuse to renew or revoke a

1 discount plan organization's license if the commissioner finds that any
2 of the following conditions exist:

3 (i) The discount plan organization is not operating in compliance
4 with this chapter;

5 (ii) The discount plan organization does not have the minimum net
6 worth as required under section 6 of this act;

7 (iii) The discount plan organization has advertised, merchandised,
8 or attempted to merchandise its services in such a manner as to
9 misrepresent its services or capacity for service or has engaged in
10 deceptive, misleading, or unfair practices with respect to advertising
11 or merchandising;

12 (iv) The discount plan organization is not fulfilling its
13 obligations as a discount plan organization; or

14 (v) The continued operation of the discount plan organization would
15 be hazardous to its members.

16 (b) If the commissioner has cause to believe that grounds for the
17 nonrenewal, suspension, or revocation of a license exists, the
18 commissioner shall notify the discount plan organization in writing
19 specifically stating the grounds for the refusal to renew or suspension
20 or revocation and may also pursue a hearing on the matter under chapter
21 48.04 RCW.

22 (c) When the license of a discount plan organization is nonrenewed,
23 surrendered, or revoked, the discount plan organization shall
24 immediately upon the effective date of the order of revocation or, in
25 the case of a nonrenewal, the date of expiration of the license, stop
26 any further advertising, solicitation, collecting of fees, or renewal
27 of contracts, and proceed to wind up its affairs transacted under the
28 license.

29 (d)(i) When the commissioner suspends a discount plan
30 organization's authority to enroll new members, the suspension order
31 must specify the period during which the suspension is to be in effect
32 and the conditions, if any, that must be met by the discount plan
33 organization prior to reinstatement of its license to enroll members.

34 (ii) The commissioner may rescind or modify the order of suspension
35 prior to the expiration of the suspension period.

36 (iii) The license of a discount plan organization may not be
37 reinstated unless requested by the discount plan organization. The

1 commissioner shall not grant the request for reinstatement if the
2 commissioner finds that the circumstances for which the suspension
3 occurred still exist or are likely to recur.

4 (9) Each licensed discount plan organization shall notify the
5 commissioner immediately whenever the discount plan organization's
6 license, or other form of authority to operate as a discount plan
7 organization in another state, is suspended, revoked, or nonrenewed in
8 that state.

9 (10) A health care provider who provides discounts to his or her
10 own patients without any cost or fee of any kind to the patient is not
11 required to obtain and maintain a license under this chapter as a
12 discount plan organization.

13 NEW SECTION. **Sec. 6.** (1) Except under subsection (3) of this
14 section, before the commissioner issues a license to any person
15 required to obtain a license under section 5 of this act, the person
16 seeking to operate a discount plan organization must have a net worth
17 of at least one hundred fifty thousand dollars.

18 (2) At all times, except under subsection (3) of this section, each
19 discount plan organization must maintain a net worth of at least one
20 hundred fifty thousand dollars.

21 (3) By rule of the commissioner, the amounts in subsections (1) and
22 (2) of this section may be adjusted annually for inflation.

23 NEW SECTION. **Sec. 7.** (1) Each licensed discount plan organization
24 shall continuously maintain in force a surety bond in its own name in
25 an amount not less than thirty-five thousand dollars to be used in the
26 discretion of the commissioner to protect the financial interest of
27 Washington members. The bond must be issued by an insurance company
28 licensed to do business in this state.

29 (2) In lieu of the bond specified in subsection (1) of this
30 section, a licensed discount plan organization may deposit and maintain
31 deposited with the commissioner, or at the discretion of the
32 commissioner, with any organization or trustee acceptable to the
33 commissioner through which a custodial or controlled account is
34 utilized, cash, securities, or any combination of these or other
35 measures that are acceptable to the commissioner which always have a
36 market value of not less than thirty-five thousand dollars.

1 (3) All income from a deposit made under subsection (2) of this
2 section is an asset of the discount plan organization.

3 (4) Except for the commissioner, the assets or securities held in
4 this state as a deposit under subsection (1) or (2) of this section are
5 not subject to levy by a judgment creditor or other claimant of the
6 discount plan organization.

7 NEW SECTION. **Sec. 8.** (1) The commissioner may conduct
8 investigations to determine whether any person has violated any
9 provision of this chapter and may, if the commissioner has a reason to
10 believe that the discount plan organization is not complying with the
11 requirements of this chapter, examine the business and affairs of any
12 discount plan organization.

13 (2) An examination conducted under subsection (1) of this section
14 must be performed in accordance with chapter 48.03 RCW, except that RCW
15 48.03.060 (1) and (2) shall not be applicable to the examination of
16 persons registered under this chapter.

17 (3) The commissioner may:

18 (a) Order any discount plan organization or applicant that operates
19 a discount plan organization to produce any records, books, files,
20 advertising, and solicitation materials or other information; and

21 (b) Gather evidence and take statements under oath to determine
22 whether the discount plan organization or applicant is in violation of
23 the law or is acting contrary to the public interest.

24 (4) The discount plan organization or applicant that is the subject
25 of the examination or investigation shall pay the expenses incurred in
26 conducting the examination or investigation. Failure by the discount
27 plan organization or applicant to pay the expenses is grounds for
28 denial or revocation of a license to operate as a discount plan
29 organization.

30 (5) All discount plan organizations or applicants that are subject
31 to examinations, investigations, or annual reporting requirements under
32 this chapter shall maintain detailed books and records of the
33 following:

34 (a) Records documenting all Washington transactions, showing all
35 funds received and all funds disbursed to Washington members,
36 prospective members, providers, and provider networks;

1 (b) All contracts or agreements with providers of the services
2 under a discount plan offered in Washington or sold to Washington
3 residents; and

4 (c) Telephone scripts for marketing activities to which this
5 chapter applies.

6 The discount plan organization shall maintain the books and records
7 described in this section, in addition to the books and records
8 required to be maintained under section 10 of this act, for a period of
9 at least two years.

10 NEW SECTION. **Sec. 9.** (1) A discount plan organization may charge
11 a periodic charge as well as a reasonable one-time processing fee of no
12 more than thirty dollars for a discount plan, or such other amount as
13 established by rule, but may not require payment of these or any other
14 charges or fees by direct debit from a banking, credit, or debit card
15 account unless that method of payment is clearly and conspicuously
16 disclosed to the prospective member. All charges and fees must be
17 provided in writing to the member when the member first joins the plan.

18 (2) When a marketer or discount plan organization solicits a
19 discount plan in conjunction with any other product, all charges that
20 a member or prospective member must pay for each discount plan must be
21 provided in writing as a separate item to the member or prospective
22 member, unless the entire amount of the periodic charge which includes
23 the periodic discount plan charge will be refunded if the member
24 cancels his or her membership in the discount plan organization within
25 the first thirty days after the date of receipt of the written
26 documents for the discount plan as provided in subsection (3) of this
27 section.

28 (3)(a)(i) If a member cancels his or her membership in the discount
29 plan organization within the first thirty days after the date of
30 receipt of the written documents for the discount plan described in
31 section 12(4) of this act, the member must receive a reimbursement of
32 all periodic charges upon return of the discount plan card to the
33 discount plan organization.

34 (ii)(A) Cancellation occurs when notice of cancellation is given to
35 the discount plan organization.

36 (B) Notice of cancellation is given when delivered by hand or

1 deposited in a mailbox, properly addressed and postage prepaid to the
2 mailing address of the discount plan organization, or e-mailed to the
3 e-mail address of the discount plan organization.

4 (iii) A discount plan organization shall return in full any
5 periodic charge charged or collected after the member has given the
6 discount plan organization notice of cancellation.

7 (b) If the discount plan organization cancels a membership for any
8 reason other than nonpayment of charges by the member, the discount
9 plan organization shall make a pro rata reimbursement of all periodic
10 charges to the member.

11 NEW SECTION. **Sec. 10.** (1)(a) A discount plan organization shall
12 have a written health care provider agreement with all health care
13 providers for whose health care services it provides access to a
14 discount to its members. The written health care provider agreement
15 may be entered into directly with the health care provider or
16 indirectly with a health care provider network to which the health care
17 provider belongs.

18 (b) A health care provider agreement between a discount plan
19 organization and a health care provider must provide the following:

20 (i) A list of the health care services and products to be provided
21 at a discount;

22 (ii) The amount or amounts of the discounts or, alternatively, a
23 fee schedule that reflects the health care provider's discounted rates;
24 and

25 (iii) That the health care provider may not charge members more
26 than the discounted rates.

27 (c) A health care provider agreement between a discount plan
28 organization and a health care provider network must require that the
29 health care provider network have written agreements with its health
30 care providers that:

31 (i) Contain the provisions described in (b) of this subsection;

32 (ii) Authorize the health care provider network to contract with
33 the discount plan organization on behalf of the health care provider;
34 and

35 (iii) Require the health care provider network to maintain an
36 up-to-date list of its contracted health care providers and to provide
37 the list on a monthly basis to the discount plan organization.

1 (d) A health care provider agreement between a discount plan
2 organization and an entity that contracts with a health care provider
3 network must require that the entity, in its contract with the health
4 care provider network, require the health care provider network to have
5 written agreements with its health care providers that comply with (c)
6 of this subsection.

7 (e) The discount plan organization shall maintain a copy of each
8 health care provider agreement into which it has entered and shall
9 promptly furnish a copy of each agreement to the commissioner when
10 requested.

11 (2)(a) Each discount plan organization shall maintain on an
12 internet web site a list of the names and addresses of the health care
13 providers with which it has a current provider agreement directly or
14 through a health care provider network. This list must be updated
15 every thirty days. The internet web site address must be prominently
16 displayed on all of its advertisements, marketing materials, brochures,
17 and discount plan cards.

18 (b) This subsection applies to those health care providers with
19 which the discount plan organization has a current provider agreement
20 directly as well as those health care providers that are members of a
21 health care provider network with which the discount plan organization
22 has a current provider agreement.

23 NEW SECTION. **Sec. 11.** (1) A discount plan organization may market
24 its products directly to consumers or contract with marketers for the
25 distribution of its discount plans.

26 (2)(a) The discount plan organization shall have an executed
27 written agreement with a marketer prior to the marketer's marketing,
28 promoting, selling, or distributing the discount plan organization's
29 discount plans.

30 (b) The agreement between the discount plan organization and the
31 marketer must prohibit the marketer from using advertising, marketing
32 materials, brochures, and discount plan cards without first having the
33 discount plan organization's approval in writing.

34 (c) The discount plan organization is bound by and responsible for
35 the activities of a marketer that are within the scope of the
36 marketer's agency relationship with the organization.

1 (3) A discount plan organization shall approve in writing all
2 advertisements, marketing materials, brochures, and discount cards used
3 by marketers to market, promote, sell, or distribute the discount plan
4 prior to their use.

5 (4) Upon request, a discount plan organization shall submit to the
6 commissioner all advertising, marketing materials, and brochures used
7 or to be used in connection with the organization's discount plans.

8 NEW SECTION. **Sec. 12.** (1)(a) All advertisements, marketing
9 efforts, promotions, marketing materials, discount plan documents,
10 brochures, discount plan cards, and any other communications of a
11 discount plan organization provided to prospective members and members
12 must be truthful and not misleading in fact or in implication.

13 (b) Any advertisement, marketing material, discount plan document,
14 brochure, discount plan card, or other communication is misleading in
15 fact or in implication if it has a capacity or tendency to mislead or
16 deceive based on the overall impression that it may reasonably be
17 expected to create within the segment of the public to which it is
18 directed.

19 (c) A discount plan organization shall conduct its business in its
20 own legal name and all written communications from a discount plan to
21 regulators and consumers must prominently display the discount plan
22 organization's full legal name.

23 (2) A discount plan organization shall not:

24 (a) Except as otherwise provided in this chapter or as a disclaimer
25 of any relationship between discount plan benefits and insurance, or as
26 a description of an insurance product connected with a discount plan,
27 use in its advertisements, marketing efforts, promotions, marketing
28 materials, discount plan documents, brochures, and discount plan cards
29 the term "insurance";

30 (b) Describe or characterize the discount plan as being insurance
31 whenever a discount plan is bundled with an insured product and the
32 insurance benefits are incidental to the discount plan benefits;

33 (c) Use in its advertisements, marketing efforts, promotions,
34 marketing materials, discount plan documents, brochures, and discount
35 plan cards words or phrases that are commonly associated with the
36 business of insurance, such as the terms "health plan," "coverage,"
37 "copay," "copayments," "deductible," "preexisting conditions,"

1 "guaranteed issue," "premium," "PPO," "preferred provider
2 organization," or similar terms, in a manner that could reasonably
3 mislead an individual into believing that the discount plan is health
4 insurance;

5 (d) Use language in its advertisements, marketing efforts,
6 promotions, marketing material, discount plan documents, brochures, and
7 discount plan cards with respect to being licensed by the insurance
8 commissioner's office in a manner that could reasonably mislead an
9 individual into believing that the discount plan is insurance or has
10 been endorsed by the insurance commissioner's office;

11 (e) Make misleading, deceptive, or fraudulent representations
12 regarding the discount or range of discounts offered by the discount
13 plan or the access to any range of discounts offered by the discount
14 plan;

15 (f) Have restrictions on access to discount plan providers
16 including, except for hospital services, waiting periods and
17 notification periods; or

18 (g) Pay health care providers any fees for health care services or
19 collect or accept money from a member to pay a health care provider for
20 health care services provided under the discount plan, unless the
21 discount plan organization has an active certificate of authority or
22 registration in Washington.

23 (3)(a) Each discount plan organization shall make the following
24 general disclosures in not less than twelve-point type on the first
25 content page of any advertisements, marketing materials, or brochures
26 made available to the public relating to a discount plan, along with
27 any enrollment forms given to a prospective member:

28 (i) That the plan is a discount plan and is not insurance coverage;

29 (ii) If true, that the range of discounts for health care services
30 provided under the plan will vary depending on the type of health care
31 provider and health care service received;

32 (iii) That the discount plan organization does not make payments to
33 providers for the health care services received under the discount
34 plan, unless the discount plan organization has an active certificate
35 of authority or registration, as described in subsection (2)(g) of this
36 section;

37 (iv) That the plan member is obligated to pay for all health care

1 services, but will receive the stated discount from those health care
2 providers that have a current provider agreement with the discount plan
3 organization; and

4 (v) The toll-free telephone number and internet web site address
5 for the licensed discount plan organization for prospective members and
6 members to obtain additional information about and assistance with the
7 discount plan and up-to-date lists of health care providers
8 participating in the discount plan.

9 (b) If the initial contact with a prospective member is by
10 telephone, the disclosures required under (a) of this subsection must
11 be made orally and included in the initial written materials that
12 describe the benefits under the discount plan provided to the
13 prospective or new member.

14 (4)(a) In addition to the general disclosures required under
15 subsection (3) of this section, each discount plan organization shall
16 send to:

17 (i) Each prospective member, at their request, information that
18 describes the terms and conditions of the discount plan, including any
19 limitations or restrictions on the refund of any processing fees or
20 periodic charges associated with the discount plan. The written
21 materials presented must not be dependent upon the requestor first
22 making any form of payment or enrolling in the plan; and

23 (ii) Each new member, within fourteen calendar days of enrollment,
24 written documents that contain all terms and conditions of the discount
25 plan.

26 (b) The written documents required under (a)(ii) of this subsection
27 must be clear and include the following information:

28 (i) The name of the member;

29 (ii) The benefits to be provided under the discount plan;

30 (iii) Any processing fees and periodic charges associated with the
31 discount plan, including any limitations or restrictions on the refund
32 of any processing fees and periodic charges;

33 (iv) The mode of payment of any processing fees and periodic
34 charges, such as monthly or quarterly, and procedures for changing the
35 mode of payment;

36 (v) Any limitations, exclusions, or exceptions regarding the
37 receipt of discount plan benefits;

1 (vi) Any waiting periods for receiving discounts on hospital
2 services under the discount plan;

3 (vii) Procedures for obtaining discounts under the discount plan,
4 such as requiring members to contact the discount plan organization to
5 make an appointment with a health care provider on the member's behalf;

6 (viii) Cancellation procedures, including information on the
7 member's thirty-day cancellation rights and refund requirements and
8 procedures for obtaining refunds;

9 (ix) Renewal, termination, and cancellation terms and conditions;

10 (x) Procedures for adding new members to a family discount plan, if
11 applicable;

12 (xi) Procedures for filing complaints under the discount plan
13 organization's complaint system and information that, if the member
14 remains dissatisfied after completing the organization's complaint
15 system, the plan member may contact the office of the insurance
16 commissioner; and

17 (xii) The name, telephone number, internet web site address, and
18 mailing address of the licensed discount plan organization or other
19 entity where the member can make inquiries about the plan, or send
20 cancellation notices and file complaints.

21 NEW SECTION. **Sec. 13.** Each discount plan organization shall
22 provide the commissioner at least thirty days' advance notice of any
23 change in the discount plan organization's name, address, principal
24 business address, mailing address, toll-free telephone number, or
25 internet web site address.

26 NEW SECTION. **Sec. 14.** (1) If the information required in
27 subsection (2) of this section is not provided at the time of renewal
28 of a license under section 5 of this act, a discount plan organization
29 shall file an annual report with the commissioner in the form
30 prescribed by the commissioner no later than March 31st of the
31 following year.

32 (2) The annual report must be filed with the commissioner,
33 accompanied by the twenty dollar annual reporting fee to be deposited
34 into the general fund. The annual report must include:

1 (a) Audited financial statements prepared in accordance with
2 generally accepted accounting principles certified by an independent
3 certified public accountant, including the organization's balance
4 sheet, income statement, and statement of changes in cash flow for the
5 preceding year. However, subject to the approval of the commissioner,
6 an organization that is an affiliate of a parent entity that is
7 publicly traded and that prepares audited financial statements
8 reflecting the consolidated operations of the parent entity may submit
9 the audited financial statement of the parent entity and a written
10 guaranty that the minimum capital requirements required under section
11 6 of this act will be met by the parent entity instead of the audited
12 financial statement of the organization;

13 (b) If different from the initial application for a license, or at
14 the time of renewal of a license, or the last annual report, as
15 appropriate, a list of the names and residence addresses of all persons
16 responsible for the conduct of the organization's affairs, together
17 with a disclosure of the extent and nature of any contracts or
18 arrangements with these persons and the discount plan organization,
19 including any possible conflicts of interest;

20 (c) The number of current members the discount plan organization
21 has in the state; and

22 (d) Any other information relating to the performance of the
23 discount plan organization that may be required by the commissioner.

24 (3) Any discount plan organization that fails to file an annual
25 report in the form and within the time required by this section is
26 subject to the following:

27 (a) Monetary penalties of:

28 (i) Up to five hundred dollars each day for the first ten days
29 during which the violation continues; and

30 (ii) Up to one thousand dollars each day after the first ten days
31 during which the violation continues; and

32 (b) Upon notice by the commissioner, loss, suspension, or
33 revocation of its license and authority to enroll new members or to do
34 business in this state while the violation continues.

35 NEW SECTION. **Sec. 15.** Each discount plan organization shall
36 designate and provide the commissioner with the name, address, and

1 telephone number of the organization's compliance officer responsible
2 for ensuring compliance with this chapter.

3 NEW SECTION. **Sec. 16.** (1) In lieu of or in addition to suspending
4 or revoking a discount plan organization's license under section 5(8)
5 of this act, whenever the commissioner has cause to believe that any
6 person is violating or is about to violate any provision of this
7 chapter or any rules adopted under this chapter or any order of the
8 commissioner, the commissioner may:

9 (a) Issue a cease and desist order; and

10 (b) After hearing or with the consent of the discount plan
11 organization and in addition to or in lieu of the suspension,
12 revocation, or refusal to renew any license, impose a monetary penalty
13 of not less than one hundred dollars for each violation and not more
14 than ten thousand dollars for each violation.

15 (2) A person that willfully operates as or aids and abets another
16 operating as a discount plan organization in violation of section 5(1)
17 of this act commits insurance fraud and is subject to RCW 48.15.020 and
18 48.15.023, as if the unlicensed discount plan organization were an
19 unauthorized insurer, and the fees, dues, charges, or other
20 consideration collected from the members by the unlicensed discount
21 plan organization or marketer were insurance premiums.

22 (3) A person that collects fees for purported membership in a
23 discount plan but willfully fails to provide the promised benefits
24 commits a theft and upon conviction is subject to the provisions of
25 Title 9A RCW. In addition, upon conviction, the person shall pay
26 restitution to persons aggrieved by the violation of this chapter.

27 (4) Any person damaged by acts that violate this chapter may
28 maintain an action for the recovery of damages caused by that act or
29 acts.

30 (a) An action for violation of this section may be brought:

31 (i) In the county where the plaintiff resides;

32 (ii) In the county where the plaintiff conducts business; or

33 (iii) In the county where the discount plan was sold, marketed,
34 promoted, advertised, or otherwise distributed.

35 (b) The acceptance or use of any discount plan or discount plan
36 card does not operate as a waiver of any civil, criminal, or
37 administrative claim that may be asserted under this chapter.

1 NEW SECTION. **Sec. 17.** (1)(a) In addition to the penalties and
2 other enforcement provisions of this chapter, the commissioner may seek
3 both temporary and permanent injunctive relief when:

4 (i) A discount plan is being operated by a person or entity that is
5 not licensed under this chapter; or

6 (ii) Any person, entity, or discount plan organization has engaged
7 in any activity prohibited by this chapter or any rule adopted under
8 this chapter.

9 (b) The venue for any court proceeding brought under this section
10 is Thurston county.

11 (2) The commissioner's authority to seek injunctive relief is not
12 conditioned on having conducted any proceeding under chapter 34.05 RCW.

13 NEW SECTION. **Sec. 18.** The commissioner may adopt rules to
14 implement this chapter.

15 NEW SECTION. **Sec. 19.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 20.** Any person, organization, or entity that
20 has engaged in a discount plan business to which this chapter applies,
21 and has done so on or before the effective date of this section, has
22 six months following the effective date of this section to submit a
23 substantially complete application for a license as provided in section
24 5 of this act and to otherwise come into compliance with the
25 requirements of this chapter.

26 NEW SECTION. **Sec. 21.** Sections 1 through 20 of this act
27 constitute a new chapter in Title 48 RCW.

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