

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 847 Session of
2011

INTRODUCED BY BARBIN, DeLUCA, FABRIZIO, PASHINSKI, KOTIK,
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PRESTON, READSHAW AND STABACK, FEBRUARY 28, 2011

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 28, 2011

AN ACT

1 Providing for registration of discount plan organizations; and
2 imposing penalties.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

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12 Section 1. Short title.

13 This act shall be known and may be cited as the Discount Plan
14 Organization Act.

15 Section 2. Purpose.

16 The purpose of this act is to promote the public interest by
17 establishing standards for discount medical plan and discount
18 prescription drug plan organizations to protect consumers from
19 unfair or deceptive marketing, sales or enrollment practices and
20 to facilitate consumer understanding of the role and function of
21 discount medical plan organizations in providing access to
22 medical or ancillary services and the role and function of
23 discount prescription drug plan organizations in providing
24 access to pharmacy services.

25 Section 3. Definitions.

26 The following words and phrases when used in this act shall
27 have the meanings given to them in this section unless the
28 context clearly indicates otherwise:

29 "Affiliate." A person that directly or indirectly, through
30 one or more intermediaries, controls, is controlled by or is

1 under common control with the person specified.

2 "Ancillary services." Services that include, but are not
3 limited to, audiology, dental, vision, mental health, substance
4 abuse, chiropractic and podiatry services. The term does not
5 include pharmacy services.

6 "Applicant." A person or entity applying to do business in
7 this State as a discount plan organization.

8 "Commissioner." The Insurance Commissioner of the
9 Commonwealth.

10 "Control," "controlled by" or "under common control with."
11 The terms shall have the meanings given in section 1401 of the
12 act of May 17, 1921 (P.L.682, No.284), known as The Insurance
13 Company Law of 1921.

14 "Department." The Insurance Department of the Commonwealth.

15 "Discount medical plan." A business arrangement or contract
16 in which a person, in exchange for fees, dues, charges or other
17 consideration, offers or purports to offer access for plan
18 members to providers of medical or ancillary services and the
19 right to receive discounts on medical or ancillary services from
20 those providers. The term does not include:

21 (1) a plan that does not charge a membership or other
22 fee to use the plan's discount medical card; or

23 (2) any product otherwise regulated under the laws of
24 this Commonwealth regulating health insurers.

25 "Discount medical plan organization." An entity that, in
26 exchange for fees, dues, charges or other consideration, offers
27 or purports to offer a discount medical plan to plan members and
28 that contracts with a provider, a provider network or another
29 discount medical plan organization to offer the discount medical
30 plan and determines the charge to plan members.

1 "Discount plan." A discount medical plan or a discount
2 prescription drug plan.

3 "Discount plan organization." A discount medical plan
4 organization or a discount prescription drug plan organization.

5 "Discount prescription drug plan." A business arrangement or
6 contract in which a person, in exchange for fees, dues, charges
7 or other consideration, offers or purports to offer access for
8 plan members to providers of pharmacy services and the right to
9 receive discounts on pharmacy services from those providers.

10 The term does not include:

11 (1) a plan that does not charge a membership or other
12 fee to use the plan's discount prescription drug card;

13 (2) a patient access program; or

14 (3) a Medicare prescription drug plan or the PACE and
15 PACENET program established under Chapters 5 and 7 of the act
16 of August 26, 1971 (P.L.351, No.91), known as the State
17 Lottery Law.

18 "Discount prescription drug plan organization." An entity
19 that, in exchange for fees, dues, charges or other
20 consideration, offers or purports to offer access for plan
21 members to providers of pharmacy services and the right to
22 receive pharmacy services from those providers at a discount and
23 that contracts with a provider, a pharmacy network or another
24 discount prescription drug plan organization to offer the
25 discount prescription drug plan and determines the charge to
26 plan members.

27 "Facility." An institution providing medical or ancillary
28 services in a health care setting. The term includes, but is not
29 limited to:

30 (1) a hospital or other licensed inpatient center;

- (2) an ambulatory surgical or treatment center;
- (3) a skilled nursing center;
- (4) a residential treatment center;
- (5) a rehabilitation center; and
- (6) a diagnostic, laboratory or imaging center.

"Health care professional." A physician, pharmacist or other health care practitioner who is licensed, accredited or certified to perform specified medical or ancillary services or pharmacy services within the scope of his or her license, accreditation, certification or other appropriate authority and consistent with State law.

"Health insurer." A company or health insurance entity licensed in this Commonwealth to issue an individual or group health, sickness or accident policy or subscriber contract or certificate or plan that provides medical or health care coverage by a health care facility or licensed health care provider that is offered or governed under any of the following:

(1) Article XXIV or another provision of the act of May 17, 1921, (P.L.682, No.284), known as The Insurance Company Law of 1921.

(2) The act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act.

(3) The act of May 18, 1976 (P.L.123, No.54), known as the Individual Accident and Sickness Insurance Minimum Standards Act.

(4) 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or Ch. 63 (relating to professional health services plan corporations).

"Marketer." A person or entity that markets, promotes, sells or distributes a discount plan, including a private label entity

1 that places its name on and markets or distributes a discount
2 plan pursuant to a marketing agreement with a discount plan
3 organization.

4 "Medical services." Maintenance care of or preventive care
5 for the human body or care, service or treatment of an illness
6 or dysfunction of or injury to the human body. The term
7 includes, but is not limited to, physician care, inpatient care,
8 hospital surgical services, emergency services, ambulance
9 services, laboratory services and medical equipment and
10 supplies. The term does not include pharmacy services or
11 ancillary services.

12 "Medicare prescription drug plan." A plan that provides a
13 Medicare Part D prescription drug benefit in accordance with the
14 requirements of the Medicare Prescription Drug, Improvement, and
15 Modernization Act of 2003 (Public Law 108-172, 117 Stat. 2066)
16 and the Medicare Improvements for Patients and Providers Act of
17 2008 (Public Law 110-275, 122 Stat. 2494).

18 "Member." An individual who pays fees, dues, charges or
19 other consideration in exchange for the right to receive the
20 benefits of a discount plan. The term does not include any
21 individual who enrolls in a patient access program.

22 "Patient access program." A voluntary program sponsored by a
23 pharmaceutical manufacturer, or a consortium of pharmaceutical
24 manufacturers, that provides free or discounted health care
25 products directly to low-income or uninsured individuals either
26 through a discount card or direct shipment.

27 "Person." An individual, a corporation, a partnership, an
28 association, a joint venture, a joint stock company, a trust, an
29 unincorporated organization, any similar entity or any
30 combination of the foregoing.

1 "Pharmacy services." Pharmaceutical supplies and
2 prescription drugs.

3 "Provider." A health care professional or facility that has
4 contracted, directly or indirectly, with a discount medical plan
5 organization to provide medical or ancillary services to members
6 or with a discount prescription drug plan organization to
7 provide pharmacy services to members.

8 "Provider network." An entity that negotiates directly or
9 indirectly with a discount medical plan organization on behalf
10 of more than one provider to provide medical or ancillary
11 services to members or with a discount prescription drug plan
12 organization on behalf of more than one provider to provide
13 pharmacy services to members.

14 Section 4. Scope and applicability.

15 (a) Scope.--This act applies to all discount plan
16 organizations doing business in this Commonwealth.

17 (b) Applicability.--A discount plan organization that is a
18 health insurer:

19 (1) is not required to obtain a certificate of
20 registration under section 5, except that it or any of its
21 subsidiaries or affiliates that operate as a discount plan
22 organization in this State shall obtain a certificate of
23 registration under section 5 and comply with all other
24 provisions of this act; but

25 (2) is required to comply with sections 9, 10, 11, 12
26 and 13 and report, in the form and manner the department may
27 require, any of the information described in section 15(b)

28 (2), (3) or (4) that is not otherwise already reported.

29 Section 5. Registration requirements.

30 (a) General rule.--Before doing business in this

Commonwealth as a discount plan organization, a person shall:

(1) be authorized to transact business in this Commonwealth under this act; and

(2) obtain a certificate of registration from the department to operate as a discount plan organization.

(b) Application.--An application or renewal application for a certificate of registration to operate as a discount plan organization shall:

(1) be in a form prescribed by the department and published in the Pennsylvania Bulletin;

(2) be verified by an officer or authorized representative of the applicant;

(3) be accompanied by a fee in an amount equal to that required for a license or annual renewal for a manager or exclusive general agent for a domestic insurance company, as specified in section 612-A(4) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929;

(4) include information on whether:

(i) a previous application for a certificate of registration or licensure has been denied, revoked, suspended or terminated for cause;

(ii) the applicant is under investigation for or the subject of any pending action or has been found in violation of any statute or regulation in any jurisdiction within the previous five years;

(iii) the applicant has established an Internet website to conform to the requirements of section 11(b); and

(5) include information, as the department may require, that permits the department, after reviewing all of the

1 information submitted pursuant to this subsection, to make a
2 determination that the applicant:

3 (i) is financially responsible;

4 (ii) has adequate expertise or experience to operate
5 a discount plan organization; and

6 (iii) is of good character.

7 (c) Review of application.--After the receipt of an
8 application filed under subsection (b), the department shall
9 review the application and notify the applicant of any
10 deficiencies in the application.

11 (d) Decision on application.--Within 90 days after the date
12 of receipt of a completed application, the department shall:

13 (1) issue a certificate of registration if the
14 department is satisfied that the applicant:

15 (i) met the requirements of subsection (b); and

16 (ii) has the required minimum capital in accordance
17 with section 6; or

18 (2) disapprove the application and state the grounds for
19 disapproval.

20 (e) Internet website.--Prior to issuance of a certificate of
21 registration by the department, a discount plan organization
22 shall establish an Internet website in order to conform to the
23 requirements of section 11(b).

24 (f) Certificate of registration.--

25 (1) A certificate of registration is effective for one
26 year, unless, prior to its expiration, it is renewed in
27 accordance with this subsection or suspended or revoked in
28 accordance with subsection (g).

29 (2) At least 90 days before a certificate of
30 registration expires, a discount plan organization shall

1 submit:

2 (i) a renewal application form; and

3 (ii) the renewal fee.

4 (3) The department shall renew the certificate of
5 registration of each holder that meets the requirements of
6 this act and pays the appropriate renewal fee required by
7 this act.

8 (g) Suspension, nonrenewal and revocation.--

9 (1) The commissioner may suspend the authority of a
10 discount plan organization to enroll new members or refuse to
11 renew or revoke a discount plan organization's certificate of
12 registration if the commissioner finds that any of the
13 following conditions exist:

14 (i) the discount plan organization is not operating
15 in compliance with this act;

16 (ii) the discount plan organization does not have
17 the minimum net worth as required under section 6;

18 (iii) the discount plan organization has advertised,
19 merchandised or attempted to merchandise its services in
20 such a manner as to misrepresent its services or capacity
21 for service or has engaged in deceptive, misleading or
22 unfair practices with respect to advertising or
23 merchandising; or

24 (iv) the continued operation of the discount plan
25 organization would be hazardous to its members.

26 (2) If the department has cause to believe that grounds
27 for the nonrenewal, suspension or revocation of a certificate
28 of registration exists, the department shall notify the
29 discount plan organization in writing, specifically stating
30 the grounds for the refusal to renew or suspension or

1 revocation and informing the discount plan organization that
2 it may pursue a hearing on the matter in accordance with the
3 provisions of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice
4 and procedure of Commonwealth agencies).

5 (3) When the certificate of registration of a discount
6 plan organization is suspended, revoked or not renewed, the
7 discount plan organization shall proceed, immediately
8 following the effective date of the order of revocation or,
9 in the case of a nonrenewal, the date of expiration of the
10 certificate of registration, to wind up its affairs
11 transacted under the certificate of registration. The
12 discount plan organization shall not engage in any further
13 advertising, solicitation, collecting of fees or renewal of
14 contracts.

15 (4) (i) The commissioner shall, in his order suspending
16 the authority of the discount plan organization to enroll
17 new members, specify the period during which the
18 suspension is to be in effect and the conditions, if any,
19 that must be met by the discount plan organization prior
20 to reinstatement of its certificate of registration to
21 enroll members.

22 (ii) The commissioner may rescind or modify the
23 order of suspension prior to the expiration of the
24 suspension period.

25 (iii) The certificate of registration of a discount
26 plan organization shall not be reinstated unless
27 requested by the discount plan organization. The
28 commissioner shall not grant the request for
29 reinstatement if the commissioner finds that the
30 circumstances for which the suspension occurred still

1 exist or are likely to recur.

2 (h) Penalty.--In lieu of suspending or revoking a discount
3 plan organization's certificate of registration under subsection
4 (g), whenever the discount plan organization has been found to
5 have violated any provision of this act, the commissioner may:

6 (1) issue and cause to be served upon the organization
7 charged with the violation a copy of the findings and an
8 order requiring the organization to cease and desist from
9 engaging in the act or practice that constitutes the
10 violation; and

11 (2) impose a monetary penalty of not more than \$5,000
12 for each violation.

13 (i) Notice of action in other jurisdiction.--A discount plan
14 organization shall notify the department within ten days
15 whenever the discount plan organization's certificate of
16 registration, or other form of authority, to operate as a
17 discount plan organization in another jurisdiction is suspended,
18 revoked or nonrenewed in that jurisdiction.

19 (j) Exemption.--A provider who provides discounts to his or
20 her own patients without any cost or fee of any kind to the
21 patient for medical services or ancillary services the provider
22 directly provides is not required to obtain and maintain a
23 certificate of registration under this act as a discount medical
24 plan organization.

25 Section 6. Minimum capital requirements.

26 (a) Minimum capital requirement for applicant.--Before the
27 department issues a certificate of registration to any person
28 required to obtain a certificate of registration under section
29 5, the person seeking to operate a discount plan organization
30 shall have a net worth of at least \$150,000.

1 (b) Minimum capital requirement for registrant.--A discount
2 plan organization shall at all times maintain a net worth of at
3 least \$150,000.

4 (c) Adjustment.--At the commissioner's discretion, the
5 amounts in subsections (a) and (b) may be adjusted annually for
6 inflation.

7 Section 7. Surety bond or deposit requirements.

8 (a) Surety bond.--A registered discount plan organization
9 shall maintain in force a surety bond in its own name in an
10 amount not less than \$35,000 to be used in the discretion of the
11 commissioner to protect the financial interest of members. The
12 bond shall be issued by an insurance company licensed to do
13 business in this Commonwealth.

14 (b) Deposit.--In lieu of the bond specified in subsection
15 (a), a registered discount plan organization may deposit and
16 maintain deposited with the department, or at the discretion of
17 the commissioner, with any organization or trustee acceptable to
18 the commissioner through which a custodial or controlled account
19 is utilized, cash, securities or any combination of these or
20 other measures that are acceptable to the commissioner with at
21 all times having a market value of not less than \$35,000.

22 (c) Income on deposit.--All income from a deposit made under
23 subsection (b) shall be an asset of the discount plan
24 organization.

25 (d) Exemption from levy.--Except for the commissioner, the
26 assets or securities held in this Commonwealth as a deposit
27 under subsection (a) or (b) shall not be subject to levy by a
28 judgment creditor or other claimant of the discount plan
29 organization.

30 (e) Adjustment.--At the commissioner's discretion, the

1 amounts in subsections (a) and (b) may be adjusted annually for
2 inflation.

3 Section 8. Examinations and investigations.

4 (a) General rule.--The department and any of its examiners
5 may examine or investigate the business and affairs of any
6 discount plan organization to protect the interests of the
7 residents of this State based on the following reasons,
8 including, but not limited to, complaint indices, recent
9 complaints, information from other states or as the commissioner
10 deems necessary.

11 (b) Conduct of examinations.--An examination or
12 investigation conducted as provided in subsection (a) shall be
13 performed in accordance with the provisions of Article IX of the
14 act of May 17, 1921 (P.L.789, No.285), known as The Insurance
15 Department Act of 1921.

16 (c) Discovery.--The department or any of its examiners may:

17 (1) order any discount plan organization or applicant
18 that operates or any applicant that anticipates operating a
19 discount plan organization to produce any records, books,
20 files, advertising and solicitation materials or other
21 information; and

22 (2) take statements under oath to determine whether the
23 discount plan organization or applicant is in violation of
24 the law or is acting contrary to the public interest.

25 (d) Expenses.--A discount plan organization or applicant
26 that is the subject of the examination or investigation shall
27 pay the expenses incurred in conducting the examination or
28 investigation. Failure by the discount plan organization or
29 applicant to pay the expenses is grounds for denial of a
30 certificate of registration to operate as a discount plan

organization or revocation of a certificate of registration to operate as a discount plan organization.

Section 9. Charges and fees, refund requirements and bundling of services.

(a) Charges and fees.--A discount plan organization may charge a periodic charge as well as a reasonable one-time processing fee for a discount plan.

(b) Refund requirements.--

(1) (i) If a member cancels his or her membership in a discount plan organization within the first 30 days after the date of receipt of the written document for the discount plan described in section 13(d), the member shall receive a reimbursement of all periodic charges and the amount of any one-time processing fee that exceeds \$30 upon return of the discount plan card to the discount plan organization.

(ii) Cancellation occurs when notice of cancellation is given to the discount plan organization. Notice of cancellation is deemed given when delivered by hand or deposited in a mailbox, properly addressed and postage prepaid to the mailing address of the discount plan organization or e-mailed to the e-mail address of the discount plan organization.

(iii) A discount plan organization shall return any periodic charge charged or collected after the member has returned the discount plan card or given the discount plan organization notice of cancellation.

(2) If the discount plan organization cancels a membership for any reason other than nonpayment of charges by the member, the discount plan organization shall make a pro

1 rata reimbursement of all periodic charges to the member.

2 (c) Bundling of services.--When a marketer or discount plan
3 organization sells a discount plan in conjunction with any other
4 products, the marketer or discount plan organization shall:

5 (1) provide the charges for each discount plan in
6 writing to the member; or

7 (2) reimburse the member for all periodic charges for
8 the discount plan and all periodic charges for any other
9 product if the member cancels his or her membership in
10 accordance with subsection (b) (1).

11 (d) Exemption.--Any discount plan organization that is a
12 health insurer that provides a discount plan product that is
13 incidental to an insurance product offered by the health insurer
14 is not subject to this section.

15 Section 10. Charge and form filing requirements.

16 (a) List of fees and charges.--A discount plan organization
17 shall file with the department a list of all prospective member
18 fees and charges associated with the discount plan.

19 (b) Forms.--In addition to the information required under
20 subsection (a), a discount plan organization shall file all
21 forms, including the form for the written document described
22 under section 13(d), to be used by a discount plan organization
23 with the department prior to use. Each form filed shall be
24 identified in the manner as may be required by the department.

25 Section 11. Provider agreements and provider listing
26 requirements.

27 (a) Provider agreements.--

28 (1) A discount medical plan organization shall have a
29 written provider agreement with all providers offering
30 medical or ancillary services to its members. A discount

1 prescription drug plan organization shall have a written
2 provider agreement with all providers offering pharmacy
3 services to its members. The written provider agreement may
4 be entered into directly with the provider or indirectly with
5 a provider network to which the provider belongs.

6 (2) A provider agreement between a discount plan
7 organization and a provider shall provide the following:

8 (i) a list of the services to be provided at a
9 discount;

10 (ii) the amount or amounts of the discounts or,
11 alternatively, a fee schedule that reflects the
12 provider's discounted rates; and

13 (iii) that the provider will not charge members more
14 than the discounted rates.

15 (3) A provider agreement between a discount plan
16 organization and a provider network shall require that the
17 provider network have written agreements with its providers
18 that:

19 (i) contain the provisions described in paragraph
20 (2);

21 (ii) authorize the provider network to contract with
22 the discount plan organization on behalf of the provider;
23 and

24 (iii) require the provider network to maintain an
25 up-to-date list of its contracted providers and to
26 provide the list on a monthly basis to the discount plan
27 organization.

28 (4) A provider agreement between a discount plan
29 organization and an entity that contracts with a provider
30 network shall require that the entity, in its contract with

1 the provider network, require the provider network to have
2 written agreements with its providers that comply with
3 paragraph (3).

4 (5) The discount plan organization shall maintain a copy
5 of each active provider agreement into which it has entered.

6 (b) Provider listing requirements.--

7 (1) A discount plan organization shall maintain on an
8 Internet website an up-to-date list of the names and
9 addresses of the providers with which it has contracted
10 directly or through a provider network. The Internet website
11 address shall be prominently displayed on all of its
12 advertisements, marketing materials, brochures and discount
13 plan cards.

14 (2) This subsection applies to providers that the
15 discount plan organization has contracted with directly as
16 well as providers that are members of a provider network with
17 which the discount plan organization has contracted.

18 Section 12. Marketing requirements.

19 (a) General rule.--A discount plan organization may market
20 directly or contract with other marketers for the distribution
21 of its product.

22 (b) Marketing agreement.--

23 (1) A discount plan organization shall have an executed
24 written agreement with a marketer prior to the marketer's
25 marketing, promoting, selling or distributing the discount
26 plan.

27 (2) An agreement between a discount plan organization
28 and the marketer shall prohibit a marketer from using
29 advertising, marketing materials, brochures and discount plan
30 cards without the discount plan organization's approval in

1 writing.

2 (3) A discount plan organization shall be bound by and
3 responsible for the activities of a marketer that are within
4 the scope of the marketer's agency relationship with the
5 organization.

6 (c) Approval of marketing materials.--A discount plan
7 organization shall approve in writing all advertisements,
8 marketing materials, brochures and discount cards used by
9 marketers to market, promote, sell or distribute the discount
10 plan prior to their use.

11 (d) Filing requirement.--Upon request, a discount plan
12 organization shall submit to the commissioner all advertising,
13 marketing materials and brochures regarding a discount plan.
14 Section 13. Marketing restrictions and disclosure requirements.

15 (a) General rule.--

16 (1) All advertisements, marketing materials, brochures,
17 discount plan cards and any other communications of a
18 discount plan organization provided to prospective members
19 and members shall be truthful and not misleading in fact or
20 in implication.

21 (2) An advertisement, any marketing material, brochure,
22 discount plan card or other communication is misleading in
23 fact or in implication if it has a capacity or tendency to
24 mislead or deceive based on the overall impression that it is
25 reasonably expected to create within the segment of the
26 public to which it is directed.

27 (b) Restrictions.--A discount plan organization shall not:

28 (1) except as otherwise provided in this act or as a
29 disclaimer of any relationship between discount plan benefits
30 and insurance, or as a description of an insurance product

1 connected with a discount plan, use in its advertisements,
2 marketing material, brochures and discount plan cards the
3 term "insurance";

4 (2) except as otherwise provided under State law,
5 describe or characterize the discount plan as being insurance
6 whenever a discount plan is bundled with an insurance product
7 and the insurance benefits are incidental to the discount
8 plan benefits;

9 (3) use in its advertisements, marketing material,
10 brochures or discount plan cards the terms "health plan,"
11 "coverage," "copay," "copayments," "deductible," "preexisting
12 conditions," "guaranteed issue," "premium," "PPO," "preferred
13 provider organization" or other terms in a manner that could
14 reasonably mislead an individual into believing that the
15 discount plan is health insurance;

16 (4) use language in its advertisements, marketing
17 material, brochures and discount plan cards with respect to
18 being registered by the department in a manner that could
19 reasonably mislead an individual into believing that the
20 discount plan is insurance or has been endorsed by the
21 Commonwealth;

22 (5) make misleading, deceptive or fraudulent
23 representations regarding the discount or range of discounts
24 offered by the discount plan card or the access to any range
25 of discounts offered by the discount plan card;

26 (6) have restrictions on access to discount plan
27 providers, including, except for hospital services, waiting
28 periods and notification periods; or

29 (7) pay providers any fees for services or collect or
30 accept money from a member to pay a provider for services

1 provided under the discount plan, unless the discount plan
2 organization has an active certificate of authority to act as
3 a third party administrator under Article VIII of the act of
4 May 17, 1921 (P.L.789, No. 285), known as The Insurance
5 Department Act of 1921.

6 (c) General disclosures.--

7 (1) A discount plan organization shall make the
8 following general disclosures along with any enrollment forms
9 given to a prospective member:

10 (i) that the plan is a discount plan and is not
11 insurance coverage;

12 (ii) that the range of discounts for services
13 provided under the plan will vary depending on the type
14 of provider and service received;

15 (iii) unless the discount plan organization has an
16 active certificate of authority to act as a third party
17 administrator as described in subsection (b)(7), that the
18 plan does not make payments to providers for the services
19 received under the discount plan;

20 (iv) that the plan member is obligated to pay for
21 all services, but will receive a discount from those
22 providers that have contracted with the discount plan
23 organization; and

24 (v) the toll-free telephone number and Internet
25 website address for the registered discount plan
26 organization for prospective members and members to
27 obtain additional information about and assistance on the
28 discount plan and up-to-date lists of providers
29 participating in the discount plan.

30 The disclosures shall be made in writing in not less than 12-

1 point font and shall appear on the first content page of any
2 advertisements, marketing materials or brochures made
3 available to the public relating to a discount plan.

4 (2) If the initial contact with a prospective member is
5 by telephone, the disclosures required under paragraph (1)
6 shall be made orally and included in the initial written
7 materials that describe the benefits under the discount plan
8 provided to the prospective or new member.

9 (d) Additional disclosures.--

10 (1) In addition to the general disclosures required
11 under subsection (c), each discount plan organization shall
12 provide to:

13 (i) each prospective member, at a time not later
14 than the enrollment application form is executed by the
15 prospective member, information that describes the terms
16 and conditions of the discount plan, including any
17 limitations or restrictions on the refund of any
18 processing fees or periodic charges associated with the
19 discount plan; and

20 (ii) each new member a written document that
21 contains the terms and conditions of the discount plan.

22 (2) The document required under paragraph (1)(ii) shall
23 be written in simple words and with sentences as short as
24 possible and shall include the following information:

25 (i) the name of the member;

26 (ii) the benefits to be provided under the discount
27 plan;

28 (iii) any processing fees and periodic charges
29 associated with the discount plan, including any
30 limitations or restrictions on the refund of any

1 processing fees and periodic charges;

2 (iv) the mode of payment of any processing fees and
3 periodic charges, such as monthly, quarterly, etc., and
4 procedures for changing the mode of payment;

5 (v) any limitations, exclusions or exceptions
6 regarding the receipt of discount plan benefits;

7 (vi) any waiting periods for certain services under
8 the discount plan;

9 (vii) procedures for obtaining discounts under the
10 discount plan, such as requiring members to contact the
11 discount plan organization to make an appointment with a
12 provider on the member's behalf or to order pharmacy
13 services on the member's behalf;

14 (viii) cancellation procedures, including
15 information on the member's 30-day cancellation rights
16 and refund requirements and procedures for obtaining
17 refunds;

18 (ix) renewal, termination and cancellation terms and
19 conditions;

20 (x) procedures for adding new members to a family
21 discount plan, if applicable;

22 (xi) procedures for filing complaints under the
23 discount plan organization's complaint system and
24 information that, if the member remains dissatisfied
25 after completing the organization's complaint system, the
26 plan member may contact the department; and

27 (xii) the name and mailing address of the registered
28 discount plan organization or other entity where the
29 member may make inquiries about the plan, send
30 cancellation notices and file complaints.

1 Section 14. Notice of change in name or address.

2 A discount plan organization shall provide the department at
3 least 30 days' advance notice of any change in the discount plan
4 organization's name, address, principal business address or
5 mailing address or Internet website address.

6 Section 15. Annual reports.

7 (a) Requirements.--If the information required under
8 subsection (b) is not provided at the time of renewal of a
9 certificate of registration under section 5, a discount plan
10 organization shall file an annual report with the department in
11 the form prescribed by the department within three months after
12 the end of each calendar year.

13 (b) Contents.--The report shall include:

14 (1) audited financial statements prepared in accordance
15 with generally accepted accounting principles certified by an
16 independent certified public accountant, including the
17 organization's balance sheet, income statement and statement
18 of changes in cash flow for the preceding year, except that,
19 subject to the approval of the department, an organization
20 that is an affiliate of a parent entity that is publicly
21 traded and that prepares audited financial statements
22 reflecting the consolidated operations of the parent entity
23 may submit the audited financial statement of the parent
24 entity and a written guaranty that the minimum capital
25 requirements required under section 6 will be met by the
26 parent entity instead of the audited financial statement of
27 the organization;

28 (2) if different from the initial application for a
29 certificate of registration or at the time of renewal of a
30 certificate of registration or the last annual report, as

1 appropriate, a list of the names and residence addresses of
2 all persons responsible for the conduct of the organization's
3 affairs, together with a disclosure of the extent and nature
4 of any contracts or arrangements with these persons and the
5 discount plan organization, including any possible conflicts
6 of interest;

7 (3) the number of discount plan members in this
8 Commonwealth; and

9 (4) any other information relating to the performance of
10 the discount plan organization that may be required by the
11 department.

12 (c) Penalty.--A discount plan organization that fails to
13 file an annual report in the form and within the time required
14 by this section shall:

15 (1) pay a penalty of up to \$500 each day for the first
16 ten days during which the violation continues;

17 (2) pay a penalty of up to \$1,000 each day after the
18 first ten days during which the violation continues; and

19 (3) upon notice by the commissioner, lose its authority
20 to enroll new members or to do business in this Commonwealth
21 while the violation continues.

22 Section 16. Compliance officer.

23 A discount plan organization shall designate and provide the
24 department with the name, address and telephone number of a
25 discount plan compliance officer responsible for ensuring
26 compliance with the provisions of this act.

27 Section 17. Penalties.

28 (a) Civil penalties.--In addition to the penalties and other
29 enforcement provisions of this act, any person who willfully
30 violates this act is subject to a civil penalty of not more than

1 \$10,000 for each violation. Penalties imposed against an
2 individual discount plan organization under this act shall not
3 exceed \$500,000 in the aggregate in any single calendar year.

4 (b) Insurance fraud.--A person that willfully operates as or
5 aids and abets another operating as a discount plan organization
6 in violation of section 5(a) commits insurance fraud and shall
7 be subject to the penalties applicable to offenses under 18
8 Pa.C.S. § 4117 (relating to insurance fraud), as if the
9 unregistered discount plan organization were an unauthorized
10 insurer, and the fees, dues, charges or other consideration
11 collected from the members by the unregistered discount plan
12 organization or marketer were insurance premiums.

13 (c) Theft.--A person that collects fees for purported
14 membership in a discount plan, but purposefully fails to provide
15 the promised benefits, commits a theft and upon conviction is
16 subject to the penalties applicable to offenses under 18 Pa.C.S.
17 Ch. 39 (relating to theft and related offenses). In addition,
18 upon conviction, the person shall be ordered to pay restitution
19 to persons aggrieved by the violation of this act. Restitution
20 shall be ordered in addition to a fine or imprisonment, but not
21 in lieu of a fine or imprisonment.

22 Section 18. Injunctions.

23 (a) Injunctive relief.--In addition to the penalties and
24 other enforcement provisions of this act, the commissioner may
25 seek both temporary and permanent injunctive relief when:

26 (1) a discount plan is being operated by a person or
27 entity that is not registered pursuant to this act; or

28 (2) a person, entity, discount medical plan organization
29 or discount prescription drug plan organization has engaged
30 in any activity prohibited by this act or any regulation

1 adopted pursuant to this act.

2 (b) Venue.--The venue for any proceeding brought under this
3 section shall be in the Commonwealth Court.

4 (c) Procedure.--The commissioner's authority to seek
5 injunctive relief is not conditioned on having conducted any
6 proceeding pursuant to the provisions of the 2 Pa.C.S. (relating
7 to administrative law and procedure).

8 Section 38. Regulations.

9 The department may promulgate rules and regulations to
10 administer and enforce this act.

11 Section 39. Applicability.

12 A person doing business in this Commonwealth as a discount
13 medical plan organization or a discount prescription drug plan
14 organization on or before the effective date of this act shall
15 have six months following the effective date of this act to come
16 into compliance with the requirements of this act.

17 Section 40. Effective date.

18 This act shall take effect immediately.