



General Assembly

February Session, 2008

Raised Bill No. 5157

LCO No. 931

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Referred to Committee on Insurance and Real Estate

Introduced by:
(INS)

AN ACT CONCERNING THE MARKETING OF MEDICAL DISCOUNT PLANS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-479qq of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) As used in this section and section 38a-479rr:

4 (1) "Affiliate" means a person that directly or indirectly through one
5 or more intermediaries, controls, or is controlled by, or is under
6 common control with, a health insurer, health care center, hospital
7 service corporation, medical service corporation or fraternal benefit
8 society licensed in this state;

9 (2) "Consumer" means: (A) A person to whom a medical discount
10 plan is marketed or advertised, or (B) a member, as defined in this
11 subsection;

12 (3) "Marketer" means a person that markets, advertises or sells a
13 medical discount plan, including, but not limited to, an entity that
14 markets, advertises or sells a medical discount plan under its own

15 name;

16 [(3)] (4) "Medical discount plan" means a business arrangement or
17 contract in which a person, in exchange for payment, provides access
18 for its members to providers of health care services and the right to
19 receive health care services from those providers at a discount.
20 "Medical discount plan" does not include a product that (A) is
21 otherwise subject to regulation or approval under this title, or (B) costs
22 less than twenty-five dollars, annually, in the aggregate;

23 [(4)] (5) "Medical discount plan organization" means a person that
24 (A) establishes a medical discount plan, (B) contracts with providers,
25 provider networks or other medical discount plan organizations to
26 provide health care services at a discount to medical discount plan
27 members, and (C) determines the fees charged to the members for the
28 medical discount plan. "Medical discount plan organization" does not
29 include a health insurer, health care center, hospital service
30 corporation, medical service corporation or fraternal benefit society
31 licensed in this state or any affiliate of such health insurer, health care
32 center, hospital service corporation, medical service corporation or
33 fraternal benefit society;

34 [(5)] (6) "Health care services" means any care, service or treatment
35 of an illness or dysfunction of, or injury to, the human body. "Health
36 care services" includes physician care, inpatient care, hospital surgical
37 services, emergency medical services, ambulance services, dental care
38 services, vision care services, mental health care services, substance
39 abuse services, chiropractic services, podiatric services, laboratory test
40 services and the provision of medical equipment or supplies. "Health
41 care services" does not include pharmaceutical supplies or
42 prescriptions;

43 [(6)] (7) "Member" means an individual who pays for the right to
44 receive the benefits of a medical discount plan; and

45 [(7)] (8) "Person" means a person, as defined in section 38a-1.

46 (b) No person may market, advertise or sell to a resident of this state
47 a medical discount plan or any plan material that: (1) Fails to provide
48 to the consumer a clear and conspicuous disclosure that the medical
49 discount plan is not insurance and that the plan only provides for
50 discounted health care services from participating providers within the
51 plan; (2) uses in its marketing materials, advertisements, brochures or
52 member discount cards the term "insurance", "health plan", "coverage",
53 "copay", "copayments", "preexisting conditions", "guaranteed issue",
54 "premium", "PPO", "preferred provider organization" or any other
55 term that could reasonably mislead a person into believing the medical
56 discount plan is insurance, except that such terms may be used as a
57 disclaimer of any relationship between the medical discount plan and
58 insurance; (3) fails to provide the name, address and telephone number
59 of the administrator of the medical discount plan; (4) fails to make
60 available to the consumer through a toll-free telephone number, upon
61 request of the consumer, a complete and accurate list of the
62 participating providers within the plan in the consumer's local area
63 and a list of the services for which the discounts are applicable; (5) fails
64 to make a printed copy of such list available to the consumer upon
65 request commencing with the time the plan is purchased or fails to
66 update the list at least once every six months; (6) fails to use plain
67 language to describe the discounts or access to discounts offered and
68 such failure results in representations of the discounts that are
69 misleading, deceptive or fraudulent; (7) fails to provide the consumer
70 notice of the right to cancel such medical discount plan; (8) offers
71 discounted health care services or products that are not authorized by
72 a contract with each provider listed in conjunction with the medical
73 discount plan; (9) fails to allow a consumer to cancel a medical
74 discount plan not later than thirty days after the date payment is
75 received by the medical discount plan; (10) with respect to a consumer
76 who cancels a medical discount plan pursuant to subdivision (9) of this
77 subsection, fails to guarantee a refund of all membership fees paid to
78 the medical discount plan by the consumer, excluding a reasonable
79 one-time processing fee, not later than thirty days after the member

80 gives timely notification of cancellation of the plan to the medical
81 discount plan organization; or (11) fails to (A) provide at least one
82 member discount card for each member as proof of membership, and
83 (B) prominently display on such member discount card a statement
84 that the medical discount plan is not insurance.

85 (c) If the initial contact between a prospective member and a
86 marketer is by telephone, the marketer shall make orally the disclosure
87 required by subdivision (1) of subsection (b) of this section, and shall
88 include such disclosure in membership materials that describe the
89 benefits of the medical discount plan that are provided to prospective
90 members after the initial contact by telephone.

91 ~~[(c)]~~ (d) Any person who knowingly operates as a medical discount
92 plan organization in violation of this section shall be fined not more
93 than ten thousand dollars. Any person who knowingly aids and abets
94 another that the person knew or reasonably should have known was
95 operating as a medical discount plan organization in violation of this
96 section shall be fined not more than ten thousand dollars.

97 ~~[(d)]~~ (e) Any person who collects fees for purported membership in
98 a medical discount plan but fails to provide the promised benefits shall
99 be subject to the penalties for larceny under sections 53a-122 to 53a-
100 125b, inclusive, depending on the amount involved.

101 ~~[(e)]~~ (f) Any person licensed in this state as a health insurer, health
102 care center, hospital service corporation, medical service corporation
103 or fraternal benefit society, or any affiliate owned or controlled by such
104 health insurer, health care center, hospital service corporation, medical
105 service corporation or fraternal benefit society, may offer medical
106 discount plans in this state pursuant to such licensure.

107 Sec. 2. Section 38a-479rr of the general statutes is repealed and the
108 following is substituted in lieu thereof (*Effective October 1, 2008*):

109 (a) Before doing business in this state as a medical discount plan

110 organization, an entity shall:

111 (1) Be a corporation, limited liability company, limited liability
112 partnership, or other legal entity organized under the laws of this state
113 or, if a foreign corporation or other foreign entity, authorized to
114 transact business in this state; and

115 (2) Obtain a license as a medical discount plan organization from
116 the Insurance Commissioner in accordance with this section. The entity
117 shall file an application for a license to operate as a medical discount
118 plan organization with the commissioner on such form as the
119 commissioner prescribes. Such application shall be sworn to by an
120 officer or authorized representative of the applicant, under penalty of
121 false statement, and be accompanied by (A) a copy of the applicant's
122 articles of incorporation, including all amendments; (B) a copy of the
123 applicant's bylaws; (C) a list of the names, addresses, official positions
124 and biographical information of the medical discount plan
125 organization and the individuals who are responsible for conducting
126 the applicant's affairs, including, but not limited to, all members of the
127 board of directors, board of trustees, executive committee, or other
128 governing board or committee, the officers, contracted management
129 company personnel, and any person or entity owning or having the
130 right to acquire ten per cent or more of the voting securities of the
131 applicant, which listing shall fully disclose the extent and nature of any
132 contracts or arrangements between the applicant and any individual
133 who is responsible for conducting the applicant's affairs, including any
134 possible conflicts of interest; (D) for each individual listed in
135 subparagraph (C) of this subdivision as being responsible for
136 conducting the applicant's affairs, a complete biographical statement
137 on forms prescribed by the commissioner; (E) a statement generally
138 describing the applicant, its personnel and the health care services to
139 be offered; (F) a copy of the form of all contracts made or to be made
140 between the applicant and any providers or provider networks
141 regarding the provision of health care services to members; (G) a copy
142 of the form of any contract made or to be made between the applicant

143 and any person listed in subparagraph (C) of this subdivision; (H) a
144 copy of the form of any contract made or to be made between the
145 applicant and any person for the performance on the applicant's behalf
146 of any function, including, but not limited to, marketing,
147 administration, enrollment and subcontracting for the provision of
148 health care services to members; (I) a copy of the applicant's most
149 recent financial statements audited by an independent certified public
150 accountant, or, in the case of an applicant that is a subsidiary of a
151 person or parent corporation that prepares audited financial
152 statements reflecting the consolidated operations of the person or
153 parent corporation, a copy of the person's or parent corporation's most
154 recent financial statements audited by an independent certified public
155 accountant, provided the person or parent corporation also issues a
156 written guarantee that the minimum capital requirements of the
157 applicant required by this section will be met; (J) a description of the
158 proposed method of marketing; (K) a description of the subscriber
159 complaint procedures to be established and maintained; [and] (L) the
160 fee for a medical discount plan organization license set forth in section
161 38a-11 of the 2008 supplement to the general statutes; and (M) a list of
162 the names, addresses and telephone numbers of the marketers the
163 applicant has authorized to market a medical discount plan in this
164 state under a name that is different from the name of the applicant. For
165 purposes of this subdivision, a "contract to be made" shall be
166 determined based on the information known to the applicant on the
167 date the information is filed with the commissioner.

168 (b) The list of authorized marketers specified in subparagraph (M)
169 of subdivision (2) of subsection (a) of this section shall be updated
170 annually and submitted to the commissioner with the renewal fee, as
171 provided in subsection (c) of this section.

172 [(b)] (c) If the commissioner finds that the applicant is in compliance
173 with the requirements of this section the commissioner shall issue the
174 applicant a license as a medical discount plan organization which shall
175 expire one year after the date of issue. The commissioner shall renew

176 the license if the commissioner finds that the licensee is in compliance
177 with the requirements of this section and the licensee has paid the
178 renewal fee set forth in section 38a-11 of the 2008 supplement to the
179 general statutes.

180 [(c)] (d) Prior to applying for a license from the commissioner, a
181 medical discount plan organization shall establish an Internet web site
182 that contains the information described in subsection [(r)] (s) of this
183 section.

184 [(d)] (e) Any license or renewal fee received pursuant to this section
185 shall be deposited in the Insurance Fund established in section 38a-52a.

186 [(e)] (f) Nothing in this section shall require a provider who
187 provides discounts to the provider's own patients to obtain or maintain
188 a license as a medical discount plan organization.

189 [(f)] (g) Each provider who offers health care services to members
190 under a medical discount plan shall provide such services pursuant to
191 a written agreement. The agreement may be entered into directly by
192 the provider or by a provider network to which the provider belongs.

193 [(g)] (h) A provider agreement shall include: (1) A list of the services
194 and products to be provided at a discount; (2) the amount of the
195 discounts or, alternatively, a fee schedule that reflects the provider's
196 discounted rates; and (3) a requirement that the provider will not
197 charge members more than the discounted rates.

198 [(h)] (i) A provider agreement between a medical discount plan
199 organization and a provider network shall require that the provider
200 network have written agreements with its providers that: (1) Contain
201 the terms set forth in subsection [(g)] (h) of this section; (2) authorize
202 the provider network to contract with the medical discount plan
203 organization on behalf of the provider; and (3) require the network to
204 maintain an up-to-date list of its contracted providers and to provide
205 that list on a quarterly basis to the medical discount plan organization.

206 No medical discount plan organization may enter into or renew a
207 contractual relationship with a provider network that is not licensed in
208 accordance with section 38a-479aa of the 2008 supplement to the
209 general statutes.

210 [(i)] (j) The medical discount plan organization shall maintain a
211 copy of each active agreement that it has entered into with a provider
212 or provider network.

213 [(j)] (k) Each medical discount plan organization shall at all times (1)
214 maintain a net worth of at least two hundred fifty thousand dollars, or
215 (2) post a surety bond in the amount of one hundred thousand dollars.

216 [(k)] (l) The commissioner may not issue or renew a license under
217 this section unless the medical discount plan organization has (1) a net
218 worth of at least two hundred fifty thousand dollars, or (2) posted a
219 surety bond in the amount of one hundred thousand dollars.

220 [(l)] (m) The commissioner may suspend the authority of a medical
221 discount plan organization to enroll new members, revoke any license
222 issued to a medical discount plan organization, refuse to renew a
223 license of a medical discount plan organization or order compliance if
224 the commissioner finds that any of the following conditions exist:

225 (1) The organization is not operating in compliance with this section
226 or section 38a-479qq, as amended by this act;

227 (2) The organization does not have the minimum net worth required
228 by this section;

229 (3) The organization has advertised, sold or attempted to sell its
230 services in such a manner as to misrepresent its services or capacity for
231 service or has engaged in deceptive, misleading or unfair practices
232 with respect to advertising or sales;

233 (4) The organization is not fulfilling its obligations as a medical
234 discount plan organization; or

235 (5) The continued operation of the medical discount plan
236 organization would be hazardous to its members.

237 [(m)] (n) If the commissioner has reasonable cause to believe that
238 grounds for the suspension, nonrenewal or revocation of a license
239 exist, the commissioner shall notify the medical discount plan
240 organization in writing specifically stating the grounds for suspension,
241 nonrenewal or revocation.

242 [(n)] (o) When the license of a medical discount plan organization is
243 surrendered, nonrenewed or revoked, the organization shall,
244 immediately following the effective date of the order, wind up and
245 settle the affairs transacted under the license. The organization [may]
246 shall not engage in any further marketing, advertising, sales, collection
247 of fees or renewal of contracts as a medical discount plan organization,
248 and its authorized marketers shall not engage in any further
249 marketing, advertising or sales on behalf of such medical discount plan
250 organization.

251 [(o)] (p) The commissioner shall, in any order suspending the
252 authority of a medical discount plan organization to enroll new
253 members, specify the period during which the suspension is to be in
254 effect and the conditions, if any, which must be met by the medical
255 discount plan organization prior to reinstatement of its license to enroll
256 new members. The commissioner may rescind or modify the order of
257 suspension prior to the expiration of the suspension period.

258 [(p)] (q) The commissioner [may] shall not reinstate a license: (1)
259 Unless reinstatement is requested by the medical discount plan
260 organization, and (2) if the commissioner finds that the circumstances
261 which led to the suspension still exist or are likely to recur.

262 [(q)] (r) Each medical discount plan organization shall provide the
263 commissioner at least thirty days' advance written notice of any
264 change in the medical discount plan organization's name, address,
265 principal business address or mailing address.

266 ~~[(r)]~~ (s) Each medical discount plan organization shall maintain an
267 up-to-date list of the names and addresses of the providers with which
268 it has contracted on an Internet web site, the address of which shall be
269 prominently displayed on all its marketing materials, advertisements,
270 brochures and member discount cards. The list shall include providers
271 with whom the medical discount plan organization has contracted
272 directly as well as providers who will provide services to the
273 organization's members as part of a provider network with which the
274 medical discount plan organization has contracted.

275 [(s)] (t) Each medical discount plan organization shall (1)
276 prominently display on any member discount card the names or
277 identifying logos or trademarks of any provider networks with whom
278 the medical discount plan organization has a contract, and (2) provide
279 the names of such provider networks to members upon request.

280 (u) No marketer shall market, advertise or sell to a resident of this
281 state a medical discount plan under a name that is different than the
282 medical discount plan organization's name unless: (1) The medical
283 discount plan organization has obtained a license from the Insurance
284 Commissioner in accordance with this section; (2) the marketer is listed
285 on such medical discount plan organization's list of authorized
286 marketers as specified in subparagraph (M) of subdivision (2) of
287 subsection (a) of this section; (3) the name, address and telephone
288 number of the medical discount plan organization appears on the plan
289 materials; and (4) the marketer does not contract directly with
290 providers or provider networks. A marketer shall not be required to
291 obtain a license from the commissioner.

292 (v) A medical discount plan organization may market directly or
293 contract with marketers for the distribution of a medical discount plan.
294 The medical discount plan organization shall execute a written
295 agreement with a marketer prior to the marketing, advertising or
296 selling of such medical discount plan by such marketer. Such written
297 agreement shall prohibit the marketer from using any advertising and

298 marketing materials, including, but not limited to, brochures and
299 medical discount plan cards, without the written approval of the
300 medical discount plan organization prior to the usage of such
301 advertising and marketing materials.

302 (w) Each medical discount plan organization that contracts with a
303 marketer shall be bound by and responsible for the activities of such
304 marketer within the scope of the marketer's agency relationship with
305 the medical discount plan organization.

306 ~~[(t)]~~ ~~(x)~~ The commissioner may adopt regulations, in accordance
307 with chapter 54, to implement the provisions of this section.

308 ~~[(u)]~~ ~~(y)~~ Any person who violates any provision of this section shall
309 be fined not more than two thousand dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	38a-479qq
Sec. 2	<i>October 1, 2008</i>	38a-479rr

Statement of Purpose:

To require the submission of information to the Insurance Commissioner regarding authorized marketers for medical discount plans and to establish standards for the marketing of such plans.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]