

- SUBJECT:** Regulation of discount health care programs by TDI
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 6 ayes — Kolkhorst, Naishtat, J. Davis, Gonzales, Hopson, S. King  
0 nays  
5 absent — Coleman, Laubenberg, McReynolds, Truitt, Zerwas
- WITNESSES:** For — Allen Erenbaum, Jeremy Hedrick, Consumer Health Alliance;  
(*Registered, but did not testify:* Michelle Romero, Texas Medical Association; Bill Stout, Green Party of Texas)  
  
Against — None  
  
On — William Kuntz, Texas Department of Licensing and Regulation;  
(*Registered, but did not testify:* Brian Francis, Texas Department of Licensing and Regulation)
- BACKGROUND:** Discount health care program members pay fees, dues, or other charges to receive discounts on health care services, such as dental and vision care. These programs are not considered insurance.  
  
In 2007, the 80th Legislature enacted HB 3064 by Delisi, which established Health and Safety Code, ch. 76 providing for the regulation of discount health care programs. The Texas Department of Licensing and Regulation (TDLR) registers and oversees discount health care programs, including the collection of fees and imposition of disciplinary actions and penalties. Discount health care programs are subject to marketing, disclosure, contract, and operational requirements. Remedies for violations of discount health care program regulations may be sought under the Deceptive Trade Practices Act.
- DIGEST:** As of April 1, 2010, CSHB 4341 would repeal Health and Safety Code, ch. 76 regulating discount health care programs under TDLR and would transfer registration, oversight, and enforcement duties related to these programs to the Texas Department of Insurance (TDI). The bill would define and prohibit unfair or deceptive acts or practices in the discount

health care program business. Certain marketing, consumer disclosure, provider contracting, and operational requirements from repealed Health and Safety Code, ch. 76 substantively would be re-established under new Insurance Code, ch. 562.

**Registration.** Registration requirements for discount health care programs would be established under new Insurance Code, ch. 562. Discount health care programs would register with TDI instead of TDLR. Certain provisions regarding the amount of registration fees, the information required in the application for registration, and the parties for whom a background check could be conducted would be the same as those that were in place when discount health care programs were registered with TDLR.

**Unfair or deceptive acts or practices.** Insurance Code, ch. 562 would define and prohibit unfair methods of competition or unfair or deceptive acts or practices in the business of discount health care programs, to include:

- false, deceptive, or misleading advertisements, solicitations, or marketing materials;
- failure to meet registration requirements;
- intentionally filing false statements in connection with registration applications; and
- misrepresenting a program by making false statements, making statements or omitting facts with the intention to mislead, or failing to disclose a matter required by law.

Use of certain terms, such as “no obligation” and “free,” no longer would be prohibited in advertising, solicitation, and marketing by health care discount programs.

**Investigation of alleged violations or prohibited acts.** TDI would investigate alleged unfair or deceptive practices, misrepresentations of a discount health care program, and violations of practice regulations for discount health care programs. CSHB 4341 would establish the hearing procedures for a person charged for a violation or for engaging in a prohibited act, including notification of the person accused of the violation and the accused’s rights at the hearing. The bill would establish standards to grant immunity from prosecution to people compelled to testify or

provide certain evidence at a hearing. TDI would record the proceedings and evidence at the request of the accused.

**Cease and desist orders.** TDI could serve a cease and desist order on a person found to have committed a violation or engaged in a prohibited act. An administrative penalty of not more than \$1,000 per violation or \$5,000 for all violations could be assessed for violations of a cease and desist order. The state could recover a civil penalty of not more than \$500 if a court found that a person willfully violated a cease and desist order.

**Injunctive relief.** The attorney general could bring an action for injunctive relief if the attorney general believed a person in the discount health care program business had engaged in or was about to engage in an unlawful act that violated discount program regulations or the Deceptive Trade Practices Act. A court could issue a temporary or permanent injunction without bond to restrain a person from engaging in the unlawful act and could order compensation to be rendered to a person owed damages, money, or property due to the enjoined act. A person would be required to pay the state a civil penalty of \$10,000 for each violation of an injunction. As of April 1, 2010, in addition to a request for injunction, the attorney general could request a civil penalty of up to \$10,000 for each violation.

**Assurance of voluntary compliance.** TDI could accept an assurance of voluntary compliance from a person who engaged in or was about to engage in an act that violated discount program regulations or the Deceptive Trade Practices Act. TDI could require the person to restore with interest money that could have been acquired from people through deceptive practices. The assurance would not be an admission of a violation.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 4341 would provide for more appropriate regulation of discount health care programs by moving regulation of these programs from TDLR to TDI. Of the 26 other states that regulate discount health care programs, 21 of these states regulate them through the state insurance department.

Since 2007, TDLR has registered 34 discount health programs which serve a total of more than 3 million consumers. While these programs are not insurance plans, TDI is more accustomed than TDLR to licensing

programs that provide benefits to large numbers of consumers. TDLR typically licenses occupations, such as electricians and barbers.

TDI is a self-leveling agency required to raise fees to meet any shortfalls. TDI operations would not be affected adversely if the cost of regulating discount health care programs exceeded the registration fees collected from these programs. The registration fees that TDLR has collected from registered discount health care programs have not been sufficient to cover the costs of regulation. Shortfalls in fee collections at TDLR must be addressed by increased appropriations or by the agency absorbing the cost.

CSHB 4341 would place regulatory authority for discount health care programs under the agency that most consumers would think to call first if they had a complaint about a program. Many consumer complaints arise when a discount health care program member was misled to believe that membership in a program constituted insurance coverage.

By increasing the maximum civil penalty to \$10,000, TDI would have the flexibility to pursue harsher punishments for more egregious violations. In recent years, people engaging in deceptive practices have advertised themselves as a discount health care program when they falsified or did not have a discount provider network. These offenders have stolen money from large numbers of people who received no benefit for their payment. Such individuals should be severely punished and a \$10,000 civil penalty per violation would serve as a deterrent to other criminals. TDI would not have to pursue any civil penalty for people who committed minor violations. Civil penalties of less than \$10,000 could be pursued if appropriate.

**OPPONENTS  
SAY:**

CSHB 4341 should not raise from \$2,500 to \$10,000 the civil penalty that could be assessed for each violation of the regulations governing discount health care programs. Given the heightened level of scrutiny that discount health care programs have received in recent years due to some bad actors, it is not unreasonable to think that TDI would seek the most severe penalties for alleged violations to deter other potential violators. A maximum penalty of \$10,000 per violation would be too extreme given the many ways that the unfair or deceptive acts regulations proposed by this bill could be construed to deem the well-intended actions of people unlawful.

For example, discount health care plan regulations prevent the use of the terms “health plan,” “coverage,” “premium,” or another similar term “that could reasonably mislead an individual into believing that the discount health care program was health insurance.” A “similar term” could be construed to mean language that discussed payment for health services. Discount health care programs help people obtain discounted health care services, and people are charged a fee for membership. People who legitimately market discount health care programs scarcely can discuss the benefits of a program without stating terms that could be construed as similar to these prohibited terms. In labeling failure to renew registration as an unfair or deceptive act, the bill also could subject to extreme civil penalties a well-meaning person who simply was a few days late in renewing registration.

**NOTES:**

The companion bill, SB 2339 by Shapiro, was reported favorably, as substituted, by the Senate Health and Human Services Committee on April 24 and recommended for the Local and Uncontested Calendar.

The fiscal note indicates a positive impact to general revenue funds of \$12,909 in fiscal 2010 due to collection of a higher first-time registration fee for the discount health care programs in fiscal 2010 than the registration fee for later years. Because TDI is a self-leveling agency, the net impact to general revenue funds in fiscal 2011 and beyond would be neutral.