

House Bill 2221

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Consumer and Business Services)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes licensing requirement for persons marketing, offering for sale or selling, promoting, distributing or administering discount medical plans. Prohibits operation of discount medical plan organization without license and without contract or agreement with service provider or service provider network. Specifies information and services discount medical plan organization must provide with discount medical plan. Prohibits use of misleading, deceptive or false statements in connection with marketing, advertising, sales, promotional and plan documents for discount medical plans and in communications with consumers.

Provides Director of Department of Consumer and Business Services with power to investigate violations and suspend or revoke licenses. Permits any person to seek injunction and statutory damages and three times actual damages against unlicensed person operating as discount medical plan organization.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to discount medical plans; creating new provisions; repealing ORS 689.565; and declaring
3 an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 12 of this 2007 Act are added to and made a part of the In-**
6 **surance Code.**

7 **SECTION 2. As used in sections 2 to 12 of this 2007 Act:**

8 (1)(a) **“Discount medical plan” means a contract, agreement or other business arrange-**
9 **ment between a discount medical plan organization and a plan member in which the organ-**
10 **ization, in exchange for fees, service or subscription charges, dues or other consideration,**
11 **offers or purports to offer the member access to service provider personnel or service pro-**
12 **vider facilities and the right to receive medical and ancillary services at a discount from**
13 **service providers.**

14 (b) **“Discount medical plan” does not include insurance, as that term is defined in ORS**
15 **731.102.**

16 (2) **“Discount medical plan organization” means a person that markets, offers for sale**
17 **or sells, promotes, distributes or administers a discount medical plan in this state.**

18 (3) **“Licensee” means a discount medical plan organization that has obtained a license**
19 **from the Director of the Department of Consumer and Business Services in accordance with**
20 **section 5 of this 2007 Act.**

21 (4) **“Medical and ancillary services” means any care, service, treatment or product pro-**
22 **vided for any dysfunction, injury or illness of the human body including, but not limited to,**
23 **physician care, inpatient care, hospital and surgical services, emergency and ambulance**
24 **services, dental care services, vision care services, mental health services, substance abuse**
25 **counseling or treatment, chiropractic services, podiatric care services, laboratory services,**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 home health care services, medical equipment and supplies or prescription drugs.

2 (5) "Plan member" means a person that pays fees, service or subscription charges, dues
3 or other consideration in exchange for the right to participate in a discount medical plan.

4 (6)(a) "Service provider" means a person that has contracted or otherwise agreed with
5 a discount medical plan organization to provide medical and ancillary services to plan mem-
6 bers at a discount from the person's ordinary or customary fees or charges or that has
7 contracted or agreed to provide medical and ancillary services to plan members at fixed or
8 scheduled prices.

9 (b) "Service provider" does not include:

10 (A) A person that, apart from any agreement or contract with a discount medical plan
11 organization, provides medical and ancillary services at a discount or at fixed or scheduled
12 prices to patients or customers the person serves regularly; or

13 (B) A person that does not charge fees, service or subscription charges, dues or other
14 consideration in exchange for providing medical and ancillary services at a discount or at
15 fixed or scheduled prices.

16 (7) "Service provider network" means:

17 (a) A list, directory, compilation or other aggregation of names, contact information,
18 discount rates or fee schedules or related information about service providers with which a
19 discount medical plan organization has or purports to have contracts or agreements to pro-
20 vide medical and ancillary services; or

21 (b) A formal or informal association of service providers in which the association mem-
22 bers have individually or jointly contracted or agreed with a discount medical plan organ-
23 ization to provide medical and ancillary services to plan members.

24 SECTION 3. A person may not market, offer to sell or sell, promote, distribute or ad-
25 minister a discount medical plan unless the person first obtains a license to operate as a
26 discount medical plan organization from the Director of the Department of Consumer and
27 Business Services in accordance with section 5 of this 2007 Act.

28 SECTION 4. (1) A discount medical plan organization shall have a written contract or
29 other written agreement with all service providers or service provider networks that the
30 organization includes or purports to include in a discount medical plan, or with an entity that
31 contracts with or enters into an agreement with a service provider network on the organ-
32 ization's behalf.

33 (2) The contract or other agreement between a discount medical plan organization and
34 a service provider must include:

35 (a) A list of the medical and ancillary services subject to the discount medical plan;

36 (b) The service provider's discount rate or rates or a schedule that reflects the service
37 provider's fixed or discounted prices for the medical and ancillary services subject to the
38 discount medical plan; and

39 (c) A provision in which the service provider agrees not to charge plan members more
40 for medical and ancillary services than the amount listed in the service provider's price
41 schedule or an amount that reflects the application of the service provider's discount rate.

42 (3) The contract or other agreement between a discount medical plan organization and
43 a service provider network, or between a discount medical plan organization and an entity
44 that contracts with or enters into an agreement with a service provider network on the or-
45 ganization's behalf, in addition to meeting the requirements of subsection (2) of this section,

1 shall:

2 (a) Authorize the service provider network to contract with or enter into an agreement
3 with the service provider or authorize the entity to contract with or enter into an agreement
4 with the service provider network, as appropriate, on behalf of the discount medical plan
5 organization; and

6 (b) Require the service provider network to maintain an up-to-date list of the service
7 providers that are part of the service provider network and to provide the updated list each
8 month to the discount medical plan organization.

9 (4) A discount medical plan organization shall retain copies of the contracts or agree-
10 ments and other documents described in this section at all times during which the organ-
11 ization operates in this state.

12 **SECTION 5.** (1) Subsection (2) of this section does not apply to a person whose exclusive
13 business activity is to transact insurance, as that term is defined in ORS 731.146.

14 (2) Each applicant for a license to operate as a discount medical plan organization shall
15 apply to the Director of the Department of Consumer and Business Services in a form and
16 manner that the director prescribes by rule. An application for a license under this section
17 must contain all of the following:

18 (a) The applicant's name, fictitious name, assumed business name and any other identity
19 the applicant uses in conducting business.

20 (b) The applicant's business address, mailing address, electronic mail address and the
21 Internet address of any website the applicant maintains for public access.

22 (c) The applicant's federal employer identification number or Internal Revenue Service
23 taxpayer identification number.

24 (d) The applicant's principal place of business inside or outside this state.

25 (e) The name of and contact information for a person that the applicant has designated
26 to provide information to consumers or answer consumer questions.

27 (f) The name and address of the applicant's agent for the service of process, notice or
28 demand, or a power of attorney that the applicant has executed and by which the applicant
29 appoints the director as the applicant's agent for the service of process, notice or demand.

30 (g) The name of and contact information for a person that will administer the applicant's
31 discount medical plan.

32 (h) A list of individual service providers or service providers included in the service pro-
33 vider network and a list of the medical and ancillary services the applicant offers or intends
34 to offer to plan members as part of a discount medical plan.

35 (i) The name, trade name, service mark or other means by which a consumer can identify
36 the discount medical plan the applicant offers or intends to offer and any different name,
37 trade name, service mark or other means the applicant uses to identify the same discount
38 medical plan to persons other than consumers.

39 (j) A statement that, for the applicant, the applicant's employees and any individual who
40 has an ownership interest in or supervisory responsibility for the applicant or the applicant's
41 activities, discloses:

42 (A) Any criminal conviction in the five-year period before the date of application;

43 (B) Any pending investigation into the applicant's business activities brought by a li-
44 censing, regulatory or law enforcement authority in any jurisdiction; and

45 (C) Any material litigation concerning the applicant or the applicant's business activities

1 in any jurisdiction in the five-year period before the date of application.

2 (k) A statement in which the applicant agrees to submit to the personal jurisdiction of
3 the courts of this state.

4 (L) A statement that discloses any instance in which another jurisdiction has denied the
5 applicant a license or other authority to operate as a discount medical plan organization or
6 has suspended or revoked any such license or other authority after issuance.

7 (m) Any other information the director may require to carry out the provisions of
8 sections 2 to 12 of this 2007 Act or any rule adopted thereunder.

9 (3) Upon receipt of a completed application for a license to operate as a discount medical
10 plan organization, the director may investigate the applicant as necessary to verify the in-
11 formation contained in the application. Except as provided in subsection (4) of this section,
12 if the director is satisfied that the information contained in the application is accurate and
13 complete, the director shall issue a license to the applicant and may make and keep any re-
14 cords concerning the licensee that are necessary to carry out the provisions of sections 2 to
15 12 of this 2007 Act and any rule adopted thereunder.

16 (4) The director may deny a license to any applicant if the director finds in writing that:

17 (a) The applicant has provided false, misleading, incomplete or inaccurate information in
18 the application;

19 (b) The applicant is not qualified to operate as a discount medical plan organization be-
20 cause the applicant is not financially responsible, does not have adequate experience or ex-
21 pertise, or has engaged in dishonest, fraudulent or illegal practices or conduct in any
22 business or profession; or

23 (c) The applicant has been convicted of a crime in any jurisdiction, an essential element
24 of which is fraud.

25 (5) If the director denies a license under this section, the applicant may request a hearing
26 under ORS 183.435. Upon receiving the applicant's request, the director shall grant the ap-
27 plicant a hearing under ORS 183.413 to 183.470.

28 **SECTION 6. A licensee shall:**

29 (1) Notify the Director of the Department of Consumer and Business Services imme-
30 diately whenever the licensee's license or other form of authority to operate as a discount
31 medical plan organization in another jurisdiction is suspended, revoked or not renewed in
32 that jurisdiction.

33 (2) Describe in a notice to the director any change in the information the licensee pro-
34 vided in an application under section 5 of this 2007 Act within 30 days after making the
35 change.

36 **SECTION 7. A license obtained under section 5 of this 2007 Act is effective for the length**
37 **of time the Director of the Department of Consumer and Business Services prescribes by**
38 **rule. The director shall prescribe by rule conditions and procedures under which a licensee**
39 **may renew a license that has expired.**

40 **SECTION 8. A discount medical plan organization shall establish or provide, in con-**
41 **nection with every discount medical plan:**

42 (1) A 30-day period in which new plan members may review the discount medical plan and
43 decide whether to continue or to cancel the plan for any reason. The discount medical plan
44 organization shall provide to a member who cancels a discount medical plan within the 30-day
45 period a full and unconditional refund for any fees, service or subscription charges, dues or

1 other consideration the member paid. The 30-day period begins on the day following the date
 2 on which the member completed any application for the plan or the day following the date
 3 on which the member paid any fees, service or subscription charges, dues or other consid-
 4 eration, whichever is later.

5 (2) A standard set of procedures by which a new plan member may obtain a refund under
 6 subsection (1) of this section.

7 (3) A toll-free telephone line and an Internet website, each of which enables plan mem-
 8 bers to contact the discount medical plan organization with questions and requests for as-
 9 sistance. The website must list all service providers in the organization's service provider
 10 network, and the organization must provide the same information to plan members in writ-
 11 ing upon request.

12 (4) Notices in bold and prominent type prominently displayed on all marketing, advertis-
 13 ing and promotional materials and all sales and discount medical plan documents that indi-
 14 cate, in particular terms the Director of the Department of Consumer and Business Services
 15 shall prescribe by rule, that:

16 (a) The discount medical plan is not insurance;

17 (b) The State of Oregon does not review or approve discount medical plans; and

18 (c) Plan members must pay for all medical and ancillary services, but will receive a dis-
 19 count from service providers.

20 (5) Other notices or information the director by rule may require the discount medical
 21 plan organization to display or provide in the organization's marketing, advertising or pro-
 22 motional materials or in sales or discount medical plan documents.

23 **SECTION 9.** (1) A discount medical plan organization may not use or disseminate mis-
 24 leading, deceptive or false statements in marketing, advertising, promotional, sales or plan
 25 documents and other informational materials for discount medical plans or in communi-
 26 cations with plan members or prospective plan members.

27 (2) For the purposes of subsection (1) of this section, "misleading, deceptive or false
 28 statements" includes, but is not limited to, statements that:

29 (a) Are misleading in fact or implication, including statements that, while containing
 30 truthful elements, conceal or omit information necessary or relevant for a consumer to
 31 make informed decisions concerning discount medical plans; or

32 (b) Have a capacity or tendency to mislead or deceive based on the overall impression a
 33 reasonable consumer may form after seeing or hearing the statements.

34 **SECTION 10.** The Director of the Department of Consumer and Business Services may
 35 investigate a person operating or purporting to operate as a discount medical plan organ-
 36 ization and may require the person at any time to produce marketing, promotional and ad-
 37 vertising materials, records, books, files or other information the person uses in conducting
 38 business as a discount medical plan organization. During an investigation, the person shall
 39 respond to the director's inquiries promptly and truthfully and in the manner or form the
 40 director requires. The person subject to an investigation under this section shall pay the
 41 expenses incurred in conducting the investigation.

42 **SECTION 11.** (1) The Director of the Department of Consumer and Business Services by
 43 order may suspend, revoke or refuse to renew a license issued under section 5 of this 2007
 44 Act if the director finds in writing that:

45 (a) Any fact or condition exists that, if the fact or condition had existed at the time the

1 licensee applied for a license to operate as a discount medical plan organization, would have
2 been grounds for the director to deny a license to the licensee;

3 (b) The licensee has not complied or is not complying with the licensee's obligations un-
4 der section 4, 5, 6, 8 or 10 of this 2007 Act or any rule adopted thereunder or the licensee
5 has violated or is violating a prohibition under section 9 of this 2007 Act;

6 (c) Permitting the licensee to continue to operate as a discount medical plan organization
7 would cause harm to plan members or to the public interest; or

8 (d) The licensee's license or other authority to operate as a discount medical plan or-
9 ganization in another state has been suspended or revoked or has not been renewed.

10 (2) A licensee subject to an order of the director suspending or revoking a license shall
11 have an opportunity for a hearing under ORS 183.413 to 183.470.

12 (3) After the director issues a final order to suspend or revoke a license, the person
13 subject to the order may not conduct further business as a discount medical plan organiza-
14 tion in this state. Immediately after the director issues a final order suspending or revoking
15 a license, the person subject to the order shall:

16 (a) Cease operations as a discount medical plan organization in this state;

17 (b) Cancel all pending transactions with plan members and refund any fees, service or
18 subscription charges, dues or other consideration collected in exchange for services the
19 person would have provided to plan members in connection with a discount medical plan af-
20 ter the effective date of the final order suspending or revoking the person's license; and

21 (c) Wind up all business conducted in connection with the person's operations as a dis-
22 count medical plan organization in this state, if necessary.

23 SECTION 12. (1) A person, a municipal or other public corporation or, at the request of
24 the Director of the Department of Consumer and Business Services, the Attorney General
25 may bring an action in a circuit court of this state against a person that operates or pur-
26 ports to operate as a discount medical plan organization but that has not obtained a license
27 under section 5 of this 2007 Act, to:

28 (a) Enjoin the person from operating or purporting to operate as a discount medical plan
29 organization or from violating section 8 or 9 of this 2007 Act or any rule adopted thereunder;
30 or

31 (b) Recover actual damages or statutory damages under this section that arise from the
32 person's violation of section 8 or 9 of this 2007 Act or any rule adopted thereunder.

33 (2) A plaintiff may bring an action under this section in the county where:

34 (a) The plaintiff resides or conducts business; or

35 (b) The defendant marketed, offered for sale or sold, promoted, distributed or advertised
36 a discount medical plan.

37 (3) If the court finds that the defendant has violated section 3, 8 or 9 of this 2007 Act or
38 any rule adopted thereunder, the court shall enjoin the defendant from continuing the vio-
39 lation.

40 (4) Unless a plaintiff seeks actual or statutory damages under this section, the plaintiff
41 need not allege or prove actual damages to bring an action for an injunction under this sec-
42 tion.

43 (5) In addition to injunctive relief, the plaintiff who prevails in an action brought under
44 this section is entitled to recover from the defendant:

45 (a) \$100 for each discount medical plan membership sold or otherwise distributed within

1 **this state or \$10,000, whichever is greater;**

2 **(b) Three times the amount of actual damages, if any, that the plaintiff sustained;**

3 **(c) Reasonable attorney fees;**

4 **(d) Costs; and**

5 **(e) Any other relief the court deems proper.**

6 **(6) A plaintiff must commence an action under this section within two years after the**
7 **date on which the violation described in subsection (1) of this section occurred or within two**
8 **years after the plaintiff bringing the action discovered or in the exercise of reasonable dili-**
9 **gence should have discovered the violation. The plaintiff may have an additional 180 days**
10 **after the two-year period provided in this subsection within which to commence an action if**
11 **the plaintiff can prove by a preponderance of the evidence that the plaintiff failed to timely**
12 **commence the action because of conduct by the defendant calculated solely to induce the**
13 **plaintiff to refrain from or postpone commencement of the action.**

14 **(7) The remedies provided in this section are cumulative and are in addition to any other**
15 **applicable criminal, civil or administrative penalties.**

16 **SECTION 13. ORS 689.565 is repealed.**

17 **SECTION 14. Sections 2 to 12 of this 2007 Act apply to any person conducting business**
18 **as a discount medical plan organization, as defined in section 2 of this 2007 Act, on or after**
19 **the operative date of this 2007 Act.**

20 **SECTION 15. Sections 1 to 12 of this 2007 Act and the repeal of ORS 689.565 by section**
21 **13 of this 2007 Act become operative on January 1, 2008.**

22 **SECTION 16. The Director of the Department of Consumer and Business Services may**
23 **take any action before the operative date of sections 1 to 12 of this 2007 Act and the repeal**
24 **of ORS 689.565 by section 13 of this 2007 Act that is necessary to enable the director to ex-**
25 **ercise, on and after the operative date of sections 1 to 12 of this 2007 Act and the repeal of**
26 **ORS 689.565 by section 13 of this 2007 Act, all the duties, functions and powers conferred on**
27 **the director by sections 1 to 12 of this 2007 Act.**

28 **SECTION 17. This 2007 Act being necessary for the immediate preservation of the public**
29 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
30 **on its passage.**

31