

940 CMR 26.00: DISCOUNT HEALTH PLANS AND DISCOUNT HEALTH PLAN ORGANIZATIONS

Section

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26.01: Purpose

940 CMR 26.00 is designed to protect Massachusetts consumers from sham discount health plans. 940 CMR 26.00 responds to acts and practices that unfairly harm consumers in the area of discount health products by requiring specific disclosures, prohibiting certain misrepresentations and requiring provider agreements.

26.02: Scope

940 CMR 26.00 defines unfair or deceptive acts or practices. 940 CMR 26.00 is not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A, § 2(a). Acts or practices not specifically prohibited by 940 CMR 26.00 are not necessarily consistent with M.G.L. c. 93A or otherwise deemed legitimate by the absence of regulation here. 940 CMR 26.00 is designed to supplement existing regulations.

940 CMR 26.00 shall cover discount health plans or discount organizations' advertising or doing business within Massachusetts, regardless of whether or not the plan or organization maintains an office in Massachusetts.

26.03: Definitions

Advertisement shall have the same meaning as set forth in 940 CMR 6.00.

Ancillary Services shall include, but are not limited to, audiology, dental, vision, mental health, substance abuse, physical therapy, chiropractic and podiatry services.

Clear and Conspicuous shall have the same meaning as set forth in 940 CMR 6.00.

Discount Health Plan shall mean a business arrangement or contract in which a person, in exchange for fees, dues, charges or other consideration, offers access for its members to providers of medical, ancillary or pharmacy services and the right to receive discounts on medical, ancillary or pharmacy services provided under the discount health plan from those providers. Discount Health Plan does not include:

- (a) any program offered by or through a governmental or government-sponsored program, including Medicaid, Medicare or state-administered prescription pharmacy programs;
- (b) any insured health plan product offered by a health carrier including a product that includes a discount program offered to enrollees when the discount program is incidental to the insurance product; or
- (c) a patient access program.

Discount Health Plan Organization shall mean an entity that, in exchange for fees, dues, charges or other consideration, contracts with providers, provider networks or other discount health plan organizations to provide access for discount health plan members to providers to receive specified medical, ancillary or pharmacy services from those providers at a discount.

Health Carrier shall mean an insurer licensed or otherwise authorized to transact accident or health insurance under M.G.L. c. 175; a nonprofit hospital service corporation organized under M.G.L. c. 176A; a nonprofit medical service corporation organized under M.G.L. c. 176B; a dental service corporation organized under M.G.L. c. 176E; an optometric service corporation organized under M.G.L. c. 176F; or a health maintenance organization organized under M.G.L. c. 176G.

26.03: continued

Marketing Material shall mean any material used to promote, sell or distribute a discount health plan, including by a private label entity that places its name on and markets or distributes a discount health plan pursuant to a marketing agreement with a discount health plan organization.

Medical Services shall mean any maintenance care of, or preventive care for, the human body or care, service or treatment of an illness or dysfunction of, or injury to, the human body, including, not limited to, physician care, inpatient care, all surgical services, skilled nursing care, rehabilitative services, emergency services, ambulance services, laboratory services, diagnostic and imaging services and medical equipment and supplies. Medical Services does not include pharmacy services or ancillary services.

Member shall mean any individual who pays fees, dues, charges or other consideration for the right to receive the benefits of a discount health plan. Member does not include any individual who enrolls in a patient access program.

Patient Access Program shall mean a voluntary program sponsored by a pharmaceutical manufacturer, or a consortium of pharmaceutical manufacturers, that provides free or discounted health care products directly to low-income or uninsured individuals either through a discount card or direct shipment program.

Person shall have the same meaning as set forth in 940 CMR 3.00.

Pharmacy Services shall include pharmaceutical supplies and prescription drugs.

Prospective Member shall mean any individual who has been solicited, orally or through advertisements, marketing material or brochures, to pay fees, dues, charges or other consideration for the right to receive the benefits of a discount medical plan or discount prescription drug plan.

Provider shall mean any physician, pharmacist or other health care practitioner who is licensed, accredited or certified to perform specified medical, pharmaceutical or ancillary services within the scope of his or her license, accreditation, certification or other appropriate authority pursuant to the General Laws or any facility that has contracted, directly or indirectly, with a discount medical plan organization to provide medical, ancillary or pharmacy services to members.

Provider Network shall mean an entity that negotiates directly or indirectly with a discount health plan organization on behalf of more than one provider to provide members with access to medical, ancillary or pharmacy services.

26.04: Required Disclosures of Material Information

(1) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Discount Health Plan or Discount Health Plan Organization to fail to disclose at the time of initial contact to a prospective member and in all advertisements, brochures or marketing material, the following material information:

- (a) that the plan is not insurance coverage and does not meet the minimum creditable coverage requirements under M.G.L. c. 111M and 956 CMR 5.00;
- (b) for a plan offering a range of discounts, that the range of discounts for specified medical, pharmacy or ancillary services provided under the plan will vary depending upon the type of provider and the type of services received;
- (c) that the discount health plan does not make any payments to providers for services received;
- (d) that the plan member is obligated to pay for all services provided by providers that participate in the discount plan but will receive a discount on services provided by providers who have contracted with the discount health plan organization;
- (e) the name and contact information of the discount health plan, including mailing address, telephone number and email address, if any; and
- (f) a toll-free telephone number and website address for the discount health plan organization for prospective members and members to obtain additional information about and assistance on the plan and up-to-date lists of providers participating in the discount health plan.

26.04: continued

For purposes of 940 CMR 26.04(1), disclosure means in writing in a clear and conspicuous manner on the first content page of any advertisements, marketing materials or brochures made available to the public relating to a discount health plan and on any enrollment forms given to an individual. If the initial contact with a prospective member is in person or by telephone, disclosure must be made during such initial contact by means of a clear oral explanation prior to any solicitation or request for payment and followed, prior to enrollment, by written disclosure as required by 940 CMR 26.04.

(2) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Discount Health Plan or Discount Health Plan Organization to fail to provide to:

- (a) each prospective member, at the time of enrollment, information that describes the terms and conditions of the discount health plan, including any limitations or restrictions on the refund of any processing fees or periodic charges associated with the discount health plan; and
- (b) each new member a written document that contains the specific terms and conditions of the discount health plan.

For purposes of 940 CMR 26.04, specific terms and conditions of the discount health plan include but are not limited to:

- 1. the discounts or range of discounts provided, expressed as a percentage or as a dollar amount;
 - 2. a current list of Providers or Provider Networks that provide discounts to members, directly or by reference to a website containing such a list;
 - 3. any fees or periodic charges associated with the discount health plan, including any limitations or restrictions on the refund of any fees or periodic charges and the mode of payment of any fees or periodic charges and procedures for changing the mode of payment; any limitations, exclusions, exceptions or waiting periods regarding the receipt of discounts under the discount health plan;
 - 4. the procedures for obtaining discounts under the discount health plan; cancellation procedures and refund requirements renewal, termination and cancellation terms and conditions;
 - 5. the procedures for filing complaints with the discount health plan organization; and
 - 6. the name and mailing address and phone number of the discount health plan organization.
- (c) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a discount health plan organization to fail to maintain on its website an up-to-date list of the names and addresses of the providers with which it has contracted directly or through a provider network, which website address shall be prominently displayed on all advertisements, marketing materials, brochures and discount health plan cards.

26.05: Misrepresentations Prohibited

It is an unfair and deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Discount Health Plan or Discount Health Plan Organization to:

- (1) use or cause to be used in advertisements, marketing material, brochures and discount health plan cards the term insurance except as specifically provided in 940 CMR 26.04(1)(a) or as a disclaimer of any relationship between the discount health plan and insurance;
- (2) use or cause to be used in advertisements, marketing material, brochures and discount health plan cards, the following terms: "health plan" without the term "discount" used before the words "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," "preferred provider organization," "open enrollment" or other terms in a manner that has the capacity to mislead a person into believing that the plan is a type of health insurance;
- (3) except as specifically provided in the general laws, use or cause to be used in advertisements, marketing material, brochures and discount health plan cards language indicating that the discount health plan is an insurance product "licensed" by the Division of Insurance or the term "license" or "licensed" in a manner that could reasonably mislead an individual into believing that the discount health plan is insurance;

26.05: continued

(4) make or cause to be made any representation that has the capacity to mislead a person into believing that the discount health plan has been authorized, approved or endorsed by the Commonwealth, including the Division of Insurance or the Commonwealth Connector Authority;

(5) make or cause to be made misleading, deceptive or fraudulent representations concerning the discount or range of discounts offered by the discount health plan or the access to any range of discounts offered by the discount health plan; and

(6) make or cause to be made misleading, deceptive or fraudulent representations concerning providers who agree to offer discounts on their services with the discount health plan.

26.06: Required Provider Agreements

(1) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a discount health plan organization to solicit, arrange, or accept payment in connection with offering, arranging or providing a health discount plan unless the discount plan organization has a written provider agreement with all providers offering medical, pharmacy or ancillary services to its members. The written provider agreement may be entered into directly with the provider or with a provider network to which the provider belongs.

(2) For purposes of 940 CMR 26.06, a provider agreement between a discount health plan or a discount health plan organization and a provider network or a provider shall include the following:

- (a) a list of all medical, ancillary or pharmacy services to be provided at a discount;
- (b) either the amount(s) of the discounts, expressed as a percentage or dollar amount or, alternatively, a fee schedule that reflects the provider's discounted rates; and
- (c) a provision that prohibits the provider from charging members more than the discounted rates.

REGULATORY AUTHORITY

940 CMR 26.00: M.G.L. c. 93A, § 2©).