



Report of the Maryland Insurance Commissioner Regarding Discount Card Plans

November 18, 2004

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I. BACKGROUND

Discount card plans offer health care services and/or pharmaceuticals to consumers at a discounted rate. These plans are not health insurance; the plan does not pay for services on the member's behalf. Instead, the plan provides individuals with a reduction in the cost of pharmaceuticals and supplies, physician visits, or a myriad of healthcare services. There are several types of discount cards available, from numerous sources.

Many insurance carriers offer discount cards at little or no cost, as an added value to their members. Associations such as AARP and AAA also provide discount cards to their members. Consumers who do not have insurance coverage and are not members of any association may purchase a membership in a discount medical and/or discount drug plan from one of the many stand-alone companies that sell discount cards.

Medicare has contracted with private companies to offer Medicare-approved discount drug cards. Consumers enrolled in Medicare Part A and/or Part B are eligible for an approved card, except those consumers who have outpatient prescription drug coverage through Medicaid when they apply. Enrollment in a Medicare-approved discount plan is voluntary. Eligible consumers who wish to enroll in an approved discount plan must contact the company that offers the card and pay an annual enrollment fee of up to thirty dollars (\$30). The approved discount drug cards offer savings between 11% and 18% on many brand name drugs and higher savings on generic drugs.

Discount plans can play a useful role in the health care delivery system by providing the consumer with savings on necessary health care services or pharmaceuticals. Governor Ehrlich and I are concerned, however, with the potential for confusion and fraud that exists with respect to discount plans. For example, some discount plan advertisements market what are described as "health plans," and the use of that term and similar insurance terms may lead consumers to believe they have purchased an insurance policy, when they have actually purchased a card that entitles them to discounts only. Other plans may require non-refundable or undisclosed fees without providing any value to the consumer for those fees.

The Maryland Insurance Administration (MIA or the "Administration") and the Office of the Attorney General's Consumer Protection Division (OAG) have received complaints and inquiries from consumers who believe they are purchasing an insurance plan. That false belief may cause consumers to expect benefits that are not provided and/or may cause consumers to forego purchasing health insurance. It is because of those, and other concerns explained below, that I decided to investigate what impact, if any, discount plans have on the healthcare system in Maryland.

II. PUBLIC HEARING

As part of my investigation, I held a Public Hearing to gather information about the marketing and operation of medical and drug discount plans in Maryland. The Hearing took place at the Community College of Baltimore County Essex campus on May 27, 2004 at 1:00 p.m. More than a dozen speakers and the public were invited to present testimony at the Hearing, which was recorded and transcribed.

A. Testimony and Exhibits Presented

Fifteen (15) individuals testified. Thirteen (13) exhibits were presented at the Hearing. A list of exhibits provided by those who testified is attached to this Report as Exhibit A. Both the hearing transcript and the exhibits are available to the public through the Maryland Public Information Act.

B. Summary of Testimony

P. Todd Cioni, Associate Commissioner of Compliance and Enforcement Unit Maryland Insurance Administration

Associate Commissioner Cioni presented examples of solicitations the MIA has received, and referenced those terms contained in solicitations that suggest that the product being sold is insurance when it is not. Those terms include "health plan" "open enrollment" "preexisting conditions" "deductibles" "health care" and "urgent care." Use of insurance related terms creates confusion and misleads consumers to believe they are purchasing an insurance product when they are not. Consumers may forgo purchasing an insurance policy because they believe they already have one, leaving the consumer with fewer, less affordable benefits. The majority of complaints handled by the MIA's Compliance and Enforcement Unit to date have come from consumers who believed they had purchased health insurance.

The first solicitation Mr. Cioni reviewed was one of many advertisements that had been sent via a "blast fax" to the Maryland Insurance Administration. Most of the discount plan advertisements that are sent in this manner do not contain information that would allow a consumer to stop delivery of the faxes or enable state agencies to contact the plan. On several occasions, staff from the MIA's Compliance and Enforcement Unit have called the phone number listed on the fax. Customer service representatives who answered the calls refused to provide any information, including their name and the discount plan's location. If the plan was a regulated insurer, that insurer would be required to provide all corporate contact information to the Administration. The MIA's efforts to investigate plan activity are often frustrated by some discount plans' secrecy and lack of accountability.

Mr. Cioni also presented a plan member's contract that was obtained by the MIA through investigation of a consumer complaint. The contract illustrated how some plans' charges exceed the plans' benefits. The plan offered "\$10 doctor visits and a prescription drug card." At first glance, the plan seemed to benefit the consumer by offering

extremely low out-of-pocket charges for physician visits. In reality, however, the \$10 is paid by the consumer at the time of the visit and offsets the plan's cost, not the consumer's cost. The consumer pays an \$80 monthly fee and the plan pays \$40 of every doctor visit. The plan then bills the member's credit card or bank account for 80% of the difference between the total amount and the \$40 plan contribution. The consumer may not know the amount charged until the billing appears on the credit card or bank statement. The plan limits the consumer to only twelve discounted doctor visits, so the plan's financial responsibility is limited to \$480. The consumer, however, pays \$900 for membership, not including the out-of-pocket fees. The particular plan described was prosecuted by the Office of the Attorney General and was stopped from doing business in Maryland.

The Compliance and Enforcement Unit has also received complaints that companies market themselves as discount plans and require the consumer to give credit card information or bank draft authorization to obtain plan materials, then repeatedly charge the consumer. Such complaints have come from consumers who did enroll a discount plan and some who opted not to enroll. The consumer who is repeatedly charged has no choice but to close his bank account or cancel his credit card in order to avoid the charges.

The Consumer Compliance and Enforcement Unit has investigated complaints from members enrolled in discount plans that charge an "initiation fee" or "activation fee." That is a fee in addition to the cost of membership, generally an administrative charge for the paperwork and computer work required to open the member's account. The Unit encountered resistance from discount plans that are unwilling to refund the administrative charge even after voiding the membership.

Sammie Mouton, Acting Director, Health Education and Advocacy Unit
Office of the Attorney General, Consumer Protection Division

The Consumer Protection Division of the Office of the Attorney General provides mediation services to consumers to help resolve complaints against businesses and health insurance carriers. The Division has received an increase each year in the number of complaints regarding discount plans. Consumers who contact the Division are asked to file a complaint with the Divisions's Health Education and Advocacy Unit (HEAU) and send whatever material they received from the plan and the method by which they received it. If a valid complaint exists, the Consumer Protection Division will participate in mediation efforts and work with the Division's Enforcement Unit to recover restitution, if necessary.

The complaints received regarding discount plans generally fall into three areas: unauthorized withdrawal of funds; misleading advertisements; or misrepresentation of the product. Ms. Mouton noted that telemarketers may seek a consumer's bank account number or credit card number, supposedly to verify the consumer has an available method of payment if he chooses to participate in the plan. Some plans refuse to send marketing materials without verification of available funds. The HEAU has investigated plans that charged a consumer after the consumer refused to enroll in the plan. The

HEAU has also received complaints from consumers whose accounts were charged by a discount plan even though the consumers had never shared their financial information with any plan.

Ms. Mouton presented an example of a solicitation that had been sent to a consumer via email. The Consumer Protection Division received approximately four complaints regarding the same online discount pharmacy plan. The particular plan sends consumers a letter via email, which states the consumer's failure to respond within five days will result in automatic enrollment and no account information is needed, because the plan already has all necessary information. Ms. Mouton's investigation revealed the online discount pharmacy plan was a Canadian company. When she contacted the Federal Trade Commission, that Commission had received about 45 complaints as of March 1, 2004. Three of those complaints to the FTC came from Maryland consumers. The FTC is investigating.

In an effort to better track discount plans, the Consumer Protection Division has improved its data collection and created a complaint tracking system. The Division also continues consumer education and mediation efforts.

**Michelle Holzer, Program Director of the Senior Health Insurance Assistance Program
Maryland Department of Aging**

Ms. Holzer presented an overview of the Maryland Senior Health Insurance Assistance Program (SHIP) and the Medicare Approved Discount Cards Program. The SHIP Program works with Medicare beneficiaries and their caregivers on problems and issues relating to health insurance, including problem resolution, counseling, education, and forgery prevention. The Medicare Approved Discount Card Program is a temporary and voluntary program. Over thirty companies have been approved by Medicare to sell discount pharmacy plans in Maryland. Generally, the companies offer a ten to twenty percent (10-20%) discount on formularies. Due to the number of companies with Medicare-approved discount drug cards, Medicare beneficiaries who are using the newly approved cards may feel overwhelmed by the number of cards, may not fully understand which services are and are not discounted, and may not have a clear understanding of the actual cost of the plan.

The Department of Aging is concerned that Medicare consumers may not understand what they are buying. The drugs covered by the discount drug plan can change on a weekly basis and prices can also change weekly. The Department is also concerned that consumers may purchase a discount drug card, although they may be eligible for a free State program. The Department, through the Senior Health Insurance Assistance Program and Curb Abuse in Medicare and Medicaid Program, conducts dozens of community presentations throughout the State. Approximately one-hundred twenty-five volunteer counselors work throughout the State, assisting consumers with the application process and obtaining all services to which the consumer is entitled.

Mila Kofman, Esquire, Assistant Research Professor
Health Policy Institute, Georgetown University

Ms. Kofman's presentation focused on medical discount card plans. Medical discount plans negotiate with a provider network to provide discounts for doctors' visits, lab work and surgical procedures. The discount cards may, in theory, be presented to primary care physicians, specialists, and hospitals. Hospitals in Maryland, however, cannot honor discount cards because all hospitals in the State must charge the rates established by the Health Services Cost Review Commission (HSCRC), a state agency.

Monthly fees for medical discount plans range from \$13 - \$129 per month for a single person, plus a non-refundable administrative fee as high as \$200. Unlike insurance products, medical discount plans do not pay claims on the members' behalf. Rather, the enrolled consumer is responsible for paying the claim, as in a fee-for-service type of arrangement. The plans offer a discounted fee and typically require the enrolled consumer to pre-pay for services. Medical discount plans may be an attractive product for middle income families and small businesses who are looking for "affordable alternatives" to the rising costs of health insurance coverage, or for consumers with low or moderate incomes who are rejected by insurance carriers but are looking for access to medical care.

Ms. Kofman expressed concern with some companies' billing practices. Some plans will assist a consumer with obtaining a credit card in order to pay for the medical discount plan. Other companies may withdraw funds directly from the consumer's bank account on a monthly basis. Ms. Kofman is familiar with one company that requires consumers to pay for an escrow account, which the plan then establishes so that funds from that account can be used to pay providers. In that case, the consumer pays a monthly fee for the discount card, monthly payments to pre-fund future healthcare services, and a monthly fee to maintain the escrow account.

An additional concern Ms. Kofman discussed is whether low and moderate income consumers get any value from medical discount plans. Low income earners may find it difficult to pre-pay for most services. Both low and moderate income consumers may not be financially able to pre-pay for surgery or other major medical expenses.

Although discount medical card plans have become more prevalent, there is no research to date that examines whether the plans provide value to consumers. Based on preliminary research, Ms. Kofman and her colleagues have begun to identify and document problems with certain discount medical card plans, including:

- a) Providers in the plan directory do not participate;
- b) Customer service telephone numbers are inoperable, or representatives do not answer the phone;

- c) Consumers are required to pay a non-refundable enrollment fee to receive information about benefits and a list of providers; and
- d) Providers may give a discount to patients without insurance regardless of whether that patient has a discount card.

Jolie Matthews, Esquire, Associate Counsel for Health Policy
National Association of Insurance Commissioners

Twenty states have reported increased discount card plan activity to the National Association of Insurance Commissioners (NAIC). Ms. Matthews presented an overview of the plan activity across the nation. As a result of the increase in both legitimate and illegitimate plans, several states have issued Consumer Alerts, and other states have revised or created consumer protection laws or regulations. Ms. Matthews highlighted some of the Consumer Alerts and consumer protections laws that are very informative to consumers.

The following state insurance departments have laws or regulations regarding discount health plans:

Florida
Illinois
Montana
Oklahoma
Utah

The following Offices of the Attorney General have laws or regulations regarding discount health plans:

Arkansas
Colorado
Idaho
Indiana
Kansas
Mississippi
Oregon
South Dakota
Tennessee
Texas

In Georgia, the Governor's Office of Consumer Affairs oversees discounts given by health care providers and requires discount medical plans to expressly state that the plan is not insurance and to execute a contract with each participating provider.

The following states have issued Consumer Alerts to assist consumers in choosing a discount health plan:

Connecticut
Delaware
Florida
Kansas
Maryland
Michigan
Minnesota
North Dakota
Texas
Vermont
Washington
Wisconsin
Wyoming

In New York, the Attorney General has issued guidelines that discount plans should follow. Specifically, the plan should clearly state the following:

- a. Benefits offered by the discount plan are not health insurance;
- b. benefits offered by the discount plan may be duplicative of any insurance the consumer already has;
- c. consumer savings may not be significant;
- d. Consumer protection is limited; and
- e. If consumers drop their current insurance to buy a discount card, they could be left with limited coverage.

**Angela Franklin, Director of the State Policies Development
America's Health Insurance Plans**

America's Health Insurance Plans (AHIP) is a national association representing nearly 1,300 member companies providing health insurance coverage to more than 200 million Americans. Ms. Franklin discussed AHIP's efforts to raise consumer awareness of fraudulent plans. AHIP educates consumers regarding prescription benefits and Medicare endorsed discount cards. Consumers are advised to ask their pharmacist which cards are accepted at their pharmacy before purchasing a discount drug card. AHIP also warns consumers to beware of anyone asking for personal financial or confidential information. A Public Service Announcement regarding discount cards is currently available to consumers and AHIP is working on a revised announcement for future distribution. AHIP is also working with the National Council on Aging to further education of senior citizens. Finally, AHIP encourages consumers to visit their website. www.avoidfraud.org.

Donna DeLeno, Advocacy Representative
AARP

The American Association of Retired Persons (AARP) is a non-profit, non-partisan membership organization for people age 50 and over, dedicated to enhancing members' quality of life. AARP offers one of the many Medicare-approved discount drug cards to eligible Medicare beneficiaries, through its contract with United HealthCare Insurance Company. Ms. DeLeno discussed the targeted outreach effort AARP has implemented to inform and educate potential Medicare beneficiaries regarding the new Medicare-approved discount drug program. AARP's consumer outreach efforts include presentations and distribution of educational materials and publications. AARP targeted 100,000 of the States' low income households with direct mail postcards encouraging consumers to call AARP or the Center for Medicare Services, or visit either entity's website. Ms. DeLeno estimated that AARP had reached over 4,000 individuals directly, and additional consumers through mailings and advertisements.

In addition to their efforts to explain the Medicare-approved discount drug program, AARP alleviates confusion and encourages consumers to find the program that is best for them. Many AARP members have expressed confusion due to the variety of discount drug cards available to them. For example, a member may have a discount card from a certain pharmacy chain, then receive several pieces of mail from Medicare-approved discount drug cards and receive phone calls from free-standing discount drug plans. The member may feel too overwhelmed to choose between the discount drug plans without help from AARP. Residents who are eligible for State programs are encouraged to seek assistance from those State programs, such as the Maryland Pharmacy Assistance Program.

Allen Erenbaum, Esquire, Counsel
Consumer Health Alliance

Consumer Health Alliance (CHA) is the national trade association of the discount health care industry. Leading discount plans became concerned about certain practices in segments of the industry and joined together to create the Consumer Health Alliance, founded in 2002. CHA's mission is three-fold: 1) to educate consumers and regulators about the consumer benefits of good discount programs and to give consumers the information they need to find good programs; 2) to create a code of conduct which establishes benchmarks for well-operated consumer friendly discount programs; and 3) to work with state legislators and regulators.

Discount card plans began operating 10-15 years ago and were originally designed to offer access to ancillary health care services at discounted rates. However, rapidly increasing health insurance costs led to the development of discount arrangements for traditional health services.

CHA educates consumers and regulators about the benefits of good discount plans. CHA has created a Code of Conduct for discount card plans. The Code of

Conduct has three primary objectives: 1) to ensure the program is legally sound; 2) to ensure the program provides clear consumer information; and 3) to ensure the program operates in a consumer friendly way. CHA also receives and responds to inquiries from consumers, providers and state attorneys general through its website and toll-free hotline.

According to CHA, there are approximately twenty states that have laws or regulations directed specifically at discount programs. All of those laws do three things in particular: require the program to expressly state it is not insurance, require participating providers to be contracted; and prohibit misleading, fraudulent or deceptive marketing. Few states have specific provisions in statute allowing them to take action against discount plans. Therefore, most states rely on consumer protection laws to stop discount plans' deceptive practices.

Diane Mahoney, Vice President
Velco Insurance Agency

Velco Insurance Agency is a full service elder care insurance agency. Velco agents do provide discount drug cards for some clients. Ms. Mahoney, Vice President of Velco, is familiar with various discount drug plans and during her testimony she compared and contrasted how “legitimate” and “problematic” programs are run.

Ms. Mahoney noted that, in her experience, the six elements of a well run plan are:

1. the plan offers discounts for both generic and brand name drugs;
2. the marketing clearly states the expected discount;
3. the plan's coverage of pharmaceuticals includes mail order drugs;
4. the plan's customer service phone is answered by actual company offering the card (not Pharmacy Benefit Manager);
5. the same company that sells the card also administers the plan; and
6. the plan markets through a single layer of agents and/or brokers who report directly to the plan, rather than outsourcing.

Likewise, Ms. Mahoney presented the following examples as elements of a “problematic” plan:

1. The plan materials quote an extremely high discount (such as 80%) when the typical discount averages about thirty percent (30%);
2. Customer service is provided by a pharmacy benefit manager, who has no access to information regarding payment history or plan design outside of prescription benefits;
3. The plan does not contract directly with its participating providers or pharmacies;
4. The plan does not reveal the fee for service until already charged to the member's credit card;
5. The plan does not reveal the provider's original charge compared to the discounted fee; and
6. The plan requires a non-refundable enrollment fee.

Dr. Winston Wong, Director of Pharmacy Management
CareFirst BlueCross BlueShield

Dr. Wong provided information concerning the operation of the CareFirst Discount Drug Card Program. CareFirst provides a discount drug card to CareFirst members who are without prescription benefits, such as members with Medicare supplemental coverage and members with prescription drug coverage under the personal comp major medical plan, who are required to pay cash for their prescriptions and then submit a claim to CareFirst for reimbursement. The CareFirst Discount Drug card is provided free of charge, as an added value, and is recognized and accepted at over 50,000 pharmacies across the nation. The card offers a standard discount of 15% to 25% off of the retail price of the prescription. The same discount is applied across the board to all self-administered prescription medications typically covered. Over-the-counter products are excluded, except insulin and diabetic supplies. CareFirst considers its discount card to have about a 23% discount benefit. As of April 2004, CareFirst had approximately 180,000 members enrolled in the CareFirst Discount Card Program.

John M. Lavin, Vice President of Provider Network Management
Caremark, Inc.

Caremark Inc. is one of the largest pharmaceutical services companies in the United States and also operates as a prescription benefits manager. Caremark has offered a discount drug card program since 1993, and also has a Medicare approved discount card for Medicare enrollees. Caremark supports health plans, third parties and other companies by coordinating a network of pharmacies and negotiating discounts with retail pharmacies and manufacturers. Caremark currently contracts with over 50,000 pharmacies that participate in discount drug card plans, operates a mail service program and home delivery program. Caremark consumer data from the first quarter of 2004 indicates an average savings of 35% for generic drugs and 14.3% for brand (savings compared to the retail price of the drug). Mr. Lavin suggests that consumers looking for a discount plan first look for an experienced, trusted company. Once the consumer finds such a company, he should then evaluate the enrollment costs, look for referrals from peers and ask for his pharmacist's opinion of the plan.

Charles Culbertson, President
Baltimore County Association of Senior Citizens

Mr. Culbertson reiterated that seniors are overwhelmed by the number of discount drug cards available, and may choose a plan without taking the time to fully understand what the plan does and does not cover. Some plans are too complicated to fully comprehend, and some seniors feel there are too many choices to make when choosing a plan.

**Pegeen Townsend, Senior Vice President, Legislative Policy
Maryland Hospital Association**

Maryland has a hospital rate setting system and discounts on hospital costs are therefore not permissible in Maryland. Ms. Townsend suggested that the unique hospital rate structure in this State may assist in identifying fraudulent discount medical plan companies who market discounts on hospital rates.

In preparation for the Hearing, Ms. Townsend contacted senior staff at the Hospital Association to see if consumers were presenting discount cards to hospitals or hospital pharmacies. None of the senior staff were familiar with such discounts, but Ms. Townsend offered the assistance of the Payor Issues Task Force to issue an Alert to facilities, in cooperation with the Maryland Insurance Administration or Office of the Attorney General.

**Bonnie Taylor, Arthur Sands, Mary Mallory
AmeriPlan USA®**

AmeriPlan USA® is a discounted fee-for-services plan that has been in operation since 1992. AmeriPlan describes itself as a Provider Access Organization. The Plan arranges for its members to have access to dental, vision, chiropractic, and pharmaceutical providers who have agreed to offer their services at negotiated discounts off their usual and customary fees.

Ms. Taylor, an insurance broker and AmeriPlan member, led the group in discussing the benefits of AmeriPlan. AmeriPlan covers Ms. Taylor and everyone living in her household whether related by blood or not. The marketing materials include a statement "this is not insurance." Any advertising must be approved by AmeriPlan before an agent can use it for marketing. Only certified brokers may market and sell an AmeriPlan product. Consumers who purchase AmeriPlan have a thirty-day money back guarantee so they can obtain a full refund if they are dissatisfied with the product within that time period.

Ms. Mallory presented more detail about the marketing process. The plan covers dental, vision, prescription, and chiropractic service, so the consumer does not have to decipher several different plans and choose. Brochures include details about cost and coverage, as well as both broker and corporate information.

**Austin Good
Consumer**

Mr. Good, a consumer who has purchased a membership in AmeriPlan, gave several examples of his savings since purchasing AmeriPlan. A prescription he purchased that cost \$300 before he enrolled in AmeriPlan cost Mr. Good \$196 when he presented his discount card. In order to obtain the discount, Mr. Good need only present his discount card at the pharmacy; he does not have to submit any paperwork. The cost of eyeglasses also dropped by \$100 when Mr. Good presented his AmeriPlan card.

III. SUBSEQUENT ACTIVITY

There has been continued activity regarding discount plans in the five months that have elapsed since the Hearing in May, 2004. The Maryland Hospital Association and the National Association of Insurance Commissioners continue to investigate the effects of discount plans in the insurance market. The Maryland Insurance Administration and Office of the Attorney General continue to receive consumer complaints and both state agencies have developed written materials to distribute to consumers.

A. Maryland Hospital Association

The Maryland Hospital Association, at my request, sent an inquiry to its Payor Issues Task Force, asking members to report on the number of patients who have presented discount cards to hospitals or other facilities.

Most facilities did not encounter patients requesting discounts. Two Maryland hospitals, however, responded that patients have asked facility staff for advice. A third hospital recently received an unsolicited contract offer from a discount plan. The plan was called "a non-insurance related savings plan" and offered members a discount card for healthcare services, including hospital stays. In order to participate in the discount plan, the facility would have to pay a \$135 fee and agree to accept 75% of regularly billed charges. That plan was obviously not aware that it is illegal to offer hospital rates that differ from those rates set by the Health Services and Cost Review Commission.

B. National Association of Insurance Commissioners

The National Association of Insurance Commissioners has drafted a Summary Chart of State Medical and Pharmaceutical Discount Plan Laws and Regulations. The chart illustrates which regulatory entity has primary authority in each state, and the basic requirements of the state law or regulation. The Summary Chart is attached to this Report as Exhibit B.

I will be presenting this Report to the NAIC's Health Insurance and Managed Care Committee Subgroup on Health Discount Plans, at a Public Hearing to be held on Monday, December 6, 2004, during the NAIC's Winter National Meeting at the New Orleans Marriott. The hearing will also provide an opportunity for interested parties to present their views to subgroup members regarding the subgroup's charge to review issues surrounding health discount plans and draft a model law or regulation, as appropriate.

C. Office of the Attorney General Consumer Protection Division

The Consumer Protection Division issued a newsletter on October 22, 2004, which is attached to this Report and available on the Division's website at www.oag.state.md.us/Consumer/edge116.htm. The newsletter, Consumer's Edge, was distributed to organizations such as middle and high schools, employers, senior centers, social clubs, civic groups, military family assistance offices, and cooperative extension

offices, all of whom share it with their members/students/clients by distributing copies, posting it on a bulletin board, publishing it in their own newsletter. It identified several of the most common problems with illegitimate discount plans and informs consumers "what you should do before signing up for any health discount card." Suggestions include waiting until the consumer has a thorough understanding of the plan materials, verifying actual costs, and inquire to state agencies regarding the number of complaints, if any, against the discount plan.

D. Maryland Insurance Administration

The Insurance Administration is preparing a consumer guide regarding discount plans. The guide will be distributed to consumers and available on the MIA website. It contains information regarding Medicare-approved drug discount cards, discount cards offered in conjunction with one's insurance policy, and stand-alone discount plans. The consumer guide urges consumers to use caution before choosing or purchasing a discount plan.

IV. FINDINGS

As a result of the Administration's investigation, including the hearing testimony and subsequent information obtained by my staff, I have made several findings. Overall, I find that discount plans, whether free or available for purchase, can be beneficial to consumers if those plans operate efficiently and honestly. It is also apparent, however, that the discount plan industry is not heavily regulated and lack of state oversight may allow for practices that harm the consumer. Additionally, dishonest plans not only harm consumers, but also harm the reputation and competitive ability of legitimate discount plans.

A. Findings Regarding Operation of a Legitimate Discount Plan

Representatives from discount plans, from insurers who provide discount plans, and from consumers who participate in or purchase discount plans testified before me as to how their plans operate to the benefit of consumers. There are many common attributes of well run, honest plans. Those attributes include, but are not limited to, the following:

- (1) require every provider to be contractually bound to offer the discount;
- (2) prohibit providers from charging members more than the discount rate;
- (3) allow consumers to get any lower rate available;
- (4) give the consumer a description of services offered, types of providers, and range of discounts;
- (5) disclose that the plan is not insurance, that members must pay providers the entire discounted rate, that services offered may be duplicative of consumer's insurance and that the plan does not guarantee quality of service from providers;

- (6) maintain a toll-free number and have that phone number answered by a customer service representative of the company offering the card, not the Pharmacy Benefit Manager or Third Party Administrator;
- (7) allow consumers to cancel membership within 30 days of joining;
- (8) update the provider lists frequently;
- (9) disclose terms of membership and amounts of payments;
- (10) operate a complaint resolution process;
- (11) offer discounts for both generic and brand name drugs;
- (12) include coverage of mail order drugs;
- (13) the same company that sells the card also administers the plan;
- (14) markets through a single layer of agents and/or brokers who report directly to the plan.

B. Findings Regarding Operation of a Suspect Discount Plan

In addition to the positive testimony and other information I received, many of the individuals who testified at the Hearing identified specific problems associated with discount plans. Several of the problems have also been revealed through consumer complaints to both my Administration and the Office of the Attorney General. Those problems include, but are not limited to, the following:

(1) Confusing and Misleading Product Description

The use of terms such as "pre-existing condition," "open enrollment," and "deductibles" often mislead consumers to believe they are purchasing an insurance plan rather than a discount plan. It is imperative that any discount card and marketing materials contain a clear and obvious statement that the plan is not insurance. Otherwise, consumers may purchase a discount plan rather than an insurance product and then lack coverage for necessary benefits.

(2) Hidden Fees

Several plans charge a hidden non-refundable initiation fee or activation fee to join the plan. Often the consumer is not aware of the initiation or activation fee until it appears on a credit card bill or similar billing statement. The fees are then non-refundable.

Some discount plans charge an "access fee" for each prescription, without disclosing the fee to the consumer before purchase and without clearly identifying the reason for the charge.

(3) Unauthorized Billing

Several plans require access to the consumer's credit card number. In some cases, the plan will not send enrollment materials until the consumer gives a credit card number or bank draft authorization. If the consumer authorizes charges to their credit card or withdrawals from their bank account, and the plan

bills more than the consumer expected, the consumer may be forced to close the bank account or cancel the credit card to discontinue such billing.

In some cases, a consumer may find a charge on their credit card as a result of a physician visit. The provider may not charge at the time of the visit and may delegate the billing to the plan, which then automatically charges the consumers' credit card without prior notice.

(4) Plan Administration

Many discount plans experience a lack of communication within the company. As a result of the confusion within the company, the consumer often experiences difficulty getting from one department to another. For example, if there is a Third Party Administrator (TPA) involved, the plan's consumer hotline is often answered by a TPA employee, who has no record of the consumer's payment history, plan design or enrollment information. In such a case, the consumer may need to make several calls to obtain whatever information he is seeking, leading to confusion and frustration for the member.

(5) Lack of Accountability to State Agencies

State oversight of discount plans is often shared between two state agencies, the state insurance department and the state office of the attorney general. As a result, discount plans are not accountable to one particular agency and consumers may not know where to turn for assistance. If the product has an element that puts the company at risk for payment, the MIA would have jurisdiction over that part of the product. For example, accidental death and dismemberment and long-term care insurance are typically underwritten by a licensed insurer, so those parts of the product would be regulated by the MIA. If, however, the plan does not bear any risk and simply contracts with providers to offer discounts, the OAG has oversight over those products that are not insurance.

Shared jurisdiction may result in different investigative speeds, different investigative techniques, or duplicative efforts. It may also cause delay for resolution of consumer inquiries or complaints. Lack of accountability prevents either state agency from contacting the plan to obtain restitution or otherwise resolve consumer complaints.

V. RECOMMENDATIONS

A. Consumer Education

Consumers must be educated to understand the benefits and limitations of discount medical and discount drug plans. The Administration has drafted the Consumer Guide, referenced above, as an educational tool and will distribute the Consumer Guide

at statewide events such as fairs, conventions, and trade shows, where the MIA customarily distributes consumer guides and answers consumer inquiries.

In addition to the written guide, the Administration also educates consumers through speaking engagements. Since the hearing, Associate Commissioner Cioni, who testified at the Hearing on behalf of the Compliance and Enforcement Unit, has spoken before the American Association of Health Plans, the National Association of Managed Care Regulators, and the League of Life and Health Insurers regarding the benefits of discount plans and the precautions one should take before purchasing or using a discount plan.

B. Legislation

The Administration recommends that legislation be proposed to allow for state oversight of discount plans. The particular actions suggested by the Administration are listed below, in conjunction with the problems the action is intended to alleviate.

Problem: Confusing and Misleading Product Description

Recommendation:

- 1) prohibit use of terms in advertisements, marketing materials, brochures, and discount cards that would lead a consumer to believe the discount plan was health insurance;
- 2) prohibit the use of the term "insurance" in advertisements, marketing material, brochures, and discount cards, except in the corporate name of an authorized insurer, non-profit health service plan, or health maintenance organization;
- 3) require certain disclosures on all advertisements, marketing materials, brochures, and discount cards, including but not limited to:
 - a. the plan is not health insurance;
 - b. membership entitles the member to discount for certain medical services offered by providers who have agreed to participate in the plan;
 - c. the plan does not pay providers of medical services for the services provided to plan members;
 - d. plan members are required to pay for any medical services provided, but are entitled to a discount on certain services from participating providers;
 - e. a description of the medical services subject to discount,
 - f. a description of the discounts the plan member is entitled to receive;
 - g. the mechanism by which members can obtain a list of providers who have contracted with the discount plan;

- h. the corporate name, location, and contract information, including a telephone number;
- i. a listing of all fees, dues, charges, or other financial consideration to be paid by the member with respect to the member's participation in the plan, including all fees or charges relating to the processing of discounts or billing.

Problem: Hidden Fees

Recommendation:

- 1) require the plan to forward a detailed billing statement to the plan member within thirty (30) days of the date on which service is provided, which itemizes the non-discounted cost of each service or item provided, the discount applied, the final cost to the member and any fees or charges the plan has billed to the member in connection with the services or items identified on the statement (not required if the provider does not give the member a statement identifying the non-discounted charge and the discount applied at the time of services);

Problem: Unauthorized Billing

Recommendation:

- 1) permit members with monthly memberships to terminate their membership without financial penalty if thirty-day notice is given to the plan;
- 2) prohibit discount plans from continuing electronic funds transfer for more than ten days if the member requests termination of such funds transfer in writing;

Problem: Plan Administration

Recommendation:

- 1) require discount plans to provide to each member a card that contains the following:
 - a. the plan's name or trademark;
 - b. the plan's address;
 - c. the plan member's name and identification number; and
 - d. the telephone number the member can call for assistance.

Problem: Lack of Accountability to State Agencies

Recommendation:

- 1) require discount plans to register with a state agency before selling, marketing or soliciting a discount plan in the State.

- 2) allow only individuals who are licensed to sell life and health insurance to negotiate, solicit or sell a discount plan;
- 3) allow the Insurance Administration to examine a discount plans' affairs, transactions, accounts, records, and assets, at the plan's expense;
- 4) permit the Insurance Commissioner to issue an order that:
 - a. requires a plan to cease and desist from violating Maryland law;
 - b. requires a plan to take specific affirmative action to correct a violation of Maryland law;
 - c. require a plan to make restitution of money, property, or other assets to a person injured because of a violation of Maryland law.
- 5) permit the Insurance Commissioner to impose a civil penalty for each violation of Maryland law.

VI. CONCLUSION

Discount plans can be beneficial to the consumer if they are managed well and marketed with full disclosure. Some plans, however, may confuse or mislead consumers, as explained above. The testimony presented at the Hearing clarified how discount plans should function and possible problems a consumer may encounter when discount plans are not run efficiently or are not marketed honestly.

I have issued this Report, with my Findings and Recommendations, to raise awareness of the benefits of discount plans and to improve the operation of discount plans in Maryland to the benefit of consumers and the industry.

Signature on file with original

Alfred W. Redmer, Jr.
Insurance Commissioner

EXHIBIT A – Exhibits List

Exhibits at MIA Informational Hearing on Medical and Pharmacy Discount Programs – May 27, 2004

1. Request for Publication of 5/27/04 Hearing
2. Notice of 5/27/04 Hearing
3. 5/27/04 Hearing Agenda
4. Presentation Packet from **P. Todd Cioni**
5. Presentation Packet from **Sammi Mouton**
6. Presentation Packet from **Michelle Holzer**
- 7A. Presentation Packet from **Mila Kofman**
- 7B. Loyola Consumer Law Review from **Mila Kofman**
8. Presentation Packet from **Jolie Matthews**
9. Presentation Packet from **Angela Franklin**
10. Presentation Packet from **Donna DeLeno**
11. Presentation Packet from **Allen Erenbaum**
12. Presentation Packet from **Diane Mahoney**
13. Presentation Packet from **Dr. Wong**
14. AmeriPlan USA brochure
15. AmeriPlan USA brochure
16. Witness Sign-In sheet

Exhibit B - Summary Chart

Summary Chart of State Medical and Pharmaceutical Discount Plan Laws and Regulations

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
Arkansas	Ark. Code Ann. §§ 4-106-201 – 4-106- 204	Office of the State Attorney General, Consumer Protection Division	Health care providers	Yes	Yes	Yes	Must designate an agent for service of process and register the agent with the Secretary of State.
Colorado	Colorado Revised Statutes, § 6-1-102 and § 6-1-712	Office of the State Attorney General under the Consumer Protection Act	Health care providers	Yes	Yes, implied	Yes	Must provide name, address and telephone number of plan administrator; must provide listing of participating providers; must allow cancellation within 30 days and refund membership fees.

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
Florida	Florida Statutes, §§ 636.202 – 636.244	Office of Insurance Regulation	Health care providers	Yes and must not use specified terms in marketing materials that could reasonably mislead a person into believing the discount medical plan is health insurance.	Yes	Yes	Must obtain a license to operate as a discount medical plan organization; Must maintain minimum net worth of at least \$150,000; Must maintain an up-to-date list of the names and addresses of contracted providers; Must file forms specifying the charges to members and charges that are more than \$30 per month or \$360 per year must be approved by the office; Must file an annual report with the office.

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
Georgia	Georgia Code Ann. § 10-1-393(32)	Governor's Office of Consumer Affairs under Fair Business Practices Act	Health care providers	Yes	Yes	No	
Idaho	Idaho Code, §§ 48- 1601 – 48-1603	Office of the State Attorney General(?)	Health care providers	Yes	Yes	Yes	Must designate an agent for service of process and register the agent with the Secretary of State.

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
Illinois*	215 ILCS 5/370g – 5/370t and 215 ILCS 5/3701	Department of Insurance	Health care providers	Yes, regulations prohibit an administrator from representing or describing itself in its name, contracts or literature as an HMO or as being an insurer	Yes	Yes, in regulations	Must register with the Insurance Dept as a preferred provider program administrator; Must maintain minimum solvency requirements; Must make specific disclosures concerning coverage, including any limitations or exclusions; Must meet specified fiduciary and bonding requirements.
Indiana	IC 24-5-21-1 – 24- 5-21-7	Office of the State Attorney General(?)	Pharmacies	Yes	Yes	Yes	Must designate an agent for service of process and register the agent with the Secretary of State.

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
Kansas	Kan. Stat. Ann. §§ 50-1,100 – 50- 1,105	Office of the State Attorney General, Consumer Protection Division(?)	Health care providers	Yes	Yes	Yes	Must provide before purchase and maintain and make available in writing or electronically, a list for each type of service offered in conjunction with the discount card that includes the name, address and telephone number of providers that are contractually bound to honor the discount card; Must maintain a surety bond in the amount of \$50,000.
Kentucky	KRS 367.828	Office of the State Attorney General	Health care providers	Yes	Yes	Yes	

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
Minnesota	Minnesota Statutes, § 325F.784	Office of the State Attorney General(?)	Pharmacies	Yes	Yes	Yes	Must designate an agent for service of process and register the agent with the Secretary of State.

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
Mississippi	Mississippi Code, § 83-9-6.1	Office of the State Attorney General, Consumer Protection Division	Pharmacies	No	No	No	Any entity that administers a prescription drug program through a network of participating pharmacies may not issue such a cash discount card that participating pharmacies must accept or honor unless the entity pays a portion of the cost of the discount given by the pharmacy for prescription drugs purchased with the card.
Montana	MCA, § 33-1-107 and § 33-1-317	Insurance Commissioner	Pharmacies, dentists and health care providers that provide vision services	Yes	No	No	

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
New Hampshire	New Hampshire Stat., RSA §§ 358- R:1 – 358-R:3	Department of Justice, Consumer Protection and Antitrust Bureau	Pharmacies	Yes	Yes, implied	Yes	Must register with the Consumer Protection and Antitrust Bureau of the Department of Justice by filing a certified statement that contains specified information, including identifying the entity that is to offer the prescription discount card.

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
New York**	N/A	Office of the New York State Attorney General	Health care providers	Yes	No, not specifically suggested, but implied.	Yes	Should maintain a toll-free customer assistance call center; Should establish and maintain a formal dispute and complaint process; Should allow any member to terminate membership within 30 calendar days; Should assure its members will receive the lower of the negotiated price or the provider's regularly available (non-negotiated) price at the time.

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
Oklahoma	36 O.S. § 1219.4	Insurance Commissioner	Health care providers	Yes	Yes	Yes	
Oregon	ORS, § 689.565	Office of the State Attorney General(?)	Pharmacies	Yes	Yes	Yes	Must designate an agent for service of process and register the agent with the Secretary of State.
South Carolina	South Carolina Stat., § 37-17-10	Department of Consumer Affairs	Pharmacies	Yes	Yes	Yes	Any person offering the discounts or access to the discounts must register with the Department of Consumer Affairs and must designate an agent for service of process and register the agent with the Secretary of State.

STATE	STATUTORY/ REGULATORY CITATION	PRIMARY REGULATOR	LAW APPLIES TO DISCOUNTS FROM	REQUIREMENTS			
				MUST EXPRESSLY STATE DISCOUNT PLAN IS NOT INSURANCE	DISCOUNT PLAN MUST HAVE A CONTRACT AUTHORIZING THE DISCOUNT WITH EACH PROVIDER	MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING IN CONNECTION WITH DISCOUNT PLAN PROHIBITED	OTHER REQUIREMENTS
South Dakota	South Dakota Codified Laws, § 37-24-6(12)	Office of the State Attorney General(?)	Pharmacies	Yes	Yes	Yes	
Tennessee	Tenn. Code Ann. §§ 47-18-2701 – 47-18-2704	Office of the State Attorney General(?)	Health care providers	Yes	Yes	Yes	
Texas	Texas Bus. & Com. Code Ann. § 17.46(b)(18)	Consumer Protection Division	Health care providers	Yes	Yes	Yes	
Utah	Utah Ins. Reg. R590-152	Insurance Department	Health care providers	Yes	Yes, implied	Yes, implied	

Revised 9/22/2004

*Illinois has two laws, one regulating health service discount plans under the Preferred Provider Program Administrators Act under the jurisdiction of the Illinois Department of Insurance and one regulating discount cards under the Consumer Fraud and Deceptive Businesses Practices Act under the jurisdiction of the State Attorney General. The chart summarizes the law under the Preferred Provider Program Administrators Act. Under that Act, a preferred provider program administrator is defined as any person that arranges, contracts with, or administers contracts with a provider whereby beneficiaries are provided an incentive to use the services of that provider. The Illinois General Assembly has defined a preferred provider program administrator as including health care discount programs. The law under the Consumer Fraud and Deceptive Practices Act is not summarized in this chart, but is similar to the laws enacted in Georgia, Idaho, Oklahoma and Tennessee.

**The New York State Attorney General issued guidelines for medical and prescription discount cards. The guidelines are voluntary and reflect the Attorney
2004 National Association of Insurance Commissioners

General's suggestions to the industry to assist the industry in advertising and marketing discount card programs in a lawful, non-deceptive manner.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and regulations and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, state statutes and regulations should be consulted.