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BULLETIN 08-36

Date: January 2, 2009

To: Discount medical plan organizations, discount drug plan organizations,
and other interested parties

Re: COMAR 31.10.24: Discount Medical Plan Organizations and Discount Drug Plan
Organizations

The Maryland Insurance Administration ("MIA") received comments regarding the emergency and proposed regulations COMAR 31.10.24, *Discount Medical Plan Organizations and Discount Drug Plan Organizations*. The MIA has elected to issue a bulletin in response to the comments received to inform all interested parties and all discount medical plan organizations and discount drug plan organizations (hereinafter "discount plans") about its decision to retain the nominal fee proposed in COMAR 31.10.24 as well as to notify discount plans how they may file their nominal fee with the MIA.

Discount Plans in Maryland --history

In 2004, then Insurance Commissioner Redmer held public hearings regarding "discount plans". Commissioner Redmer found that abuses occur in connection with the development and marketing of some discount plans. In response, the MIA published a consumer education guide to discount plans and worked closely with the Office of the Attorney General to develop consumer protection legislation first introduced in the 2005 Legislative Session and ultimately enacted in 2007.

One area greatly debated over the two years this consumer protection legislation was considered in the General Assembly was the amount of money discount plans may keep if a consumer purchases a discount plan and then cancels his or her membership during the first 30 days. The consumer may cancel the membership for a variety of reasons, including a determination that the monthly membership cost exceeds the value of the discounts available through the discount plan.

Discount plans suggested they should be able to retain a fee to offset the cost of enrolling a new member, establishing the specific plan and discouraging consumers from joining a discount plan simply to use it at little or no cost for only one month. Conversely, the Office of the Attorney

General maintained consumers should have the ability to join a discount plan and have a 30 day period in which to assess if the discount plan has value with all monies returned to the consumer if membership is canceled during the first 30 days.

Ultimately, the General Assembly enacted the following language:

(a) (1) If membership in a discount medical plan or a discount drug plan is canceled within the first 30 calendar days after the effective date of enrollment, all fees, dues, charges, or other financial consideration, except a nominal fee, not to exceed any fees, dues, charges or other financial consideration the member has already paid, associated with enrollment costs that were part of the discount medical plan card or the discount drug plan card, shall be refunded to the payor on return of the discount medical plan card to the discount medical plan organization or return of the discount drug plan card to the discount drug plan organization.

(2) The Commissioner, in consultation with the Attorney General, shall adopt regulations that establish standards for determining the nominal fee associated with enrollment costs that may be retained by a discount medical plan organization or a discount drug plan organization under this subsection.

(3) Subject to paragraph (1) of this subsection, any regulation adopted under this subsection shall include a cap on the nominal fee that may be retained. *Ins.* §14-608

Thus, the consumer protection legislation passed by the General Assembly requires the Commissioner, in consultation with the Attorney General, to establish standards for determining the nominal fee associated with enrollment costs that are a part of the discount plan card and cap the nominal fee.

The direction the General Assembly gave to the Insurance Commissioner differs from the National Association of Insurance Commissioner's (NAIC) Model Act. Section 9 of the NAIC Model Act states:

- A. A discount medical plan organization may charge a periodic charge as well as a reasonable one-time processing fee for a discount medical plan.
- B. (1) (a) If a member cancels his or her membership in the discount plan organization within the first thirty (30) days after the date of receipt of the written document for the discount medical plan described in Section 13D of this Act, the member shall receive a reimbursement of all periodic charges and the amount of any one-time processing fee that exceeds [\$30] upon return of the discount medical plan card to the discount medical plan organization.

Drafting Note: The maximum one-time processing fee amount of \$30 in Paragraph (1)(a) is a suggested amount.

The NAIC Model Act, unlike the Maryland statute, allows discount plans to keep a one-time processing fee up to a designated amount. The NAIC Model Act makes no reference to “nominal” or to “enrollment costs” or to the “card”.

Other States

The MIA surveyed other states to determine the amount of money discount plans are allowed to retain if a consumer cancels membership during the first 30 days. Thirteen states responded. Five states (Connecticut, Montana, South Carolina, Missouri, and New Hampshire) permit discount plans to retain a “nominal fee”. These states have not defined a “nominal fee”.

The Consumer Health Alliance (Alliance) in its comments to the proposed regulations provided excerpts from nine state statutes. Five of these followed the NAIC Model Act, allowing discount plans to retain a one-time processing fee of \$30. Four states allow discount plans to retain a “nominal fee associated with enrollment costs” or a “nominal processing fee” and set this nominal fee at \$25 to \$60.

Industry Practice

The MIA surveyed registered discount plans. Twenty discount plans responded to the survey. The survey included the following three questions:

1. How does the plan determine enrollment costs? Identify cost associated with a membership card.
2. How is the retained nominal fee for cancellation within 30 days determined by the plan?
3. What is the current nominal fee retained by the plan?

Six discount plans identified components of enrollment costs: fulfillment materials, printing and packaging materials, postage, staff time, technology, marketing and network development. One plan identified the actual cost of a card, \$1. Mailing costs were identified by three plans ranging from \$0.75 to \$3. Based on the information provided by the plans, the cost of producing and mailing a card appears to be \$2.00 to \$3.00. Plans identified all enrollment costs ranging from \$6 to \$90.

Of the 20 discount plans, eight return all monies paid (including an enrollment or processing fee) to the consumer if membership is canceled during the first 30 days. Twelve retain a fee, ranging from \$5 to an amount equal to the monthly membership fee. The weighted average amount retained for the 12 discount plans is \$36.25.

In addition, the MIA reviewed the websites of 13 discount plans. Of these, seven charge an enrollment or processing fee in an amount ranging from 4 percent to 22 percent of the discount plan member’s annual cost up to \$60 per year.

Nominal fee

The MIA considered the plain meaning of the word “nominal” (“insignificantly small” or “trifling, insignificant”) when assessing the standards to be used for determining the nominal fee associated with enrollment costs. First, a nominal fee should be insignificant to the consumer, allowing the consumer to cancel membership during the first 30 days if he or she finds the discount plan to be of little value. Second, the nominal fee must be “associated with enrollment costs that were part of the discount plan card.” *Ins.* §14-608

The MIA concluded \$5 is nominal to a consumer and thereby allows a consumer to purchase a discount plan and have a thirty day period to determine if it has value. In addition, the \$5 nominal fee covers the \$2 to \$3 cost of producing and mailing a card to a consumer.

It is for these reasons that the emergency and proposed regulations allow a discount plan to retain a nominal fee that is the *lesser* of \$5 or the actual expenses incurred for issuing a plan member’s discount drug plan card or discount medical plan card.

Response to proposed nominal fee

The MIA received four written comments to the proposed regulation. All four objected to the nominal fee.

The Office of the Attorney General (OAG) urged the MIA to modify the regulations to allow consumers to receive a full refund of any initial payment and any monthly payment that has been paid to the discount plan. In part, the OAG reasoned “Prohibiting companies from retaining any fees from consumers who then cancel would provide discount card companies with an incentive to ensure that consumers are provided with complete and accurate information at the time of sale.”

The Consumer Health Alliance, Careington, Ameriplan, and the National Association of Dental Plans contend the nominal fee established by regulation is not reasonable and urged the MIA to follow the NAIC Model Act permitting discount plans to retain \$30. They find the nominal fee to be unreasonable because it does not fully cover the costs of processing an application, providing printed materials, creating identification cards, mailing, leasing a network, commissions, and the costs of cancelling a membership. Moreover, it will not deter consumers from obtaining all medical or prescription drug services during the first 30 days and cancelling their membership.

The MIA was not persuaded by these comments and will not modify the standard for the nominal fee and its cap.

Marketing material

The emergency and proposed regulations require discount plans to disclose the nominal fee in writing in all marketing materials. The comments the MIA received point out that there is a

difference between marketing material used to invite a consumer to inquire about a discount plan and enrollment material.

The MIA agrees that the emergency and proposed regulations do not recognize this distinction and will modify the regulations in the following manner:

.04 B. A discount drug plan or discount medical plan shall disclose the amount of the nominal fee and the circumstances when the discount drug plan organization or discount medical plan organization may retain the nominal fee in writing in 12 point type and in all marketing materials RELATING TO AN APPLICATION OR CONTRACT soliciting prospective members, including all:

- (1) Printed materials;
- (2) Brochures; and
- (3) Websites.

Guidance to discount plans

As specified in COMAR 31.10.24, discount plans may not retain a nominal fee when a consumer cancels his or her membership within 30 days unless the discount plan has filed its nominal fee with the Commissioner. Discount plans may notify the Commissioner by submitting a letter that includes: (1) the amount of the nominal fee; and (2) the actual expenses incurred for issuing a plan member's discount plan card, including the cost of creating the card and the cost of mailing the card. The letter may be sent by mail or by e-mail to:

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