

Discount Health Plans May Get Scrutiny

By Emma Gallegos

Discount medical referral services that have been sued in California over allegations they're consumer rip-offs could see more sunshine in coming months as state regulators nail down new rules for how to regulate these controversial businesses.

Sometimes referred to as "discount health plans," these subscriber services charge an up-front fee to customers in exchange for lists of medical providers who supposedly offer hefty mark-downs on health and dental care. These deals typically lure consumers who cannot afford to pay premiums for health insurance.

The popularity of discount plans exploded during the last decade, while legislative efforts in California to rid the industry of abuses have failed. The problem is physicians can end up on the referral lists unknowingly, according to consumer advocates who say these so-called discount plans take advantage of uninsured, non-English-speaking patients.

"It's been the venue of rogue plans, and for legitimate entities there's long been this cloud hanging over them," said Richard B. Spohn, a partner at Nossaman LLP. Spohn's firm helped First Dental Health, a dental referral service, obtain the first license for a discount plan in California in 2006.

Last year, the Department of Managed Health Care, a state agency that monitors HMOs, stepped into the void by claiming the authority to license all discount plans. The proposed regulations were rejected by the Office of Administrative Law in December, but the department has until April to appeal.

"These plans do exist and the department's desire in pursuing licensure is to protect consumers," said Lynne Randolph, a spokeswoman for the Department of Managed Health Care. "We know that they're out there and they're not going away, and we want to protect consumers the best that we can."

Five discount plans voluntarily applied for a state license, but the proposed regulations would force any discount plan that signs up subscribers in California to get a license. The move raised the ire of both the trade group that represents discount plans and California physicians, who oppose their operation in any form.

The discount plans that have come under the most scrutiny are ones where consumers complained they were not able to find doctors who offered the discounts promised.

Juan and Manuela Zermeno signed up in 2001 to join Care Entrée, a service offering a list of dental clinics for \$54.95 each month. When they contacted three on the list, none of the dentists were familiar with Care Entrée and said they didn't offer any special discounts.

After contacting Neighborhood Legal Services, the couple sued Care Entrée and its parent company, alleging the business is illegal under California law, which bans for-profit referral services to health care providers. The trial court issued an opinion last November in favor of the Zermenos. *Zermeno v. Precis Inc.*, 2009 DJDAR 17875 (Cal. App. 2nd Dist. December 23, 2009)

If the state goes ahead with regulations on the discount plans, that shouldn't harm the Zermenos' case, which is up on appeal, according to their attorney, David Pallack from Neighborhood Legal Services.

"I think they're taking a pragmatic approach," Pallack said, about the state's efforts. "The law is not being enforced, so they're doing what they can to reduce abuse."

A national trade group, Consumer Health Alliance, balked at its members having to obtain licenses, instead seeking legislation mandating only that the plans state clearly that they are selling a referral product, not a form of insurance.

Seeking a license would be too costly, said Allen Erenbaum, a partner at Mayer Brown LLP, who works with the alliance.

"The industry remains hopeful that California will adopt regulations that both protect consumers and allow legitimate companies to continue making health care products more affordable," he said.

Physicians say they can be unwittingly added to lists when they sign up to be a part of a traditional insurance network, such as a PPO. Their information is often sold to a discount company through a third-party administrator, according to Armand Feliciano, California Medical Association associate director for medical and regulatory policy.

"Doctors also feel misled, because they've never agreed to such a thing," Feliciano said.

It is unclear exactly how large the discount market is in California. State regulators have a database of nearly 200 discount groups they are tracking, based mostly on complaints from consumers. Consumer Health Alliance claims 6 million people in California joined discount plans.

"The problem with some of these discount entities is that they're very fluid," Randolph said. "They can just change their name, close their phone lines and

operate the next day as a different business entity."

Sheryl Bilbrey, president and CEO for the Better Business Bureau in San Diego, says she gets many complaints about San Diego based-businesses that hawk phantom discounts at pharmacies, often targeting seniors on fixed incomes.

"We have seen an increase in complaints over time in the industry as health insurance premiums are increasing," Bilbrey said.

Major HMOs, including Aetna and Pacificare, offer discount plans through their full-service licenses and those insurers wouldn't be affected by the new regulations, Randolph said.

A few discount plans welcomed regulation to distinguish themselves from the worst players in the market.

One of those to embrace licensure is the Texas-based Care Entrée, which received a 2-year temporary license under the name Capella Group last week from the Department of Managed Health Care. Spokesman Brad Denison said the company was "anxious" to convince regulators that it offers benefits to uninsured customers.

"If everyone understood how the discount works, there wouldn't be such concern about it," Denison said. "When they're operated correctly, they provide an incredible benefit to customers that don't have insurance."

Still the company dwindled in size in California amid the controversy. In 2003, Care Entrée, claimed more than 11,000 members in California bringing in \$500,000 in monthly membership fees. Now the company claims just 1,000 members in California, Denison said.

What remains unclear is whether a regulated marketplace would help discount plans like it grow in membership.

"I think the issue is going to be 'Will the market accept this to be a viable model?'" Spohn said. "The prudent entrepreneur is going to stay in the sidelines until this is all cleared up."

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