



Overview of State Laws Regulating Discount Health Care Programs

October 2011

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Scope of Regulations

Thirty-four states now have laws that regulate discount health care programs to some degree. Since October 2009, five states enacted new laws or regulations or substantial revisions affecting the industry, and additional legislative and regulatory activity is expected in 2011. These laws vary widely in scope. Some apply to discounts on all health care purchases.¹ Some regulate only prescription drug discounts,² while others regulate discounts on everything but prescription drugs.³ A few states specifically exempt discounts on eye care services, glasses or contact lenses.⁴ And some states exempt discounts offered without charge to the consumer.⁵

The strength of individual state laws also varies widely. Some contain only operating requirements, while others require registration or licensing of programs. This overview provides a consolidated summary of state laws by topic. While we have attempted to be complete in our descriptions, this overview is not an exhaustive list of requirements. Before doing business in any particular state, discount programs should review the applicable statute, regulations and forms to determine what requirements, if any, are operative in that state.

Advertising and Marketing Materials

Laws regulating discount health care advertisements typically apply to any attempt to sell, market, promote, advertise or otherwise distribute a discount card or other purchasing mechanism or

¹ Alaska Stat. § 21.36.155(a) (2005) [hereinafter AK]; Ark. Code Ann. § 4-106-201(1) (2005) [AR]; Colo. Rev. Stat. § 6-1-102(4.3) (2004) [CO]; Ga. Code Ann. § 10-1-393(b)(32) (2004) [GA]; Idaho Code § 48-1601 (2004) [ID]; 815 Ill. Comp. Stat. 505/2B.3 (2005) [IL]; Kan. Stat. Ann. § 50-1,100 (2005) [KS]; Ky. Rev. Stat. § 367.828 (2004) [KY]; Louis. Revis. Stat. § 22:2037.2(13) (2008) [LA]; Md. Code Ann. § 14-601 (2007) [MD]; 940 Code of Mass. Regs. 26.03 (2010) [MA]; Miss. Code § 83-64-1(1) (2007) [MS]; Mont. Code Ann. § 33-38-102 (2005) [MT]; N.H. Rev. Stat. Ann. § 415-I:3(VIII) [NH]; Nev. Rev. Stat. § 695H.050 (2005) [NV]; Ohio Rev. Code § 3961.01(F) (2006) [OH]; H. 2221 at § 2(4), Oregon Rev. Stat. § 742.420(4) (2007) [OR]; S.C. Code Ann. § 37-17-20(3) (2006) [SC]; S.D. Code § 58-17E-5 (2005) [SD]; Tenn. Code Ann. § 47-18-2701 (2004) [TN]; Tex. Ins. Code Ann. § 562.002(4) (2009) [TX]; Utah Code Ann. § 31A-8a-204 (2005) [UT]; Wash. Rev. Code § 48.155.010(9) (2009) [WA]; West Virginia Code § 33-15E-3 (2008) [WV].

² Ind. Code § 24-5-21-3 (2004) [IN]; Minn. Stat. § 325F.784(1) (2004) [MN]; Miss. Code Ann. § 83-9-6.1(1) (2004) [MS]; TN § 56-57-101; Tex. Bus. & Com. Code Ann. § 17.46(18)(C) (2004) [TX B&C].

³ Gen. Stat. of Conn. § 38a-479qq(a)(5) (2005) [CT]; Del. Code, tit. 18, § 8301(10) (2010) [DE]; Fla. Stat. ch. 636.202(2), (4) (2005) [FL]; IN § 27-17-1-8; Missouri Rev. Stat. § 376.1500(8) (2007) [MO]; Nebraska Rev. Stat. § 44-8303(11) (2008) [NE]; N.D. Cent. Code § 26.1-53-01(4) (2005) [ND]; Okla. Stat. tit. 36, §§ 1219.4(A)(1), (8) (2005) [OK]; Rhode Island Gen. Laws § 27-74-3(15) (2010) [RI].

⁴ AR § 4-106-204; DE § 8301(2), (10); IN § 24-5-21-1; MN § 325F.784(4)(1); TN § 47-18-2702.

⁵ CT § 38a-479qq(a)(3); DE § 8301(4)(b); KS § 50-1, 101; LA § 22:2037.2(4); MT §§ 33-38-102(5)(a) and (6); NE § 44-8303(5)(b); ND § 26.1-53-01(2); NH § 415-I:3(III)(b); NV § 695H.050; OK § 1219.4(3); RI § 27-74-3(6); SC § 37-17-20(2); SD §§ 58-17E-2 and 58-17E-4; TX § 562.002(2); UT § 31A-8a-102(3); WA § 48.155.010(4)(b); WV § 33-15E-3(4);

device.⁶ Generally, they require all plan advertising and marketing materials to disclose the following:

- The plan is not insurance.⁷
- The plan does not make payments directly to providers.⁸
- The plan member is obligated to pay for all services.⁹
- The plan only provides discounts at participating providers.¹⁰
- The name, address and telephone number of the discount health care organization¹¹ or plan administrator.¹²

Indiana requires that advertisements also disclose the availability of provider lists.¹³ Massachusetts requires that advertisements state that the plan does not meet the minimum creditable

⁶ AK § 21.36.155(1)(a); AR § 4-106-201; CO § 6-1-712(1)(a); CT § 38a-479qq(b); DE § 8310; FL 636.210; GA § 10-1-393(b)(32); ID § 48-1601; IL 505/2B.3; IN § 24-5-21-3; KS § 50-1,101(a); KY § 367.828; MN § 325F.784(1)(1); MS § 83-64-1(2); MT § 33-38-103(1); ND § 26.1-53-03; OK § 1219.4(F)(1); RI § 27-74-11; SC § 37-17-30(A); TN §§ 47-18-2701 and 56-57-101(4); TX B&C § 17.46(18); TX § 562.052; UT § 31A-8a-204.

⁷ AK § 21.36.155(1)(a); AR § 4-106-201(7); CT § 38a-479qq(b)(1); DE § 8310(c)(3)(a); GA § 10-1-393(b)(32)(A); ID § 48-1601(1); Ill. Admin. Code, tit. 50, § 2051.320(d)(1) (2009) [IL Admin. Code]; IN § 27-17-5-1(a)(1)KS § 50-1,101(b)(1); KY § 367.828(2)(a); LA § 22:2037.7(C)(1)(a); MA § 26.04(1)(a); MD § 14-607(d)(1); MN § 325F.784(1)(1); MO § 376.1512(1); MS § 83-64-1(2)(a); MT § 33-38-103(2)(a); NE § 44-8311(3)(a)(i); ND § 26.1-53-03(1)(a); NH § 415-I:11(IV)(a)(1); NV § 695H.110(1)(a); OH § 3961.04(A)(1); OK § 1219.4(F)(1)(a); OR § 742.432(4)(a); RI § 27-74-11(c)(3)(i); SC § 37-17-30(A)(3); SD §§ 58-17E-39 and 37-24-6(12)(a); TN §§ 47-18-2701(1) and 56-57-104(a); TX § 562.104(d); UT § 31A-8a-204(2)(c)(ii)(A); WA § 48.155.090(3)(a)(i); West Virginia Code of State Rules § 114-83-4.1(a)(1) (2008) [WV CSR].

⁸ DE § 8310(c)(3)(c); FL 636.212(3); IL Admin. Code § 2051.320(d)(3); IN § 27-17-5-1(a)(3); MA § 26.04(1)(c); MO § 376.1512(1); NE § 44-8311(3)(a)(iii); NH § 415-I:11(IV)(a)(3); NV § 695H.110(1)(c); OH § 3961.04(A)(3); OK § 1219.4(F)(1)(c); RI § 27-74-11(c)(3)(iii); SC § 37-17-55(B)(3) (applies to telephone solicitations); WA § 48.155.090(3)(a)(iii); WV CSR § 114-83-4.1(a)(3).

⁹ DE § 8310(c)(3)(d); FL 636.212(4); IL Admin. Code § 2051.320(d)(4); IN § 27-17-5-1(a)(5); LA § 22:2037.7(C)(1)(c); MA § 26.04(1)(d); MD § 14-607(d)(3); MO § 376.1512(1); NE § 44-8311(3)(a)(iv); ND § 26.1-53-03(1)(c); NH § 415-I:11(IV)(a)(4); NV § 695H.110(1)(d); OH § 3961.04(A)(4); OK § 1219.4(F)(1)(d); OR § 742.432(4)(b); RI § 27-74-11(c)(3)(iv); SC § 37-17-55(B)(4) (applies to telephone solicitations); UT § 31A-8a-204(2)(c)(ii)(C); WA § 48.155.090(3)(a)(iv); WV CSR § 114-83-4.1(a)(4).

¹⁰ CT § 38a-479qq(b)(1); CO § 6-1-712(1)(a)(I); FL 636.212(2); MA § 26.04(1)(d); MD § 14-607(d)(2); MO § 376.1512(1); ND § 26.1-53-03(1)(b); NH § 415-I:11(IV)(a)(2); NV § 695H.110(1)(b); OK § 1219.4(F)(1)(b); UT § 31A-8a-204(2)(c)(ii)(B).

¹¹ FL § 636.212(5); IN § 27-17-5-1(a)(6); MA § 26.04(1)(e); MD § 14-607(d)(4); MO § 376.1512(1); NE § 44-8311(3)(a)(v); ND § 26.1-53-03; NH § 415-I:11(IV)(a)(5); NV § 695H.110(1)(e); OH § 3961.04(A)(5); OK § 1219.4(F)(1)(e); SC § 37-17-30(B)(6); UT § 31A-8a-204(2)(c)(ii)(D); WV CSR § 114-83-4.1(a)(5).

¹² AK § 21.36.155(a)(3); CO § 6-1-712(1)(a)(II); CT § 38a-479qq(b)(3); DE § 8310(c)(3)(e); LA § 22:2037.7(A)(1); MS § 83-64-1(2)(c).

coverage requirements under its universal healthcare law.¹⁴ And a few states require written itemizations if discount programs are bundled with insurance or other products. In Illinois and Utah, bundled plans must include a written itemization if the other products can be purchased separately,¹⁵ in Florida itemization is required if the fees for the discount program exceed \$30 (or \$50 if certain benefits are included),¹⁶ and in Nebraska, Ohio, Washington and West Virginia, a plan must either provide a written itemization or reimburse members for all periodic charges if they cancel.¹⁷ In Maryland, advertisements that refer to hospital services must state that hospital discounts are not available in the state.¹⁸

South Carolina requires that all one-time or short-term promotions contain limiting terms as prominent as the special offer,¹⁹ and Texas requires that if a program sells or transfers a member's patient information or prescription drug history, that practice be disclosed prior to enrollment.²⁰

Disclosures generally must be made in a "bold and prominent"²¹ or a "clear and conspicuous" manner.²² Sometimes, a specific font size (such as 10, 12 or 14 point)²³ or location (*i.e.*, the first page of advertisements and marketing materials)²⁴ is required. Rhode Island requires

¹³ IN § 27-17-5-1(a)(4).

¹⁴ MA § 26.04(1)(a).

¹⁵ IL Admin. Code § 2051.320(e); UT § 31A-8a-204(3).

¹⁶ FL § 36.230.

¹⁷ NE § 44-8308(3); OH § 3961.04(E); WA § 48.155.060(2); WV § 33-15E-8(c).

¹⁸ MD § 14-607(d)(6).

¹⁹ SC § 37-17-30(B)(6).

²⁰ TX § 7002.002.

²¹ AK § 21.36.155(1)(a); AR § 4-106-201(7); GA § 10-1-393(b)(32)(A); ID § 48-1601(1); IL Admin. Code § 2051.320(d); IN § 24-5-21-3(1); KS § 50-1,101(b)(1); KY § 367.828(2)(a); MN § 325F.784(1)(1); MO § 376.1512(1); MT § 33-38-103(2)(a); SD § 58-17E-39; SC § 37-17-30(A)(3); TN §§ 47-18-2701(1) and 56-57-104(a); TX B&C § 17.46(18)(B); UT § 31A-8a-204(2)(c)(ii)(A).

²² CO § 6-1-712(1)(a)(I); CT § 38a-479qq(b)(1); MA § 26.04(1); MT § 33-38-108(1)(a) (pharmacy discount cards); ND § 26.1-53-03(1)(a); NV § 695H.110(1); RI § 27-74-11(c)(1); TX § 562.104(d).

²³ DE § 8310(c)(1); FL § 636.212(1); IN § 27-17-5-1(b); LA § 22:2037.7(C)(1); MD § 14-607(d); MO § 376.1512(1); MT § 33-38-103(2)(a); NE § 44-8311(3)(a); NH § 415-I:11(IV)(b); NV § 695H.120; OH § 3961.04(A); OK § 1219.4(F)(1)(a); OR § 742.432(4); RI § 27-74-11(c)(1); UT § 31A-8a-204(2)(c)(ii)(A); WA § 48.155.090(3)(a); WV CSR § 114-83-4.1(a).

²⁴ DE § 8310(c)(2); FL § 636.212(1); IL Admin. Code § 2051.320(d); IN § 27-17-5-1(a); LA § 22:2037.7(C)(1); MO § 376.1512(1); NE § 44-8311(3)(a); NH § 415-I:11(IV)(b); OH § 3961.04(A); OK § 1219.4(F)(1)(a); RI § 27-74-11(c)(2); WA § 48.155.090(3)(a); WV CSR § 114-83-4.1(a).

that disclosures achieve a grade level score of no higher than 8th grade on the Flesch-Kincaid readability test.²⁵

Several states explicitly extend the disclosure requirements to telemarketing, in which case the disclosures must be made orally²⁶ and/or provided in the initial written materials.²⁷ If initial contact is made by telephone, Massachusetts also requires that the written disclosures be provided prior to enrollment.²⁸

At least three states also establish specific disclosure requirements for electronic advertisements. In Arkansas, advertisements made via the radio, television or the internet must state in a bold and prominent manner that “the discounts are not insurance” and that members have the right to cancel for a full refund within thirty (30) days.²⁹ In North Dakota, television and internet advertisements must state that the plan is not insurance and that the plan provides discounts for certain health care services.³⁰

One state – Indiana – requires that all advertisements be pre-approved by the state Department of Insurance before use.³¹

Prohibition on Fraud, Misrepresentation and Deception

Most states prohibit discount plan materials that are fraudulent, misleading or deceptive.³²

Restriction on Terms Commonly Associated with Insurance

²⁵ RI § 27-74-11(c)(1).

²⁶ AR § 4-106-201(8); DE § 8310(c); IL Admin. Code § 2051.320(d); FL 636.212; IN § 27-17-5-1(d); LA § 22:2037.7(C)(2); MA § 26.04(1); MO § 376.1512(2); NE § 44-8311(3)(b); ND § 26.1-53-03(3); NH § 415-I:11(IV)(b); OH § 3961.04(B); OK § 1219.4(F)(2); RI § 27-74-11(d); SC § 37-17-55(B); SD § 58-17E-42; WA § 48.155.090(3)(b); WV CSR § 114-83-4.1(b).

²⁷ DE § 8310(c); FL 636.212; IL Admin. Code § 2051.320(d); IN § 27-17-5-1-(d); LA § 22:2037.7(C)(2); MA § 26.04(1); MO § 376.1512(2); NE § 44-8311(3)(b); NH § 415-I:11(IV)(b); NV § 695H.110(2); OH § 3961.04(B); OK § 1219.4(F)(2); RI § 27-74-11(d); SC § 37-17-55(B); SD § 58-17E-42; WA § 48.155.090(3)(b); WV CSR § 114-83-4.1(b).

²⁸ MA § 26.04(1).

²⁹ AR § 4-106-201(8).

³⁰ ND § 26.1-53-03(2).

³¹ IN § 27-17-6.

³² AK §§ 21.36.030(a)(1), (a)(12); AR § 4-106-201(4); CO § 6-1-712(1)(a)(IV); CT § 38a-479qq(b)(6); DE § 8310(b)(5); Fla. Admin. Code Ann. r. 69O-203.203; ID § 48-1601(1); IL 505/2B.3(3); IN § 27-17-4-1(5); KS § 50-1,101(a), -1,101(b)(3); KY § 367.828(4) (by reference to KY § 367.190 (2004)); LA § 22:2037.7(B)(5); MA § 26.05(5), (6); MN § 325F.784(1)(3); MT § 33-38-103(1); NE § 44-8311(1)(a); NH § 415-I:11(I); OH § 3961.05(C); OK § 1219.4(J)(1)(c); OR § 742.434(1)(a); RI § 27-74-11(b)(5); SC § 37-17-30(A)(5); SD §§ 58-17E-40(4) and 37-24-6(12)(c); TN § 47-18-2701(3); TX § 562.052; UT § 31A-8a-209, 31A-31-111 (by reference to Chapter 31 of the Utah Code); WA § 48.155.090(1)(a); WV CSR § 114-83-3.2(a).

Many states prohibit discount programs from using terms commonly associated with insurance in a manner that could mislead consumers.³³ Several states list the specific terms that cannot be used in this manner, including: “health plan,” “health benefit plan,” “benefits,” “coverage,” “copay,” “copayments,” “preexisting conditions,” “guaranteed issue,” “insurance,” “premium,” “preferred provider,” “PPO,” and “preferred provider organization.”³⁴ Nevada and Utah arguably prohibit the use of these terms in any manner, and Nevada permits the terms “insurance” and “enrollment” to be used only with the approval of the commissioner.³⁵ Some states do allow use of the term “insurance”³⁶ and other terms commonly associated with insurance³⁷ if used to disclaim any relationship between the discount program and insurance or to describe a bundled insurance product.

In Utah, salespersons cannot be called “agents,” “producers,” or “consultants.”³⁸ Other states require plans to use plain language and words of common usage.³⁹

The Discount Card

Most states require that the discount card contain a statement that the plan is not insurance in either a “bold and prominent”⁴⁰ or “clear and conspicuous” manner.⁴¹ Missouri and Indiana require this statement to be on the front of the card.⁴² Arkansas also requires that cancellation and refund

³³ AK § 21.36.030(a)(13); AR § 4-106-201(5); CT § 38a-479qq(b)(2); DE § 8310(b)(3); FL § 636.210(1)(b); IL Admin. Code § 2051.360(c); IN § 27-17-4-1(1)(B); LA § 22:2037.7(B)(3); MA § 26.05(2); MD § 14-606(2); MO § 376.1510(1); MT § 33-38-103(1)(b); NE § 44-8311(2)(c)(i); ND § 26.1-53-02(2); NH § 415-I:11(III)(b); NV § 695H.100(2); OH § 3961.05(B); OK § 1219.4(E)(1)(a); OR § 742.434(1)(b); RI § 27-74-11(b)(3); TX § 562.051(6); UT § 31A-8a-204(1); WA § 48.155.090(2)(c); WV CSR § 114-83-3.4(c).

³⁴ CT § 38a-479qq(b)(2); DE § 8310(b)(3); FL § 636.210(1)(b); IL Admin. Code § 2051.360(c); IN § 27-17-4-1(1); LA § 22:2037.7(B)(3); MA § 26.05(2); MD § 14-606(2); MO § 376.1510(1); ND § 26.1-53-02(2); NH § 415-I:11(III)(b); OH § 3961.05(B); OK § 1219.4(E)(1)(a); OR § 742.434(1)(b); RI § 27-74-11(b)(3); TX § 562.051(6); WA § 48.155.090(2)(c); WV CSR § 114-83-3.4(c).

³⁵ NV § 695H.100(1); UT § 31A-8a-204(1).

³⁶ DE § 8310(b)(1); FL § 636.210(1)(a); IN § 27-17-4-1(1)(A)(i); LA § 22:2037.7(B)(1); MA § 26.05(1); MD § 14-606(1); MO § 376.1510(5); NE § 44-8311(2)(a); NH § 415-I:11(III)(a); OH § 3961.05(A); RI § 27-74-11(b)(1); TX § 562.051(5); WA § 48.155.090(2)(a); WV CSR § 114-83-3.4(a).

³⁷ CT § 38a-479qq(b)(2).

³⁸ UT § 31A-8a-204(1).

³⁹ CO § 6-1-712(1)(a)(IV); CT § 38a-479qq(b)(6).

⁴⁰ AK § 21.36.155(a)(1); AR § 4-106-201(1); CT § 38a-479qq(b)(11); GA § 10-1-393(b)(32)(A); ID § 48-1601(1); IL 505/2B.3(1); IN § 27-17-5-1(c); KS § 50-1,101(b)(1); KY § 367.828(2)(a); MN § 325F.784(1)(1); MO § 376.1512(3) SC § 37-17-10(A)(2); TN §§ 47-18-2701(1) and 56-57-104(a); TX B&C § 17.46(18)(B).

⁴¹ MT § 33-38-103(2)(a); TX § 562.103(b)(1).

⁴² IN § 27-17-5-1(c); MO § 376.1512(3).

rights be on or attached to the card.⁴³ Connecticut and Illinois require the card to include the name, trademark or logo of participating provider networks,⁴⁴ Maryland requires the card to include the name or identifying trademark of the discount program or provider network,⁴⁵ and Texas requires the card to include information on the entity administering the prescription drug benefits.⁴⁶ Several states require the discount card to include the address of an internet website where a complete and accurate listing of participating providers can be found.⁴⁷ Illinois and Tennessee require discount cards to contain a toll-free customer service number and website address where members can access an up-to-date list of providers.⁴⁸ Illinois also requires discount cards to include member names and ID numbers, as well as any group numbers or processor control numbers necessary to process the benefits.⁴⁹

Fees

Discount programs generally can charge periodic fees and a reasonable one-time processing fee. In Florida, all fees must be filed with the Office of Insurance Regulation, and membership fees in excess of \$50 per month (for comprehensive plans) and \$30 per month (for other plans) must be approved by that Office.⁵⁰ In Tennessee and Washington, discount program must disclose to each prospective member all fees, including any up front fees and membership fees.⁵¹

Cancellation Rights

In many states, members must be given the right to cancel their membership within thirty days (10 days in Utah⁵²) with a full refund of all periodic charges, though nominal processing fees are non-refundable.⁵³ At least one state (Arkansas) requires refund of all fees, including processing

⁴³ AR §§ 4-106-201(2), (6).

⁴⁴ CT § 38a-479rr(s); 215 IL §§ 138/15(c)(3) and 139/15(d)(3).

⁴⁵ MD § 14-609(a)(2).

⁴⁶ TX § 562.103(b)(2).

⁴⁷ CT § 38a-479rr(c); DE § 8308(e); FL 636.226; 215 IL §§ 138/15(c)(8) and 139/15(d)(8); MA § 26.04(c); MO § 376.1522; NE § 44-8309(2); ND § 26.1-53-05; NH § 415-I:9(II); OH § 3961.04(D); OK § 1219.4(L); RI § 27-74-9(f); SC § 37-17-30(B)(5) WV § 33-15E-10(b).

⁴⁸ 215 IL §§ 138/15(c)(1), (2) and 139/15(d)(1), (2); TN § 56-57-104(a).

⁴⁹ 215 IL §§ 138/15(c)(4)-(7) and 139/15(d)(4)-(7).

⁵⁰ FL Admin. Rule 69O-203.204.

⁵¹ TN § 56-57-104(b); WA § 48.155.060(1).

⁵² UT § 31A-8a-205.

⁵³ AK § 21.36.155(a)(5); AR § 4-106-205; CO § 6-1-712(1)(c); CT § 38a-479qq(b)(9); DE § 8306(b); FL § 636.208; IL Admin. Code § 2051.320(b)(1); IN § 27-17-8-1; LA § 22:2037.5(B)(1); MD § 14-608(a); MO § 376.1508(2); MS § 83-64-1(e)-(f); MT § 33-38-104(1); NE § 44-8308(2)(a)(i); ND § 26.1-53-08(1); NH § 415-I:8; OH § 3961.06(B); OR §

fees, and a few states cap the processing fee that can be retained at \$20⁵⁴, \$25,⁵⁵ \$30⁵⁶ or \$50.⁵⁷ Refunds generally must be provided within thirty days of cancellation.⁵⁸ A couple states require pro rata reimbursement of periodic charges if the membership period lasts longer than 1 month, even if cancellation is initiated by the member.⁵⁹

Several states require notice of cancellation and refund rights.⁶⁰ Some states specify that such notice must appear on or attached to the discount card,⁶¹ with the card,⁶² in the enrollment materials,⁶³ in advertising and marketing materials,⁶⁴ or on the first page of the contract.⁶⁵

Contractual Requirements

Provider Agreements

With a couple exceptions (*i.e.*, Maryland and Louisiana), discount programs must have written contracts with participating health care providers.⁶⁶ Typically, the contract must contain a

742.432(1); RI § 27-74-8(b); SC § 37-17-55(C); SD § 58-17E-45; TN § 56-57-105(a); TX § 562.103(e); WA § 48.155.060(3)(a)(i); WV § 33-15E-8(b)(1).

⁵⁴ RI § 27-74-8(b).

⁵⁵ S.D. Admin. R. 20:06:49:01 (2005).

⁵⁶ FL 636.208; IL Admin. Code § 2051.320(f); LA § 22:2037.5(B)(1); NE § 44-8308(2)(a)(i); OH § 3961.06(B); OR § 836-200-0215; WA § 48.155.060(1); WV § 33-15E-8(b)(1).

⁵⁷ ND § 26.1-53-08(1); TX § 562.103(e).

⁵⁸ AK § 21.36.155(a)(6); CO § 6-1-712(1)(d); CT § 38a-479qq(b)(10); MO § 76.1508(2); ND § 26.1-53-08(1); NH § 415-I:8(III); NV § 695H.170(7); OH § 3961.06(B); OK § 1219.4(D); TX § 562.103(e).

⁵⁹ ND § 26.1-53-08(1); OK § 1219.4(D).

⁶⁰ AR § 4-106-201(6); CO § 6-1-712(1)(a)(V); CT § 38a-479qq(b)(7); DE § 8310(e)(8); IL Admin. Code § 2051.320(b)(1); IN § 27-17-8-2; LA § 22:2037.7(D)(2)(h); MO § 376.1508(3); MT § 33-38-104(3); NE § 44-8311(4)(b)(viii); NH § 415-I:11(IV)(c)(7); SC § 37-17-52(B)(8); SD § 58-17E-44(8); TN § 56-57-105; WV § 33-15E-8(b)(1).

⁶¹ AR §§ 4-106-201(2), (6).

⁶² IN § 27-17-8-2.

⁶³ AR § 4-106-201(6); DE § 8310(e)(8); IL Admin. Code § 2051.320(b)(1); LA § 22:2037.7(D)(2)(h); MT § 33-38-104(3); NE § 44-8311(4)(b)(viii); NH § 415-I:11(IV)(c)(7); RI § 27-74-11(e)(2)(viii); SC § 37-17-52(B)(8); SD § 58-17E-44(8).

⁶⁴ AR § 4-106-201(6); ND § 26.1-53-03(1)(e).

⁶⁵ OK § 1219.4(D)(3); MO § 376.1508(3); WV § 33-15E-8(b)(1).

⁶⁶ AK § 21.36.155(a)(2); AR § 4-106-201(3); CO § 6-1-712(1)(b); CT § 38-479qq(b)(8); DE § 8308(a); FL 636.214; GA § 10-1-393(b)(32)(B); ID § 48-1601(2); IL 505/2B.3(2); IN § 27-17-1-12; KS § 50-1,101(b)(2); KY § 367.828(2)(b); MA § 26.06(1); MN § 325F.784(1)(2); MO § 376.1514; MS § 83-64-1(2)(b); MT § 33-38-103(2)(c); NE § 44-8309(1)(a); ND § 26.1-53-04; NH § 415-I:9(I); NV § 695H.170(5); OH § 3961.02; OK § 1219.4(G); OR §

list of the services to be provided, as well as a list of discounts offered or a fee schedule that reflects the providers' discounted rates. The providers must guarantee that they will not charge members more than the discounted rate. Provider networks must update their lists quarterly or monthly. Illinois has additional provider agreement requirements, including ones relating to required malpractice insurance, non-discrimination, 30-day termination notice and internal appeal or arbitration procedures.⁶⁷

Member Agreements

Some states require written membership contracts⁶⁸ or fulfillment materials.⁶⁹ In Florida, Illinois, Indiana, Missouri, Oklahoma and Utah, these contracts are subject to the same disclosure requirements as advertising and marketing materials. Delaware, Illinois Louisiana, Nebraska, New Hampshire, Ohio, Rhode Island, South Carolina, South Dakota, Texas, Washington and West Virginia also require specific disclosures in the fulfillment materials, such as benefits, charges, limitations and cancellation procedures.⁷⁰ In Florida, the form membership contracts are subject to state approval.⁷¹

Marketing Agreements

Some states require written marketing agreements under which discount programs must approve all advertisements used by entities marketing the program.⁷² Oregon also requires such approval, although not pursuant to a written agreement.⁷³

Provider Lists

742.424; SC § 37-17-30(A)(4); RI § 27-74-9(a); SD § 37-24-6(12)(b); TN § 47-18-2701(2); TX § 562.105; UT § 31A-8a-206(3); WA § 48.155.070(1)(a); WV § 33-15E-10.

⁶⁷ IL Admin. Code § 2051.290.

⁶⁸ FL 636.216(2); IL Admin. Code § 2051.320(a); IN § 27-17-5-2; OK § 1219.4(H)(1); UT §§ 31A-8a-204(2)(c)(ii)(A), -205(b).

⁶⁹ DE § 8310(e); LA § 22:2037.7(D)(1)(b); MA § 26.04(2)(b); MO § 376.1516(1); NE § 44-8311(4)(a)(ii); NH § 415-I:11(IV)(c); OH § 3961.04(C); RI § 27-74-11(e)(2); SC § 37-17-52(A); SD § 58-17E-25; WV CSR § 114-83-4.2(a)(2); TX § 562.103(c); WA § 48.155.090(4)(a).

⁷⁰ DE § 8310(e); IL Admin. Code § 2051.320(b); LA § 22:2037.7(D)(2); NE § 44-8311(4)(b); NH § 415-I:11(IV)(c); OH § 3961.04(C); RI § 27-74-11(e)(2); SC § 37-17-52(B); SD § 58-17E-44; TX § 562.103(c); WA § 48.155.090(4)(b); WV CSR § 114-83-4.2(b).

⁷¹ FL 636.216(3).

⁷² CT § 38-479rr(v); DE § 8309(b); FL 636.228; IN § 27-17-12; MO § 376.1524; NE § 44-8310(2); ND § 26.1-53-06; NH § 415-I:10; OH § 3961.03; OK § 1219.4(M); RI § 27-74-10(b); SD §§ 58-17E-33 and 34; TX § 562.104(b); UT § 31A-8a-204(2)(a), (b); WA § 48.155.080(2); WV § 33-15E-11(b).

⁷³ OR § 742.435(4).

Generally, discount programs must make available to their members and prospective members a complete and accurate listing of participating providers.⁷⁴ Some states require that the list be accessible via a toll-free telephone number.⁷⁵ Others require a list in writing or on a website maintained by the discount program.⁷⁶ Kansas requires discount programs to provide members within seven days of purchase a written list of the twenty-five providers closest to the members' local area.⁷⁷

Payments to Providers

Several states prohibit discount programs from collecting money to pay providers for medical services,⁷⁸ although, except for Delaware and Ohio, they allow such collections if the discount program is a licensed TPA.

Licensing and Registration

Connecticut, Delaware, Florida, Oregon, Utah, Washington and West Virginia require discount programs to obtain an annual license from the state insurance commissioner.⁷⁹ Illinois, Indiana, Missouri, Montana, Nebraska, Nevada, New Hampshire, Oklahoma, South Dakota, Tennessee and Texas require discount programs to register annually with the state insurance commissioner,⁸⁰ while Louisiana, Maryland and Rhode Island require biennial registration.⁸¹ South

⁷⁴ AK § 21.36.155(a)(4); CO § 6-1-712(1)(a)(III); CT § 38a-479qq(b)(4); DE § 8310(c)(3)(e); FL 636.226; IL Admin. Code § 2051.320(d)(5); IN § 27-17-5-1(a)(4); KS § 50-1,101(b)(5); LA § 22:2037.7(C)(1)(d); MA § 26.04(1)(f); MO § 376.1522; MS § 83-64-1(2)(d); MT § 33-38-103(c) and (d); NE § 44-8309(2); ND § 26.1-53-05; NH § 415-I:9(II); NV § 695H.170(3); OH § 3961.04(A)(5); OK § 1219.4(L); RI § 27-74-9(f); SC § 37-17-30(B)(5); SD § 58-17E-31; TN § 56-57-104(c)(1); TX § 562.103(1); UT § 31A-8a-205(1)-(2); WA § 48.155.070(2)(a); WV § 33-15E-11(b).

⁷⁵ CO § 6-1-712(1)(a)(III); CT §§ 38a-479qq(b)(4); DE § 8310(c)(3)(e); IL Admin. Code § 2051.320(d)(5); KS § 50-1,101(b)(5); LA § 22:2037.7(C)(1)(d); MA § 26.04(1)(f); MT § 33-38-103(1)(d); NE § 44-8309(3); NH § 415-I:11(IV)(a)(5); NV § 695H.170(3); OH § 3961.04(A)(5); RI § 27-74-11(c)(3)(v); SC § 37-17-30(B)(5) (applies to participating facilities); TN § 56-57-104(c)(1); TX § 562.103(1); WV CSR § 114-83-4.1(a)(5).

⁷⁶ CO § 6-1-712(1)(a)(III); CT § 38a-479rr(r); DE § 8310(c)(3)(e); FL 636.226; IL Admin. Code § 2051.320(d)(5); MO § 376.1522; LA § 22:2037.7(C)(1)(d); MA § 26.04(1)(f); MT § 33-38-103(1)(d); NE § 44-8309(2); ND § 26.1-53-05; NH § 415-I:9(II); OH § 3961.04(A)(5); OK § 1219.4(L); OR § 742.432(3); RI § 27-74-9(f); SC § 37-17-30(B)(5); SD § 58-17E-31; TN § 56-57-104(c)(1); TX § 562.103(1); WA § 48.155.070(2)(a); WV § 33-15E-11(b).

⁷⁷ KS §§ 50-1,101(b)(4)(A)-(B).

⁷⁸ DE § 8310(b)(7); FL 636.210(2); IL Admin. Code § 2051.290(m); IN § 27-17-4-1(4); MD § 14-606(4); MO § 376.1510(4); NE § 44-8311(2)(c)(v); ND § 26.1-53-02(3); NH § 415-I:11(III)(f); NV § 695H.100(4); OH § 3961.05(E); OK § 1219.4(E)(1); RI § 27-74-11(b)(7); UT § 31A-8a-206; WA § 48.155.090(2)(g); WV CSR § 114-83-3.4(f).

⁷⁹ CT § 38a-479rr(a); DE § 8303; FL 636.204; OR § 742.422; UT § 31A-8a-201, to -203; WA § 48.155.020(1); WV § 33-15E-4.

⁸⁰ IL Admin. Code § 2051.240; IN § 27-17-2; MO § 376.1504; MT § 33-38-105 (except pharmacy-only plans); NE § 44-8306 (except pharmacy-only plans); NH § 415-I:5; NV § 695.080 (except pharmacy-only plans); OK § 1219.4(B); SD § 58-17E-9; TN § 56-57-103 (pharmacy-only plan); TX § 7001.005.

⁸¹ LA § 22:2037.4; MD § 14-603; RI § 27-74-5(a).

Carolina requires registration with the Department of Consumer Affairs.⁸² And Kansas requires annual registration with the Secretary of State.⁸³ Utah also requires marketers to be licensed.⁸⁴

Requirements vary on the types of information that must be filed with a license or registration application. Some states require applicants to file provider contracts⁸⁵, audited financial statements⁸⁶, marketing plans⁸⁷, a list of providers⁸⁸, a list of marketers⁸⁹, enrollment/fulfillment materials or written member agreements⁹⁰, and copies of advertising or promotional materials.⁹¹ Tennessee requires a list of eligible drugs or a notation that the plan is an open formulary.⁹² Several states also require discount programs to maintain a specific net worth or obtain a surety bond prior to licensing or registration.⁹³ Additional information on registration and licensing requirements is detailed on a separate CHA chart.

Miscellaneous

There are other notable state-specific requirements, including:

⁸² SC § 37-17-30(A)(2).

⁸³ KS § 50-1,101(b)(1).

⁸⁴ UT R590-152-5.

⁸⁵ CT § 38a-479rr(a)(2)(F); DE § 8303(b)(2)(h); FL 636.204(2)(f); IL Admin. Code § 2051.260(b); IN § 27-17-2-2(b)(2)(G); LA § 22:2037.4(B)(7); NV § 695H.090(1)(e); OK § 1219.4(H)(2); SC § 37-17-30(A)(4) (documentation evidencing contract); TX § 7001.005(a)(5); UT § 31A-8a-203; WA § 48.155.020(2)(b)(viii); WV CSR § 114-83-2.2(j).

⁸⁶ CT § 38a-479rr(a)(2)(I); FL 636.204(2)(i); NV § 695H.090(1)(f); SC § 37-17-40(A)(4); WA § 48.155.020(2)(b)(xii); WV CSR § 114-83-2.2(g).

⁸⁷ CT § 38a-479rr(a)(2)(J); DE § 8303(b)(2)(k); IN § 27-17-2-2(b)(2)(H); FL 636.204(2)(j); LA § 22:2037.4(B)(8); NV § 695H.090(1)(g); UT § 31A-8a-203; WA § 48.155.020(2)(b)(xiii); WV CSR § 114-83-2.2(f).

⁸⁸ IN § 27-17-2-2(b)(2)(E).

⁸⁹ CT § 38-479rr(a)(2)(M); IL Admin. Code § 2051.260(d); MD § 14-605(a)(9); OR § 742.426(1)(h); TX § 7001.005(a)(4); WA § 48.155.020(2)(b)(x).

⁹⁰ DE § 8307; IL Admin. Code § 2051.260(c); FL 636.216(3); LA § 22:2037.4(B)(6); UT § 31A-8a-203l.

⁹¹ TN § 56-57-103(a)(2); UT § 31A-8a-204.

⁹² TN § 56-57-103(a)(3).

⁹³ CT § 38a-479rr(j); DE § 8304; FL § 636.205; IN § 27-17-9; IL; KS § 50-1, 101(b)(6); MO § 376.1518; MT § 33-38-106 (except pharmacy-only plans); NV § 695H.130; OK § 1219.4(P); RI § 27-74-6(a); SC § 37-17-40(A)(3); SD § 58-17E-20; TX § 562.103(f); WA §§ 48.155.030(1) and 7(1); WV §§ 33-15E-5 and 33-15E-6.

- Several states prohibit discount programs from restricting access to plan providers through waiting or notification periods,⁹⁴ although Florida, Illinois, Louisiana, Missouri, Nebraska, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Washington and West Virginia exempt hospital stays from this prohibition. Delaware prohibits restrictions on access but exempts waiting and notification periods altogether.⁹⁵
- Kentucky and South Carolina requires discount programs to disclose the range of discounts offered to members.⁹⁶ Massachusetts requires plans to disclose the discounts or range of discounts as a percentage or dollar amount.⁹⁷
- Tennessee requires prescription drug plans to provide each member with a list of the drugs covered by the plan or a notation that the plan is an open formulary.⁹⁸
- In Mississippi, any organization offering a discount on prescription drug purchases must pay a portion of that discount itself.⁹⁹
- In West Virginia, no discounts may be offered for hospital services without the approval of the appropriate state rate-making agency.¹⁰⁰
- In Indiana, a discount program cannot list or advertise a physician as a program provider without the express written consent of the physician.¹⁰¹
- South Carolina and Montana require discount programs to annually submit a list of marketers authorized to sell the plan.¹⁰² Washington requires programs to submit a list of marketers upon licensing, and to update that list within six days of any change.¹⁰³ Texas requires that discount programs submit an updated list of marketers every quarter.¹⁰⁴ Connecticut requires discount programs to annually submit a list of authorized private label

⁹⁴ FL 636.210(1)(c); IL Admin. Code § 2051.320(b)(2); IN § 27-17-4-1(2); LA § 22:2037.7(B)(6); MD § 14-606(3); MO § 376.1510(2); NE § 44-8311(2)(c)(iv); NH § 415-I:11(III)(e); OH § 3961.05(D); OK § 1219.4(E)(1)(b); RI § 27-74-11(b)(6); SD § 58-17E-40(5); UT § 31A-8a-206(1); WA § 48.155.090(2)(f); WV CSR § 114-83-3.4(e).

⁹⁵ DE § 8310(b)(6).

⁹⁶ KY § 367.828(2)(c); SC § 37-17-30(B)(5).

⁹⁷ MA § 26.04(2).

⁹⁸ TN § 56-57-104(c)(2).

⁹⁹ MS § 83-9-6.1(3).

¹⁰⁰ WV § 16-29B-10.

¹⁰¹ IN § 27-14-4-1(6).

¹⁰² SC § 37-17-40(C)

¹⁰³ WA § 48.155.020(2)(b)(x).

¹⁰⁴ 28 Texas Administrative Code 19.1605(c).

marketers, and to update that list electronically if any private label marketer is added mid-year.¹⁰⁵ Illinois requires discount programs to submit a list of private label marketers and any product names used by such marketers upon registration.¹⁰⁶

- In Tennessee, a discount program must disclose to each prospective member the estimated average savings typically associated with the plan.¹⁰⁷
- Illinois requires discount plans to detail how their networks provide sufficient accessibility to participating providers and how they address the needs of members with limited English proficiency.¹⁰⁸ Illinois also requires DMPOs to conduct due diligence before contracting with other DMPOs.¹⁰⁹
- Rhode Island requires that all communications with members (including forms, marketing materials, fulfillment materials, and discount cards) achieve a grade level score of no higher than 8th grade on the Flesch-Kincaid readability test.¹¹⁰

¹⁰⁵ CT § 38a-479rr(b).

¹⁰⁶ IL Admin. Code § 2051.260(d).

¹⁰⁷ TN § 56-57-104(b).

¹⁰⁸ IL Admin. Code § 2051.310.

¹⁰⁹ IL Admin. Code § 2051.300(a).

¹¹⁰ RI § 27-74-11(c)(1); RI Regulation 15, § 7.