

**NEW YORK STATE ATTORNEY GENERAL'S
ADVERTISING, MARKETING and PROGRAM GUIDELINES FOR MEDICAL AND
PRESCRIPTION DISCOUNT CARDS**

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INTRODUCTION

Consumers throughout the nation, especially the 43 million uninsured, are looking for ways to obtain more affordable medical care. An ever increasing number of companies are offering discount card programs for health care services and prescription drugs. While these discount card programs may provide savings, they are not insurance. Consumers who enroll in discount card programs pay out-of-pocket for their own health care and prescription expenses at rates that may be lower than the providers' ordinary rates.

The Attorney General's review of certain medical and prescription discount card programs revealed a pattern of misleading advertising by some discount card companies and their marketers. Those companies and marketers exaggerated the savings on medical expenses and the scope of available services, and failed to disclose relevant information that ultimately increased the overall cost of the program to consumers. In addition, with the impending issuance of Medicare prescription cards, certain companies have been marketing their discount card programs to senior citizens with claims and tactics that falsely suggest that their cards are federally approved Medicare prescription discount cards. Such misleading promotions can be costly traps for unwary purchasers of medical and prescription discount cards, and are unfair to those companies that compete on the basis of forthright and truthful advertising.

In response to these concerns, the Attorney General prepared and disseminated consumer education materials to assist consumers in making informed decisions when considering enrolling in medical and prescription discount card programs. In addition, the Attorney General directed his staff to issue the following guidelines for the industry to assist it in better communicating, in a non-deceptive manner, with consumers about their programs. In preparing these guidelines the Attorney General's staff closely examined a substantial number of medical and prescription discount card advertisements, researched the laws, regulations and guidelines of other states and the federal regulations for the Medicare discount prescription card program, and reviewed consumer complaints and related enforcement actions involving discount card companies.

Enforcement action by the Attorney General in the area of false advertising and deceptive business practices is based primarily on the New York consumer protection statutes:

Executive Law § 63(12), and General Business Law Article 22A, §§ 349 & 350. These guidelines are intended to assist the industry in advertising and marketing discount card programs in a lawful, non-deceptive manner. These guidelines reflect the Attorney General's suggestions to the industry, unless specific regulatory or statutory requirements are cited. The use of the word *should* in these guidelines means that something is suggested or recommended, but not required. These guidelines do not purport to cover all possible representations by the discount card industry that may run afoul of the New York consumer protection laws.

Importantly, compliance with the guidelines suggested by the Attorney General should in no way be deemed an endorsement by the Attorney General of a particular discount card program, nor should it be deemed a finding that a particular discount card program is in compliance with applicable law.

SECTION I. STATEMENT OF ADVERTISING PRINCIPLES

All medical and prescription discount card advertising, whether printed or broadcast, must be in plain language, clear and conspicuous (defined below) and non-deceptive. Deception may result from direct statements in the advertisement or from reasonable inferences that may be drawn from an advertisement, or from disclaimers that contradict, confuse, unreasonably limit or materially modify a principal message of the advertisement. Deception may also result from the failure to clearly and conspicuously disclose any material facts, including limitations, disclaimers, qualifications, conditions, exclusions or restrictions.

SECTION II. DEFINITIONS

The term "Discount Card" means a medical and/or prescription discount card program. A Discount Card includes those programs that are operated by companies which offer their members access to health care services at discounted fees, including those that offer a discount for a single type of service, such as dental or pharmacy, and those that offer access to a variety of health services.

The term "marketer" means a person or entity that sells, markets or distributes a Discount Card, including a person or entity that attaches its own private label name on a Discount Card that it rents or leases but does not operate.

The terms "clearly and conspicuously" or "clear and conspicuous" mean that the statement, representation or term being disclosed is of such size, color, contrast or audibility and is so presented to be readily noticed and understood by the person to whom it is disclosed. In addition to the foregoing, with regard to interactive media, the disclosure should also be unavoidable (*i.e.*, no click-through required to access it), and should be presented prior to the consumer incurring any financial obligation.

SECTION III. ADVERTISING & MARKETING PRACTICES

A. General Advertising Practices - the following are advertising practices that

may be found to be deceptive when used by medical and prescription Discount Cards:

1. Price/Discount Advertising

Use of any price, price range or other discount or savings figure or range in an advertisement, that does not represent the price, price range or other discount or savings figure or range that a consumer can typically expect to obtain. In the case of price ranges or discount or savings ranges, use of ranges that are too large, as where the discount or savings represented at the uppermost portion of the range was achieved by only a few members of the Discount Card.

2. Size/Locale of Provider Networks

Use of statements that misrepresent directly or implicitly, the size and/or location of a provider network.

3. Health Insurance

Representations that suggest, directly or by implication, that the Discount Card is a form of health insurance.

4. Medicare Prescription Cards

Representations that misrepresent, directly or implicitly that the Discount Card is a federally approved Medicare prescription discount card. For example, use of the term, "senior card" for a Discount Card program that covers family members of all ages, or use of logos that resemble those of a federal government agency.

5. Abbreviations and Jargon

Use of any unexplained abbreviation or jargon that is confusing, misleading or not readily understood by the general public. For example, use of the term "100% copayment" (a term generally used in the context of health insurance) when a member is solely responsible for payment of health care fees.

6. Footnotes and Asterisks

Use of one or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify or unreasonably limit a principal message of the advertisement.

7. Print Size

Important disclosures made in print type size so small as to be not easily readable, i.e., under 10-point type.

8. Color Contrasts

Use of color contrasts which render the text difficult to read. For example, the use of grey print on a grey background without sufficient contrast to make it easily readable.

9. Photographs, Logos and Illustrations

Use of inaccurate or misleading photographs, logos or illustrations when describing the Discount Card. For example, depicting the logo of a major health organization or federal government agency (see 4. Medicare Prescription Cards above), or a simile thereof, in a manner as to suggest that such organization endorses the Discount Card when there is no such endorsement.

10. Gifts and "Free" Merchandise

Use of the terms "free," "no obligation," "discounted," "reduced," or words of similar import, without disclosing clearly and conspicuously, and in close proximity to such representation, any and all conditions, limitations and restrictions on the ability of the consumer to obtain or use any such purportedly free or discounted good or service prior to requesting the consumer's authorization to be charged or billed for the goods or services with which the purportedly free or discounted good or service is offered, or, in the case of printed materials, contemporaneously with requesting the consumer's authorization.

11. Free Trial Membership

The offer of a "free" trial membership in the Discount Card without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer's authorization to be charged or billed for the offered trial membership, or contemporaneously with, in the case of printed materials:

- i. Any obligation of the consumer associated with accepting the offered trial membership, including, but not limited to, payment of shipping and handling fees, the obligation to purchase other goods or services, and the obligation to cancel membership or take other affirmative action to avoid incurring payment obligations and the manner in which such a cancellation request may be submitted;
- ii. The number of payments (if more than one), and the amount of each payment, that will or may be required, and the circumstances under which additional payments may be required; and

- iii. All conditions, limitations and restrictions on the ability of the consumer to use or cancel the offered trial membership.

B. Disclosures

1. Advertising and membership materials should disclose, clearly and conspicuously: (i) that the Discount Card is not a health insurance program; (ii) that membership, administrative and other fees, requirements and restrictions apply, if applicable; and (iii) a toll-free number to call for further information about the Discount Card.
2. The membership card provided to each member should state, clearly and conspicuously, that the Discount Card is not health insurance. The membership card should also include a toll-free number to call for further information about the Discount Card.
3. Where the membership card is used to identify the holder both as a member of a Discount Card and an insured under a health insurance program, the card should state, clearly and conspicuously, that the Discount Card feature is not health insurance.

C. Telemarketing

1. Telemarketers must, at a minimum, satisfy all requirements of applicable federal and state laws including, but not limited to, New York General Business Law § 399-pp.
2. Telemarketers should obtain a consumer's express consent before submitting his or her demographic and payment information (for example, name, address and credit card information) for payment.

D. Unsolicited Facsimiles

Discount Cards and their marketers must comply with the Telephone Consumer Protection Act of 1991, 47 U.S.C. §227(b)(1)(C), which, among other things, prohibits unsolicited fax advertisements. Discount Cards should ensure that their marketers do not engage in such unlawful conduct.

SECTION IV. CARD PROGRAM ADMINISTRATION

A. Membership Materials

1. A copy of the Discount Card's membership materials, or

comparable disclosure materials setting forth all applicable terms, conditions, limitations and policies, should be provided to consumers, including prospective enrollees, upon request.

2. Membership materials should include a notice to members to advise them of the steps necessary to access the discounts when arranging appointments with participating providers under the Discount Card. Such steps may include, where appropriate, having members (i) identify themselves as members of the Discount Card; (ii) mention that the Discount Card is affiliated with particular provider networks; and (iii) mention that the discounts available from the provider networks are available to the Discount Card members.
3. The Discount Card should disclose, clearly and conspicuously, in all of its membership materials: (i) a toll-free number, and (ii) that customer assistance is available through the toll-free number.

B. Customer Assistance

A Discount Card should maintain a toll-free customer call center during usual business hours and in accordance with standard business practice to assist members in understanding the program and to provide information on the Discount Card's participating providers, including but not limited to, providing assistance to any member who reports to it that: (i) he or she is having difficulty availing himself or herself of any represented savings or accessing any of the participating providers under the Discount Card; (ii) a provider does not recognize the Discount Card's name; or (iii) the provider does not participate in the Discount Card.

C. Notice of Material Change in Program

1. A Discount Card should notify members 30 days in advance of any material change in the offered services or pricing discounts for services and allow members a reasonable opportunity to cancel their enrollment and obtain a pro-rated refund of enrollment and membership fees for any remaining unused period.
2. If 30 days advance notice is impossible due to circumstances beyond the Discount Card's control, notice of any material change in the offered services or pricing discounts for services should be sent to members as soon as the Discount Card learns of such change.

D. Marketing of Other Services

1. A Discount Card must obtain members' prior written authorization to include members' demographic and payment information on any customer list that it either sells or leases. See also Section

V.(2) below.

2. A Discount Card should obtain members' prior written authorization to market services to its members that are unrelated to the Discount Card.

E. Complaint Process

1. A Discount Card should establish and maintain a formal dispute and complaint process that includes a toll-free telephone number for filing any and all disputes and complaints and should disclose in its membership materials, clearly and conspicuously, its procedures for filing and resolving a dispute or complaint. Examples of disputes and complaints include, but are not limited to, the following: a member reports difficulty in locating a provider in his or her geographic area that accepts the Discount Card; a member did not obtain the savings that he or she expected with the Discount Card; a member had difficulty getting a provider to accept the Discount Card; and a member questions the Discount Card's billing practices. As part of the dispute and complaint process, the Discount Card should:
 - i. record and track by date all disputes and complaints received;
 - ii. investigate all such disputes and complaints against the Discount Card and take all necessary steps to resolve any and all disputes and complaints;
 - iii. provide a refund or other adjustment as appropriate; and
 - iv. document how it handled each such dispute or complaint and how each was resolved.
2. Marketers should inform the Discount Card of any and all complaints concerning the Discount Card and the marketers' activities. All such complaints should be handled in accordance with the Discount Card's formal complaint process.
3. For a complaint involving quality of services, a Discount Card should provide the member the name, telephone number, and address of the agency to which the member can direct the complaint. All such complaints should be recorded and tracked and referrals to agencies should be documented in accordance with the Discount Card's formal complaint process.

F. Termination of Membership

1. A Discount Card should allow any member to terminate his or her membership within 30 calendar days of becoming a member without requiring the member to provide a reason and refund all membership and enrollment fees paid by the member to the Discount Card, except for nominal application processing fees.
2. A Discount Card should disclose in its membership materials, clearly and conspicuously, its membership termination policy.

G. Automatic Membership Renewal

1. A Discount Card should disclose in its membership materials, clearly and conspicuously, any automatic membership renewal policy.
2. In the case of automatic annual or semi-annual renewals, a Discount Card should provide a clear and conspicuous notice to its member of the automatic renewal between 30 and 75 days prior to the date on which the Discount Card intends to renew the membership. Such notice should provide instructions on procedures to be followed if the member wishes not to renew his or her membership and to avoid a checking account deduction, a credit/debit card charge or any other payment obligation.
3. In the case of automatic renewals occurring more frequently than semi-annually, a Discount Card should provide a clear and conspicuous notice to its member of his or her periodic automatic renewal dates, at least annually. Such notice should provide instructions on procedures to be followed if the member wishes not to renew his or her membership and to avoid a checking account deduction, a credit/debit card charge or any other payment obligation.

H. Assurance of Best Price

A Discount Card should assure that its members will receive the lower of the negotiated price or the provider's regularly available (i.e., non-negotiated) price at the time the service is rendered.

I. Qualified Providers

1. A Discount Card should obtain assurances that all of its participating providers hold valid licenses or certifications as required by law.
2. A Discount Card should require that it be promptly notified of the suspension or revocation of a participating provider's license or certificate.
3. A Discount Card should remove from its participating provider

panel, or require that the contracted network remove from its panel, any and all providers that lose their legal authority to provide services.

4. A Discount Card should notify its members when a provider is no longer participating on its provider panel at a minimum by promptly updating its list of providers and making that list available on its website and otherwise upon the request of any member.

J. Maintenance of Documents

1. A Discount Card should maintain documents that substantiate the accuracy of any and all representations in its advertisements, marketing and membership materials.
2. A Discount Card should maintain copies of all provider contracts to which it is a party.

Section V. PROTECTION OF PERSONAL HEALTH INFORMATION

Discount cards must comply with all applicable requirements of state and federal laws governing the protection of personal health and other private information, including all relevant provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA Privacy Rule”).

Generally, Discount Cards are not covered entities under the HIPAA Privacy Rule. However, in some cases, a Discount Card may be a business associate to a covered entity under the HIPAA Privacy Rule, e.g., to the pharmacies in the Discount Card’s network, or to a health plan that engages in group enrollment. If the HIPAA Privacy Rule is not applicable to the Discount Card, the Discount Card should nonetheless safeguard protected health information (“PHI”) as defined in the HIPAA Privacy Rule, in a manner consistent with the intent of the rule with regard to consent, authorization, notice, public policy, permissible uses and disclosures, and by limiting disclosure to the “minimum necessary.”

1. A Discount Card should notify each member of expected uses and disclosures of the member’s PHI, as well as of the member’s rights and the Discount Card’s duties with respect to PHI.
2. A Discount Card should not use PHI for marketing purposes without the prior written authorization of the member.
3. Privacy notices should include information on how a member’s authorization for use of PHI can be revoked.
4. A Discount Card should develop and implement a data security plan to assure that PHI is protected from unauthorized access and disclosure.