Discount Health Plans Regulation: Written Comments Received during 1st Comment Period 1/8-2/22/10

#	Comment Summary	Department Response
1	Understandable language: The Department should clearly define language so the average consumer will understand it and not be misled.	Reject: The comment does not specify what language in the proposed regulation is not clear. Part of the purpose of the proposed regulation is intended to increase consumer understanding regarding discount health plans.
2	Discounts for prescriptions already available: Free prescription discount cards should not be regulated by the department.	Reject: Free prescription discount cards do not meet the definition of a health care service plan, according to Health and Safety Code section 1345(f), and therefore are not subject to regulation by the Department of Managed Health Care ("Department").
3	Burdensome and unnecessary provisions: The regulation text includes burdensome and unnecessary provisions that have not been required by nearly 30 states.	Reject: The Department of Managed Health Care is required by law to regulate health care service plans, including those that arrange discounts on health care services in exchange for a prepaid or periodic charge. See, for example, Health and Safety Code section 1345(f) and 1349, and the Department's Precedential Decision 04-312 . These regulations are necessary to carry out the intent of Health and Safety Code section 1340 et seq., also known as the Knox-Keene Act. California's health care service plan statutes may differ from those of other states. California is not obligated to follow the laws of another state.
4	The regulations would make it difficult for discount health plans to operate in California.	Reject: Health plans offering discounted health care services are not illegal under California law. However, pursuant to Health and Safety Code section 1345(f), they are under the jurisdiction of the DMHC. The proposed regulations are necessary in order to carry out the intent of Health and Safety Code section 1351 and 28 CCR section 1300.51, which are the current licensing requirements. The proposed regulations will make the licensing process for discount health plans more clear and standardized. Currently, each discount health plan license application must be evaluated on a case-by-case basis. These regulations create a level playing field for all health care service plans that offer discounted health services.
5	For the Department to purchase discount health cards for all California households.	Reject: The action requested by the commenter is not within the Department's jurisdiction.
6	Proposing this regulation would be unfair and unnecessary and would eliminate an alternative for people without healthcare benefits to receive affordable health care products or services.	Reject: See comment #4.
7	Discount plans are not health insurance: Discount health plans are not insurance and the Department should not impose insurance-like regulations on these plans.	Reject: See comment #4.
8	Suggested amendment for 1300.49.1.7: For discount plans that are otherwise in full compliance with the regulations, but offer services of a purely elective nature, such as cosmetic dentistry and cosmetic surgery, such plans should be allowed to accept premiums from consumers without facing the problem of consumers requesting a refund after obtaining one or more elective cosmetic procedures. Such services are not based on illness or injury or otherwise subject to insurance principles.	Reject: The change suggested by the comment could create a hardship for consumers who have prepaid for a discount product membership and who have a legitimate reason to cancel prior to the expiration of the membership. Enrollees should not have to pay for months during which they have no benefit from the membership.

	The cost of the plan to all consumers will necessarily be raised, and possibly be impractical to be offered at all if the plan must face the possibility that a consumer will purchase elective coverage for a period, for example, of a year, at a reasonable amount of premium, but then be able to cancel after a short period of time, after receiving all desired services, possibly in a period of a few weeks, and then obtain a refund of most or all of the premium We therefore propose the following amendment to the proposed rule: *(d) A discount plan that offers only elective services such as cosmetic procedures or other services that are based only on the election of the subscriber rather than caused by illness or injury may charge the consumer an annual (12 month) prepaid or periodic charge. The contract with the consumer shall state clearly that the charge is annual and is not subject to a refund after three working days. The discount plan may allow the consumer to pay the annual amount over time, such as by a monthly payment so long as no interest is charged for such a payment option.*	
9	Suggested amendment for 1300.49.1.4 (b)(1)(A): References to Medicare Physician Fee Schedules should not apply to a discount plan that offers only elective and cosmetic procedures and is otherwise in compliance with these Article 2.5 rules. Providers of elective cosmetic procedures normally charge rates higher than, for example, the Medicare fees for plastic surgery for cosmetic cases. These rates are well established in the community and are the correct starting point for a discount program that offers such services. There should be no ambiguity in the rules which may possibly be interpreted to imply that Medicare Fee Schedules apply to such cases. Of course, the discounts for such elective procedures will be bona fide under Section 1300.49.1.4 (B) and the discounts shall meet or exceed the 20% discount requirement. **(A)** *The charge must be equivalent to, or less than, the 2009 Medicare Physician Fee Schedule as set forth in 73 Federal Register 69726-70237 (November 19, 2008) and amended by 73 Federal Register 80302-80305 on December 31, 2008, for all services covered by Medicare, relative to the geographic practice area. This criterion does not apply to discounts for elective cosmetic procedures provided by*	Reject: The proposed regulation is necessary to create a verifiable benchmark from which the discount may be measured. The proposed change does not identify any other measurable benchmark that may be used by consumers to determine whether a discount is bona fide.

	Discount Health Plans that are otherwise in compliance with these Article 2.5 Discount Health Plan rules. Discounts for elective cosmetic procedures must comply with the requirements of (b)(1)(B) of this section.	
10	Discount plans are illegal: Discount health plans are illegal and should not be regulated.	Reject: See comment #3.
11	1300.49.1.4 Bona Fide Discounts: Discount plans do not take "risk" therefore, membership fees do not include monies designed to fund a reserve account for any claims as typically done by "at risk" plans. For this reason we do not believe discount health plans should be liable for billing discrepancies.	Reject: Discount Health Plans are not taking any financial risk as long as the contracts they agreed to between the plan, consumer, and provider are followed. It is, however, the plan's responsibility to ensure the enrollee obtains the discount they have been promised by the plan. Therefore, the plan will be held responsible for the amount of the discount the enrollee should have had. It is the plan's responsibility to work with the provider to ensure the consumer has received the promised discount.
12	1300.49.1.4 Bona Fide Discounts: Requiring a July update would potentially disassociate fee updates with important changes in dental treatment and billing terminology making communication between plan, dentists and members less effective. It is respectfully suggested that the date to report be moved to November 1 with a January 1 effective date.	Reject: The proposed requirement is necessary because the Department must establish a firm date for these reports, and this date was selected relative to the fiscal year.
13	1300.49.1.7 Cancellation and Termination: If the Department believes there needs to be a pro-rated refund policy for medical discount plans we respectfully suggested that there be a bifurcation to this rule, distinguishing ancillary discount products such as dental, vision etc. and allowing them the option to require annual membership after the 30 day money back period.	Reject: If the consumer cancels a membership, and has already paid for the membership or monthly fees in advance, the consumer is entitled to a pro- rata refund of that money, because they receive no benefit during that time period. Please also see comment #8.
14	1300.49.1.9 Financial and Administrative Requirements: Department has already established a precedent of charging full service plans more than specialty plans based upon the greater regulatory oversight required for full service plans. This same logic should be applied to determining a smaller, more appropriate fee for discount health plans.	Reject: Discount health plans are specialized plans. The Department is charging discount health plans the same fee as specialized plans.
15	1300.49.1.9 Financial and Administrative Requirements: The department's allocation of cost and expenses should not be based on the same fee as full service plans and specialty plans. The $10,000 annual assessment fee should be lowered to $5,000 and the member assessment charge should be a percentage lower than both full-service and specialty plans.	Reject: See comment #14.
16	1300.49.1.10 Subscriber and Enrollee Disclosure Forms: better alternative would be to have resources for the member/prospect member to obtain that information, rather than make it mandatory to print each and every time with the disclosure form.	Reject: The information required by the proposed regulation must be made available to all members. It is necessary to print this information to include those members that may have limited, or no, access to the internet.
17	Discount health plans are unlawful: Unlawful activity cannot be	Reject: See comment #4.

	regulated. DMHC must cease efforts to regulate unlawful business scheme that continues to harm many physicians and our patients.	
18	Fiscal Impact on private persons and businesses: Private persons and businesses will be affected and irreparably harmed by these proposed regulations. The Department is not aware of any cost impacts that a private person or business would necessarily incur. The summary of fiscal impact is incorrect.	Reject: Discount health plans are not illegal under California law. The comment provides no details on what costs may be affected and how the fiscal analysis should be amended. The proposed section is necessary to protect providers and consumers from fraud. Also see comment #4.
19	Fiscal Impact on small businesses: Many physicians own and operate small business for purpose of providing health care to Californians. They can be financially ruin physicians who are improperly underpaid and harm patients who are improperly under-reimbursed. The summary of fiscal impact is incorrect.	Reject: Providers may decline to participate in discount health plans if the terms are not acceptable. Please also see comment #18.
20	Discount Plans violate Health and Safety Code section 445: CA Attorney General confirmed unlawful nature of discount health plans and rendered a narrow opinion stating discount health plans violate H&S code section 445. Refer prohibition of discount health plans to California A Attorney General: We request that prohibition of Discount Health Plans be referred to the Attorney General and the conflicts of interest to be thoroughly investigated.	Reject: See comment #4. The Attorney General based this decision on a single set of facts concerning a particular business; this narrow opinion does not create a blanket prohibition of all discount health plans.
21	Welcomed regulations but insufficient: to stop companies from unscrupulous marketing practices to lure customers into purchasing these services which need to be banned.	Reject: See comments #3 and #4.
22	Consumers' expenditures on healthcare: would be directly applied to healthcare products and services so consumer can have proper treatment for their medical condition.	Reject: See comment #4.
23	Discount plans already show a disregard for Health & Safety code sections 1345(f) and 1349 by failing to be licensed, so they will not respect the new regulation. They should be banned.	Reject: See comment #4.
24	Discount Health Plans are illegal: within meaning of H & S Code 445 Attorney General Opinion that a corporation may not charge an annual subscription fee for furnishing list of physicians providing medical services at discounted rates to uninsured indigent persons.	Reject: See comments #4 and #20.
25	DMHC has no authority to regulate Discount Health Plans: Discount health plans are not health care service plans.	Reject: Please see Health and Safety Code section 1345(f). See also comment #3.
26	DMHC has no authority to regulate: Discount Health Plans based on legislative history because the Legislature has recognized that they are	Reject: See comment #3.

	not health care service plans.	
27	Proposed regulation is inconsistent with the general intent of Health and Safety Code requirements: because it only provides a list of physicians for consumers in exchange for a fee.	Reject: See comments #3 and #25.
28	Violation of Government Code §11349(b): Legislative proposals failed passage which clearly demonstrates that the Legislature has not given DMHC statutory authority to regulate discount health plans.	Reject: See comment #3.
29	Discount Health Plan regulation is inconsistent with Health and Safety Code §445: As the Attorney General concluded that it is illegal under Health & Safety Code §445	Reject: See comment #20.
30	DMHC has no authority to set rates: The KKA does not give DMHC authority to set health plan or provider rates. Section 1300.49.1.4 (b) appears to dictate the amount billed by providers to enrollees by codifying the 2009 Medicare Physician Fee Schedule as set forth in 73 Federal Register 69726-70237 (November 19, 2008) and amended by 73 Federal Register 80302-80305 on December 31, 2008. In addition, subdivision (b)(1)(B)(i)(ii) and (iii) further attempts to set the discount rates at 20% off the full billed charges. We submit that these rate setting provisions are in clear violation of the Knox-Keene Act, and are also therefore, in violation of Government Code § 11349 (b).	Reject: The proposed regulation does not regulate provider rates, but rather establishes a verifiable, measurable benchmark against which the value of the discount may be measured.
31	The proposed discount health plan regulation will have a significant financial impact on patients and physicians: The Department is not aware of any cost impacts that a private person or business would incur because physicians incur financial loss whenever discount health plans circulate a discount with contractual agreement from physicians.	Reject: See comment #18.
32	Legitimizing Discount Health Plans contravenes sound public policy: because they offer no real benefits to patients other than provide a list of physicians.	Reject: See comment #18.
33	Legitimizing Discount Health Plans contravenes sound public policy: and it discourages individuals from obtaining health care coverage that adequately covers them.	Reject: See comment #18.
34	Legitimizing Discount Health Plans contravenes sound public policy: because it undermines the health insurance system including viability and affordability of KK plans, since they take healthy patients away from the insurance risk pools.	Reject: See comment #4.
35	Discount Health Plans do not qualify as "creditable health insurance": and consumers who drop their coverage to purchase a discount health plan could find that their new insurance will not cover pre-existing conditions.	Accept in part: Discount health plans are not creditable coverage. Reject in part: The disclosure requirements in the regulation are to help consumers understand that discount plans are not insurance.
36	Patients may go bankrupt: to the extent they incur medical expenses	Accept in part: We agree with the statement that bankruptcies may occur due to medical

	they cannot afford.	expenses. Reject in part: The disclosure requirements in the regulation are to help consumers understand that they must pay their provider directly.
37	Discount health plans are inherently deceptive: as they falsely imply that they are "plans" for "health" as the DMHC's own regulations label them.	Reject: Please see Health and Safety Code section 1345(f) which defines a "health care service plan."
38	Why not move all these Californians into real health insurance coverage: individual health insurance is expensive but if you add millions of lives in the individual market it should expand the risk pool and help drive down costs.	Reject: This comment is beyond the scope of the Department's regulatory authority.
39	The decision to regulate Discount health plans: can only be made by the Legislature and to date is has had the good sense not to do so.	Reject: See comment #4.
40	DMHC should issue and desist orders: to all Discount Health plans in California or report them to the Attorney General for a definitive investigation.	Reject: See comments #20 and #44.
41	Discount Health Plans or other third party administrators may participate in contract chains such as those used to pay these two claims: It is often impossible for either physicians or consumers to identify errors or detect unfair business practices because they do not have access to the pertinent contracts. Physicians often have no effective way to determine if they have agreed to accept a discount - or if they are victims of fraud.	Reject: In section 1300.49.1.12 of the proposed regulation, the plan is required to ensure that the provider is aware of and agrees to the terms of the discount membership contract.
42	Consumers have no effective way to determine how heavily discounted "allowed amounts" or big deductibles are calculated; much less if fraud is involved. Both consumers and their physicians are harmed.	Reject: While the Department recognizes the challenges faced by consumers in determining the cost of health care services, the Department has no authority to regulate the rates charged by physicians. The discount plan promises a discounted rate on physician services, and the discount plan will be responsible to ensure that consumers obtain the discount that was promised under the enrollment agreement.
43	Discount Health Plan regulations will only legalize some damaging practices that are currently unlawful and will not solve these problems.	Reject: See comment #18.
44	Realistic way to straighten out claims like these two examples is for the finder of fact to have both subpoena power and the ability to bring criminal charges against any company that unlawfully conveys discounts on medical services provided by physicians.	Reject: The Department has the authority to investigate and take enforcement action against any health care service plan that violates the Knox-Keene Act or title 28.
45	Doctors reimbursement rate are so poor: that they cannot pay their bills and have left or are leaving the State California. Discount health plans undertake innumerable behind-the-scenes schemes that cut our fees.	Reject: In the proposed regulation, providers must agree to the discount by contract. If the provider does not agree with the amount of the discount, the provider does not need to sign the contract. Please also see comment #42.
46	Existing Plan Products: Plans should not be required to make changes to their existing products and operational procedures for products already approved by the Department.	Reject: Unless exempted by a case by case basis, plans will need to comply with all applicable laws.

	We ask that the Department **exempt** from these regulations "specialized plan products that, with the exception of section 1375.1 otherwise comply with the requirements of the Knox-Keene Act and Regulations."	
47	Value Added Exemption: The definition of Value Added Services and the exemption for value added products is too broad. As written, full service plans could offer unregulated discount dental or vision products under the value added exemption provision of Section 1300.49.1.2. Likewise, dental plans could offer discount vision products under the same value added exemption. Suggest amending definition of 'value added services' to include "non-medical services" such as: (g) The term "Value added services" means non-medical services or items that promote wellness, such as massage services, ~~and~~ gym memberships and similar services or items, which are arranged for…" Not making this change would create 2 classes of discount products. The first being those required to meet the standards of these regulations and the others being totally unregulated with no standards of any kind.	Reject: The "value added services" as defined must be offered by a licensed plan at no additional cost to the member, and this clarifies that these "free" discount products are not subject to the regulations. Free discount products do not meet the definition of a health care service plan in Health and Safety Code section 1345(f).
48	Administrative Requirements: These proposed regulations should not be the only way a licensed plan should comply. The proposed regulations might be appropriate for organizations offering just discount products but not appropriate and too restrictive for specialized plans. These minor requirements could actually require major changes to a plans operation. Licensed specialized plans should be allowed to offer discount products that with the exception of section 1375.1 comply with the requirements of the KKA and regulations as an alternative to meeting the requirements of these regs. Suggested revision: We ask the Department to **exempt** from these regulations "specialized plan products that with the exception of section 1375.1 otherwise comply with the requirements of the Knox-Keene Act and Regulations."	Reject: Under the proposed regulations, specialized heath plans may offer discount health plans within the scope of their license through the filing of a material modification. If the specialized plan wants to offer a discount health product outside of the scope of the existing license, it is necessary to have the plan apply for a discount plan license because there will be additional criteria to consider in determining whether the plan and new product will meet the requirements of the Knox-Keene Act.
49	Suggested revision to Section 1300.49.1.12 – Provider Contracts: These proposed regulations allows discount health plans to indirectly contract with providers who are part of other provider networks which would perpetuate and expand the "silent PPO" problem that already exists.	Reject: In 1300.49.1.12, the providers must be directly notified and have agreed to the discount contract.

	Suggested revision: "(a) A discount health plan shall maintain a written contract with each provider or medical group offering discounts on purchases to the discount health plan's subscribers and enrollees. (1) The provider contract must be entered into directly with individual providers or their medical group. The discount health plan shall document that each provider has been notified of and agrees to, the terms of the discount product prior to inclusion in the provider directory."	
50	No authority or power to license or regulate as defined in Section 1345 of KKA: The proposed rulemaking is illegal and unconstitutional by misconstruing purported statutory authority to ostensibly bring discount plans within the purview of the KKA.	Reject: See comment #3.
51	Proposed rules are facially invalid: These proposed rules will cost the state of California an substantial amount of money and spawn substantial litigation seeking injunctions and damages.	Reject: See comment #3.
52	No authority to amend statutes: By adding terms and definitions to the statutes, the Department is acting in excess of its statutory authority	Reject: Please see Health and Safety Code section 1344.
53	Department has failed to draft a clear and precise definition: of the activity of a discount plan that brings the discount plan within the definition of §1345 of the KKA.	Reject: See comment #3.
54	The Director must have statutory authority to require licensing: The KKA does not authorize DMHC or the Director to expand licensing requirements beyond the statutory structure of the KKA, and the DMHC does not have statutory authority to regulate discount health plans.	Reject: See comment #3 and #4. Please also see Health and Safety code sections 1341.8, 1344, 1349, and 1351.
55	Section 1300.49.1.3 is unconstitutionally vague: This proposed rule is an acknowledgement that the statutes cited do not apply to the businesses the Department is proposing to regulate.	Reject: See comment #3.
56	No authority to shift burden to the plan in Section 1300.49.1.3: The proposed rule places the burden on the discount plan to develop and apply terms appropriate to its licensure and operations.	Reject: The Department is the regulator and does not develop plan operations for the plans. See comment #3 regarding licensing.
57	No authority to decide that the only discounts available in CA are those set forth in this proposed rule: There is no statute in the KKA that purportedly grants the Department the power to decide the amount of a discount in California.	Reject: See comment #3.
58	Section 1300.49.1.5 – No authority to require a toll-free phone system: The scope of this regulation is far in excess of the authority of the DMHC and this rule is facially invalid.	Reject: See comment #3, and see the Health and Safety Code section 1367.26(g).

59	1300.49.1.6 Grievance Systems: The proposed rule has no authority to replace terms of statutes and is unconstitutionally vague.	Reject: See comment #3 and Heath and Safety Section 1368.
60	1300.49.1.7 Cancellation and Termination: This rule is wholly inapplicable to the common business practices of discount plans.	Reject: Discount health plans do have termination and cancellation policies and the KKA does set forth terms on how health plans may terminate and cancel policies.
61	1300.49.1.8 Language Assistance: There is no statutory or constitutional right for the speakers of languages not adopted by a business to force businesses to make interpretation services freely available. This Proposed Rule appears to be facially unconstitutional.	Reject: See Health and Safety Code section 1367.04.
62	1300.49.1.9 Financial and Administrative Requirements: The discount plan licensing process does not require the same level of administrative effort as does the licensing of a health insurance company. The DMHC's proposal to charge a discount plan the same amount of money as a Specialized Health Care Plan is unconstitutionally excessive.	Reject: All plan licensing application fees are based upon an hourly rate. Plans are not charged more than the actual cost to review the application. Please also see comment #14.
63	1300.49.1.10 Subscriber and Enrollee Disclosure Forms: This Proposed Rule adopts the unconstitutional mechanism of requiring the plan to replace statutory language with, " . . . terms appropriate for the discount health plan's licensure and operations." Neither the discount plan, nor the DMHC, has the authority to replace statutory language.	Reject: See Health and Safety Code sections 1343(b) and 1344.
64	1300.49.1.11 Subscriber Contracts: This Proposed Rule is illegal. If an individual can purchase a product, a company certainly has the constitutional right to purchase the same product. The DMHC does not have the authority to ban the purchase of legal products and services depending upon whether the purchaser is an individual or a group.	Reject: See comment #63.
65	1300.49.1.12 Provider Contracts: This Proposed Rule is unclear and excessive. Compliance with the terms of this Proposed Rule will be cost prohibitive, requiring discount plans to directly communicate with thousands, if not tens of thousands, of providers.	Reject: See Health and Safety Code sections 1367(h)(1) and 1375.7.
66	1300.51.01 Application for Licensure not clear: Application fails to clearly set forth what standards the plan must meet for licensing and it omits exactly what a plan must provide to qualify for a license.	Reject: Regulation sets forth the requirements for the application licensure in a clear and concise manner. The commenter does not specify what sections of the application are not clear.
67	Legal right to do business in California: Businesses, including businesses developing and selling discount programs, have a constitutional right to free commercial speech guaranteed by the federal constitution.	Reject: See Health and Safety Code section 1349.
68	1300.51.01 Application is cumbersome: The Proposed Application is also unnecessarily cumbersome by incorporating and referring to rules	Reject: The application is concise and clear as possible without repeating other laws, consistent with the requirements of Government Code sections 11349(f), 11346.2(b)(5),

	instead of simply stating what the Applicant is required to provide.	and 1 CCR 12.
69	1300.51.01 Application fails to provide certain criteria: Proposed Application fails to set forth objective criteria with sufficient specificity to allow an applicant to understand precisely what the plan must do, and what information the plan must provide, to become licensed.	Reject: See comment #66.
70	1300.51.01 Application for Licensure: If the DMHC has the power to create a license as a condition precedent for a business to exercise the right of free commercial speech, the licensing mechanism must not be arbitrary.	Reject: See comment #67 and the Initial Statement of Reasons.
71	Proposed Application is unconstitutionally vague and arbitrary: This is particularly burdensome (and unconstitutional) because the DMHC shifts its administrative cost of applying the DMHC's arbitrary licensing standards to the applicant.	Reject: See comment #66.
72	Application process unclear to applicant: The required information must have a reasonable nexus to the State's regulatory interest. The Proposed Application wholly fails in this respect, and this Proposed Rule may not legally be adopted.	Reject: See comment #66.
73	Misrepresented the statutory authority: Since the Notice of Rulemaking and the Initial Statement of Reasons are specifically required as conditions precedent for rulemaking activity, DMHC's failure to clearly set forth in these documents its purported jurisdiction renders these statutorily required preconditions to rulemaking null and void.	Reject: Please see page 3 of the Notice, under the section "Authority and Reference," and see page 1 of the Initial Statement of Reasons, under the section "Authority."
74	Discount Health Plans are misleading and a fraud against consumers: Consumers drop their health insurance for this cheap plan to cover but find facts too late. Discounted health referral service is what it should be called.	Reject: See comment #18.
75	Brokers take fees and add nothing to health care: Discount Health Plans are not Health Plans. These regs allow brokers to take fees and add pressure on physicians, distracting care from patients.	Reject: See comment #4.
76	Lowers reimbursement for physician services: Brokers sell discounts for these services and physicians have not even agreed to these plans.	Reject: See proposed sections 1300.49.1.3(e) and 1300.49.1.12.
77	Patients reliance on Discount Plans false schemes: Consumers failure to understand the true nature of this product leaves them vulnerable and the majority of the cost to the consumer.	Reject: The regulation proposes strict disclosure requirements in order the help the consumer understand the product. See also comment #78.
78	Trade name prohibition in section 1300.49.1.2(c)(2)(A) and (B): Trusted brands should be able to identify themselves when offering a discount program and should not be operating under a fictitious name.	Reject: Discount health plans must be distinguished from full risk plans because consumer comments have indicated that there is considerable confusion between full risk health care service plans and discount health care service plans.
79	Specified criteria for "bona fide" discounts in section 1300.49.1.4(b)(1)(B)(i) and (ii), and 1300.49.1.4(b)(2): Discounts cannot realistically be negotiated with the dental provider	Reject: Consumers must have a consistent benchmark against which to measure the value of the discount that they have been promised when they paid their enrollment and monthly fees to the discount health plan. Discounts may vary between services as long as

	community on a one-size-fits-all basis. We therefore recommend against stipulating a 20 percent discount minimum and support allowing each plan to submit its rationale for the discounts it intends to offer, allowing the maximum flexibility.	they meet the minimum required to be a bona fide discount.
80	Prohibition against co-offering discount plans with insurance or health care service plan products in section 1300.49.1.3(g). We don't see why consumers should be forced to separately contract for adjunct insured and discount plans, when the two can be offered jointly in a manner that would serve to maximize patient cost savings, while also encouraging them not to defer care for services an employer might have elected not to include in the scope of insured benefits.	Reject: This section is necessary to prevent consumer confusion regarding the types of products being offered to them.
81	Public does not understand that these plans are not insurance: Consumers purchase these plans thinking they have health insurance but only to find out they only have a discount if contracted with a PPO.	Reject: See comment #77.
82	This regulation not sufficient to clarify between PPO and Discount Health plans: PPO and a Discount health plan are different and this reg not sufficient to correct abuses of the other.	Reject: See comment #77. A PPO network does not generally arrange for discounts on health care services where the enrollee retains the obligation to pay the full discounted provider bill; thus, a PPO would not fall within the definition of a discount plan, without anything more. If the commenter is aware of a specific situation where this occurs, the commenter may request an Interpretive Opinion from the Director.
83	A complete disclosure to all parties and transparency as to what exactly is and is not being offered or advertised discount plans should be stopped or be declared illegal.	Reject: This comment is addressed throughout the proposed regulation, but especially in sections 1300.49.1.3, 1300.49.1.4, 1300.49.1.10, and 1300.49.1.12.
84	Limit the scope of the regulation to the need: problems intended to be addressed have not existed in long-standing discount programs that health plans have available but in separate medical discount programs being marketed.	Reject: These regulations are necessary so that all discount health products are subject to the same rules and requirements, so that the consumer can make an educated choice and so that all discount products are fairly and equally regulated.
85	Existing provisions of the KKA were simply NOT structured to apply to and address discount programs: If the Department's deems discount plans to be health plans, then those entities must comply with all statutes/regulations unless the regulation either (1) states very clearly that the discount plan has to comply ONLY with the statutes/regulations identified and no others or specifically lists the statutes/regulations that the discount plans do NOT have to comply with.	Reject: These regulations are intended to clarify how discount plans fit into the Knox-Keene Act.
86	Licensed health plans that make discount programs available to plan enrollees should be exempt from all of the requirements in this regulation: because the real problem to be addressed is with the stand-alone medical/surgical discount plans being sold.	Reject: See comment #84.
87	The current proposed regulation does NOT exempt licensed health plans from compliance with the requirements of the regulation: it	Reject: See comment #84.

	exempts the plans from having to file a notice of material modification; the plan still must comply with the other requirements.	
88	Blue Shield recommends the following be added to the regulation and that the references to health plan applications, value added services, etc. should be deleted: "The requirements of this section do not apply to any discount programs made available (1) by a health care service plan licensed under this Act to enrollees of that health care service plan, (2) an entity licensed by the California Department of Insurance as a health insurer to their insureds, nor, (2) to self-funded health benefit programs administered by affiliates or subsidiaries of licensed health care service plans or insurers."	Reject: See comment #47.
89	Stated Health Plan Limited Exemption Inadequate: the exemption effectively only means the plan doesn't have to file a notice of material modification. The plan must still comply with all of the other requirements.	Reject: See comment #84.
90	Other definition problems: what is a "health care service" – the phrase is not defined in KKA. The regulation needs to be VERY clear what must be licensed and what discounts can be offered without a license. To do that, the regulation must define what constitutes a "health care service".	Reject: The term health care service is a common phrase used throughout the Knox-Keene Act and is understood to mean services provided by health professionals as described in the Business and Professional Code.
91	Bona Fide Discounts is beyond the scope of the Department's authority: The entire section on bona fide discounts has material problems and must be rewritten.	Reject: See comment #3.
92	Excessive Requirements: which the discount plan must meet are GREATER than those that a health plan must meet for its medical plans.	Accept in part: Some requirements for discount health care service plans are less than for full risk health care service plans; and in some circumstances additional requirements are necessary. Reject in part: No change to the proposed regulation is necessary. These requirements are based on the unique business model aspects of the discount health plan and discount health product.
93	No statement in the regulations that the full KKA applies to discount health products, including specialty discount health products: Having access to all of Knox-Keene's protections - particularly the language access, timely access, and appeal sections - will make a huge difference to consumers who in the past have had no protections when they bought these products.	Reject: See comments #3 and #92.
94	The discount health products should not be called discount health plans: The Department has disallowed the use of misleading terms that could lead an individual to believe a discount health product is health insurance in advertising and marketing materials.	Reject: The definition is appropriate given that these plans fit the definition in Health and Safety Code section 1345(f), and because the plans offer discounts.

95	We recommend using the term discount health product instead: Health plan is itself a misleading term that should not be allowed. The terms health plan and health insurance are often used synonymously. Consumers may presume when they see "health plan" that they know what the product is and not read the fine print that explains how different a discount product is from health insurance.	Reject: See comment #94.
96	Disclosures in regulation: The regulation should have to disclose discount health products that consumers may be eligible for discounts even without a discount health product and that the discount health plan may stand in the way of them receiving those discounts.	Reject: The Department has no way to verify whether an additional discount may be available for a consumer, therefore it cannot require such a disclosure.
97	Interaction with discount health product and hospital financial assistance laws: If a consumer had a discount health product, the hospital may be unwilling to give them charity care in addition to the discount. Some hospitals do not know how to process these discount health products.	Reject: See comment #96. The hospital has the discretion whether to contract with the discount health plan or not.
98	Definition of bona fide discount: A bona fide discount should be amenable to documentation, verification, and enforcement not just by the discount health product but also by the Department and consumers. If consumers cannot verify that they are receiving a discount then the product is meaningless to them.	Accept: The purpose of the proposed regulation is to require documentation and verification of the offered discounts.
99	Marketing: We support the requirement in 1300.49.1.3 (a)(1) that marketing materials must disclose that the discount health product is not insurance. The majority of our clients that have purchased Discount Health Products have been under the misimpression that they were purchasing insurance.	Accept.
100	We support the requirement in 1300.49.1.3 (b) that products share their provider network in the subscriber's preferred geographic area in contracts: Whenever the provider network is provided- be it in conjunction with a contract, in marketing materials, or on the website- there should also be a requirement to specify which providers are accepting new members. A network where all the providers are full does not help the consumer. Potential enrollees need to know the extent of doctor's that will be able to see them and offer a discount not just the doctors that can offer a discount to their current patients.	Accept.
101	Soliciting enrollment by telephone and enrolling over the telephone: This is unacceptable. Allowing enrollment by telephone will harm consumers and encourage fraud by solicitors. Consumers must have a	Reject: Proposed section 1300.49.1.3(c) establishes requirements for telephone enrollment to ensure that consumers have sufficient notice and access to enrollment materials prior to enrollment over the phone.

	chance to read all disclosure forms and all terms in the contracts. No one should be allowed to verbally sign up for a plan. A written application should be required from everyone.	
102	Regulations should also require a written reenrollment each year: Discount health products should not be able to reenroll people automatically every year and charge them for that year. Instead the default should be disenrollment. Subscribers should be required to affirmatively reenroll in writing every year, similar to open enrollment for employer insurance and recertification for Medi-Cal.	Reject: Under proposed section 1300.49.1.7, the enrollee may cancel their membership at any time, if the enrollee does not want to renew the contract. Some consumers may appreciate not having a lapse in membership due to the oversight of failing to renew.
103	Requirements regarding discounts/demonstrating bona fide discounts: We fully support the use of the Medicare rate being used as the measure for discounts when a service is a Medicare covered service. Medicare rates create a meaningful and measurable discount.	Accept.
104	Support of 1300.49.1.4(b)(1)(B): We also support the intent behind the calculation of discounts for non Medicare services in 1300.49.1.4 (b)(1)(B).	Accept.
105	Concerns with 1300.49.1.4 (b)(1)(B): how it will be determined if a provider does give discounts to those without a contractual relationship because the majority of services covered by discount products right now are not services that have a Medicare fee schedule and thus are services where section (B) will apply.	Reject: The provider will be contracted with the discount health plan to provide agreed-upon discounts to the enrollee. It is the provider's discretion whether to offer the same discount to other patients; it is outside of the Department's jurisdiction to regulate the provider's ability to offer discounts not related to a discount health plan.
106	We suggest that the provider be required to share a sample of their billing and payment records: With this information the discount health product and the Department could clearly see how much a provider generally charges for a service and how much the provider then accepts as payment in full for that service.	Reject: Proposed regulation 1300.49.1.4(e) already requires a report, to be filed annually, in which the plan must demonstrate that the discounts received by enrollees are bona fide, and they must provide the information relied upon to support the finding.
107	Penalty for failure to deliver the correct discount should be higher than the penalty in 1300.49.1.4 (d): We believe that the Consumers who do not receive the discount they are entitled to should be reimbursed for the amount they paid the discount health product in the month they received the inadequate discount. They should also at this point have the option to cancel the policy and get a pro rata share of their prepaid money going forward.	Reject: Proposed regulation 1300.49.1.4(d) requires that the plan ensure that the discount is provided, or pay enrollees the difference, and this ensures that the consumer has obtained the discounts promised to them in exchange for their monthly fee. Consumers may also cancel the policy at any time and obtain a pro-rata refund pursuant to section 1300.49.1.7(b)(2).
108	Cancellation and Termination: We support a consumer's right to cancel their policy within the first thirty days and receive full reimbursement.	Accept.

	We also believe that a subscriber should be able to cancel their contract at any time and receive the pro rata portion of the money they already paid for the months going forward.	
109	Language Assistance: We support sections Section 1300.49.1.8 (a)-(d) and appreciate the inclusion of language assistance requirements in the proposed discount health regulations that require an assessment of language needs, provision of interpreter services, and training of staff by the discount plans.	Accept.
110	Requirements should be strengthened to meet the requirements of CA Code of Regulations, Section 1300.67.04: 1) Before section (a) we would add a requirement for the discount health product to establish a Language Assistance Program: "Every discount health plan/product shall develop and implement a language assistance program, which shall comply with 28 CA Code of Regulations, Section 1300.67.04. The Language Assistance Program shall be documented in written policies and procedures, and shall address, at a minimum, standards for enrollee assessment, standards for providing language assistance services, standards for staff training, and standards for compliance monitoring."	Accept in part: Additional requirements have been added from 1300.67.04 that requires the plan to translate vital documents in writing. Reject in part: The regulation is tailored to fit the operational abilities of a discount health plan, which will include interpretation and translation services but not a full language assistance program.
111	Requirements should be strengthened to meet the requirements of CA Code of Regulations, Section 1300.67.04: 2) In section (b), we would add "translation services": "A discount plan/product shall also set forth reasonable procedures for assessing the linguistic needs of its enrollees. Based on those needs, the plan/product shall provide free interpretation services through its toll-free customer assistance call center and ***provide free translated material to its potential subscribers and enrollees....***"	Reject: See comment 110.
112	Requirements should be strengthened to meet the requirements of CA Code of Regulations, Section 1300.67.04: 3) Before current section (c), we would add another section requiring the translation of vital documents, including any application forms, reenrollment forms, disclosure forms and all terms of the contracts and any materials in connection with enrollment in the plan. To determine the languages for which these materials should be translated, we would recommend using a requirement similar to the "safe harbor" provision used in the Office for Civil Rights, U.S. Department of Health and Human Services: The threshold provisions used in Health and Safety	Reject: See comment 110.

	Code Section 1367.04 for health care service plans would not be appropriate given the much smaller number of enrollees/purchasers of discount health products. We recommend the following language: "The discount health plan/product shall provide translations of vital documents, including but not limited to, any application forms, reenrollment forms, disclosure forms and all terms of the contracts and any materials in connection with enrollment in the plan. For each eligible language group that constitutes 5% or 1000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered."	
113	Requirements should be strengthened to meet the requirements of CA Code of Regulations, Section 1300.67.04: 4) In section (d), we would recommend that the notice to potential subscribers or enrollees also include the toll-free customer assistance call center number and the DMHC's HMO Help Line to report any problems and/or complaints. " A discount health plan/product must disclose the availability of interpretation ***and translation*** services, at the customer assistance call center...***Notice of free interpreter and translation services, including translated materials, shall be sent to potential subscribers and enrollees, along with the plan's/product's toll-free customer assistance call center number and the DMHC HMO Hot Line number to report any problems and/or complaints.*** Confirmation of compliance ..."	Reject: Plans must already provide interpretation services over the phone for customer assistance pursuant to proposed section 1300.49.1.10(b). Please also see comment #110.
114	Section 1300.49.1.2(c) Licensing: Section 2 (c)(2)(A&B) requires that trade names not be used to identify a discount program. Unfortunately this regulation goes against the very grain of keeping the identification of the discount program clear to consumers as stated in 2(c). All marketing and advertising materials must clearly state that the discount policy is not insurance, making it clear to consumers exactly what type of program they are purchasing. Not one of the other 24 states currently regulating discount plans have similar legislation, and to our knowledge, this has not been an issue or complaint from the general public. - NADP recommends deleting both A and B from this section.	Reject: The discount plan must be distinguished from other types of products so that consumers are not misled into believing they are purchasing full financial risk health coverage.
115	Section 1300.49.1.3(c)(3) Marketing of Discount Health Plan Contracts:	Reject: The proposed section was developed in direct response to a unique aspect of marketing of discount health plans that has been harmful to consumers. Recordings are

	Section 3 under (c) requires the audio recording of solicitors marketing to potential subscribers. This mandate would prohibit sales by individuals from cost alone, which is a key component to many discount plans; making availability extremely limited to California residents. Audio recording of sales is not required by Knox Keene licensed plans, nor of any discount or insurance plan licensed in any state. - NADP would recommend deleting this section in its entirety.	necessary to ensure discount health plans are in compliance with the telephone marketing requirements. Health and Safety Code section 1361 and 28 CCR section 1300.51(d)(V) require all advertising to be filed with the Department. This includes any advertising used for potential subscribers.
116	Section 1300.49.1.3(e) Marketing of Discount Health Plan Contracts: This section requires the 'ethical obligations of a solicitor', and while NADP absolutely agrees with this requirement, the term 'ethical' is not defined. Specifications of the term would be helpful for plans to make sure they abide by all requirements from the DMHC.	Reject: The ethical obligations of a solicitor are defined in Health and Safety Code sections 1360, 1363, and 1365.5, and in 28 CCR sections 1300.59.
117	Section 1300.49.1.4(b)(1)(A) Requirements Regarding Discount/Demonstrating Bona Fide Discounts: A requirement to illustrate a 'bona fide discount' is the charge must be equal or less then the Medicare Fee Schedule. At this time, there are no dental services listed under this fee schedule, and not all dentists may take part in Medicare if dental procedures were to be included in the Medicare Fee Schedule. - NADP recommends this section be deleted or specialized procedures be exempted until dental codes are included, and then at such a time this section can be reevaluated.	Reject: The Medicare rates are proposed as a benchmark from which to measure the discount; providers are not required to participate in Medicare in order to offer a discounted rate. The Medicare rates are publicly available to participating and non-participating providers to compare to the discounted rate. Proposed subsection (b)(1)(B) establishes alternative means for measuring the discount for those services not offered by Medicare.
118	Section 1300.49.1.4(b)(1)(B)(ii) Requirements Regarding Discount/Demonstrating Bona Fide Discounts: This section requires plans to ensure a 20% discount on services off of the provider's billed charges. While the majority of discounts offered by discount plans are 20% and lower, there may be a few specific services that do not reach the 20% threshold. NADP discussed specific discounts with their members, and 15% was the threshold. - NADP would recommend a compromise for all services to remain under a 15% level, or allow the discount to be for a category of services, not specifically per code.	Reject: While the Department agrees that many discounts are 20% or higher, the commenter did not provide any documentation to support the contention that the threshold discount should be lower than 20%. Please refer to page 6 of the Initial Statement of Reasons.
119	Section 1300.49.1.5(a)(4) Availability and Accessibility of Discounted Provider Services: Section a (4) requires the geographic accessibility standards of Knox Keene plans be required of discount plans. Knox Keene plans consist mainly of 'closed panels' which have higher administrative costs to manage and more stringent geographic standards than non Knox Keene licensed plans. Such standards should not be applicable to discount	Reject: Consumers must have accessible providers in their service area; otherwise the discount health plan has offered an illusory benefit. Discount health plans must provide an accessible network of providers to their enrollees.

	plans as consumers will have an updated provider directory accessible to them at all time. - NADP recommends this section be deleted or exempt dental and vision discount plans from this specific regulation.	
120	Section 1300.49.1.5(b) Availability and Accessibility of Discounted Provider Services: Section 5 (b) requires plans to have a sufficiently staffed call center to ensure all calls are answered in less than 5 minutes by a live person. - NADP recommends the call wait time to parallel the DMHC's Timely Access regulations, at 10 minutes.	Accept. The regulation has been amended to change the wait times.
121	Section 1300.49.1.6(b) Grievance Systems: Section b mandates quarterly reports of all complaints and grievances; while compiling this data should be available if requested by the DMHC, a summary should be reasonable to file for the DMHC. - NADP recommends altering this regulation to allow for the summary of complaints and grievances. This modification would parallel what is required of Knox Keene licensed plans.	Reject: The proposed regulation is necessary because the Department must have the complete information regarding every complaint in order to determine whether there has been a violation of the Knox-Keene Act. A summary could exclude vital information.
122	Section 1300.49.1.8(b) Language Assistance: This section requires procedures to assess the linguistic needs of its enrollees which will add administrative costs to a lower priced discount product. Section (a), which precedes this requirement is the key for protecting consumers with limited English proficiency by requiring discount plans to provide free interpretation services. - NADP recommends the deletion of this section, as the action will substantially increase administrative costs to discount plans while not adding consumer protection for LEPs which is guaranteed in Section a.	Reject: All health care service plans are subject to health and safety code section 1367.04, which requires that the Department adopt regulations that require every health care service plan to assess the linguistic needs of the enrollee population.
123	Section 1300.49.1.9(a) Financial and Administrative Requirements: Section 9 (a) requires discount plans to pay the same fees as specialized plans under the Knox Keene Act; these costs vary, and could reach upwards to $10,000. Discount plans are less expensive than insurers because they do not assume risk, they do not pay claims, they simply offer discounts on specific dental services. As such, discount plans should not be expected to pay the same as licensed dental managed care plans; the difference of revenues generated are not comparable. Almost half the states have passed legislation and are regulating discount plans - the annual license fee averages between $250 - $500, and there are a few states that cost up to a $1000. NADP recognizes the DMHC would spend additional time and revenue on regulating discount plans, however to charge insurers fees is not appropriate for this line of business and moderation is necessary to keep the discount option as a	Reject: The Department is authorized by statute only to collect fees for full service plans and specialized plans. Discount health plans are a specialized type of heath care service plans. The Department is not authorized to collect less. The Department is not required to follow the law of other states.

	viable low cost oral health care alternative. - NADP recommends the costs to the DMHC be reevaluated and a different formula or pay structure be included in these regulations that are more moderate.	
124	Section 1300.49.1.10(c) Subscriber and Enrollee Disclosure Forms: This section requires discount plans to provide the percentage of discount offered on each service, which becomes extremely burdensome to the plan as well as to the consumer due to the small differences which may be part of many provider contracts. - NADP recommends a modification to this section so that a 'range' of discounts is deemed as acceptable in the regulations.	Reject: The enrollee must have full disclosure regarding the discount benefit that they have purchased. A "range" of discounts is permissible in advertising if the Department has previously approved the "range." This is necessary to ensure that the advertisement has provided the consumer with sufficient information to understand what the "range" means so that the advertisement is not fraudulent. See Health and Safety Code section 1360.
125	Consistency in the definition of "discount health plan": The definition of a discount health plan assumes that discount health plans are stand-alone plans, distinct and separate from traditional insurance or managed health care benefit plans. We urge DMHC to clarify and strengthen the rule such that health care service plans themselves cannot design hybrid products that lock discounted benefits into a schedule of procedures that are covered.	Reject: See comment #94.
126	Definition of "discount": CDA suggests that the regulations protect the confidentiality of the fees charged by providers, as a practice's fees are proprietary, and clarify that the mechanism used by a discount plan to verify a provider's discount simply confirm to the enrollee that the discount is real without the necessity of divulging actual provider fee information.	Reject: Discounted rates cannot be verified without knowledge of the full provider rate. While some contractual rates between providers and insurers are proprietary information, consumers who pay cash for services are not subject to any confidentiality agreements. The cash price must be disclosed in order to measure the value of the discount.
127	Provider agreement with single plan contract offer: No provider should be required by contract or plan policy to participate in a discount plan as a condition of participating in another plan.	Reject: See comment #19.
128	Require discount plans to affirmatively enter into a separate contract with a provider for each discount plan: This indirect means of establishing contracts with providers contradicts the implied requirement that each provider be presented with the proposed discounts and individually agree to accept those discounts. DMHC needs to ensure that individual providers be fully notified of the terms and that they be made fully aware of the plans to which they will become a part of and that a contract be established; and that they be given the choice to reject participation even when such contracts are entered into "indirectly."	Reject: Proposed Section 1300.49.1.12 requires that providers be informed and agree to participate in discount plans.
129	Regulation lacks clarity: because the definition of a person could be interpreted to include entities regulated under the CDI.	Reject: The regulation does not propose any exemption from, or conflict with, Health & Safety Code Section 1343(e)(1).
130	Consistent with current law: We are requesting that the proposed	Reject: The proposed regulations may apply to a health insurer, if the health insurer is

	regulation be amended to be consistent with current law, and clarify that it does not apply to health insurers.	conducting activities described in Health and Safety Code section 1345(f).
131	Discounts Offered by Health Care Service Plans Are Not the Problem: Department has not identified an issue with any of the discount programs offered by plans. Conversely, it is the unlicensed entities that are ripping off the consumers.	Reject: The purpose of the proposed regulation is to clarify and make specific the requirements for all discount health products. Consumers may be confused if some discount health products are subject to regulations and some are not.
132	Health Care Service Plans Are Subject to the Entire Knox-Keene Act – Bifurcated Regulation For Discount Products Will Not Work: The Department is proposing to license discount plans based on the belief that they are health care service plans. If that is the case, then by definition, discount plans would be required to meet all the requirements of the Act, unless otherwise exempted.	Reject: See comment #131.
133	Standards in the proposed regulations exceed what is required for plans: There are no similar requirements on plans regarding Proposed Rule 1300.49.1.3(c).	Reject: The proposed regulations have been drafted to specifically address the unique business model of the Discount Health Plan. The referenced requirement is necessary to address concerns regarding past business practices of discount health plans that have proven harmful to consumers.
134	1300.49.1.5 (b) answer customer service calls within 5 minutes: Department's own regulations concerning timely access to health care, *adopted this year*, require plans to answer customer service calls within 10 minutes. CAHP strongly objects to these blatant regulatory inconsistencies, and contends the Department is far exceeding its authority under the APA.	Accept: See comment #120.
135	The Department Should Exempt Licensed Plans from the Discount Plan Regulations: these regulations do not fit for licensed health care service plans and believes they should be exempt under Proposed Rule 1300.49.1.2 (g) and (h) like the pharmacy chains and wholesale membership clubs are.	Reject: See comment #131.
136	CAHP proposes an exemption for Knox-Keene licensed health care service plans that offer access to discounts to its members: CAHP's proposed exemption includes an exemption for insurers licensed under the California Department of Insurance (CDI) and affiliates or subsidiaries of licensees who administer self-funded programs.	Reject: See comment #131.
137	Add the following after Proposed Rule 1300.49.1.2 (h): The requirements of this section do not apply to any discount programs made available by any of the following: (1) A health care service plan licensed under this Act to enrollees of that health care service plan. (2) An entity licensed by the California Department of Insurance as a health insurer to their insureds. (3) Self-funded health benefit programs administered by affiliates or	Reject: See comment #131.

	subsidiaries of licensed health care service plans or insurers.	
138	Delete Proposed Rule 1300.49.1.1 (valued added services)	Reject: The proposed regulation is necessary to clarify the difference between a discount health product and value added services.
139	Deleted Proposed Rule 1300.49.1.2 (b)	Reject: See comment #131.
140	If enforced, could result in reduced illegal discount plan activity: The very act of developing these regulations will legitimize such illegal activity and may inhibit unfair (and dangerous) business activity and their complexity may make full enforcement difficult or impossible.	Reject: See comment #4.
141	Appearance of legitimacy: Partial adherence of the regulations by unscrupulous discount plans may create the appearance of legitimacy and has already been determined illegal by health and safety code 445.	Reject: See comment #20.
142	Comment: *(d) Health care service plans licensed under the Act do not need to file a material modification or obtain a separate license in order to offer discounts on "value added services" as defined in this Article.* The Plan appreciates the Department clarifying that currently licensed health care service plans may continue to offer value-added services without additional regulatory mandates. This provision correctly exempts health care service plans from having to obtain a duplicative, separate licensure. However, the Plan emphasizes that health care service plans, regulated under Section 1387 of the Act, be exempted from the requirements of these regulations, similar to the exemptions provided to pharmacies or wholesale membership clubs. Recommended language: (d) Health care service plans licensed under the Act do not need to file a material modification or obtain a separate license in order to offer discounts on "value added services" as defined in section (g) of this Article, and are exempted from the requirements of this Article.	Reject: Value added services are not considered to be a discount health product; therefore, there is no need for additional exemption language.
143	Regulations are over burdensome: These plans merely provide access to discounted health care and this regulation treats these plans like a comprehensive health insurance plan which may drive the legitimate discount plan industry out of California.	Reject: see comment #3
144	Duplicative licensing requirements: Hard to understand the necessity of an entirely separate licensing process for insurers and health plans. The licensing required of health plans and insurers is much more extensive than the requirements for discount plans	Reject: The licensing requirements in the proposed regulations have been tailored specifically to address issues unique to discount health plans.
145	1330.49.1.3 (b) Directories for each region unnecessary: Creating separate directories for each region is unnecessary, expensive, and	Reject: The section is necessary to reduce the burden on discount health plans and consumers. Consumers need information regarding providers that is relevant to their

	potentially duplicative. These issues will limit the availability of discount plans in regions outside California's major cities.	geographic area.
146	1330.49.1.3 (c)(3) Marketing of Discount Health Plan Contracts: this section creates an extremely costly burden for small companies. The terms of these contracts – providing access to discounts in exchange for a periodic fee – are not complicated enough to justify the cost of recording and storing each disclosure.	Reject: See comment #115.
147	1330.49.1.3 (g) Marketing of Discount Health Plan Contracts: this ban is entirely unnecessary and harms consumers and the proper disclosures to prevent confusion are already required in this regulation.	Reject: The proposed regulation is necessary to protect consumers from confusion between discount health plans and other health coverage products.
148	1300.49.1.4 (b) should be deleted in its entirety: Medicare reimbursement should be replaced with alternative language. Most medical providers will not agree to this discount level and consumers will have diminished access to care.	Reject: A benchmark to measure the value of the discount is necessary, and Medicare rates are a verifiable, measurable benchmark.
149	1300.49.1.4 (d): a guarantee goes too far and requiring discount plans to cover the potential cost of thousands of dollars in the case of a dispute is just not reasonable regulation.	Reject. Discount plans are offering discounts; the proposed section is necessary to ensure that consumers obtain the value they have paid for.
150	1300.49.1.4 (e): Requiring the discount plan to keep track of every transaction is impossible. Discount plans do not process claims or function as a payor.	Reject: The proposed regulation is necessary to address consumer concerns that promised discounts are not being honored. Because the plan has promised these discounts, and benefits from the consumer's membership fees, it is reasonable to require the plan to verify that these discounts are, in fact, being provided.
151	1300.49.1.5 Availability and Accessiblity of Discounted provider services: We believe adequate network disclosures solve this problem better than over burdensome regulation.	Reject: The plan must verify that an adequate provider network exists.
152	1300.49.1.8 Language Assistance: We believe that this section places an undue burden on discount plans, and will be particularly difficult for them to fulfill.	Reject: Health care service plans are required to provide language assistance pursuant to Health and Safety Code section 1367.04.
153	1300.49.1.11 Subscriber Contracts: We're not sure that banning the use of group contracts – which are sometimes provided as a benefit to members in an association – makes sense or provides any consumer protections.	Reject: The commenter has not provided sufficient documentation or justification for the proposed change.
154	No statement in KKA that applies to Discount Health Products: Consumers need protection when they buy these products and need to be specified strongly in the KKA.	Reject: See proposed section 1300.49.1.2(f).
155	Discount health products should not be called discount health plans: The use of the misleading term leads consumer to believe its health insurance. We recommend using the term discount health product instead.	Reject: See comment #94.
156	Support 1300.49.1.3(a)(1) We support the requirement in 1300.49.1.3 (a)(1) that marketing materials must disclose that the discount health	Accept.

	product is not insurance.	
157	Support the requirement in 1300.49.1.3 (b): that products share their provider network in the subscriber's preferred geographic area in contracts, however, the penalty for failure to deliver the correct discount should be higher than the penalty in 1300.49.1.4 (d).	Accept.
158	Support consumer's right to cancel policy: within the first thirty days and receive full reimbursement but we also believe they should be able to cancel their contract at any time and receive pro rata portion of the money they paid for months going forward.	Accept.
159	We support sections Section 1300.49.1.8 (a)-(d) and appreciate the inclusion of language assistance requirements that require an assessment of language needs, provision of interpreter services, and training of staff by the discount plans.	Accept.
160	Strengthen requirements in Section 1300.49.1.8 (a)-(d) We recommend the following changes: Before section (a) we would add a requirement for the discount health product to establish a Language Assistance Program: "Every discount health plan/product shall develop and implement a language assistance program, which shall comply with 28 CA Code of Regulations, Section 1300.67.04. The Language Assistance Program shall be documented in written policies and procedures, and shall address, at a minimum, standards for enrollee assessment, standards for providing language assistance services, standards for staff training, and standards for compliance monitoring."	Reject: See comment #110.
161	Strengthen requirements in Section 1300.49.1.8 (a)-(d) We recommend the following changes: In section (b), we would add "translation services": "A discount plan/product shall also set forth reasonable procedures for assessing the linguistic needs of its enrollees. Based on those needs, the plan/product shall provide free interpretation services through its toll-free customer assistance call center and provide free translated material to its potential subscribers and enrollees…."	Reject: See comment #110.
162	Strengthen requirements in Section 1300.49.1.8 (a)-(d) We recommend the following changes: Before current section (c), we would add another section requiring the translation of vital documents, including any application forms, reenrollment forms, disclosure forms and all terms of the contracts and any materials in connection with enrollment in the plan.	Reject: See comment #110.
163	Strengthen requirements in Section 1300.49.1.8 (a)-(d) To determine the languages for which these materials should be	Reject: See comment #110.

	translated, we would recommend using a requirement similar to the "safe harbor" provision used in the Office for Civil Rights, U.S. Department of Health and Human Services: We recommend the following language: "The discount health plan/product shall provide translations of vital documents, including but not limited to, any application forms, reenrollment forms, disclosure forms and all terms of the contracts and any materials in connection with enrollment in the plan. For each eligible language group that constitutes 5% or 1000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered."	
164	Strengthen requirements in Section 1300.49.1.8 (a)-(d) In section (d), we would recommend that the notice to potential subscribers or enrollees also include the toll-free customer assistance call center number and the DMHC's HMO Help Line to report any problems and/or complaints.	Reject: See comment #113.
165	Language is overly broad in solicitor licensing 1300.49.1.2: We recommend removing the licensure requirement for solicitors to promote commercial and consumer choice and interests.	Reject: See Health and Safety Code section 1359.
166	Licensees would be responsible for solicitors: Licensee would submit a list of approved solicitors and programs periodically to DMHC to reduce workload of reviewing applications.	Reject: See comment #165.
167	Filing marketing materials 30 days prior to use is burdensome and unnecessary: We suggest adding a review of all plan materials, as are done in other states.	Reject: See Health and Safety Code section 1361.
168	Provider directory already made available to consumers: Requiring us to include this information with each advertisement is extremely costly and unnecessary and increases the cost of marketing.	Reject: This information is necessary for the consumer to determine whether there are providers in their area that participate in the discount health plan's network.
169	Outright prohibiting bundling of products is unclear: We suggest either removing this prohibition altogether or requiring disclosures to make clear the nature of the components of the bundled product.	Reject: See comment #147.
170	Prohibitively expensive to add unnecessary additional language assistance disclosures in advertisements: Would suggest that DMHC simply require discount medical plans that advertise in a certain language offer interpretation services in those same languages.	Reject: The proposed requirement is necessary so that the consumer is aware that the language assistance service is available.
171	The entire section of Bona Fide discounts should be reworked: The effect would deter many providers from participating because of information and reporting requirements and over-management of their billing practices and would also drive the cost of our plans very high.	Reject: The regulation proposes the simplest way to verify that bona fide discounts are being provided to enrollees in discount health plans-comparison to a verifiable benchmark.

172	Provider and network contracting should be reworked because they are impossible to comply with: As drafted, would force the network Coverdell contracts with to re-contract with each and every provider which all of our networks would contain over 119,000 providers.	Reject: The proposed requirement is necessary to ensure full notice and agreement by each provider in the network. This specifically addresses a common consumer concern: that the discount health plan lists providers in their networks who have neither knowledge of, nor agreement to participate in, the plan, and therefore consumers are left without the discount that was promised to them.
173	The definition of discount health plan as proposed applies equally to plans currently licensed as well as unlicensed: Another approach would be to exempt licensed plans so we suggest adding a subsection (i) as follows: "The requirements of this Article do not apply to any discount products or programs made available (1) by a health care service plan licensed under this Act to enrollees of that health care service plan, (2) by an entity licensed by the California Department of Insurance as a health insurer to their insureds, or (3) to self-funded health benefit programs administered by affiliates or subsidiaries of licensed health care service plans or insurers." If this exemption is added, then section 1300.49.1.2 should be deleted.	Reject: See comment #131.
174	For the regulations to exclude discount plans sold as an adjunct to the licensed product: Apply new regulations only to those discount plans that are "stand alone" products.	Reject: See comment #131.
175	Proposing addition to Section 1300.49.1.1(b): "A discount health plan does not include a full service or specialized health care service plan that is separately licensed by the Department."	Reject: The commenter did not provide sufficient justification for the proposed change.
176	Proposing that "discount health product" as defined in section (c) be revised as follows: "'A discount health product' does not include a discount health arrangement offered to enrollees of a licensed full or specialized health care service plan when such arrangement is offered as an adjunct to the plan's licensed product and not as a discount health product available for separate purchase."	Reject: See comment #131.
177	Section 1300.49.1.2(c)-Clear identification of the discount health plan and product: the step of prohibiting plans from using established trade names is unnecessary and ill serves the public. We propose that subsections (A) and (B) be deleted.	Reject: See comment #78.
178	In addition, and as an alternative to 1300.49.1.2 (c): it should be clarified that the regulation would permit a licensed non-discount plan to offer a discount product from a separate discount plan and still use its own brand name.	Reject: See comment #78.
179	Section 1300.49.1.3(g) Marketing of discount health plan products should not be prohibited: The regulation should also treat all solicitors	Reject: See comment #80

	and marketers in the same manner. We propose the following be added at the end of the first sentence: "unless the plan clearly distinguishes the products from each other." We also suggest that the second sentence be revised.	
180	Section 1300.49.1.4 Department should reconsider its approach to setting pricing rules in these regulations: The proposed definition of bona-fide discount is clear about what conditions to be met in section 1300.49.1.1(a) but then departs from its longstanding position on section 1300.49.1.4. Department should use a guidelines approach to its enforcement of what constitutes a bona fide discount.	Reject: The measurement of the value of a discount requires that a verifiable benchmark be used to measure against the discounted bill. The proposed change does not address this requirement.
181	Propose section 1300.49.1.4(b) be deleted in its entirety: The proposed prescriptive approach is unnecessary to protect consumers since there are other provisions and existing regulations in the KKA already.	Reject: The proposed regulations are necessary to ensure that consumers are able to obtain a bona fide discount for their membership fees.
182	The Medicare Physician Fee Schedule should be clarified that it only applies to medical, and not dental services: if the Department continues to use as a benchmark.	Reject: Please see the alternative standard in subsection 1300.49.1.4(b)(1)(B).
183	Section 1300.49.1.1 should be expanded to include discount items that promote wellness: We propose the following revision: (g) The term "value added services" means services and items that promote wellness, such as massage services, ~~and~~ gym memberships, oral healthcare products, and tobacco counseling, which are arranged for, or provided, at no additional charge by a licensed health care service plan to an enrollee in that plan's health care service plan product. The definition of these services should be expanded to include discounts items that promote wellness such as oral healthcare products and tobacco counseling.	Reject in part: The definition of "value added services" has been modified for clarity, but does not incorporate the proposed language because it was not necessary.
184	(b) When presenting any written individual subscriber contract for examination or sale, the plan or its solicitor shall also provide the disclosure form applicable to the contract and a directory of the plan's providers located in the subscriber's preferred geographic area. For purposes of this subsection, written contracts include subscriber contracts or enrollment forms distributed via facsimile, e-mail or Internet web site. The required disclosure form ~~and relevant portion of the provider directory~~ shall be provided through the same mode of distribution as the subscriber contract, ~~except that, if the potential subscriber prefers,~~ except that the provider directory may be provided through the plan's Internet web site or call center unless the potential	Reject: The commenter does not provide sufficient justification for the proposed change. The proposed change appears to provide less information to the consumer than the current proposed regulation, and does not propose to explain how consumers will be notified regarding how to "opt in" to receiving a paper copy nor how to access the internet or call center versions of the directory.

	subscriber requests that it be presented in a paper format. The cost of providing the directory in other than electronic format at the time of presenting the subscriber contract to each and every potential subscriber is cost prohibitive. The same goal of disclosure can be obtained by presenting the information on a website or through a call center unless the subscriber requests that it be presented in a paper format.	
185	(2) ~~Verbally disclose prior to enrollment all principal terms, conditions and exclusions and limitations under the subscriber contract~~. The requirement of verbal disclosure exceeds the disclosure requirements for non-discount plans.	Reject: The requirement is necessary to ensure that consumers are informed prior to enrolling in a discount health plan over the telephone. See also comment #101.
186	(3) Document each telephone enrollment transaction, including all required verbal disclosures, ~~in an audio recording~~, and retain the ~~audio recordings~~documentation, pursuant to Rule 1300.85.1, for not less than five years in a manner that enables the plan to retrieve ~~a specific recording~~ the documentation by date or subscriber name and to provide it to the Department not more than five days after request.	Reject: See comment #115.
187	(e) Prior to allowing any person to engage in acts of solicitation on its behalf, a discount health plan shall reasonably assure itself that such person has sufficient knowledge of its organization, procedures, plan contracts, and the provisions of the Act and these rules to do so lawfully. ~~require all solicitors and solicitor firms to demonstrate either current licensure in good standing by the State of California as an insurance agent or broker, or completion of a solicitor training program required by the plan through which the solicitor or solicitor firm demonstrates competent knowledge of the marketing and solicitation requirements of this Article and Section 1300.5 1.01, and the ethical obligations of a solicitor. A plan may demonstrate compliance with this training requirement through administration of the plan's training program to all solicitors and solicitor firms or, in the alternative, to the supervisory employees of a solicitor or solicitor firm, if the trained supervisory employees are obligated to train all other employees of the solicitor or solicitor firm who solicit on behalf of the plan.~~ This regulation imposes a costly training program that will be unique to this particular product. We would suggest its deletion and the substitution of the requirements currently set forth in 28 CCR 1300.59.	Reject: This requirement is necessary to ensure that solicitors for discount health plans are fully versed in the nature of the discount health product, and also that they aware of their ethical obligations as solicitors. This requirement is in direct response to consumer concerns that solicitor intentionally mislead potential enrollees, or lack sufficient information to help consumers determine whether to purchase a discount health product.

188	(g) A discount health plan shall not offer any insurance product, or health care service plan product, in conjunction with the offer of a discount health plan product unless the plan clearly distinguishes the products from each other. This ~~prohibition includes but is not limited to,~~ requirement shall apply to all media, including but not limited to the following: radio, television, print, e-mail, and internet advertisements, and disclosure documents and subscriber contracts, that reference discount health plan products together with any reference to insurance product or insurance terminology. This subsection does not prohibit a California-licensed insurance agent or broker from offering prospective subscribers and enrollees a discount plan product as an alternative to, as an optional rider or adjunctive benefit to, an insurance product. All contracts and marketing of a discount plan product as an optional rider or an adjunctive benefit to an insurance product shall be disclosed to the Department in the appropriate exhibit to the discount plan's license application. This regulation permits an insurance agent or broker to offer a discount plan as an alternative to an insurance product, but does not allow a plan or non-DOI licensed solicitors from so doing. The regulation should treat all such solicitors and marketers in an even-handed manner. By adding the additional language which requires the plans to clearly distinguish between and among products, the consumer will not be misled and the different marketers will be on a level playing field.	Reject: The commenter does not provide sufficient justification for the proposed change. The regulation remains necessary to prevent consumer confusion regarding the nature of discount health products.
189	(j) References to discounts constitute price advertising within the meaning of Section 1395(a) of the Act, except that, the prohibition in Section 1395(a) to offering a "discount" in advertisements shall not apply to discount health plans that are licensed by the Department and in full compliance with the requirements for such licensure. Advertisement of a "range" of discounts may be allowed provided that any such advertisements meet the requirements of section 1300.49.1.3(a). ~~only if the plan has obtained approval of the Department prior to use.~~ It is very probable that not all providers will offer the same discount; hence, this regulation would require many advertisements to be submitted for pre-approval which will be burdensome to the Department as well as the plans. We	Reject: The comment does not provide sufficient justification for the proposed change.

	believe that this requirement is not necessary in light of the Department's array of other regulatory tools: the prohibition on deceptive advertising; the right to revoke "file and use" processes if there are abuses; and enforcement proceedings.	
190	We recommend that the Department clearly distinguish between discount health products offered by licensed health plans and those offered as "stand-alone" products by discount health plans.	Reject: See comment #131.
191	The proposed rule provides only for a Notice of Material Modification in this circumstance. To that end, we request the following revisions: □ Definitions, Section 1300.49.1.1 (c) – Revise to omit the reference to a "discount" health plan: *The term "discount health product" means the contract by which a health plan offers discounts on health care services.*	Reject: The definition is necessary to clarify the meaning of a phrase used in the regulation.
192	□Licensing, Section 1300.49.1.2(b)(1) – Revise to be consistent with subsection (b)(2), deleting reference to "full service, dental or vision" would clear up the ambiguity created by referring as examples only to full serve, vision and dental plans, where other specialty plans can and do exist. *Secure a separate license as required by subsection (a) of this Section, if the type of discount health product differs from the type of plan contract(s) approved under the plan's license pursuant to 28 CCR Section 1300.51(c)(C).*	Reject: The proposed language is necessary to provide examples of "types" of plans. During the development of the section, some stakeholders requested that examples be provided in the regulation.
193	The term "value added services" is ambiguous as defined and could be interpreted to include Non-basic health services that may be offered by specialized plans, and which are not considered "Basic services" under Section 1345(b) & 28 CCR § 1300.46. We see no reason to exempt these Non-basic health services from the proposed rule's reach where discounted prices are offered at no additional cost to the enrollees. We believe a brighter line can be drawn by distinguishing health care offered by licensed professional health care providers from non-professional services used to promote wellness. Otherwise, existing health plans that can arrange discounted fees for Non-basic services will have no responsibility for assuring that providers are accessible and providing bona fide discounts. We recommend the following: □ *Section 1300.49.1.1(g): The term "value added services" means services and items that promote wellness, such as massage services and gym memberships, which are arranged for, or provided, at no additional charge by a licensed health care service plan to an enrollee*	Reject: The definition of "value added services" has been amended for clarity though not in the manner proposed. The proposed change is too restrictive for the intent of the section.

	in that plan's health care service plan product. "Value added services" does not include any health care services that are provided by a licensed professional, including allied health care providers, as required under the Business and Professions Code.	
194	Pharmacy Exemptions: Pharmacies and wholesale membership clubs, as qualified in the proposed rule, are exempted from the proposed rule. Section 1300.49.1.2(g)&(h). In its Initial Statement of Reasons, the Department stated that these entities met the criteria for exemption. Under the Administrative Procedure Act, the Department is required to specify the reasons for this exemption. In the absence of written justification for the exemption, we must oppose exempting the pharmaceutical discounts.	Reject: The exemption was based on public policy of low risk to the consumer. The exemption only applies if the discounts are limited to the retailer's own stores, at a minimal charge to the consumer, and pricing of pharmaceuticals is more readily available than pricing of other services.
195	Consumers must be given the means by which to compare apples to apples. For instance, in vision care, the price of an eye examination may or may not include dilation and other procedures. We recommend that the Department require that a plan offering a discount product either: (a) list fees or a range of fees that will be charged by each participating provider for each discounted service or procedure (which shall include those required to be rendered in accordance with professional and regulatory standards, *e.g.*, dilation for a comprehensive eye examination), or alternatively, (b) disclose in its directory the discounted fees that will be charged for each service or procedure for each participating provider.	Reject: Proposed section 1300.49.1.5(b) requires that plans be able to verify discounts and costs for consumers over the phone for each specific provider.
196	The Department has, without adequate explanation or jurisdiction, determined that fees billed to enrollees not exceed the Medicare Physician Fee Schedule rates, if applicable, or be twenty percent (20%) off of the full billed charge. Otherwise, a plan has to propose an alternative standard to prove that the discount is bona fide. Again, the Department has not set forth an adequate explanation of its rationale for imposing this presumptive standard. If full disclosure is made to consumers, plans should not be limited in the amount of the discount offered and products could be priced accordingly.	Reject: See comment #9.
197	Section 1300.49.1.4: Most, if not all, discount plans do not pay provider or enrollee claims, however. The Department may have inadvertently inserted "claim" instead of the term "grievance."	Reject: The section has been modified for clarity, though this language was not accepted.
198	Revision resolving grievances: Further, each plan has thirty days in which to resolve grievances and unless the enrollee has paid the provider there would be no need for reimbursement. We therefore suggest that this section be revised to state that reimbursement should be made within thirty days of a plan's determining that an enrollee paid	Reject: The grievance resolution must be made within a measurable time frame from the date the consumer submitted the claim, not from a date of the plan's subjective determination.

	an amount higher than the promised discount amount.	
199	Marketing of Discount Health Plan Contracts: The disclosures required under subsection 1300.49.1.3(a)(3) are ambiguous. We suggest the following revisions and additions: *(a)(3) That the subscriber or enrollee is responsible for paying for all health care purchases. (a)(5) That the subscriber or enrollee's receipt of the discount may be conditioned upon payment for the health care services or product at the time services are rendered or the product is received. Confirm all payment terms and conditions with your provider.*	Reject: The comment has not sufficiently justified the proposed change. The proposed terms may be inapplicable to some discount health plans.
200	Customer Assistance Call Center: The proposed rule requires that a plan's toll-free customer assistance call center answer a call in less than five minutes. Section 1300.49.1.5(b). This is inconsistent with the recently promulgated timely access regulations, which contain a ten minute answering requirement. We recommend that the standard in the proposed rule be changed to ten minutes to be consistent.	Accept.
201	Prepaid and Periodic Charges: Under the Department's definition of a discount health plan (Section 1300.49.1.1(c)), there must be a prepaid or periodic charge. This definition fails to make accountable those entities that provide discounts to health care services at no charge. Where health care services rendered by licensed professionals are involved, the need to ascertain that the services are accessible and being rendered at bona fide discounts does not vanish, regardless of whether new or existing plans offer it at no charge. Moreover, the Department needs to reconcile its ban against bonuses and gratuities for enrollment and various prior Attorney General opinions with its allowance of these discounts at no charge.	Reject: See comments #2 and #20. Section 1300.49.1.3(j) of the proposed discount plan regulations contains an exemption to the discount portion of Section 1395(a).
202	Cancellation & Notices: Section 1300.49.1.3(b) provides for email, facsimile or Internet distribution of enrollment forms and contract but current Section 1300.65(b) mandates that cancellation notices be mailed to subscribers at their current addresses. We recommend that the proposed rule be revised to allow cancellation notices to be electronically provided (email or facsimile) unless the subscriber otherwise opts out of such notification methods.	Reject: The current requirement is necessary to ensure consumers, including those who lack internet access, have full notice regarding cancellation; the proposed change could be damaging to consumers who obtain provider services and incur charges without realizing that they are no longer entitled to the benefit.
203	Section 1300.49.1.12(a)(2) – When reviewing a plan's network's compliance, Department may consider whether or not the plan's "arrangements are so complex and/or attenuated that they render the discount health plan unable to reasonably maintain effective oversight and monitoring for the network's compliance with this Article." It is unclear what the Department considers "complex and/or attenuated."	Reject: The words are used in the common meaning; the Department will make the determination on a case by case basis.
204	Summary of Fiscal Impact is incorrect. The Department is unaware of	Reject: Discount health plans that meet the definition of health and safety code section

	all the costs invested in resources to become licensed as a discount health plan.	1345(f) are currently required to be licensed, and the costs associated with licensure are currently in effect. It is not a cost attributable to the regulation merely because some discount health plans have not yet complied with the requirement.
205	Revise Section 1300.49.2: to make it more clear: In order to change our business name, it will be necessary to amend its qualifications as a foreign corporation and licenses in a number of states just to include the phrase discount health plan.	Reject: The commenter has not provided sufficient justification to support the proposed change.
206	Revise Section 1300.49.1.3: By removing requirement that all telephone enrollment transactions must be recorded and maintained by plans and to more narrowly specify the terms, conditions, exclusions, and limitations.	Reject: The commenter has not provided sufficient justification for the proposed change.
207	Strongly urge the revision of 1300.49.1.4 provision: To account for annual adjustments so current Medicare rates would always apply. Family Care already negotiated its provider contracts during licensing process with the Department and this requirement would necessitate another renegotiation.	Reject: Title 2, section 20 of the California Code of Regulations requires that any document incorporated by reference be specifically identified by date.
208	We strongly urge the Department not to adopt provision 1300.49.1.4(d): This requirement would turn a non-risk bearing discount health plan into a risk bearing plan. Periodic charges would likely increase to account for the risk assumed under this provision.	Reject: The discount plan assumes no risk as long as the discount is provided to the consumer. It is the responsibility of the discount plan to ensure contracts are in place and enforced to ensure that their members are obtaining the promised discount.
209	Section 1300.49.1.4(e) This provision would be next to impossible to implement: Because discount plans do not pay providers for medical services to insist providers to receive cost and payment information for each service.	Reject: See comment #208. Discount plans must assume responsibility to ensure that consumers are obtaining the discounts that were promised by the discount plans; the only way to do that is to compare actual price information.
210	Section 1300.49.1.4(e) – This requirement is not necessary: The specific minimum discount standards under 1300.49.1.4.(b) are adequate to verify that the discounts are bona fide.	Reject: See comment #209.
211	Section 1300.49.1.4(e) This requirement would be costly: We would incur significant increases in operating expenses to develop and implement a discount tracking system.	Reject: See comment #209.
212	Revise Section 1300.49.1.5(b): Suggest this provision to require discount health plans to strive to answer all calls during normal business hours by a live person in less than 5 minutes and account for outliers by providing, for instance, that no more than 10% of calls shall have a wait time exceeding 5 minutes.	Reject: See comment #120.
213	We suggest 1300.49.1.7(a) to be revised because discount health products are not insurance products and not considered as creditable coverage: Revise this provision to permit a discount health plan to discontinue or non-renew a particular discount health product in its	Reject: The reason proposed is insufficient for discontinuing the consumer protection provision in section 1365.

	entirely, even if the discontinuance or non-renewal does not fall within one of the reasons for cancellation under this subsection or Section 1365 of the KKA.	
214	Suggested revision for section 1300.49.1.8: Revise this provision to require a discount health plan to provide free interpretation services for all languages that are used by the plan, solicitors, and marketers, to direct marketing activities towards persons with limited English proficiency when 3,000 or more or 5% of the enrollee population, whichever number is less, indicates in the needs assessment required by 28 CCR 1300.49.1.8(b) a preference for interpretation services in that language.	Reject: The proposed change does not provide sufficient protection for consumers to whom the plan has marketed in a foreign language.
215	1300.49.1.9 – We strongly urge the Department to establish much lower regulatory fees for discount health plans than apply to traditional health care service plans.: Discount health plans do not assume risk and do not pay providers for medical services on behalf of enrollees.	Reject: The Department has authority to impose fees based on the plan offering full health services or specialized services. See Health and Safety Code section 1356. Discount Health Plans are a specialized service; therefore the fee must be imposed for a specialized plan.
216	1300.49.1.9(c)-We do not provide medical care to its subscribers or enrollees and do not pay for such care so we suggest this section to be revised: We suggest to make the following phrase in Section 1367(g) inapplicable to discount health plans: "that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management."	Reject: The discount plan is arranging for the provision of health care services, and therefore the section must apply.
217	1300.49.1.10 – We urge this provision to be revised because the percentage discount may vary among our providers as noted in our comment to 1300.1.4(b): Revise this provision to require the disclosure forms to list either the percentage discount offered on each service listed or a fee schedule that reflects the discounted rates by provider.	Reject: The discount provided on a particular service must be the same across all providers to avoid enrollee confusion and so that enrollees have access to the discount at all network providers.
218	1300.49.1.11(a) We strongly urge the Department to delete this provision: The ISOR states this restriction is necessary to eliminate confusion but the extensive disclosures required in these proposed regulations should make it clear to a subscriber or consumer that discount health plan is not traditional insurance	Reject: The proposed regulation remains necessary to protect consumers from confusion regarding the nature of the discount health product.
219	1300.49.1.11(c) Imposing a prohibition on waiting periods would require us to renegotiate contracts with our providers. We strongly urge the Department not to prohibit waiting periods.	Reject: Because the plan does not accept risk, the contract cannot exclude any preexisting conditions, and so there is no need for any plan to impose a waiting period.
220	1300.49.1.11(d) Reference to Exhibits P-2 and Q-2 in the preface note to 1300.51.01(c) (Exhibit P) should actually refer to Exhibits P-3 and Q-3.	Accept
221	1300.49.1.12(a) Family Care already negotiated each of its provider contracts and provider network contracts during the licensing process: We strongly urge the Department to strike the requirements contained	Reject: The proposed section is necessary so that the end provider will honor the discount that the discount plan has promised to the consumer.

	in the second and third sentences of subsection (a)(1).	
222	1300.49.1.12(c)-Suggested revision on this provision so that 28 CCR 1300.67.8(c) is made inapplicable to discount health plans: It would be next to impossible for a discount health plan to insist it receive cost and payment information from providers for each service.	Reject: See comment #209.
223	1300.51.01 GG. 2.- We believe that the minimum tangible net equity requirement in California should be higher than $50,000 for discount health plans: Other states impose net worth requirements in excess of $50,000.	Reject: The requirement is consistent for specialized health care service plans.
224	1300.51.01 HH.- A higher minimum net worth requirement would help to ensure that only companies that have the financial resources to comply with the requirements under the KKA will seek to do business as a licensed discount health plan in California.	Reject: See comment #223
225	This regulation should include a provision stating as follows: "Other than as provided in this Article 2.5, no other provisions of the California Knox-Keene Health Care Service Plan Act of 1975 or amendments thereto, or Chapter 2 of Title 28 of the California Code of Regulations or amendments thereto, shall apply to a discount health plan or discount health product, unless such law shall expressly state it is applicable to such a plan or product.": This provision is necessary because it is not clear whether the balance of the KKA and 28 CCR will be applied to discount health plans or discount health products.	Reject: The proposed regulations make specific and clarify sections of the Act. The full Act applies unless exempted in these regulations or by order of the Director.
226	DMHC does not have authority to regulate discount health care plans: Discount Health Plans based on legislative history because the Legislature has recognized that they are not health care service plans.	Reject: See comment #4.
227	Discount health care plans do not qualify as "health care service plans": The Act requires health care service plans to assume "full financial risk on a prospective basis for the provision of covered health care services." The Act was intended to regulate risk-bearing entities, like HMOs, not discount health care plans.	Reject: See comment #4.
228	These proposed regulations will affect small businesses: DMHC's determinations are incorrect. Some companies qualify as small businesses under California law and these proposed regulations will affect them.	Reject: The comment does not sufficiently explain how small business will be adversely affected.
229	These proposed regulations will affect 1)creation or elimination of jobs 2) creation of new business and 3)elimination or expansion of businesses: DMHC's determinations are incorrect. These regulations are so burdensome that the net result will be lost jobs, fewer businesses and less access to discount plans for consumers.	Reject: The comment does not sufficiently explain how the regulations will have an adverse effect on business, nor why these businesses are not already under such a "burden" because the regulations clarify existing law.
230	These proposed regulations will have a fiscal impact on private	Reject: See comment #229.

	businesses: DMHC's determinations are incorrect. These rules would impose thousands of dollars in annual fees on each discount plan.	
231	DMHC does not mention the NAIC Model Act: when determining that no reasonable alternatives that would be as effective and less burdensome than the proposed rules.	Reject: The NAIC rules do not address issues that must be considered under the Knox-Keene Act.
232	The definition for "bona fide discount" is vague and unnecessary: We suggest that the definition for "bona fide discount" be deleted.	Reject: The definition of "bona fide discount" is necessary to ensure that consumers are obtaining value for the membership fees paid to the discount plan.
	The definition for "discount health plan" is too broad: It leaves open the possibility for many solicitors to qualify as discount health plans just by selling the programs.	Reject: The proposed definition of discount health plan clearly excludes solicitors unless those solicitors are conducting the actions of a health plan.
233	A separate solictor license requirement would waste valuable government resources: It would also increase confusion and pose a significant burden on solicitors without any real benefit.	Reject: The proposed regulation is necessary because a primary concern regarding discount plans is misleading marketing, conducted most often by solicitors.
234	The NAIC Model Act utilize a uniform definition that distinguishes plans from solicitors: We suggest that subsection (b) be amended as read: (b) The term "discount health plan" means a person who, in exchange for a prepaid or periodic charge paid by or on behalf of subscribers and enrollees, undertakes to arrange for access to discounts on health care services ~~on behalf of subscribers and enrollees who retain the financial responsibility to pay the discounted cost of health care services~~ by contracting with providers, provider networks or other discount health plans and determining the charge to subscribers or enrollees. A solicitor, as defined in subsection (f), is not a discount health plan, unless the activities of the solicitor include those described in this section ~~or Section 1345(f) of the Act~~.	Reject: The language in subsection (b) is necessary because it reflects the definition of a heath care service plan, as defined in Health and Safety Code section 1345(f).
235	Definition for "discount health product" in subsection (c): We agree that product should be defined separately from the "plan" operator. However, other sections of the rule appear to use those terms interchangeably.	Accept.
236	Definition for discount health product is vague and needs to be clarified: We suggest definition be clarified as read: (c) The term "discount health product" means ~~the~~ a business arrangement or contract by which a discount health plan, in exchange for a prepaid or periodic charge, offers access to discounts on health care purchases. It does not include a product that does not charge a membership or other fee to use the product.	Reject: The definition of "discount health product" has been modified for clarity, though not in the manner suggested. The comment's suggestion did not add clarity.
237	The definition for "provider" in subsection (d) should be clearly limited to providers that have contracted with the plan. We suggest the definition be clarified to read:	Reject: If the plan lists a provider in the directory that is relied upon by consumers, the plan must honor the responsibilities that go along with that listing. The plan must contract with all providers listed in the directory.

	(d) ~~In addition to the definition at Section 1345(i) of the Act, t~~The term "provider" ~~includes~~ means any professional person, organization, health facility ~~providers~~, provider groups, ~~contracted providers, and all providers listed in the directory provided to enrollees~~ or other person or institution authorized by the state to deliver or furnish health care services that has contracted, directly or indirectly, with a discount health plan to provide health care services to enrollees.	
238	Subsection (g) contains a definition for "value added services" that are provided "at no additional charge": We believe that all free products should be exempted, not just "wellness services" offered by licensed plans.	Reject: See comment #2.
239	If free products is exempted by excluding them from the definition of "discount health product" than subsection (g) and section 1300.49.1.2(d) can be deleted: We suggest amending subsection (g) to read: The term "value added services" means health care services and items ~~that promote wellness, such as massage services and gym memberships,~~ which are arranged for, or provided at, no additional charge ~~by a licensed health care service plan~~ to an enrollee ~~in that plan's health care service plan product~~.	Reject: The proposed change is too broad and is not consistent with the definition of value added services.
240	Section 1300.49.1.2 (a) contains language that is too broad: It could be interpreted to require solictors to obtain a license. We suggest to amend as follows: (a) No person shall engage in business as a discount health plan ~~or offer a discount health plan product~~ in this state unless such person has first secured from the director a license….	Reject: The proposed change would exclude entities that must be licensed as defined in Health and Safety code section 1345(f).
241	The same comment applies to the language contained in subsection (b). The license requirement should be limited to those that engage in business as a discount health plan: (b) Prior to engaging in business as a discount health plan or offering a ~~discount health product~~, a health care service plan with an existing license for non-discount services must either:…..	Reject: See comment #240.
242	Section 1300.49.1.2 (c) contains a new requirement that is vague, ambiguous, and burdensome: Unclear whether this would require every discount health plan and product to have the word "discount" in its name. We recommend that subsection (c) be deleted.	Reject: The proposed regulation is necessary to ensure that consumers understand the nature of the product offered by the discount health plan.
243	Subsection 1300.49.1.2 (e) and (f) – Plans should not have to guess what requirements of KKA or Title 28 apply to them: We suggest that the rules clearly reference any section of the KKA or Title 28 that apply to discount plans and that discount plans be subject only to the	Reject: See comment #225.

	referenced sections.	
244	Subsection (g) adds a new exemption for pharmacies but it will have an uneven and unfair effect: If a low cost pharmacy program is going to be exempt, it should be exempt regardless of who offers it. Subsection (g) should be deleted or substantially amended to make it fair.	Reject: The exemption is narrowly drawn and involves only discounts on services offered by the retailer's own stores, because these products are not likely to cause confusion for consumers and are offered at such a low cost that the risk to the consumer is very low.
245	The term "wholesale membership clubs is undefined: Who is considered a "wholesale membership club"? All free programs should be exempted, which would obviate the need for subsection (h).	Reject: See comment #2.
246	Section 1300.49.1.3(a) should include the requirement that discount health plans review and approve advertising and marketing materials used by solicitors: This would ensure that solicitors are complying with laws and contractual requirements established between discount plans and providers. It protects consumers and should not be deleted.	Reject: See Health and Safety Code sections 1360 and 1361.
247	Marketing of discount health plan contracts requirements are burdensome and unnecessary: We suggest that discount health plans be required to retain ads and marketing materials for two years and not file them with the Department.	Reject: The proposed change attempts to circumvent the Department's responsibility to review advertising material of health plans. The proposed change also is inconsistent with the records retention requirements in 28 CCR section 1300.85.1.
248	References to the "plan" and the "discount health plan contract" in subsection (a) need to be replaced with the appropriate defined terms: We suggest subsection (a) be amended to read: (a) A discount health plan shall review and approve and retain for 2 years, ~~file with the Department not less than 30 days prior to use,~~ all advertising, marketing and solicitation materials published or distributed in connection with enrollment in the ~~plan~~ discount health product, including all such materials distributed by solicitors or solicitor firms. All advertising and marketing materials shall clearly and prominently disclose: (1) The discount health ~~plan contract~~ product is not insurance….	Reject: See comment #247.
249	It is unclear what the rule means by "examination or sale" in subsection 1300.49.1.3(b): This rule is vague and unnecessary. We suggest that the rule be clarified to require that enrollment forms include the standard disclosures referenced in subsection (a).	Reject: Please see Health and Safety Code section 1362(e), which defines "presenting for examination or sale."
250	Suggest that the rules not require plans to send written provider lists to every prospective enrollee: Rules should require that plan advertising and enrollment forms include a reference to the plan's website, along with a statement that written provider lists are available upon request. An online default approach is better for consumer.	Reject: The proposed comment does not explain why an online-only provider directory is beneficial to the consumer, who may or may not have access to a computer and/or may not be accustomed to using the internet.
251	Membership kits requirement would be burdensome and unnecessary: Discount plans are not insurance. Consumers will be protected as long as the enrollment forms or marketing materials contain the basic	Reject: The proposed regulation is necessary because of the pattern of consumer confusion regarding discount health products. Consumers must have written notice regarding their enrollee rights and responsibilities. See Health and Safety Code section

	disclosures found in subsection (a).	1363.
252	Written enrollment forms: We suggest that subsection (b) be replaced with the following: (b) All written enrollment forms or their attached marketing materials shall contain (1) the disclosures required by subsection (a) and (2) reference to a website where a prospective subscriber can access an up-to-date list of contracted providers and a statement that written provider lists are available upon request.	Reject: See comment #250.
253	Maintaining audio recordings for 5 years conflicts with state and federal laws: This section is also vague and unclear whether the entire call needs to be recorded or just the verbal disclosures and confirmation of purchase.	Reject: The requirement differs but does not conflict with Federal law. The plan can comply with both. The call recording must include all elements as required by proposed subsection 1300.49.1.3(c)(3).
254	Audio recording subsection (c) contains irrelevant rule: This section contains a reference to rule 1300.85.1 which does not appear to be relevant. We suggest removing subparagraph (c)(3) to avoid any unnecessary duplication and confusion.	Reject: See comment #253.
255	If audio recording subsection (c)(3) not removed: We suggest amending subparagraph to read: Document each telephone transaction, including all required verbal disclosures, in an audio recording, and retain the audio recordings, pursuant to Rule 1300.85.1, for not less than ~~five~~ two years in a manner that enables the plan to retrieve a specific recording ~~by date or subscriber name~~ and to provide it to the Department not more than five days after request.	Reject: See comment #253.
256	1300.49.1.3(e) is vague, burdensome and unnecessary: It is unclear what a solicitor has to do to demonstrate "competent knowledge" as that term is undefined and there are no articulated standards for the training program. Ethical obligations is also undefined.	Reject: The proposed regulation intends the common meaning of the words to apply.
257	Individual solicitor to participate in formal training program is burdensome: To require an individual solicitor to participate in a formal training program is unnecessary especially when applied to a large marketer with hundreds of employees.	Reject: The proposed regulation is necessary to ensure that all solicitors on behalf of a discount health plan provide accurate and thorough information to potential enrollees.
258	Undefined training program for solicitors: Another solution (1) Require a discount health plan to maintain written contracts with its solicitor firms that prohibit the firms and their employees from using any advertisements or marketing materials unless they are first approved in writing by the plan, and (2) hold a plan accountable for the acts of its solicitors.	Reject: The proposed section is necessary because all other requirements are meaningless unless the solicitors who are in contact with the consumer are trained in and understand both the product they are selling and the ethical responsibilities of salesmanship.
259	Suggested revision for subsection (e): To be replaced with the following:	Reject: See comment #258.

	(e) A discount health plan shall have written contracts with each solicitor firm that prohibits such solicitor firm and its employees from using any advertisements or marketing materials unless they are approved in writing by the plan. A solicitor shall not use any advertisements or marketing materials unless they are approved in writing by the discount health plan. A discount health plan shall be responsible for the acts of a solictor that are within the scope of its agency relationship.	
260	The word "agent" in subsection (f) is inconsistent with subsection (g): We suggest that "agent" be removed from the list of prohibited words.	Reject: The proposed change would likely lead to confusion by consumers who associate the word "agent" with "insurance agent" The proposed regulation is necessary to prevent this confusion.
261	Subsection (g) rule is beyond the scope of DMHC's authority: It also conflicts with other parts of the rule that allow licensed HMOs to file a material modification in order to offer a discount plan. We suggest that subsection (g) be deleted.	Reject: The proposed regulation is necessary to prevent consumer confusion. The Department has authority to regulate what products may be offered by health plans pursuant to Health and Safety Code section 1341. The comment provides insufficient documentation or explanation to support the proposed change.
262	Subsection (h) incorporates provisions of the KKA which are duplicative or should not be applied to discount health plans: We suggest that subsection (h) be amended to read: (h) All discount health plan marketing practices shall comply with the requirements of sections ~~1360, 1361,~~ 1363~~(d),~~ (f) and (g) ~~and 1395(a)~~ of the Act and sections 1300.51.01(c) (Exhibits Z and AA), ~~1300.59, 1300.61,~~ 1300.61.3, ~~1300.76.2,~~ and 1300.85.1 of Title 28, except the plan shall replace terms that apply to health care service plans with terms appropriate for the discount health plan's licensure and operation.	Reject: The sections are noted for reference purposes, and do not duplicate any text of the statutes.
263	Subsection (i) not relevant to discount health plans: It is unclear how the rule protects consumers by prohibiting them from incentives, such as free month trial. We suggest subsection (i) be deleted.	Reject: The section is necessary for the same reasons it is applicable for full risk health care service plans consumers should not be lured to enroll in a particular product because of a bonus or gratuity.
264	Subsection (j) contains no standards for approval: If range of discounts require DMHC approval, the standards for approval should be set out in the rule so that all companies are treated equally.	Reject: The proposed regulation does not establish a standard for a "range of discounts" because these will be evaluated on a case by case basis, based on the facts presented.
265	Subsection (i) should only be required if plan markets towards non-English speaking community: We suggest that subsection (i) be amended to read: (1) A discount health plan, or any discount health plan solicitor or solicitor firm which solicits enrollment of subscribers or enrollees, must disclose, in all marketing materials and telephone calls, the telephone number for the plan's toll-free customer assistance call center~~ and the availability of interpretation services at the customer assistance call center~~.	Reject: The proposed change removes an important consumer protection for those enrollees who may need interpretative services; this conflicts with the requirement of Health and Safety Code section 1367.04.
266	Section 1300.49.1.4 (a) The scope is unclear: Does the standard apply	Reject: The scope of this section is clear within the context of the regulation-and it

	only to specific discounts listed in those materials? The language of this proposed rule leaves many unanswered questions.	specifies exactly which documents are addressed by the regulation. The comment does not specify the many unanswered questions.
267	Usual and customary charge: It would be impractical for discount health plans to comply with this mandate in Section 1300.49.1.4(a). Discount plans do not have the leverage to force existing provider networks to renegotiate all of their individual provider agreements and provide 20% discount.	Reject: The section is necessary to ensure that consumers have a measurable benefit from the discount health product. Lesser discounts may be available upon request from the provider with no discount health product membership required.
268	20% discount for non-Medicare services: This is not based on any particular provision of the KKA and is misplaced. DMHC should not be setting prices for discounted health services.	Reject: The proposed regulation does not seek to set prices; the proposed regulation seeks to establish a measurement to determine the amount of the discount as compared to a verifiable benchmark.
269	DMHC's attempt to prevent discount plans from advertising: It violates the plans' commercial free speech rights under the U.S. and California Constitutions.	Reject: The proposed regulation does not prevent advertising that is factual and that discloses the material facts regarding discount health plans.
270	Proving alternative fee arrangement is "bona fide": These are completely undefined terms for a discount health plan to prove. The rules should provide clear standards not vague references.	Reject: The standard for measurement of a "bona fide" discount is clearly defined in the proposed regulation, section 1300.49.1.4(b).
271	The term "promised discount": This term is vague and needs to be clarified.	Reject: The term "promised discount" is used in the common meaning of the phrase. In the context of the regulation, it is clearly the discount promised by the discount health plan to the enrollee.
272	New annual reporting requirements in subsection (e): These rules are burdensome and unworkable. Discount plans do not track utilization. This requirement is not practical. We suggest that section 1300.49.1.4 be deleted in its entirety.	Reject: This section is necessary because discount health plans promise a discount on services. The proposed regulation requires that discount health plans prove these claims. If the discount health plan cannot substantiate any benefit to the enrollee, it raises the issue whether the discount health plan provides any service at all.
273	Terms in Section 1300.49.1.5(a) are vague: Discount plans do not maintain this information and there is no practical way for a plan to meet this requirement.	Reject: The section is necessary because discount health plans represent to enrollees that the enrollee may obtain discounts from a network of doctors. The proposed regulation merely requires that the discount health plan prove that such a network exists, and that enrollees may have access to it. If the discount health plan lacks this information, the enrollee has no meaningful way to access the benefit the discount health plan has promised.
274	Section 1300.49.1.5(a)(4) complying with geographic accessibility standards: These type of requirements maybe relevant to managed care plans but are overbroad and burdensome when applied to a discount health plan. We suggest subsection (a) be deleted.	Reject: The proposed regulation is necessary to ensure that consumers have access to discounts from providers in their geographic area.
275	Streamlined grievance process for discount health plans: Subsection (a) contains provisions more applicable to managed care plans. We suggest that a more streamlined process be created for discount health plans.	Reject: The proposed regulation already acknowledges that some aspects of the grievance process are not applicable to discount health plans.

276	The terms "complaints" and "grievances" in subsection (a): This is vague and overbroad that it requires a discount health plan to comply with all the procedures for a simple complaint that is quickly resolved. We suggest deleting the word "complaint."	Reject: See Title 28 of the California Code of Regulations, section 1300.68(a). Both terms are defined.
277	Filing quarterly reports on each "complaint and grievance": It is unclear what "complaint" means and it is too overbroad. No reason to require non-insurance discount plans to comply with the same level of reporting.	Reject: See comment #276. Quarterly reports are necessary to address a consistent pattern of consumer dissatisfaction with discount health plans and to monitor plan compliance.
278	Section 1300.49.1.7 Cancellation and Termination: This provision makes sense to an HMO plan but discount health plans have no incentive to drop subscribers. We suggest that subsection (a) be amended to read: (a) Discount health plans shall comply with the requirements of section 1365(a) and (c) of the Act and sections 1300.65(a), (b), (c)(1)-(3), (d) and (e) ~~and 1300.65.1~~ of Title 28.	Reject: These sections are necessary to protect consumers and the commenter has not provided sufficient documentation to support the proposed change.
279	The provision that allows plans to retain only their 'actual administrative costs of enrolling the subscriber" is vague and difficult to implement: The discount plan's only costs are its administrative costs. To make the process simpler on plans and the DMHC, the rule should simply set a $30 limit for a one-time enrollment fee.	Reject: It may cost the plan less than $30 to enroll a member; therefore the member should get their money refunded less the plan's actual administrative cost. The upper limit is to protect consumers from unreasonable administrative charges.
280	Plans should not have to make a pro rata reimbursement if a subscriber cancels after 30 days: It is costly and burdensome to force a plan to refund a partial month	Reject: The proposed regulation is necessary because the consumer should not be penalized for canceling membership and should not have to pay for any period during which they received no benefit from the discount health product.
281	Pro rata refund of the entire administrative fee if that subscriber cancels after initial period makes no sense: We suggest that subsection (b) be amended to read: (b) A discount health plan shall provide for refund of prepaid or periodic charges upon cancellation of a subscriber contract as follows: (1) A discount health plan shall provide a period of not less than 30 days following enrollment in which a subscriber may cancel the subscriber contract and obtain full reimbursement of the money paid to the plan less ~~an amount that represents the plan's actual administrative costs of enrolling the subscriber, such as printing and mailing required disclosures, but which shall not~~ a one-time processing fee not to exceed $30. (2) ~~Upon cancellation of a subscriber contract after the initial 30 days of enrollment, the plan shall, within 30 days, return to the subscriber the pro rata portion of the money paid to the plan which corresponds to any unexpired period for which payment has been received.~~ If a discount	Reject: See comments #279 and 280.

	health plan cancels a membership for any reason other than nonpayment of charges by the member, the discount health plan shall make a pro rata reimbursement of all prepaid or periodic charges. ~~(3) For purposes of this section "money paid to the plan" shall include all fees paid to the plan in connection with enrollment, including but not limited to prepaid or periodic charges, enrollment fees, and administrative processing fees. If administrative fees or other fees are charged to subscribers or enrollees as a one time fee or as an annual fee, the pro rata refund shall be based on a twelve month contract term.~~	
282	Language Assistance (b) should be deleted: There is no standard for discount health plans to use in assessing the needs of their population. It is also burdensome to require them to conduct linguistic assessments akin to those required of large managed care plans.	Reject: Language assistance is required by Health and Safety Code section 1367.04. The proposed regulation is already tailored down from the more strict requirements for non-discount plans to the unique business model of discount health plans.
283	Availability of interpretation services only if they market in a non-English language: We suggest subsection (d) be amended to read: (d) ~~A~~ If a discount health plan directs marketing activities towards persons with limited English proficiency as defined in subsection (a), it must disclose the availability of interpretation services at the customer assistance call center in all marketing materials aimed at and telephone calls to potential subscribers or enrollees with limited English proficiency, all contracts with subscribers or enrollees with limited English proficiency, and all disclosure forms provided to subscribers or enrollees with limited English proficiency. Confirmation of compliance with this section shall be filed under Exhibits S, V, Y and/or Z, as appropriate.	Reject: See comment #282.
284	Financial and administrative requirements not fair or realistic: These fees are excessive for discount health plans. Unlike HMOs that have billions of dollars in revenues but most discount health plans are small business and should not be treated like insured specialized plans for fee purposes. We suggest that subsection (a) be replaced with a licensing and annual fee that more reasonably reflects the nature of the discount industry.	Reject: The commenter provided neither documentation nor sufficient explanation to support the change proposed by the comment.
285	Demonstrating financial viability "for the nature of its operations" is a vague standard: We suggest the rule adopt the approach reflected in Exhibit HH of the proposed application. Subsection (b) should be amended to read: (b) Discount health plans shall demonstrate financial viability ~~for the nature of its operations. The clause in section 1375.1, subdivision (a)(2) that states "Assumed full financial risk on a prospective basis for the provision of covered health care services" shall not apply to~~	Reject: See comment #284.

	~~discount health plans that are licensed by the Department and in full compliance with the requirements for such licensure~~ by demonstrating that they have a net worth of $150,000 or by obtaining a surety bond in the amount of $50,000.	
286	Subscriber and enrollee disclosure forms 1300.49.1.10 (a) is vague and unclear: It is unclear what the rule means by "description of discounted services" because if not clarified, it could apply to every piece of correspondence a plan sends to subscribers.	Reject: The proposed regulation uses these terms in plain meaning.
287	Subscriber and enrollee disclosure forms 1300.49.1.10(a) is also overbroad and burdensome: This filing requirement could require companies to submit thousands of pages of duplicative materials. We suggest subsection (a) be deleted.	Reject: The proposed regulation is necessary to ensure that consumers have a full disclosure statement regarding their rights and obligations under the discount health plan membership.
288	1300.49.1.10(b)(1) should be amended to match the defined term as follows: (1) The discount health ~~plan~~ product is not insurance; and	Accept.
289	Not enough room on discount card to include what is required in 1300.49.1.10(e): Specifically (e)(2) and (e)(4) because it is duplicative of required disclosures and not needed by subscribers or providers in order to access the discounts.	Reject: Only four items are specifically required on the membership card, and each of these is necessary to ensure that both the enrollee and provider can identify and process the benefit guaranteed by the discount plan.
290	Name of discount health plan on discount card should be clarified: The discount card should require the name of the discount plan or private label solicitor. If discount plan is sold by a private label solicitor, the name of that solicitor will be on the card.	Reject: If a card is sold by a private label marketer, both names must be on the card, so that the enrollee can identify the product that was purchased, as well as the Knox-Keene licensed entity that is responsible for compliance and grievances.
291	Requiring the disclosure of subsection (e)(4) will take away valuable space on card: We suggest that subsection (d) be amended to read: (d) Discount cards intended for presentation to health care providers as evidence of an enrollee's entitlement to discounts shall contain all of the following: (1) The name of the discount health plan or solicitor that attaches its own private label name and the telephone number for ~~its~~ the toll-free customer service call center; (2) A prominent statement that the discount health plan is not insurance ~~and the enrollee must pay the provider directly~~; and (3) Sufficient information to ensure that the network provider will recognize the discount plan~~;~~ ~~(4) If the discount card contains the name of a private label marketer, prominent statements equivalent to those required by subsection (d)~~.	Reject: The proposed regulation is necessary to ensure that a provider can identify the ultimate contract that is affiliated with the private label marketer, in order to process the discount benefit.
292	Subscriber contracts subsection (a) is vague and overbroad: It is not clear what qualifies as a "group" contract. This prohibition appears to apply to all groups, not just employers. We suggest this subsection (a) be deleted.	Reject: "Group" is defined in Health and Safety Code section 1345(e).

293	Prohibiting discount plans from imposing any waiting periods: We do not oppose this concept; however, it should be amended to allow a 30-day waiting period for hospital stays. We suggest that subsection (c)(1) be amended to read: (1) Impose any waiting period (except for a 30-day waiting period for hospital discounts) or preexisting condition exclusion upon the provision of advertised discounted health care services.	Reject: see comment #219.
294	Providing written notice of a participating provider's termination is unworkable: Discount health plans do not have any involvement in the provider/patient relationship or keep track of what providers are utilized. We suggest that subsection (d) be amended to read: (d) A discount health plan's forms of subscriber contracts shall comply with the requirements of section 1300.51.01(c) (Exhibits P and Q) and 1300.67.4 (except subsection (a)(8) thereof) of Title 28, except that the plan shall replace terms that apply to health care service plans with terms appropriate for the discount health plan's licensure.	Reject: The discount plan provides a list of providers to the enrollees. The proposed regulation is necessary to ensure that the plan's list is accurate and up to date.
295	Provider contracts subsection (a)(1) is unclear and unnecessary: It is cost-prohibitive to require provider networks to affirmatively contact thousands of providers every time they lease their networks to a new entity. We suggest that subsection (a)(1) be amended to read: (1) The provider contract may be entered into directly with individual providers or indirectly through either one or more provider networks that maintain written contracts with individual providers, or other discount health plans that maintain written contracts with such networks. ~~The discount health plan shall document that each provider has been notified of, and agrees to, the terms of the discount product prior to inclusion in the provider directory. The provider contract shall require verification that all provider billing affiliates have also been notified of, and agree to bill according to, the terms of the discount product.~~	Reject: The proposed regulation is necessary to address the consumer concern that many providers do not recognize, or do not honor, discount cards on the premise that they do not recognize the discount card. It is the responsibility of the discount health plan to ensure that any provider listed in their directory will honor the discount card.
296	Reviewing the compliance of a discount plan provision is vague: We believe a discount health plan either has compliant provider contracts or it does not. We suggest that subsection (a)(2) be deleted.	Reject: This section of the proposed regulation addresses not the contracts themselves, but the complexity of the layers of subcontracts. This section of the proposed regulations is necessary to ensure that the plan can maintain sufficient oversight over its provider contracts.
297	Provider contracts to comply with the various KKA provision requires several changes: Section 1300.67.8(a) does not apply to discount health plans since they do not make any payments to providers.	Reject: The section may apply in the case of some discount plans.
298	Access to patient records does not apply to discount plans: Discount health plans are not involved in the provider/patient relationship so this requirement is also inappropriate.	Reject: Access to records may be necessary to resolve complaints or disputes regarding the provision of the discount on the health care services.

299	Subsection (c)(1) is vague and unnecessary and should be deleted: It is unclear what "terms and conditions" would allow discount health plans to satisfy this requirement.	Reject: These terms will vary depending on the nature of the plan's own product.
300	Discount health plans cannot "verify" that discounts are being provided: The subscriber receives the bill not the plan. Subsection (b)(1) should be deleted.	Reject: The discount plan has an obligation to ensure that the discounts it has promised are provided to enrollees.
301	Subsection (c)(3) is burdensome and unnecessary and should be deleted: It is unclear what types of providers or services would be subject to this requirement.	Reject: See comment #300.
302	Subsection (c) requirement is unnecessary and it would be difficult to renegotiate all of our contracts: Subsection (c) should be amended to read: (c) A discount health plan's forms of provider contract shall comply with the requirements of sections 1367(a), (b), and (c) of the Act and sections 1300-.51.01(c) (Exhibits K) and 1300.67.8~~(a),~~ (b)~~, (c)~~ and (d) of Title 28, except the plan shall replace terms that apply to health care service plans with terms appropriate for the discount health plan's licensure. Provider contracts shall also contain terms and conditions sufficient to enable the plans: ~~(1) To verify that network providers are delivering bona fide discounts to enrollees as advertised;~~ (2) ~~T~~to enforce the provision of discounts by the individual providers in its contracted networks~~; and~~ ~~(3) To require the provider to disclose, to the extent feasible for the nature of the services specific pricing information to plan enrollees upon request before the service is rendered.~~	Reject: See comments #299 and 300.
303	Discount plans should not be required to obtain executed copies of every contract: It should be clarified that only direct agreements be maintained. Subsection (e) should be amended to read: (e) The discount health plan shall maintain an executed copy of each active provider agreement into which it has directly entered into, and shall make the contracts available for the Department's inspection upon request.	Reject. The commenter is misreading the section. Proposed subsection (a)(1) states that provider contracts may be direct or indirect.
304	Type of plan contract categories: Discount health plans should not be forced in the categories of "general" and "specialized". We suggest that (B)(1) and (2) be collapsed into one section.	Reject: Some discount health plans provide general health care services; some only provide discounts on vision or dental services, and so the proposed regulation is tailored to address the unique regulatory aspects of general and specialized discount plans.
305	Internal quality and compliance review system is vague and ambiguous: "Access" and "availability" are not defined. DMHC does not define what an "audit" should entail.	Reject: See Title 28 of the California Code of Regulations sections 1300.67.2 and 1300.67.2.1.
306	Plans should not be required to submit a "narrative explanation" for	Reject. The comment fails to provide sufficient examples or explanation to support the

	"bona fide discounts" and provider "accessibility": We suggest that you further specify the requisite type of grievance system and give consideration to the existing practice and resources of the discount industry.	commenter's proposed change.
307	Contracts with providers comply with the Act provision does not apply to discount plans: This provision is inapplicable to discount health plans and the reference to section 1379 should be deleted from subsection (K).	Reject: The requirements for provider contracts are detailed in proposed section 1300.49.112. If the plan is not in compliance with 1379, a simple explanation may be provided in the exhibit.
308	Complying with Exhibit O requirement is antithetical to discount health plans: Discount plans do not make coverage decisions or pay for any medical services. Subsection (O) should be deleted.	Reject: In the circumstances described by the comment, the statement required by this exhibit should be simple to create and submit and will not create an undue burden on the plan.
309	Group and subscriber contracts should not apply to discount health plans: Discount plans have no financial incentive to cancel subscribers to avoid paying claims. We suggest that the reference to section 1365 be deleted.	Reject: The reference is necessary to clarify the conditions under which cancellation or non-renewal of enrollment may occur.
310	Section 1300.67.4 does not apply to discount plans: Discount plans do not pay claims or do not keep track of what providers are utilized by subscribers. We suggest that the reference to section 1300.67.4 be amended to exclude subsection (a)(8).	Reject: This section may be applicable to discount health plans that offer other types of health services.
311	Section 1300.67.4(a)(10) does not apply to discount health plans: Discount plans are not liable for any covered services. We suggest the reference to section 1300.67.4 also be amended to exclude subsection (a)(10).	Reject: See comment #310.
312	Section 1300.49.1.11(a) does not apply to discount health plans: Plans should not be required to describe how they comply with that prohibition.	Reject: See comment #310.
313	Advertising provisions referencing the Act and the rule: It is unclear why these provisions have been referenced here and we suggest that they be removed.	Reject: See comment #310.
314	Several enrollee/subscriber grievance procedures provisions do not apply: Several provisions of these laws do not apply to discount plans. Section 1368 (a)(2) is highly burdensome and unnecessary and discount health plans should not have to comply.	Reject: The comment fails to provide sufficient reason to exempt the plan from the statutory requirement that a plan inform enrollees on how to file a grievance with the plan. This requirement is necessary to ensure that enrollees are informed as to how to resolve grievances with the plan.
315	A written acknowledgement of a grievance is unnecessary for discount plans: Discount plans do not make coverage decisions and it does not make sense for a discount plan to comply. We suggest the reference be	Reject: See comment #314

	replaced with a requirement that discount plans send a written acknowledgment to any complainant whose grievance is still unresolved after five business days,	
316	Marketing of group and individual contracts conflicts with section 1300.49.1.3 of proposed rule: The presentation is also burdensome and unnecessary when applied to discount plans. The reference to section 1365(d) should be deleted from subsections (Y) and (Z).	Reject: The proposed regulation allows discount plans to comply with this requirement by submitting a copy within 3 business days: see proposed section 1300.49.1.3(c)(4). It is not clear what the commenter means by citing to section 1365(d) as such a section does not appear to exist in the Knox-Keene Act or Title 28 of the regulations.
317	Discount health plans already comply with section 1300.76.2: Discount health plans are already required to maintain a $150,000 net worth. We suggest that the reference to section 1300.76.2 be deleted.	Reject: The provision is necessary to ensure that solicitors have the funds to refund enrollees if necessary and to ensure that funds paid by enrollees are transferred to the plan, so that the enrollees' membership dollars are not lost in the event the solicitor becomes insolvent.
318	Solicitation contracts irrelevant to discount health plans: Discount health plans do not pay claims, the rate of compensation paid to a marketer is irrelevant. Discount health plans should not have to submit Exhibit BB-3.	Reject: See comment #317.
319	Projected financial viability is for HMOs or insured plans: The only costs of a discount health plan are its administrative costs. Discount plans should not have to keep these costs below 15% or submit Exhibit HH-5.	Reject. See proposed section 1300.49.1.9(b).
320	Proposed motor club exemption: We propose that the proposed regulations be revised to include a new Section 1300.49.1.2 (i) as follows: (i) A motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code and organizad not for the profit of any person or organization that has entered into an arrangement with a pharmacy or chain of pharmacies, either directly or indirectly through a pharmacy benefits management company, to offer discounts on the services and products of the pharmacies to members of the motor club, is exempt from the requirements of this Article if all of the following conditions are met: (1) The motor club does not charge or require its members to pay an additional fee beyond the fee to become or remain a member in order to access discounts on services and products offered by the pharmacies. (2) The fee to become or remain a member of the motor club does not include a separate charge to access discounts on services and products offered by the pharmacies.	Accept.
321	Motor club exemption is consistent with other exemptions from Department: The proposed exemption is in the public interest and would grant millions of consumers to save on their prescription	Accept.

	medications at no additional cost.	
322	Motor club exemption is narrowly tailored to cover only discount offerings that eliminate need for regulation by Department: This exemption would only be available to licensed motor clubs that are subject to regulation and oversight by Department of Insurance.	Accept.
323	Motor club exemption consistent with the exemptions in the proposed regulation: This exemption is consistent with the exemptions for chains of pharmacies (Section 1300.49.1.2(g)) and wholesale membership clubs (Section 1300.49.1.2(h)). We believe this motor club exemption would be more beneficial to the public than exemptions currently in proposed regulation.	Accept.
324	Discount health plans are not insurance: The concerns associated with insurance are not present. We offer savings and only affordable access to medical services. We encourage you to seek regulatory alternatives which will govern effectively without limiting the health care options.	Reject. See comment #3.
325	Burden the discount industry: This proposed regulation would make it difficult for companies to offer savings on health care products. This proposed regulation would impede our ability to continue our plans in California with these overreaching provisions.	Reject. See comment #4.
326	Interpretation services at the customer service level: The proposed regulation is silent on a plan's obligation to have language accessible providers or the availability of interpretation services at the provider level. Stronger language protections are needed.	Reject: The proposed change is too complex for the unique business model of discount health plans.
327	Full disclosure to consumer who signs contract: Discount plan providers should be required to inform individual subscribers of the availability of Medi-Cal or Healthy Families.	Reject. This Department has no way to verify whether Medi-Cal or Healthy Families is available to certain consumers, therefore, it may be inaccurate to require a blanket disclosure.
328	Proving discounts being offered are bona fide: We are concerned that without a contractual relationship the discounts remain illusory. Stricter price controls need to be in place to provide consumer protection. Expanding Section 1300.49.1.4(B) to include Medi-Cal rates.	Reject: The proposed change would create too many benchmarks for the same service, and multiple benchmarks do not fulfill the need for a standard benchmark from which to compare the value of the discount.
329	Penalty for failure to submit reports: There is nothing in the proposed regulations that indicates the penalty for failure to submit reports to demonstrate that discounts are not bona fide.	Reject. See proposed section 1300.49.1.2(f).
330	Complaints and grievances process: Disclosing that DMHC stands to protect consumers should be incorporated into the discount health paln complaint and grievance process. The lack of any mention that DMHC will penalize or revoke licensure is particularly disturbing.	Reject. See proposed section 1300.49.1.2(f).
331	Silent on Enforcement: DMHC has failed to propose any fines or licensing restrictions from abusive practices in the discount health plan industry.	Reject. Proposed section 1300.49.1.2(f) specifies that the Director may impose civil, criminal, and administrative fines and penalties to the fullest extent set forth in the Act and Title 28.

332	Private right of enforcement: DMHC must provide consumers with self-help tools to protect their interests. It is essential to empower consumers to take steps to bring plans before the courts when they do not follow the law.	Reject. Part of the request exceeds the Department's authority. The Department's HMO Help Center is available during normal business hours to assist consumers. Extensive consumer help information is also available on the Department's website.
333	Discount plans are illegal: Under present laws, discount health plans are illegal and illusory and should not be regulated.	Reject. See comment #4
334	Discount health plans violate Health and Safety Code Section 445: The referral of patients to any health care provider for profit is prohibited and these so-call discount health plans are violating this statute.	Reject. See comment #20
335	Discount plans violating Section 650: Discounts to be offered by participating physicians to the health care service plan constituted illegal consideration under Section 650.	Reject. See comment #4
336	Annual subscription fee was deemed illegal: it is illegal for a corporation to charge an annual subscription fee for furnishing a list of physicians willing to provide medical services at discounted rates to uninsured individuals.	Reject. See comment #20
337	Section 1300.49.1.1-Clarify and strengthen definitions: We support adding the following to (d): "and does not include a provider not listed in the directory provided to the enrollees" under the definition of "provider".	Reject: The health plan must be accountable for listing a provider in the directory. Any provider listed in the directory must be a contracted provider that will provide discount services to the enrollee.
338	Section 1300.49.1.4-Discount must be off a knowable price: This regulation greatly improves previous language. The discount granted must be equivalent to or less than the charge in the 2009 Medicare Physician Fee Schedule for all covered Medicare services in the geographic practice area. For those services not included in the Medicare Physician Fee Schedule, the discount must be at least 20 percent off either the billed charge or, if there is not a requirement to pay the billed charge, 20 percent off the paid charge. This should be further supported by the requirement that the full billed charges be made public and be furnished to the Department as well upon requiest to the consumer to facilitate the transparency of the discounts. It should also be clear that the discount plan must require that any discount can only be applied to the consumer's share of costs and cannot be considered a discount if it is applied to any other portion of the charges.	Reject: The proposed regulations states that the measurement of the value of the discount applies to the amount billed to the enrollee. (See proposed section 1300.49.1.4(b)(1).)
339	Section 1300.49.1.4-The discount must be bona fide and enforced: We agree with the enforcement of genuine discounts must be verifiable and they should apply appropriate remedies in situations where the enrollee does not obtain the full, promised discount from the provider.	Accept the first part. Reject in part: The Director may impose additional penalties to the extent allowed under the Act and

	We urge the Department to include much stronger language that includes the cost differential or a multiplier of that differential plus an administrative penalty corresponding to the amount of money involved and the incidence of these dishonest and deceptive practices. DMHC should track complaints by plan to begin early identification of questionable practices. We would favor the inclusion of tracking of the base price, as well as the discount applied and the documentation required, under the annual reporting requirement defined in Section 1300.49.1.4(e).	Title 28. Complaint information will be filed by each plan. Under the proposed regulation, plans must provide the information relied upon in determining that the discounts are bona fide. This will include pricing information.
340	Section 1300.49.1.12-The network of providers available to consumers must exist and be available: We agree with the Department's requirement that "the discount health plan shall document that each provider has been notified of, and agrees, to, the terms of the discount product, prior to inclusion in the provider directory."	Accept.
341	Section 1300.49.1.3(c)-Discount health plans must be required to operate under stringent marketing restrictions: We would prefer that telephone enrollment solicitation be banned. However, if it is permitted, we would urge the Department to require the issuance of a follow-up document to confirm the consumer's purchase. This would be in addition to an audio record of the conversation which must be retained for a significant interval.	Accept in part: See proposed new section 1300.49.1.3(c)(4). Reject in part: Telephone enrollment is not illegal and is permitted under the proposed regulation, subject to the conditions in 1300.49.1.3(c)(4).
342	Oversight and enforcement should be vigilant for this problematic industry: Discount plans should be required to keep records of enrollee complaints and grievances, track patterns of complaints, and undertake a Corrective Action Plan with remedies and to report these to the Department. DMHC should not assume that this regulatory language will ensure compliance from this problematic industry.	Reject: The Department will utilize enforcement methods as necessary if the discount plan is not in compliance with the Act or Title 28. See section 1300.49.1.2(f).
343	Exemption of wholesale membership clubs: We agree with the Department that wholesale membership clubs that own and operate pharmacies, and that meet the other requirements of Section 1300.49.1.2(h), meet these requirements for exemption.	Accept.
344	Exemption of wholesale membership clubs is in the public interest: Allowing wholesale membership clubs to provide discounts on services and products at pharmacies is consistent with the public interest.	Accept.
345	Regulation of discount wholesale clubs is not essential for the purposes of KKA: The problems the Department seeks to remedy by adopting this regulation are not present with the provision of discount pharmacy	Accept.

	products and services by wholesale membership clubs who meet the terms of Section 1300.49.1.2(h), and therefore the exemption for wholesale membership clubs from licensure is appropriate.	
346	Clarification of 1300.49.1.4(b)(1): The words "amount billed to the enrollee must meet the following criteria" needs clarification in this context.	Reject. The phrase is clearly understandable in the context of the section and does not require further explanation.
347	Clarity of requirements for subsection (b)(1): It is unclear whether each CDT code involved in the service would have to meet requirements or whether the test would be deemed satisfied so long as the total bill for the procedures met those requirements. We request that the words "the amount billed" be clarified in the final regulation so that it would permit the above.	Reject. See comment #347.
348	Subsection (b)(1)(B): This applies only to services that are not included in the Medicare Physician Fee Schedule. This is irrelevant to us since Medicare does not cover dental services.	Reject. Subsection (b)(1)(B) states relates to services that are not included in the schedule; this may include dental and any other service not covered by Medicare, because it is not included in the schedule.
349	Subsection (b)(1)(B)(iii): We appreciate the new language but how the regulation is drafted this subsection applies only to services not covered by Medicare. We recommend that subsection (b)(1)(B)(iii) be renumbered as subsection (b)(1)(C).	Accept.
350	Language of subsection (b)(1)(B)(iii) ambiguous: Will Coastal be required to resubmit this demonstration once regulations becomes final? The current language is unclear. We recommend that subsection (b)(1)(B)(iii) be clarified to state that no new proposal is required from licensed discount plans who have already demonstrated to the Department's satisfaction that their discounts are bona fide.	Reject: Compliance with this section will be on the effective date unless otherwise exempted by undertaking or order of the Director. The commenter should review any conditions imposed on the license for guidance and may consult your licensing counsel for further information.
351	Alternative geographic accessibility standard: We previously requested an additional standard that would apply if all requirements met but we were denied because it was not permitted under the regulations. Coastal requests that the final regulation permit an alternative geographic accessibility standard in accordance with the foregoing.	Reject. See Title 28 of the California Code of Regulations, section 1300.67.2.1(a).
352	Section 1300.49.1.7 appropriate for medical not dental: The proposed cancellation rule maybe appropriate for medical discount plans, but not for dental discount plans. The regulation could specify that for discount dental plans the cancellation rule applies only if the enrollee or an enrolled family member has not used the services of the plan prior to cancellation. This provision can be modified at least two ways:	Reject. See comment #8.

	(a) A provision could be added to the regulation specifying that no refund is required if the enrollment fee paid by the subscriber is less than the value of the discount the subscriber had already received prior to cancellation. (b) The regulation could state that the cancellation is retroactive to the enrollment date. Accordingly, if a subscriber or an enrolled family member had received services prior to cancellation the provider could bill the subscriber for the difference between the discounted fees actually billed and the fees that would have been billed if the subscriber had not been enrolled.	

END OF WRITTEN COMMENTS FOR FIRST COMMENT PERIOD

Discount Health Plans Regulation: Comments Received at February 22, 2010 Public Hearing

#	Comment Summary	Department Response
1a	Language assistance from providers: Section 1300.49.1.8 must be amended to require that language assistance be available from providers as well as from the discount health plan.	Reject: The proposed change is unsupportable by the business model of the discount health plan.
2a	Eligibility for other programs: Disclosures must be added that inform the consumer that they may be eligible for other types of insurance coverage under other programs. Discount plans should not be allowed to sell their products to a person who may be eligible for programs such as Medi-Cal or Healthy Families.	Reject: The Department has no way to verify the information requested by the comment, such as whether an enrollee is eligible for other types of insurance or other discounts.
3a	Measurement of the Bona Fide Discount: 20% off of the full billed charge is not a sufficient discount. A better protection for consumers would be to measure the discount from the Medi-Cal rate or from the best third-party payer rate.	Reject: The proposed regulation is necessary because not all services are comparable to Medicare rates. It also may not be possible to verify the "best" third party payor rate as these rates fluctuate over time and may be subject to limited terms, and these rates are subject to confidentiality rules. It is not practical to have multiple benchmarks for the same service from which to measure the value of the discount.
4a	Enforcement: The regulations should state the steps that will be taken based on the reports filed by the discount health plans. The regulations should not be silent on enforcement.	Reject: See proposed regulation section 1300.49.1.2(f).
5a	Discount Plans are illegal: Discount Health Plans are already illegal in California pursuant to Health and Safety Code section 445. The Attorney General has not enforced a single action against a discount health plan.	Reject: Health plans offering discounted health care services are not illegal under California law. However, pursuant to Health and Safety Code section 1345(f), they are under the jurisdiction of the DMHC. The proposed regulations are necessary in order to carry out the intent of Health and Safety Code section 1351 and 28 CCR section 1300.51, which are the current licensing requirements. The proposed regulations will make the licensing process for discount health plans more clear and standardized.
6a	The Department should seek a persona writ of action for individuals scammed by discount health plans.	Reject: The comment proposes an action that is outside of the scope of this rulemaking.
7a	Declined to speak	n/a
8a	Discount Plans are illegal: Discount health plans are illegal and should remain illegal because they are not in the interest of the consumer.	Reject: See comment #5a.
9a	False Provider Lists: Discount health plans sign up providers without notifying them and the provider was not able to opt-out.	Reject: Please see proposed regulation section 1300.49.12(a).
10a	Discounts already available for patients: Most doctors will arrange discounts for cash-paying patients on request, therefore discount health plans are unnecessary.	Reject: See comment #2a.

11a	Declined to speak	n/a
12a	Discount Plans are illegal: Discount health plans are illegal and should not be legitimized though regulation.	Reject: See comment #5a
13a	Language Assistance: interpretation services should be provided during health care encounters as well as the administrative services.	Reject: See #1a
14a	Jurisdiction: The Department does not have legal jurisdiction to regulate discount plans and the speaker's client has a constitutional right to do business in California.	Reject: See comment #5a
15a	Definitions: The Department should define the operational variance like it did in the Care Entree decision. The Department should define what terms apply to health care service plans and what are appropriate for discount plans; to do otherwise would leave the decision to discount plans who may develop arbitrary terms.	Reject: The proposed regulations are necessary to clarify the licensing and operational requirements for discount health plans. These regulations allow flexibility for health plans to define their own terms and write their own documents, to the extent possible. Performance standards are preferable to specific actions. (See Government Code section 11346.2(b)(3)(A))
16a	Application: The application process, which requires written narratives and a fee for reviewing the application, is unconstitutional.	Reject: Please see Health and Safety Code sections 1351 and 1356.
17a	Health Plans that already have a license: The new regulations should not apply to health plans that already have a license under the Knox-Keene Act.	Reject: The proposed regulations are necessary to ensure that all discount health products are operating under the same regulatory requirements. This equality is especially important from the consumer perspective, for comparing products. Proposed regulation section 1300.49.1.2(b) provides a simple procedure for health plans with existing licenses to obtain approval to offer discount health products.
18a	Trade Name: Health plans with established trade names should be allowed to use those names for discount health products.	Reject: The recognition of trade names associated with insurance products is the very reason that the proposed regulation is necessary. Consumers may too easily confuse the discount health product with a health insurance product with a similar name.
19a	Bona Fide Discount: The Department is attempting to set prices, and the required amount of the discount is too high for some services, and may discourage the offering of any discount.	Reject: The proposed regulation does not set the provider's rate; it establishes a benchmark against which to measure the value of a discount.
20a	Section 1300.49.1.3(g): Health plans are prohibited from offering a discount product with a non-discount product, but solicitors are allowed to do so; the requirement should be equal for both plans and solicitors.	Reject: The comment is not consistent with the language in the proposed regulation.
21a	Legality of Discount Health Plans: Discount health plans are not health plans, and many do not even offer discounts. They create false lists of participating physicians, are inherently deceptive, and lead to medical bankruptcies. The Attorney General has determined that discount plans are	Reject: See comment #5a In addition, the Attorney General made a decision on a single set of facts concerning a particular business; this narrow opinion does not

	illegal. Discount plans should not be legitimized by regulation.	create a blanket prohibition of all discount health plans.
22a	Declined to speak	n/a
23a	Legality of Discount Health Plans: Discount health plans create confusion, and put physicians on lists unsolicited. It creates adversarial situations between patient and physician. There is no quality control regarding the physician. Some discount plans are not really discount plans; there is dishonesty. Discount plans are not legal according to the Attorney General.	Reject: See comment #21a
24a	Health Plans that already have a license: The new regulations should not apply to specialized health plans that already have a license under the Knox-Keene Act.	Reject: See comment #17a
25a	Legality of Discount Health Plans: Discount health plans are illegal.	Reject: See comment #5a
25a	Discounts already offered: Many offices and departments offer discounts to patients who do not have insurance at no charge. Patients should not have to pay to obtain a discount.	Reject: See comments #2a, 5a
25a	Department has other obligations other than regulating discount plans: The Department should resolve billing problems with HMO's rather than legitimizing discount plans.	Reject: See comment #5a
26a	Health Plans that already have a license: The new regulations should not apply to specialized health plans that already have a license under the Knox-Keene Act. They are duplicative and unnecessary. Licensed health plans have not been the subject of complaints regarding discount products.	Reject: See comment #17a.
27a	Requirements stronger for those of licensed plans: The requirement in section 1300.49.1.3(c) that solicitors disclose all principal terms and document the audio recording exceeds that which is required of non-discount plans.	Reject: The proposed regulations are tailored to the unique discount health plan business model. Some requirements differ from non-discount plans because of the nature of the product and the way consumers have encountered the product in the marketplace.
28a	Pharmacy chain and wholesale club exemption: If these exemptions to the regulation are granted, then licensed health plans should also be exempt.	Reject: Both exemptions were proposed based on the reasons described in the Statement of Reasons. For a discount plan or product to meet the exemption, it must meet several narrow qualifications and be good public policy. It would not be good public policy to create two classes of discount products that operate substantially similarly: regulated and non-regulated. This would be very confusing to the consumer and creates an inequity in the marketplace.
29a	Legality of Discount Health Plans: Discount health plans are illegal. The Attorney General has determined that discount plans are illegal. These regulations are subject to legal challenge.	Reject: See comment #21a
30a	Legislative intent: The failure of the legislature to pass a statute to regulate discount health plans shows that discount health plans are not health plans.	Reject: See comment #5a

31a	A Capella Opinion: The Opinion should have been decided differently, given the legislative intent. The opinion is inconsistent with Health and Safety Code section 445.	Reject: The comment proposes an action that is beyond the scope of this rulemaking action.
32a	Support of proposed regulations: Prefer plans be declared illegal, but if not, commenter generally supports the regulations. The regulations address many problems with discount health plans.	Reject: See comment #5a
33a	Telephone enrollment should not be allowed: Telephone enrollment causes confusion and is an invitation for fraud.	Reject: the disclosure and marketing requirements in the regulations are intended to help consumers understand their purchase even if it is over the phone.
34a	All enrollment should be in writing: All contracts and disclosures must be sent to consumers before enrollment.	Reject: Telephone enrollment is still permissible, however, under the proposed revision, written documents must be mailed to the enrollee within three days.
35a	Bona Fide Discounts: The rate billed by the physician varies, so it is difficult to measure the discount. The Medi-Cal rates are a reasonable measure.	Reject in part: The proposed regulation establishes a verifiable benchmark for measuring the value of a discount. In some cases, a verifiable benchmark is not available, and in this case, the physician's billed rate is the only means of comparison to determine the value of the discount.
36a	Language assistance: Translation for all services should be provided if five percent of enrollees speak a certain language; written materials should be translated.	Accept: Vital written documents must now be translated; the revised regulation proposes ways to assess the language needs of enrollees. Reject: The threshold is not 5% but depends on the plans' evaluation of the needs of the enrollees based on criteria specified in the regulation.
34a	Cancellation: Enrollees should be allowed to cancel at any time, not just within the first 30 days of enrollment.	Accept: Proposed regulation section 1300.49.1.7(b)(2) already allows enrollees to cancel at any time.
35a	Jurisdiction: The Department does not have jurisdiction over discount health plans. Jurisdiction should be established instead through the legislative process.	Reject: See Health and Safety code section 1345(f).
36a	Support of proposed regulations: Prefer plans be declared illegal, but if not, commenter generally supports the regulations.	Reject: See comment 5a
37a	Availability of HMO hotline: consumers should be made more aware of the availability of the HMO Hotline; complaints about discount plans are probably under-reported.	Reject: The comment proposes an action that is beyond the scope of this rulemaking action.