Discount Health Plan Proposed Regulation
Third Comment Period Comments and Responses

#	Comment	Response
1a	Section 1300.49.1.8 Language Assistance - A Department representative stated that because there was no corresponding express supercession clause in Section 1300.49.1.8, this could mean that both Section 1300.49.1.8 and Section 1300.67.04 would apply to discount plans. We do not believe that this is the Department's intent. We assume the Department wants only the provisions of Section 1300.49.1.8 to apply. This should be clarified.	Reject: Comment is not related to most recent proposed changes to the text.
1b	Section 1300.49.1.7 – Cancellation and Termination – We again request that Section 1300.49.1.7 be revised to state that, at least for discount dental plans, no refund is required if the enrollee has actually used the services of the plan. Coastal currently has this provision in its disclosure materials, and that the provision has previously been approved by the Department. If the Department is reluctant to make this change, we offer the following alternative revisions: (a) A discount plan should be able to charge a processing fee for canceling an enrollment. As it currently reads, Section 1300.49.1.7 only permits a plan to deduct "the cost of enrolling the subscriber," not the cost of cancellation.	Reject: Comment is not related to most recent proposed changes to the text.
1c	Section 1300.49.1.7 – Cancellation and Termination – In our experience the actual administrative costs it incurs in canceling an enrollment exceeds the administrative costs it incurs in the initial enrollment. Prohibiting a plan from recovering its reasonable cancellation costs does not make sense. Proposes that Section 1300.49.1.7 be revised to specify that a plan may deduct reasonable costs of cancellation as well as the costs of enrollment, so long as the total combined costs do not exceed $30.00.	Reject: Comment is not related to most recent proposed changes to the text.
1d	Section 1300.49.1.7(c) permits a discount plan to cancel an enrollment for "a subscriber's or enrollee's fraud in the use of	Reject: Comment is not related to most recent proposed changes to the text.

	services and facilities" of the plan. However, the provisions of Section 1300.49.1.7(b) are ambiguous regarding a plan's refund obligations when a subscriber or enrollee has engages in fraud. The introductory language in this subsection, and in (b)(2) refers to "cancellation of a subscriber contract," which clearly means cancellation for any reason, and whether by the plan or by the subscriber. However, subsection (b)(1) appears to apply only when the subscriber cancels the contract, not when the plan terminates. This needs to be clarified and in particular should say that a plan is not required to make any refund if the subscriber or enrollee has engages in fraud in the use of the services or facilities of the plan.	
2a	Section 1300.49.1.10 – Subscriber and enrollee disclosure forms would require that "the subscriber or enrollee 'may' be required to pay at the time services are rendered." Are providers able to refuse services if the enrollee is unable to pay for elective procedures prior to services being rendered? The regulation lack specificity in this regard.	Reject: Comment is not related to most recent proposed changes to the text.
2b	Section 1300.49.1.12(a)(1) Provider contracts would permit the practice of accessing discounted rates without direct authorization from providers. As additional protection for Providers, we request language that would require written documentation and execution from Providers to be included in this subsection, rather than solely based on representations of a discount health plan.	Reject: Comment is not related to most recent proposed changes to the text.
2c.	We seek further clarification on a discount health plan v. provider's charity care program. Does the discount plan supersede charity care? Is a provider obligated to treat an enrollee if they otherwise qualify for a provider's charity care program? What happens if the enrollee is unable to pay as point-of-service under the discount plan rates? Can we refuse services to enrollees based solely on their inability to pay at the time services are rendered and not see charity care eligibility?	Reject: Comment is not related to most recent proposed changes to the text.

	Given that many patients who choose to enroll in a discount health plan may otherwise qualify for a Charity Care Program, we are concerned at the patient financial obligations created by a discount plan membership and collection practices with such patients.	
3a	1300.49.1.4(b) Wishes to reiterate its comments concerning the inapplicability of the test for bona fide discounts for stand-alone discount drug programs. Subsection (b)(1)(A) should never apply to DDC programs, since drug discounts are not negotiated using a Medicare standard, and, with respect to subsection (iii) discounts vary from one drug to another, since the discount is based on the Average Wholesale Price published for the particular drug on the day it is purchased. The discount percentage on all drugs purchased is not the same across the entire range of drugs sold. In addition, the range of drugs available under the DDC program is not consistent or limited. There is no fixed list of available drugs. Therefore, attempting to apply a discount standard over the range of drugs sold under the DDC program is impractical.	Reject: Comment is not related to most recent proposed changes to the text.
4	Reaffirms and incorporates by reference all previously filed objections and comments to the proposed regulation. Urges the Department to withdraw these regulations in their entirety and re-draft the regulations to conform to the Department's statutory authority under the KKA.	Reject: Comment is not related to most recent proposed changes to the text.
5a	Disappointed that the Department has not modified its proposed regulations of discount health plans to address the very serious issues that have been raised in prior comment letters dated Feb. 22, 2010 and Oct. 11, 2010.	Reject: Comment is not related to most recent proposed changes to the text.
5b	The regulations as proposed are unreasonable and unduly burdensome in their application to all discount plans, but particularly to those dental plans that are already licensed as specialized health care service plans and that may seek to offer consumers a discount product as an additional choice. The	Reject: Comment is not related to most recent proposed changes to the text.

	proposed regulations may actually reduce consumers' choices of affordable plans, obscure the information that should be available to consumers while denying plans their ability to market under their brand-names, and create unreasonable barriers to the entry of new products in the marketplace.	
6a	The clear APA violations have not been remedied in the third draft of the proposed rules.	Reject: Comment is not related to most recent proposed changes to the text.
6b	The third draft also fails to remedy the other APA defects relating to Government Code § 11349.1. Those defects include: 1) The DMHC failure to meet the authority and reference standards by, among other things, exempting in piecemeal fashion discount plans from specific provision of the KKA, in violation of Health & Safety Code § 1343(b). 2) The DMHC's failure to provide the substantial evidence necessary to establish that a rulemaking is necessary/ 3) The DMHC's failure to draft rules that meet the clarity standard.	Reject: Comment is not related to most recent proposed changes to the text.
6c	The DMHC still has not explained why the Discount Medical Plan Organization Model Act adopted by NAIC and implemented in more than 20 states does not provide a less burdensome alternative.	Reject: Comment is not related to most recent proposed changes to the text.
6d	The DMHC still has not properly assessed the economic impact and significantly affect small businesses and the creation or elimination of jobs and businesses in the State. The DMHC has never conducted a fiscal analysis regarding the proposed rules or the regulation of discount plans.	Reject: Comment is not related to most recent proposed changes to the text.
6e	Disappointed to see that the DMHC did not incorporate a single change suggested in the 30 pages of comments that it submitted to the second draft.	Reject: Comment is not related to most recent proposed changes to the text.
6f	1300.49.1.2(i) Does not understand why the DMHC would exempt discount plans offered by AAA, as there is no readily apparent basis for exempting a pharmacy plan offered by AAA	Reject: This section is necessary to clarify that this discount plan that is not subject to the regulations because it is provided at no cost to members, and therefore does not meet the prepaid or

	while simultaneously regulating the same pharmacy plan offered by another association. This exemption is totally unfair and unwarranted.	periodic charge requirement of 1345(f).
6g	The proposed rules continue to violate the APA and the DMHC continues to lack jurisdiction to pursue them.	Reject: Comment is not related to most recent proposed changes to the text.
6h	A tried and true model already exists in the NAIC Model Act. More than 20 states have adopted a version of the NAIC Model Act and California should do so.	Reject: Comment is not related to most recent proposed changes to the text.
7a	We continue to believe that the underlying principle of this regulation is that discount health plan products should provide real discounts from real providers with real notice of consumer protections. We support your efforts to prevent consumer fraud in an industry that continues to be riddled with abuses.	Reject: Comment is not related to most recent proposed changes to the text.
7b	In light of federal health care reform, we recognize that there will be legal requirements and marketplace pressures for consumers to acquire health care coverage. We strongly believe that no consumer should ever be confused that a discount product counts as health insurance for purposes of meeting the individual mandate.	Reject: Comment is not related to most recent proposed changes to the text.
7c	We note the restrictions you have placed on membership clubs in terms of dues, consumer disclosures, and notice requirements. We support the additional specificity of the pharmacy discount clubs to offer a retail pharmacy network located within the state "shall not fall below 75% of retail pharmacies licensed and operating in California." This should ensure a robust network of outlets and represents a verifiable data based measure of accessibility for consumers.	Accept.
7d	We note a recent court decision that calls into question the legality of these discount health plans. We urge you to review the language of that decision to determine whether further revisions are required to the language of this regulation, or, in fact, whether this decision alters the future arena for future oversight of discount health plans.	Reject: The effect of the trial court opinion is limited to the parties, and the court did not address whether the discount plan was a prepaid health plan pursuant to Health and Safety Code section 1345(f) and whether it would have been subject to the exemption for prepaid health plans under Health and Safety Code section 445.

8	CAHP is very disappointed that the DMHC did not accept the proposed revisions that we offered during the second comment period. CAHP strongly believes that the proposed discount health plan regulations need to be modified for plans that are already obligated to comply with the KKA. We reiterate the comments we made in the 2nd comment period and have attached them for reference.	Reject: Comment is not related to most recent proposed changes to the text.
9.	Consumer Advocacy groups oppose legitimizing discount health care products described in the proposed regulations. Discount health products are unlawful under California Health & Safety Code Section 445, which prohibits medical referrals for profit. The court has issued a ruling ordering injunctive relief and finding that Section 445 both applies and is violated by discount health plans.	Reject: See comment #7d.
9b	On Nov. 1, 2010, the court ruled that the clear language of Health & Safety Code Section 445 prohibits the business practice that is the subject of the proposed discount health plan regulations. Section 445 provides: "No person, firm, partnership, association or corporation, or agent or employee thereof, shall for profit refer or recommend a person to a physician, hospital, health-related facility, or dispensary for any form of medical care or treatment of any ailment or physical condition. The imposition of a fee or charge for any such referral or recommendation creates a presumption that the referral or recommendation is for profit." This is almost the exact definition of a discount health plan proposed in Article 2.5, Section 1300.49.1.1(b). The ruling is clear that such conduct is specifically prohibited by the plain language in Health & Safety Code Section 445.	Reject: See comment #7d.
9c	It is not wise to regulate a business practice that the court finds is unlawful.	Reject: See comment #7d.
9d	We again assert that regulation of discount health products and plans, as contemplated by Article 2.5 and amendment of Article	Reject: See comment #7d.

	3 in California Code of Regulations Title 28 is unwise. Rather, the DMHC must provide that the business of discount health products/plans, as defined in the proposed regulation and by the court is unlawful in California.	
9e	We strongly urge the DMHC to consider issuing clear guidance and direction that California law does not permit the sale of discount health plans. By doing so, the DMHC will be protecting California consumers from illusory and sham insurance products.	Reject: See comment #7d.