

Alternative Funding Programs & Unfair Trade Practices



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INTRODUCTION

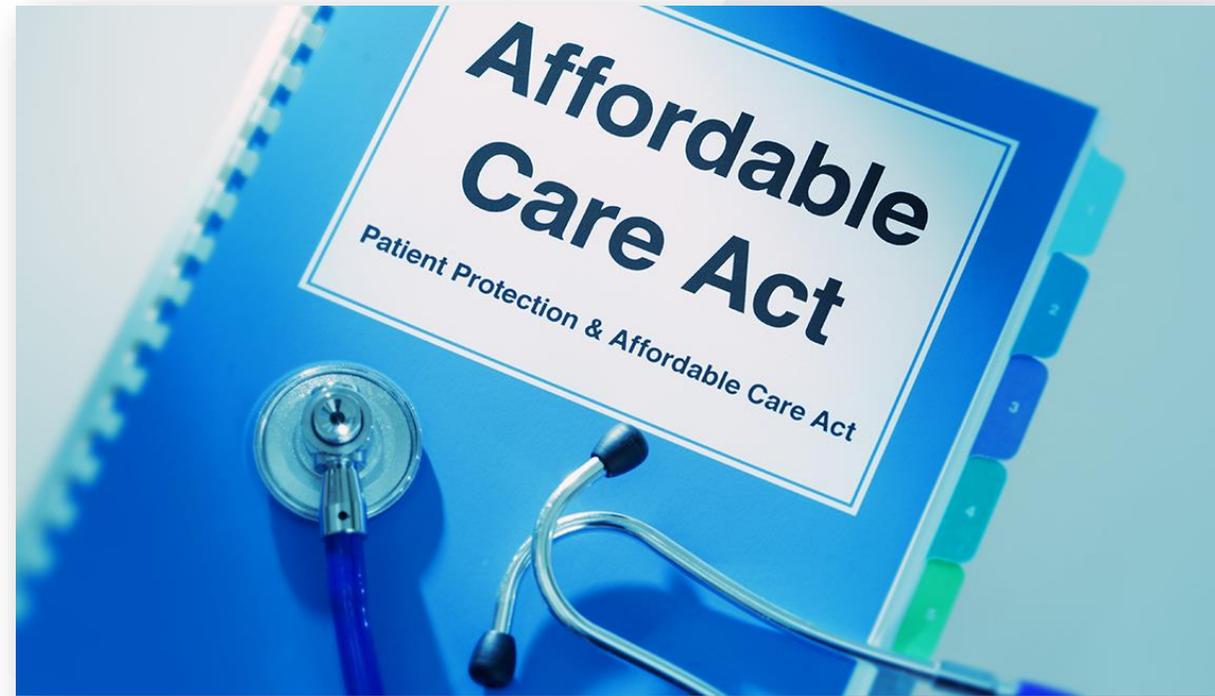
- ▶ Not-for-profit health policy organization
- ▶ **MISSION:**
Protect and enhance the rights of health care consumers and providers
- ▶ **SUPPORTERS:**
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A nighttime photograph of the United States Capitol building in Washington, D.C. The building is illuminated, and its iconic dome is the central focus. The sky is a deep blue. In the foreground, a street is visible with some light trails from traffic. A large, semi-transparent blue shape is overlaid on the lower half of the image, containing white text.

What can state legislatures do about AFPs?

Scope of Reform

- Primarily in self-insured health plans
- Unions, school districts, and state employee programs
- States can regulate individual, small group, and fully-insured plans
 - Including public employee and state employee plans
- AFPs as business practices



Insurance v. Business Practices

- **Insurance** – The core element of insurance is the underwriting or spreading of risk between insurer and policyholder.
 - *Congressional Research Service Report* – everyone contributes to a common pool, so the expensive health services used by a few are covered by the contributions of the larger group.
- **Business of Insurance** – Supreme Court held in *Pireno* that pharmacy agreements that did not spread risk were simply arrangements for the purchase of goods and services by the insurer to minimize its costs and maximize its profits.
- **AFPs** – Business practices. Do not spread risk. If AFP is unable to source the medication from another avenue, they aren't paid – not expected to pay the cost of the medication if covered under the traditional insurance pathway. No risk, only reward if alternative sourcing occurs.

Unfair or Deceptive Trade Practices

- Unfair or Deceptive Trade Practices
- All states have language similar to Section 5 of the Federal Trade Commission Act
 - Some specifically state that they will defer to FTC interpretation of Section 5



Unfair Trade Practices

- **Unfair Trade Practice**
 - **(1) Causes or is likely to cause a substantial injury to consumers;**
 - AFPs – require consumers to experience delays or denials in accessing their necessary medications, require consumers to act inconsistently with federal law, and require consumers to falsely complete PAP applications.
 - **(2) Cannot be reasonably avoided by consumers; and**
 - AFPs – If consumers refuse to work with the AFP they are responsible for 100% the cost of the medication.
 - **(3) Is not outweighed by countervailing benefits to consumers or competition.**
 - AFPs – Do not improve competition. In some cases, AFPs steer patients away from their treatments to medications that have more accessible PAP programs – does not lower prescription drug costs or premiums.

Unfair Trade Practices

- Prohibit businesses (including those engaged in the business of insurance) from requiring enrollees to apply for, enroll in, or accept financial assistance or drug product(s) from any charitable assistance programs, patient assistance programs, or international pharmacies prior to, or as a condition of drug coverage, initiation and/or determination of an appeal, or a request for and/or granting of an exception.
- Prohibit businesses (including those engaged in the business of insurance) from making deceptive and misleading representations about plan drug coverage or non-coverage (to consumers, employers, and/or patient assistance programs); and
- Require businesses (including those engaged in the business of insurance) to transparently disclose prescription drug costs and cost-sharing requirements at open enrollment.

A large crowd of people is shown from behind, with many of their hands raised in the air. The scene is dimly lit, with a blueish tint. A prominent red banner is overlaid across the lower right portion of the image, containing the word "QUESTIONS?" in white, bold, sans-serif capital letters.

QUESTIONS?

THANK YOU

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