

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE: WEST VIRGINIA  
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**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W. Va. Code §§33-25G-5 & 33-2-10.

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

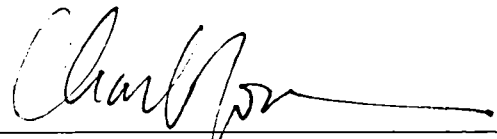
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 43A

TITLE OF RULE BEING PROPOSED: Provider Sponsored Networks

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Charles O. Lorensen  
Cabinet Secretary  
West Virginia Department of Revenue

**TITLE 114  
LEGISLATIVE RULE  
INSURANCE COMMISSIONER**

**SERIES 43A  
PROVIDER SPONSORED NETWORKS**

Sections.

- 114-46A-1. General.
- 114-46A-2. Applicability.
- 114-46A-3. Definitions.
- 114-46A-4. Application for certificate of authority.
- 114-46A-5. Regulation as an HMO.

**TITLE 114  
LEGISLATIVE RULE  
INSURANCE COMMISSIONER**

**SERIES 43A  
PROVIDER SPONSORED NETWORKS**

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**§114-43A-1. General.**

1.1. Scope. -- This rule provides for the licensing and regulation of provider sponsored networks.

1.2. Authority. -- W. Va. Code §33-25G-5 (2012).

1.3. Filing Date. --

1.4. Effective Date. --

**§114-43A-2. Applicability.**

2.1. This rule applies to any applicant for a certificate of authority from the Commissioner to operate in this state as a provider sponsored network and to any entity to which such a certificate has been granted.

**§114-43A-3. Definitions.**

3.1. "Commissioner" means the West Virginia Insurance Commissioner.

3.2. "Federally Qualified Health Center" or "FQHC" means an entity as defined in 42 U.S.C. §1396d(1)(2)(B).

3.3. "Medicaid beneficiary" means any person participating, through either a state plan amendment or waiver authority, in any Medicaid program administered by the West Virginia Department of Health and Human Resources or its Bureau for Medical Services.

3.4. "Participating provider" means a licensed health care provider who has entered into a contract with a provider sponsored network to provide services to Medicaid enrollees.

3.5. "Provider sponsored network" or "PSN" means an entity that satisfies the definition of a "Medicaid managed care organization" set forth in 42 U.S.C. §1396b(m)(1)(A), is controlled by one or more FQHCs, and provides or otherwise makes available health care services solely to Medicaid beneficiaries pursuant to contract with the Secretary executed in accordance with W. Va. Code §16-2L-1 *et seq.*

3.6. "Secretary" means the Secretary of the West Virginia Department of Health and Human Resources.

#### **§114-43A-4. Licensing Requirements.**

4.1. Except to the extent provided differently by this rule, a PSN may apply for a certificate of authority to operate in West Virginia as a Medicaid managed care organization in accordance with the provisions of W. Va. Code §33-25A-1 *et seq.*, W. Va. Code St. R. §114-43 and §114-46, and any other rule, bulletin or guidance issued by the Commissioner regarding the licensing of health maintenance organizations ("HMOs").

4.2. An applicant must demonstrate that it is controlled by one or more FQHCs. For purposes of this subsection, the term "controlled by" means the direct or indirect possession by one or more FQHCs of the power to direct or cause the direction of the management and policies of the organization through membership, board representation or an ownership interest greater than 50 percent.

4.3.a. In determining whether an applicant has demonstrated that it is financially responsible, the Commissioner shall take into consideration the factors set forth in W. Va. Code §33-25A-4(c) as well as, but not limited to, W. Va. Code St. R. §114-43 and §114-46, in the same manner as if the applicant were applying for a certificate of authority to operate as a HMO.

4.3.b. A PSN that has been issued a certificate of authority may petition the Commissioner to be permitted to operate with lower standards of financial responsibility than would otherwise be required for a HMO, including lower surplus and capital.

4.3.b.1. In ruling upon a petition submitted pursuant to subdivision b of this subsection, the Commissioner, in consultation with the Secretary, may consider actuarial evaluations and other qualified technical standards as well as the possible lower risks of insolvency arising from the control of the PSN or applicant by one or more FQHCs, any transfer of risk to a third party, and the restriction of the PSN to the provision of Medicaid-related services. The Commissioner may also require that the PSN submit such other information as may be deemed necessary for a decision on the petition. A PSN will be presumed to be unable to operate with lower standards of financial responsibility unless it submits at least 3 years of audited financial statements.

4.3.b.2. The decision whether and how to change the solvency requirements is committed to the sole discretion of the Commissioner.

4.4.a. Every application for a certificate of authority to operate as a PSN shall include a certification that any physician or behavioral health provider licensed by the appropriate West Virginia state agency or board shall be permitted to contract with the PSN to become a participating provider as long as he or she agrees to participate in the health care delivery approach designed by the PSN and such other applicable requirements of the Department of Health and Human Resources.

4.4.b. A PSN shall require that providers:

4.4.b.1. Agree to observe the PSN's care management protocols, including provisions for designations of certain services that may be provided only by designated providers or classes of providers;

4.4.b.2. Be credentialed before they may provide certain services; and

4.4.b.3. Comply with the PSN's utilization management programs and referral systems.

4.4.c. A PSN shall not:

4.4.c.1. Require a participating physician provider to sell or transfer ownership of his, her or its assets or practice operations to the PSN or any of the PSN's participating providers as a condition of participation or of being permitted access or use of the PSN's medical home resources and care management systems; or

4.4.c.2. Prohibit a participating provider from participating in or contracting with other networks or other managed care organizations to provide services to Medicaid beneficiaries.

#### **§114-43A-5. Regulation as an HMO.**

5.1. PSNs are subject to all statutes, rules and other legal bases for the regulation of HMOs by the Commissioner, except to the extent any such statutes, rules or other legal bases for regulation are expressly made inapplicable to PSNs or are superseded by an applicable federal law or regulation.