

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In this Box

2009 JUN 13 PM 2:30

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY WV Code §§33-2-10, 33-15E-4(b)
and 33-15E-17

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

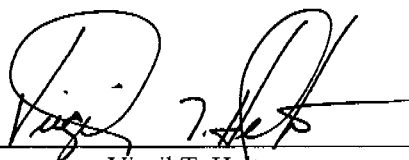
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 83

TITLE OF RULE BEING PROPOSED: Discount Medical Plan Organizations and Discount Prescription Drug Plan
Organizations

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 14 AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy R. Murphy, Associate Counsel
Offices of the Insurance Commissioner
P.O. Box 50540
Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**Department of Revenue
Agency Questionnaire**

Re: Legislative Rule to be Filed

**TITLE 114, SERIES 83
DISCOUNT MEDICAL PLAN ORGANIZATIONS AND DISCOUNT PRESCRIPTION DRUG
PLAN ORGANIZATIONS**

Question 1: Are regulations required?

Yes. See W.Va. Code Sections §33-15E-4(b) and §33-15E-17.

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

The rule is not expected to be controversial. The rule will regulate licensing, marketing, and disclosures of Discount Medical Plan Organizations and Discount Prescription Drug Plan Organizations. Suggestions from the industry group were received and many are incorporated in the draft.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

The rule is based on Model #98 adopted by the National Association of Insurance Commissioners in 2006 with regards to marketing restrictions and disclosure requirements. The remainder is custom-drafted, although other states' rules were considered.

Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?

These organizations do mass faxes promising discounts and using the language of low cost health insurance, although most of these faxes have no company name or address and the companies are largely unregulated. The rule promotes public interest by mandating licensing and establishing standards for DMPOs to protect consumers from unfair or deceptive marketing, sales or enrollment practices, including having to display a website address where a plan member can obtain provider information and prohibiting the use of terms such as "insurance" or "health plan." This rule also will help consumers better

understand what a DMPO offers by requiring certain disclosures to the public and would permit cancellations with a refund within 30 days.

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 83

**DISCOUNT MEDICAL PLAN ORGANIZATIONS AND
DISCOUNT PRESCRIPTION DRUG PLAN ORGANIZATIONS**

TITLE 114, SERIES 83

BRIEF SUMMARY OF RULE

The rule promotes the public interest by establishing standards for Discount Medical Plan Organizations to protect consumers from unfair or deceptive marketing, sales or enrollment practices. This rule recognizes the licensing requirements that a Discount Medical Plan Organization must adhere to before they can obtain a license to conduct business in this state. This rule provides a provisional license which will allow a Discount Medical Plan Organization that is already operating in this state to continue conducting business while their application is pending. In the event the application is denied, the organization must immediately cease operations. This provisional license provision is needed to cover the gap in time between when the statute goes into effect and when the license can be approved. This rule requires a Discount Medical Plan Organization to abide by certain marketing restrictions including, but not limited to, having to display a website address where a plan member can obtain provider information and the restriction that certain terms, such as "insurance" or "health plan", cannot be used in advertising materials. This will help to eliminate misleading and deceptive practices in advertising to consumers. This rule also will help consumers better understand what a Discount Medical Plan Organization offers by requiring the organization to make disclosures to the general public that they are only a discount plan and not insurance to ensure that there is no confusion on the part of the consumer and that the consumer is not misled into buying the product. This rule also requires the Discount Medical Plan Organization to make multiple disclosures to a new plan member including, but not limited to, fees and charges of a plan, mode of payment, plan limitations, waiting periods for certain benefits, cancellation procedures and many more so that the consumer is fully aware of the terms and conditions of the plan they are entering into.

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 83

**DISCOUNT MEDICAL PLAN ORGANIZATIONS AND
DISCOUNT PRESCRIPTION DRUG PLAN ORGANIZATIONS**

TITLE 114, SERIES 83

STATEMENT OF CIRCUMSTANCES

The bill mandating the promulgation of rules to regulate Discount Medical Plan Organizations was enacted in 2008 (HB 4404) and became effective May 29, 2008. These entities are currently operating in this state but are essentially unregulated by any state agency. WV Code §33-15E-4 now provides that

"The Commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, as well as emergency rules in accordance with section fifteen of said article, setting forth the licensing requirements. These rules shall include, at a minimum: (1) All necessary forms and other information considered necessary and required by the Commissioner for processing the license application; (2) Applicable fees; (3) Reciprocity requirements; (4) Time frames for the application and approval process; (5) Conditions of approval of the license application or denial of the license; (6) Renewal process; (7) Notice requirements; and (8) Any other provisions considered necessary by the Commissioner to effectuate the provisions of this article."

WV Code §33-15E-17 provides that

"The Commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article. The Commissioner may also promulgate emergency legislative rules to carry out the provisions of this article, including rules setting forth the requirements and prohibited practices with regard to the marketing of discount medical plans and discount prescription drug plans and for disclosures to members and prospective members of the plans."

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Discount Medical Plan Organizations and Discount Prescription Drug Plan Organizations (Title 114, Series 83)

Type of Rule: Legislative Interpretive Procedural Emergency

Agency: Insurance Commission

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The net fiscal impact of the rule should be nominal to state government. After the initial implementation, the fees for assessments should be adequate to cover any on-going expenses.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	3,000	5,500	3,375
Personal Services	3,000	5,500	3,375
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	9,000	3,000

Rule Title: Discount Medical Plan Organizations and Discount Prescription Drug Plan
Organizations (Title 114, Series 83)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

It is projected that 30 Discount Plans will apply for licensure.

First year expenses consist of the PS and EB costs for the development of applications, licenses and review processes. Additional PS expenses have been included to provide for system programming to incorporate discount plans into the existing database systems. (\$3,000 PS + EB).

Initial Application is \$300 per Plan. $300 \times 30 = \$9,000$
Renewal Filing fees are \$100 per Plan. $100 \times 30 = \$3,000$.

In order to regulate the Plans, a Financial Conditions Auditor - \$30,000 Salary + Benefits = \$40,500 will need to allocate approximately 1 month of their annual workload to discount plans or \$3,375.

Initial application review is projected higher \$5,500 PS + EB.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 13, 2008

Signature of Agency Head or Authorized Representative

Timothy Murphy, Associate Counsel

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 83
DISCOUNT MEDICAL PLAN ORGANIZATIONS AND
DISCOUNT PRESCRIPTION DRUG PLAN ORGANIZATIONS**

Section

- 114-83-1. General.
- 114-83-2. Licensing Requirements.
- 114-83-3. Marketing Restrictions.
- 114-83-4. Disclosure Requirements.
- 114-83-5. Bundled Products.
- 114-83-6. Discount Prescription Drug Plan Organizations.

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 83
DISCOUNT MEDICAL PLAN ORGANIZATIONS AND
DISCOUNT PRESCRIPTION DRUG PLAN ORGANIZATIONS**

2009 JUN 13 PM 2:33
62

§114-83-1. General.

1.1. Scope. -- The purpose of this rule is to implement W. Va. Code §33-15E relating to Discount Medical Plan Organizations and Discount Prescription Drug Plan Organizations. This rule will establish standards to better protect consumers from unfair or deceptive marketing, to establish licensing requirements and to set forth disclosures to be made to plan members.

1.2. Authority. -- §§33-2-10, 33-15E-4(b) and 33-15E-17.

1.3. Filing Date. --

1.4. Effective Date. --

§114-83-2. Licensing Requirements.

2.1. A person or entity shall not operate as a Discount Medical Plan Organization without first obtaining a license pursuant to W. Va. Code §33-15E-4 and this rule.

2.2. A person or entity must submit the following to obtain a license to act as a Discount Medical Plan Organization:

- a. A fully completed Discount Medical Plan Organization Application for License (Form DMP-1);
- b. A three hundred dollar non-refundable application fee;
- c. An original certificate of authority from the state of domicile;
- d. Copies of all registration documents and/or licenses required by the State of West Virginia;
- e. Articles of Incorporation and by-laws;

**Insurance Commissioner
Legislative Rule
Title 114, Series 83**

f. A description of the proposed method of marketing, including types of discounts to be offered and the advertising media to be used, including the procedures in place to approve advertising, prior to use;

g. An audited financial statement prepared in accordance with generally accepted accounting principals certified by an independent certified public accountant, including the balance sheet, income statement and statement of changes in cash flow for the preceding year or if an affiliate of a parent entity that is publicly traded, those audited financial statements and a written guarantee that the minimum capital will be met by the parent entity;

h. List of names, official positions and addresses of all persons responsible for the conduct of the organization's affairs, including company officers, directors and shareholders owning ten percent or more shares in the organization;

i. The number of discount medical plan members in the state;

j. A copy of the form of all provider agreements offering medical or ancillary services to its members;

k. A list of all participating pharmacies offering discounts on prescription drugs to plan members or an Internet website address where such a list can be accessed by the Commissioner;

l. Organization chart including all entities within the ultimate parent company structure, if applicable;

m. Biographical affidavits for company officers, directors and shareholders owning ten percent or more shares in the organization;

n. Proof of maintenance with the net worth requirement of one hundred fifty thousand dollars; and

o. A surety bond in an amount not less than thirty-five thousand dollars for the benefit of any person that is damaged by any violation of W. Va. Code §33-15E and this rule.

p. A description of the member complaint procedures to be established by the applicant.

2.3. Any incomplete application, as determined by the Commissioner, that remains incomplete for a period of four months will be considered withdrawn and a new application and

**Insurance Commissioner
Legislative Rule
Title 114, Series 83**

new application fees shall be required.

2.4. The license of a Discount Medical Plan Organization may be renewed annually on or before the thirty first day of May next following the date of issuance for a fee of one hundred dollars. If the expiration date upon first occurrence shortens the period for which a license fee has been paid, no refund of unearned fee shall be made. If the expiration date upon first occurrence lengthens the period for which a license fee has been paid, the Commissioner shall charge no additional fee for the lengthened period. Along with the renewal fee, each licensee shall provide the Commissioner with the following in order to renew their license:

a. An audited financial statement prepared in accordance with generally accepted accounting principals certified by an independent certified public accountant, including the balance sheet, income statement and statement of changes in cash flow for the preceding year or if an affiliate of a parent entity that is publicly traded, those audited financial statements and a written guarantee that the minimum capital will be met by the parent entity;

b. Any changes in the list of names and addresses of all persons responsible for the conduct of the organizations affairs, including company officers, directors and shareholders owning ten percent or more shares in the organization;

c. The number of discount medical plan members in the state; and

d. Proof of maintenance with the net worth requirement of one hundred fifty thousand dollars.

2.5. In the event a problem occurs with a particular provider, the Discount Medical Plan Organization shall provide that particular provider agreement to the Commissioner upon request by the Commissioner.

§114-83-3. Marketing Restrictions.

3.1. Upon request, the Discount Medical Plan Organization or Discount Prescription Drug Plan Organization shall submit to the Commissioner all advertising, marketing materials and brochures regarding a discount medical plan.

3.2. a. All advertisements, marketing materials, brochures, discount medical plan cards and any other communications of a Discount Medical Plan Organization or Discount Prescription Drug Plan Organization that are provided to prospective members and members shall be truthful and not misleading in fact or in implication.

**Insurance Commissioner
Legislative Rule
Title 114, Series 83**

b. An advertisement, any marketing material, brochure, discount medical plan card or other communication is misleading in fact or in implication if it has a capacity or tendency to mislead or deceive based on the overall impression that it is reasonably expected to create within the segment of the public to which it is directed.

3.3. a. A Discount Medical Plan Organization or Discount Prescription Drug Plan Organization must prominently display in their advertising, marketing materials, brochures, discount medical plan cards, or other communication provided to members or prospective members, the website address where a list of participating providers can be accessed.

b. The website address provided to members of a Discount Medical Plan Organization or Discount Prescription Drug Plan Organization must (i) prominently display on such website the e-mail address of the organization where a plan member may cancel a discount medical plan, or (ii) allow the member to cancel a plan by sending an e-mail to the organization through the website.

3.4. A Discount Medical Plan Organization or Discount Prescription Drug Plan Organization shall not:

a. Use in its advertisements, marketing material, brochures and discount medical plan cards the term "insurance," except as a disclaimer of any relationship between discount medical plan benefits and insurance or as a description of an insurance product connected with a discount medical plan;

b. Describe or characterize the discount medical plan as being insurance whenever a discount medical plan is bundled with an insured product and the insurance benefits are incidental to the discount medical plan benefits;

c. Use in its advertisements, marketing material, brochures and discount medical plan cards the terms "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," "preferred provider organization," or other terms in a manner that could reasonably mislead an individual into believing that the discount medical plan is health insurance;

d. Make misleading, deceptive or fraudulent representations regarding the discount or range of discounts offered by the discount medical plan card or the access to any range of discounts offered by the discount medical plan card;

e. Have restrictions on access to discount medical plan providers, including, except for hospital services, waiting periods and notification periods; or

**Insurance Commissioner
Legislative Rule
Title 114, Series 83**

f. Pay providers any fees for medical or ancillary services or collect or accept money from a member to pay a provider for medical or ancillary services provided under the discount medical plan, unless the Discount Medical Plan Organization has an active certificate of authority to act as a third party administrator in accordance with W. Va. Code §33-46.

3.5. The marketing restrictions found in this subsection shall not go into effect until July 1, 2008 in order to allow Discount Medical Plan Organizations or Discount Prescription Drug Plan Organizations the necessary time to change marketing materials to comply with the provisions of this section.

§114-83-4. Disclosure Requirements.

4.1. a. Each Discount Medical Plan Organization shall make the following general disclosures, in writing not less than twelve-point font, on the first content page of any advertisements, marketing materials or brochures made available to the public relating to a discount medical plan and along with any enrollment forms given to a prospective member:

1. That the plan is a discount plan and is not insurance coverage;
2. That the range of discounts for medical or ancillary services provided under the plan will vary depending on the type of provider and medical or ancillary service received;
3. That the plan does not make payments to providers for the medical or ancillary services received under the discount medical plan;
4. That the plan member is obligated to pay for all medical or ancillary services, but will receive a discount from those providers that have contracted with the Discount Medical Plan Organization; and
5. The toll-free telephone number and Internet website address for the licensed Discount Medical Plan Organization for prospective members to obtain additional information about and assistance on the discount medical plan and up-to-date lists of providers participating in the discount medical plan.

b. If the initial contract with a prospective member is by telephone, the disclosures required under subdivision a of this subsection shall be made orally and included in the initial written materials that describe the benefits under the discount medical plan provided to the prospective or new member.

**Insurance Commissioner
Legislative Rule
Title 114, Series 83**

4.2. a. In addition to the disclosures required under subsection 4.1. of this section, each Discount Medical Plan Organization shall provide to:

1. Each prospective member, at the time of enrollment, information that describes the terms and conditions of the discount medical plan, including any limitations or restrictions on the refund of any processing fees or periodic charges associated with the discount medical plan; and

2. Each new member a written document that contains the terms and conditions of the discount medical plan.

b. The written document required under paragraph 2, subdivision a of this subsection shall be clear and include the following information:

1. The name of the member;
2. The benefits to be provided under the discount medical plan;
3. Any processing fees and periodic charges associated with the discount medical plan, including any limitations or restrictions on the refund of any processing fees and periodic charges;
4. The mode of payment of any processing fees and periodic charges, such as monthly, quarterly, etc., and procedures for changing the mode of payment;
5. Any limitations, exclusions or exceptions regarding the receipt of discount medical plan benefits;
6. Any waiting periods for certain medical or ancillary services under the discount medical plan benefits;
7. Procedures for obtaining discounts under the discount medical plan, such as requiring members to contact the Discount Medical Plan Organization to make an appointment with a provider on the member's behalf;
8. Cancellation procedures, including information on the member's thirty-day cancellation rights and refund requirements, procedures for obtaining refunds and the process for cancelling the plan by e-mail in accordance with subdivision b, subsection 3.3 of this rule.

**Insurance Commissioner
Legislative Rule
Title 114, Series 83**

9. Renewal, termination and cancellation terms and conditions;
10. Procedures for adding new members to a family discount medical plan;
11. Procedures for filing complaints under the Discount Medical Plan Organization's complaint system and information that, if the member remains dissatisfied after completing the organization's complaint system, the plan member may contact the Offices of the West Virginia Insurance Commissioner; and
12. The name and mailing address of the licensed Discount Medical Plan Organization or other entity where the member can make inquiries about the plan, send cancellation notices and file complaints.

§114-83-5. Bundled Products.

5.1. W. Va. Code §33-15E-8(c) recognizes that the discount medical plan may be combined together with other products. The bundled product shall clearly identify the discount medical plan component separately from each other component. The Discount Medical Plan Organization must (i) provide the charges for each discount medical plan in writing to the member or (ii) reimburse the member for periodic charges on both the discount medical plan and any other product if the member chooses to cancel plan membership.

5.2. Any health carrier that provides a discount medical plan product that is incidental to the insured product is not subject to this section. For the purposes of this subsection, "incidental" means costing less than ten percent of the cost of the insured product.

5.3. If a marketer or Discount Medical Plan Organization and Discount Prescription Drug Plan Organization solicits, markets or sells a discount plan together with any insurance product, the marketer or organization shall disclose clearly or conspicuously that the plan is not insurance.

§114-83-6. Discount Prescription Drug Plan Organizations.

A Discount Prescription Drug Plan Organization shall annually submit to the Commissioner a list of all the participating pharmacies offering discounts on prescription drugs to plan members, or an Internet website address where such a list can be accessed by the Commissioner.