

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

Form #6

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE
AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Insurance Commission TITLE NUMBER: 114

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

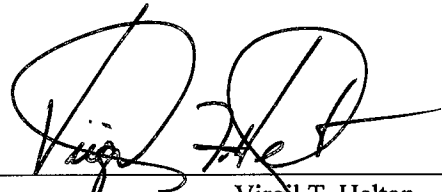
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 227

SECTION 64-7-2(e), PASSED ON April 11, 2009

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE

FOLLOWING DATE: May 14, 2009



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

**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. Definitions.
- 114-83-3. Licensing and Renewal Requirements.
- 114-83-4. Marketing Restrictions.
- 114-83-5. Disclosure Requirements.
- 114-83-6. Bundled Products.
- 114-83-7. Discount Prescription Drug Plan Organizations.

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-83-1. General.

1.1. Scope. -- The purpose of this rule is to implement W. Va. Code §33-15E, *et seq.* relating to Discount Medical Plan Organizations and Discount Prescription Drug Plan Organizations. This rule establishes standards to protect consumers from unfair or deceptive marketing, licensing requirements and 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. -- May 14, 2009.

1.4. Effective Date. -- May 14, 2009.

§114-83-2. Definitions.

2.1. "Discount medical plan organization" means an entity that contracts with providers, provider networks or other discount medical plan organizations to offer access to medical or ancillary services at a discount to plan members, provides access for discount medical plan members to the services in exchange for fees, dues, charges or other consideration, and determines the charges to plan members.

2.2. "Discount prescription drug plan organization" means an entity that contracts with providers, pharmacy networks or other discount prescription drug plan organizations to offer access to pharmacy services to plan members at a discount, provides access for discount prescription drug plan members to the services in exchange for fees, dues, charges or other consideration, and determines the charges to plan members.

§114-83-3. Licensing and Renewal Requirements.

3.1. All Discount Medical Plan Organizations must obtain a license pursuant to W. Va. Code §33-15E-4 and this rule to continue conducting business and prior to commencing operations in the state of West Virginia.

3.2. A person or entity must submit the following to obtain a license to conduct business as a Discount Medical Plan Organization:

- a. A fully completed Discount Medical Plan Organization Application for License (Form DMP-1);
- b. A \$300 non-refundable application fee;
- c. An original certificate of authority from the state of domicile;
- d. Copies of all registration documents and licenses required by the State of West Virginia;
- e. Articles of Incorporation and by-laws;
- 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 as set forth in W. Va. Code §33-15E-5 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 compliance with the net worth requirement of \$150,000; and
- o. A surety bond in an amount not less than \$35,000 for the benefit of any person that is damaged by any violation of W. Va. Code §33-15E, *et seq.* and this rule.

p. A description of the member complaint procedures.

3.3. 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 new application fees are required.

3.4. The license of a Discount Medical Plan Organization must be renewed annually on or before the thirty first day of May next following the date of issuance. The renewal fee shall be in an amount of \$100. If a Discount Medical Plan Organization fails to pay the renewal fee, the nonpayment shall result in a lapse of the license. A Discount Medical Plan Organization that allows its license to lapse may, within twelve months from the due date of the renewal fee, reinstate the same license, however, a penalty in the amount of \$100 shall be required for any renewal fee received after the due date.

3.5. 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. If the Discount Medical Plan Organization is 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 organization's 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 compliance with the net worth requirement of \$150,000.

3.6. The Insurance Commissioner may waive any requirement for a Discount Medical Plan Organization license for an applicant with a valid license from the organization's home state if the applicant's home state awards nonresident licenses to residents of this state on a reciprocal basis.

3.7. 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.

§114-83-4. Marketing Restrictions.

4.1. 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.

4.2. 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.

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.

4.3. 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.

4.4. 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

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 §33-46-1, *et seq.*

4.5. 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.

§114-83-5. Disclosure Requirements.

5.1. 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.

5.2. a. In addition to the disclosures required under subsection 5.1 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 4.3 of this rule.
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.

§114-83-6. Bundled Products.

6.1. 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.

6.2. 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.

6.3. 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.

§114-83-7. 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.