

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

Form #2

Do Not Mark In this Box

2010 JUN 11 PM 12: 27

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §§ 33-25A-5(b) and 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: 91

TITLE OF RULE BEING PROPOSED: Health Maintenance Organization Point of Service Option

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 7-12-2010 AT 5:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Victor A. Mullins, Associate Counsel

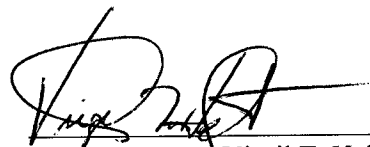
WV Offices of the Insurance Commissioner

P.O. Box 50540

Charleston, WV 25305-0540

Victor Mullins@wvinsurance.gov

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



Virgil T. Helton  
Cabinet Secretary, Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**Department of Revenue  
Agency Questionnaire**

**Re: Legislative Rule to be Filed**

**TITLE 114, SERIES 91  
HEALTH MAINTENANCE ORGANIZATION POINT OF SERVICE OPTION**

**Question 1: Are regulations required?**

No, but are expressly permitted by Senate Bill 483 (2010 RS).

**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 sets forth requirements to be followed by health maintenance organizations that offer a point of service option to its enrollees.

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

The rule is based upon an Illinois statute pertaining to the regulation of point of service options.

**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?**

In giving emergency rule-making authority to the Insurance Commissioner, the Legislature perceived a potential need to define the parameters by which a health maintenance organization may offer a point of service option to its enrollees. The rule sets such parameters and provides the Insurance Commissioner with substantial oversight in how point of service options are carried out in practice.

Insurance Commissioner  
Legislative Rule  
Title 114, Series 91

**HEALTH MAINTENANCE ORGANIZATION POINT OF SERVICE OPTION**

**TITLE 114, SERIES 91**

**BRIEF SUMMARY OF RULE**

The rule sets forth requirements to be followed by health maintenance organizations (HMO) that offer a point of service option to its enrollees. A point of service option gives an enrollee the choice of going outside the HMO's panel of health care providers. However, the out-of-network coverage is significantly less than that of in-network coverage and may require a deductible and co-payment. The enabling legislation gave emergency rule-making authority to the Insurance Commissioner to develop standards HMOs must follow in connection with the offering of a point of service option. The rule sets such parameters and provides the Insurance Commissioner with substantial oversight in how point of service options are carried out in practice.

Insurance Commissioner  
Legislative Rule  
Title 114, Series 91

**HEALTH MAINTENANCE ORGANIZATION POINT OF SERVICE OPTION**

**TITLE 114, SERIES 91**

**STATEMENT OF CIRCUMSTANCES**

The bill permitting the promulgation of rules to address health maintenance organizations offering a point of service option to its enrollees was enacted in 2010 (SB 483) and is effective June 11, 2010.

With the passage of Senate Bill 483, W.Va. Code §33-25A-5(b) provides the following:

"The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code limiting or regulating the powers of health maintenance organizations which the commissioner finds to be in the public interest. The commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement standards and requirements for a point of service option."

The proposed rule sets forth standards and requirements for a point of service option.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Health Maintenance Organization Point of Service Option (Title 114, Series 91)

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Offices of the Insurance Commissioner

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

Phone Number: (304) 558-0401 Email: Victor.Mullins@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 rule will have no additional fiscal impact upon state government.

**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.

<b>FISCAL YEAR</b>			
<b>Effect of Proposal</b>	<b>Current Increase/Decrease (use "-")</b>	<b>Next Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>1. Estimated Total Cost</b>	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Equipment	N/A	N/A	N/A
Other	N/A	N/A	N/A
<b>2. Estimated Total Revenues</b>	N/A	N/A	N/A

Rule Title: Health Maintenance Organization Point of Service Option (Title 114, Series 91)

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

N/A
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**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.

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Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

\_\_\_\_\_  
Victor A. Mullins, Associate Counsel

**TITLE 114  
LEGISLATIVE RULE  
INSURANCE COMMISSIONER**

**SERIES 91  
HEALTH MAINTENANCE ORGANIZATION POINT OF SERVICE OPTION**

Section.

- 114-91-1. General
- 114-91-2. Definitions.
- 114-91-3. Requirements for Point of Service Option.

**TITLE 114  
LEGISLATIVE RULE  
INSURANCE COMMISSIONER**

FILED

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**SERIES 91  
HEALTH MAINTENANCE ORGANIZATION POINT OF SERVICE OPTION**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§114-91-1. General.**

1.1. Scope. -- The purpose of this rule is to set forth requirements to be followed by health maintenance organizations that offer a point of service option to its enrollees.

1.2. Authority. -- W.Va. Code §§33-25A-5(b) and 33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

**§114-91-2. Definitions.**

2.1. "Commissioner" means the Insurance Commissioner of the State of West Virginia.

2.2. "Enrollee" means an individual who has been voluntarily enrolled in a health maintenance organization, including individuals on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care.

2.3. "Health care services" means any services or goods included in the furnishing to any individual of medical, mental or dental care, or hospitalization or incident to the furnishing of the care or hospitalization, osteopathic services, chiropractic services, podiatric services, home health, health education or rehabilitation, as well as the furnishing to any person of any and all other services or goods for the purpose of preventing, alleviating, curing or healing human illness or injury.

2.4. "In-plan covered services" means health care services provided by a provider that are within the panel of providers with which a health maintenance organization has a contractual agreement.

2.5. "Out-of-plan covered services" means health care services provided by a provider that are not within the panel of providers with which a health maintenance organization has a contractual agreement.

2.6. "Point of service option" means a delivery system that permits an enrollee to receive health care services from a provider outside of the panel of providers with which a health maintenance organization has a contractual agreement under the terms and conditions of the enrollee's contract with the health maintenance organization or an insurance carrier that provides the point of service option.

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2.7. "Provider" means a person or other entity which holds a valid license to provide health care services.

**§114-91-3. Requirements for Point of Service Option.**

3.1. A health maintenance organization that offers a point of service option pursuant to W. Va. Code §33-25A-5(a):

3.1.a. Must include as in-plan covered services all services required by law to be provided by a health maintenance organization;

3.1.b. Must provide incentives, which shall include financial incentives, for enrollees to use in-plan covered services;

3.1.c. May not offer services out of plan without providing those services on an in-plan basis;

3.1.d. May not consider emergency services, authorized referral services, or non-routine services obtained out of the service area to be point of service services;

3.1.e. May treat as out-of-plan covered services those services that an enrollee obtains from a participating provider, but for which the proper authorization was not given by the health maintenance organization; and

3.1.f. Must include the following disclosure on its point of service contracts and evidences of coverage:

**"WARNING, LIMITED BENEFITS WILL BE PAID WHEN NON-PARTICIPATING PROVIDERS ARE USED. You should be aware that when you elect to utilize the services of a non-participating provider for a covered service in non-emergency situations, benefit payments to such non-participating providers are not based upon the amount billed. The basis of your benefit payment will be determined according to your policy's fee schedule, usual and customary charge (which is determined by comparing charges for similar services adjusted to the geographical area where the services are performed), or other method as defined by the policy. YOU CAN EXPECT TO PAY MORE THAN THE COINSURANCE AMOUNT DEFINED IN THE POLICY AFTER THE PLAN HAS PAID ITS REQUIRED PORTION. Non-participating providers may bill members for any amount up to the billed charge after the plan has paid its portion of the bill.**

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Participating providers have agreed to accept discounted payments for services with no additional billing to the member other than co-insurance and deductible amounts. You may obtain further information about the participating status of professional providers and information on out-of-pocket expenses by calling the toll free telephone number on your identification card.”

3.2. A health maintenance organization offering a point of service option is subject to all of the following limitations:

3.2.a. The health maintenance organization may not expend in any calendar quarter more than twenty percent (20%) of its total expenditures for all its members for out-of-plan covered services.

3.2.b. If the amount specified in subdivision a of this subsection is exceeded by two percent (2%) in a quarter, the health maintenance organization must effect compliance with subdivision a of this subsection by the end of the following quarter.

3.2.c. If compliance with the amount specified in subdivision a of this subsection is not demonstrated in the health maintenance organization’s next quarterly report, the health maintenance organization may not offer the point of service option to new groups or include the point of service option in the renewal of an existing group until compliance with the amount specified in subdivision a of this subsection is demonstrated or until otherwise allowed by the Commissioner.

3.2.d. A health maintenance organization failing, without just cause, to comply with the provisions of this subsection shall be required, after notice and hearing, to pay a penalty of \$250 for each day out of compliance, to be recovered by the Commissioner. The Commissioner may reduce the penalty if the health maintenance organization demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the health maintenance organization.

3.3. A health maintenance organization that offers a point of service option must do all of the following:

3.3.a. File a quarterly financial statement detailing compliance with the requirements of subsection 3.2 of this rule.

3.3.b. Track out-of-plan, point of service utilization separately from in-plan or non-point of service, out-of-plan emergency care, referral care, and urgent care out of the service area utilization.

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3.3.c. Record out-of-plan utilization in a manner that will permit such utilization and cost reporting as the Commissioner may require.

3.3.d. Demonstrate to the Commissioner's satisfaction that the health maintenance organization has the fiscal, administrative, and marketing capacity to control its point of service enrollment, utilization, and costs so as not to jeopardize the financial security of the health maintenance organization.

3.3.e. Maintain, in addition to the deposit required by W. Va. Code §33-25A-4(h), a deposit in an amount that is not less than the greater of one hundred twenty-five percent (125%) of the health maintenance organization's annual projected point of service claims or \$200,000.

3.3.f. Maintain cash and cash equivalents of sufficient amount to fully liquidate ten days' average claim payments, subject to review by the Commissioner.

3.3.g. Maintain and file with the Commissioner, reinsurance coverage protecting against catastrophic losses on out of network point of service services. Deductibles may not exceed \$100,000 per covered life per year, and the portion of risk retained by the health maintenance organization once deductibles have been satisfied may not exceed twenty percent (20%). Reinsurance must be placed with licensed authorized reinsurers qualified to do business in West Virginia.

3.4. A health maintenance organization may not issue a point of service contract until it has filed and had approved by the Commissioner a plan to comply with the provisions of this section. The compliance plan must, at a minimum, include provisions demonstrating that the health maintenance organization will do all of the following:

3.4.a. Design the benefit levels and conditions of coverage for in-plan covered services and out-of-plan covered services as required by this rule.

3.4.b. Provide or arrange for the provision of adequate systems to:

3.4.b.1. Process and pay claims for all out-of-plan covered services;

3.4.b.2. Meet the requirements for point of service options set forth in this rule and any additional requirements that may be set forth by the Commissioner; and

3.4.b.3. Generate accurate data and financial and regulatory reports on a timely basis so that the Commissioner can evaluate the health maintenance organization's experience with the point of service option and monitor compliance with point of service option provisions.

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3.4.c. Comply with the requirements of subsections 3.2 and 3.3 of this rule.