

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

Form #2

Do Not Mark In this Box

FILE

2012 JUL -5 AM 11:55

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 §§33-25G-5

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

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 Aug. 6, 2012 AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy Murphy, Associate Counsel

WV Offices of the Insurance Commissioner

P. O. Box 50540

Charleston WV 25305-0540

Timothy.Murphy@wvinsurance.gov

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



Charles O. Lorensen
Cabinet Secretary
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Insurance Commissioner
Legislative Rule
Title 114, Series 43A

PROVIDER SPONSORED NETWORKS

TITLE 114, SERIES 43A

BRIEF SUMMARY OF RULE

This is a new rule to implement a bill enacted in 2012, HB 4438, that among other things requires a new form of licensure for Provider Sponsored Networks. The licensing scheme set forth in the rule is the same as that applicable to HMOs except for the following differences set forth in the bill: (1) A PSN must be "controlled by" one or more federally qualified health centers; (2) upon an adequate showing, solvency requirements may be lowered by the Commissioner; (3) a PSN must allow any willing provider to participate in its provider networks; and (3) PSNs will be restricted to serving Medicaid enrollees only pursuant to contract with DHHR.

Insurance Commissioner
Legislative Rule
Title 114, Series 43A

PROVIDER SPONSORED NETWORKS

TITLE 114, SERIES 43A

STATEMENT OF CIRCUMSTANCES

This is a new rule mandated by a 2012 bill 4438 (codified at W. Va. Code §33-25G-1 *et seq.*) creating Provider Sponsored Networks, a new form of health insurer that will be limited to serving Medicaid beneficiaries. This rule sets out the licensing scheme (which will be similar to that of an HMO) and provides that, unless expressly expressed otherwise, all other aspects of OIC regulation will be the same as that for HMOs. DHHR will have to provide for implementation of other aspects of PSN regulation in the context of the state Medicaid program.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Provider Sponsored Networks (Title 114, Series 43A)
 Type of Rule: X 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: 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.

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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	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
2. Estimated Total Revenues	N/A	N/A	N/A

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

n/a

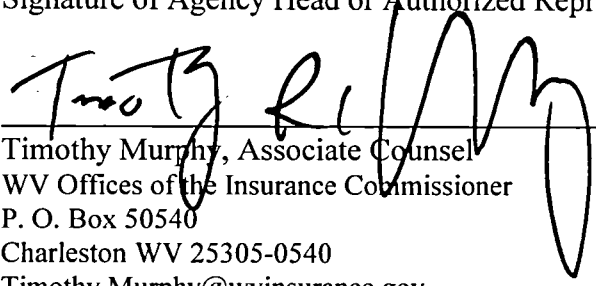
MEMORANDUM

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: 7-5-12

Signature of Agency Head or Authorized Representative



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

FILED
2012 JUL -5 AM 11:55

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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.

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 may 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 may 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.