

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

Form #7

Do not mark in this box  
Filing Date

2012 DEC 28 AM 11:06

OFFICE OF THE SECRETARY OF STATE  
Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

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

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

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

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

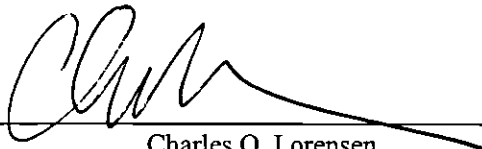
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 43A

TITLE OF RULE BEING AMENDED: Provider Sponsored Networks

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED



Charles O. Lorensen  
Cabinet Secretary  
West Virginia Department of Revenue

Insurance Commissioner  
Emergency Rule  
Title 114, Series 43A

**Title 114, Series 43A - Emergency Rule  
Provider Sponsored Networks**

**FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY**

This is a new rule to implement the insurance provisions of HB 4438 (2012) that establish a new form of licensure for Provider Sponsored Networks. The licensing scheme set forth in the rule will be the same as that applicable to HMOs except for the following differences: (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 networks; and (4) PSNs will be restricted to serving Medicaid enrollees.

The bill authorizes the Insurance Commissioner to promulgate emergency rules to implement and enforce those portions of the bill set forth in the insurance code, WVC 33-25G-1 et seq. This emergency rule is the same as the agency approved legislative rule, as modified, that was filed with the Secretary of State and LRMRC on October 18, 2012.

Insurance Commissioner  
Emergency Rule  
Title 114, Series 43A

PROVIDER SPONSORED NETWORKS

TITLE 114, SERIES 43A

BRIEF SUMMARY OF RULE

This new rule implements a 2012 bill that, among other things, establishes a new form of licensure by the Insurance Commissioner for Provider Sponsored Networks. The licensing scheme set forth in the rule incorporates the same scheme as that applicable to HMOs except for the following differences: (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 networks; and (4) PSNs will be restricted to serving Medicaid enrollees. The rule also establishes a process by which a PSN applicant's request for a reduction in the solvency requirements will be evaluated by the Commissioner.

Insurance Commissioner  
Emergency Rule  
Title 114, Series 43A

## QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

**DATE:** December 28, 2012

**TO:** LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

**FROM:** WV OFFICES OF THE INSURANCE COMMISSIONER  
ATTN: Legal Division  
1124 Smith Street  
Post Office Box 50540  
Charleston, West Virginia 25305-0540

**EMERGENCY RULE TITLE:** PROVIDER SPONSORED NETWORKS  
(Title 114, Series 43A)

1. **Date of Filing:**

December 28, 2012.

2. **Statutory authority for promulgating emergency rule:**

W. Va. Code §§33-25G-5 and 33-2-10.

3. **Date of filing of proposed legislative rule:**

July 5, 2012 (notice of public comment period)

4. **Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?**

The emergency rule adopts new language.

5. **Has the same or similar emergency rule previously been filed and expired?**

No.

Title 114, Series 20  
EMERGENCY RULE

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.

N/A

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.

This is a new rule to implement a bill enacted in 2012, HB 4438 ("Provider sponsored networks"), that among other things requires a new form of licensure for Provider Sponsored Networks. The licensing scheme set forth in the rule will be the same as that applicable to HMOs except for the following differences: (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 networks; and (3) PSNs will be restricted to serving Medicaid enrollees. HMOs oppose the possibility of different treatment afforded PSNs under the statute and the implementing rule. While the areas to be covered by the OIC portion of the rule are essentially dictated by the bill (e.g. control and solvency), the HMOs may object to anything they see in the rule as facilitating relaxation of the "controlled by" requirement or of solvency standards without sufficient evidence in a way that would give PSNs a competitive advantage.

Insurance Commissioner  
Emergency Rule  
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PROVIDER SPONSORED NETWORKS

TITLE 114, SERIES 43A

STATEMENT OF CIRCUMSTANCES

This is a new rule implementing W. Va. Code §33-25G-1 et seq. which creates Provider Sponsored Networks, a new form of HMO that will be limited to serving Medicaid beneficiaries. This rule sets out the licensing scheme (which will be similar to that of a 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:      Legislative      Interpretive      Procedural   X   Emergency

Agency: WV Offices of the Insurance Commissioner

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

Phone Number: (304) 558-0401 x1210 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.

Licensing and ongoing regulation of the single PSN, which is essentially an HMO, will have minimal impact on costs and revenues.

**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

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

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

Revenues

Initial licensing fee \$300 and annual renewal \$100

Annual exam fee \$1050 (WVC 33-2-9)

Costs

Licensing

Financial exam (every 5 yrs)

Market conduct exams (every 5 yrs)

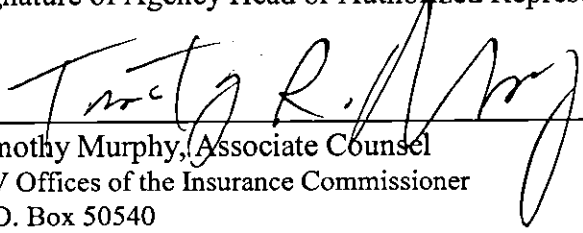
**MEMORANDUM**

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.

As a Medicaid only entity, OIC will have no rate and form obligations with regard to policies used. Many of the duties involved in HMO regulation, e.g. determination of network adequacy, will be the sole or shared responsibility of the state Medicaid office. OIC has experience with one other Medicaid-only managed care organization, Unicare, and the information presented herein is based in part on such experience.

Date: 12-28-12

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  
Timothy.Murphy@wvinsurance.gov

**TITLE 114  
EMERGENCY 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.

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**TITLE 114  
EMERGENCY RULE  
INSURANCE COMMISSIONER**

**SERIES 43A  
PROVIDER SPONSORED NETWORKS**

**§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. -- December 28, 2012.

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.*

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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

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Emergency Rule**

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.