TITLE 114

LEGISLATIVE RULE

INSURANCE COMMISSIONER

SERIES 46

FILING PROCEDURES FOR HEALTH MAINTENANCE ORGANIZATIONS

§114-46-1. General.

1.1. Scope. -- This rule applies to all persons or entities which are licensed or which may be required to be licensed pursuant to the provisions of W. Va. Code §33-25A-1 et seq.

1.2. Authority. -- W. Va. Code §§33-25A-3, 12, 15, 20 and 22.

1.3. Filing Date. -- April 2, 1996.

1.4. Effective Date. -- April 2, 1996.

§114-46-2. Application for Certificate of Authority.

2.1. Each application for a certificate of authority submitted by a health maintenance organization shall be in the format described on a form provided by the Insurance Commissioner.

2.2. Each application shall be verified by an officer or authorized representative of the applicant.

2.3. Each application shall set forth or be accompanied by:

a. The applicant's name; trade name, if any; address and telephone number; name, address and telephone number of attorney or principal filing the application;

b. A copy of the applicant's basic organizational document, and any amendments, stamped with the date of filing, together with:

A. An original certificate issued by the Secretary of State of the state under whose laws the applicant is organized, certifying that the attached organizational document is a true and correct copy of the original filed in the Secretary of State's office;

B. A copy of the stock certificate(s) issued by the applicant, together with a listing of capital (par value per share) and surplus (per share contribution in excess of par value); and

C. A description of the applicant's legal history in chronological order, including predecessor corporations or organizations, mergers, reorganizations and changes of ownership, the dates thereof and the parties involved;

c. The applicant's bylaws, rules, regulations or similar form of document regulating the conduct of the applicant's affairs;

d. A list of the names, addresses and official positions of all persons responsible for the conduct of the applicant's affairs, including all officers, members of the applicant's board of directors or other governing body and persons owning five percent (5%) or more of the applicant. The list shall contain:

A. A full disclosure of any financial interest in the health maintenance organization held by

(a). any officer or member of the governing body;

(b). any provider, as defined in W. Va. Code §33-25A-2(18); or

(c). any organization or corporation owned or controlled by an officer or member of the governing body or by a provider;

B. A full disclosure, by any person owning five percent (5%) or more of the applicant, of the extent of that person's ownership interest in all parent organizations, subsidiaries and affiliated organizations of the applicant, together with an organizational chart depicting all levels of ownership of the applicant and its parent organizations, subsidiaries and affiliated organizations;

C. The extent and nature of any contract or financial arrangements between an officer or member of the governing body or a provider and the health maintenance organization;

D. A completed "Biographical Statement and Affidavit" on a form provided by the Insurance Commissioner, for each officer, director, manager and administrator of the applicant, including, but not limited to, the applicant's executive director, medical director, finance director and marketing director, and for each person owning five percent (5%) or more of the applicant; and

E. An independent investigation report on each individual reported under paragraph D of this subdivision must be submitted by an independent investigator, which has been approved in writing by the Insurance Commissioner, directly to:

Financial Conditions Division

West Virginia Insurance Commissioner

P.O. Box 50540

Charleston WV 25305-0540;

e. A description of the applicant, including:

A. Whether it is or will be organized for profit or not for profit;

B. Whether it is or will be a "staff model", "individual practice arrangement model" or "combination model" health maintenance organization;

C. The method of compensation (fee for service, capitated basis, etc.) for providers; and

D. A statement describing the service area or areas and the type or types of enrollees to be served by the applicant;

f. A copy of contract forms used by the applicant, including:

A. Each health maintenance contract form, including but not limited to contracts with affiliates, administrative contracts and external service contracts;

B. Each evidence of coverage form;

C. Member handbook(s) to be offered to enrollees, showing benefits to which enrollees will be entitled together with any riders and endorsements;

D. Each type of provider contract, which must hold harmless all enrollees and otherwise comply with W. Va. Code §33-25A-7a;

E. Each enrollee contract form; and

F. An alphabetical list of all providers with whom the applicant has contracted for services, sorted by county and by specialty, and corresponding signature page(s) from each executed provider contract, sorted alphabetically, by county and by specialty;

g. A description of the applicant's enrollee grievance procedure, including all formal and informal steps for resolving grievances;

h. The applicant's financial statements, including:

A. Assets, liabilities and sources of financial support of the applicant and any corporation or organization owned or controlled by the applicant, evidencing adequate funding to meet continuously the minimum capital and surplus requirements required by W. Va. Code §33-25A-4(2)(c)(ii);

B. Monthly pro forma financial statements including a balance sheet, income statement and cash flow analysis, with annual totals, for the greater of three (3) years or until the applicant is projected to be profitable for twelve (12) consecutive months, on a statutory accounting principal basis with documentation of all assumptions used and income, expense and capital items projected;

C. A proposed initial cash and cash reserves summary, including loan receipts, loan repayments, stock sales, etc., and describing all sources and terms of funding; an independently certified, audited financial statement must be submitted for each guarantor;

D. A declaration that all investments have been valued for asset purposes on a basis currently approved by the National Association of Insurance Commissioners (NAIC), or, if any investments have not been so valued, a description of each investment and its basis of value shown on the "Asset Page" of the balance sheet;

E. The applicant's proposed methods for limiting its financial risk, including:

(a). If the applicant has secured reinsurance coverage, an executed copy of each applicable policy, together with each reinsurance agreement and any modification(s); and

(b). Any risk sharing with providers or other parties, referencing the applicable sections of any provider contracts that demonstrate risk sharing;

F. A completed "Fidelity Bond Worksheet" on a form provided by the Insurance Commissioner and copy of the applicant's fidelity bond in the amount prescribed by the worksheet; and

G. A description and documentation of the applicant's arrangements to guarantee the continuation of benefits to enrollees and payments to providers for services rendered either prior to or after insolvency, for the duration of the enrollee's contract period for which payment has been made or until the discharge of an enrollee from an inpatient facility in which the enrollee is confined on the date of the applicant's insolvency;

i. The applicant's proposed marketing plan, including:

A. Marketing strategy for each major enrollment category (group, individual, PEIA, Medicare, Medicaid), including:

(a). Criteria for selection of primary and secondary targets;

(b). Use of underwriting guidelines; and

(c). Plans for community education and public relations;

B. Proposed charges for each enrollment category; and

C. A detailed marketing budget covering projected income, expenses and other sources of future capital for the greater of three (3) years or until the applicant is projected to be profitable for twelve (12) consecutive months:

(a). The marketing budget shall cover each major category of enrollment identified in the applicant's marketing strategy and shall include, but not be limited to, compensation, local and out-of-town travel, equipment, printing and postage, advertising and public relations, expense accounts and meeting costs and publications, if applicable;

j. If the applicant is not domiciled in West Virginia, a power of attorney duly executed by the applicant, appointing the commissioner and his or her successors in office and duly authorized deputies as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the applicant on a cause of action arising in this State may be served;

k. A description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of the applicant's policies and operation;

l. A comprehensive feasibility study performed by a qualified independent actuary in conjunction with a certified public accountant:

A. The study shall include a certification by the actuary and an opinion by the certified public accountant as to the proposed organization's feasibility;

B. The study shall be for the greater of three years or until the applicant is projected to be profitable for twelve (12) consecutive months;

C. The study must show that the applicant would not, at the end of any month of the projection period, have less than the minimum capital and surplus required by W. Va. Code

§33-25A-4(2)(c)(ii);

D. The actuary shall certify that:

(a). The rates are neither inadequate nor excessive nor unfairly discriminatory;

(b). The rates are appropriate for the classes of risks for which they have been computed;

(c). The rating methodology is appropriate, provided that the certification shall include an adequate description of the rating methodology showing that the methodology follows consistent and equitable actuarial principles;

(d). The applicant is actuarially sound, provided that the certification shall consider the rates, benefits and expenses of, and any other funds available for the payment of obligations of, the applicant;

(e). The rates being charged or to be charged are actuarially adequate to the end of the period for which rates have been guaranteed; and

(f). Incurred but not reported claims and claims reported but not fully paid have been adequately provided for;

E. The applicant must send a copy of the study, for information only, to:

Rates and Forms Division

West Virginia Insurance Commissioner P.O. Box 50540

Charleston WV 25305-0540

The submission of a copy of the study does not constitute an official filing of the applicant's rates and forms;

m. A description of assumptions underlying enrollment projections, including:

A. A projection of enrollment for the greater of three (3) years or until the applicant is projected to be profitable for twelve (12) consecutive months, on a statutory accounting principles basis;

B. The number of eligible persons residing within the proposed service area;

C. Contract size assumptions (contract distribution and content);

D. Penetration assumptions and rationale, including initial and re-enrollments;

E. An allowance for involuntary/voluntary disenrollment and group contract additions during each year;

F. Month and year when applicant first reports income equal to all expenses and enrollment on that date; and

G. A plan for emergency and out-of-area health care.

n. A description of competition, including:

A. Identification of the applicant's competitors operating in applicant's proposed geographic service area; and

B. Major differences between the applicant and competitors operating in applicant's proposed geographic service area; and

o. Notarized acknowledgments, which may be submitted on the "Acknowledgment and Waiver of Chief Executive Officer on Behalf of HMO Applicant" form provided by the Insurance Commissioner:

A. That a delinquency proceeding pursuant to W. Va. Code §33-10-1 et seq., or supervision by the Insurance Commissioner pursuant to W. Va. Code §33-34-1 et seq., constitutes the sole and exclusive method for the liquidation, rehabilitation, reorganization or conservation, respectively, of a health maintenance organization;

B. That the applicant waives any right to file or be subject to, as a debtor, any federal bankruptcy proceeding; and

C. That the applicant's chief executive officer has read and understands his or her obligations under W. Va. Code §33-35-1 et seq., which imposes criminal sanctions for the failure to report to the Insurance Commissioner an impairment of the health maintenance organization;

p. Acknowledgment on a form provided by the Insurance Commissioner that once licensed, the applicant will observe the resident agent's law of West Virginia, including the countersignature and other requirements of W. Va. Code §33-12-1 et seq.;

q. A description of the applicant's arrangements for ongoing evaluation of its quality of health care;

r. The applicant's procedure for development, compilation, evaluation and reporting of statistics relating to the cost of its operations, availability and accessibility of its services, the pattern of utilization of its services and the quality of health care provided; and

s. Such other information as the commissioner may request during review of the application.

2.4. The applicant must file an original application and two copies with:

West Virginia Insurance Commissioner

P.O. Box 50540

Charleston, WV 25305-0540

2.5. The application must be accompanied by a completed "Health Maintenance Organization Application for a Certificate of Authority Filing Fee Remittance Form" provided by the Insurance Commissioner and a check in the amount of two hundred dollars ($200.00) payable to the "West Virginia Insurance Commissioner".

2.6. The applicant must mail one copy of the application, together with copies of all related correspondence with the West Virginia Insurance Commission, to:

General Counsel

Health Care Cost Review Authority 100 Dee Dr., Suite 201

Charleston WV 25311-1692

2.7. Prior to the issuance of a certificate of authority, the Financial Conditions Division will contact the applicant to initiate the depositing of cash or government securities with the state treasurer pursuant to West Virginia Code § 33-25A-4(2)(h).

2.8. Either before or after receiving a certificate of authority, the applicant must provide amended versions of the documents required by subparagraphs 2.3.d, D and E of this rule to the Insurance Commissioner within thirty (30) days of any change in the individuals referred to in those subsections.

§114-46-3. Application for Amendment to Certificate of Authority.

3.1. Each application for an amendment to a health maintenance organization's certificate of authority must be accompanied by a completed "Application for Amendment to Certificate of Authority Filing Fee Remittance Form" provided by the Insurance Commissioner and a check in the amount of two hundred dollars ($200.00) payable to the "West Virginia Insurance Commissioner."

§114-46-4. Annual Financial Statement.

4.1. Each annual financial statement submitted by a health maintenance organization to the commissioner shall include, but not be limited to:

a. A financial statement on a West Virginia statutory accounting basis of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent certified public accountant, reflecting at least (i) all prepayment and other payments received for health care services rendered; (ii) expenditures to all providers, by classes or groups of providers, and insurance companies or nonprofit health service plan corporations engaged to fulfill obligations arising out of the health maintenance contract; and (iii) expenditures for capital improvements, or additions thereto, including, but not limited to, construction, renovation or purchase of facilities and capital equipment;

b. The number of new enrollees enrolled during the year, the number of enrollees as of the end of the year and the number of enrollees terminated during the year, using the "Health Maintenance Organization County Enrollment Worksheet Form" provided by the Insurance Commissioner;

c. A summary of information compiled in such form as may be required by the West Virginia department of health and human resources or other accredited entity, relating to the cost of the health maintenance organization's operations, the pattern of utilization of its services and the quality, availability and accessibility of its services;

d. report of the names and residence addresses of all persons responsible for the conduct of the health maintenance organization's affairs, including all officers of the health maintenance organization, members of its board of directors or other governing body, providers and persons owning five percent (5%) or more of the health maintenance organization, who were associated with the health maintenance organization during the preceding year, and the amount of wages, expense reimbursements, or other payments to those individuals for services to the health maintenance organization, including a full disclosure of any contract or financial arrangement between that person and the health maintenance organization during the preceding year; and

e. uch other information relating to the health maintenance organization as the commissioner may request during review of the financial statement.

§114-46-5. Grievance Procedure Annual Report.

5.1. Each health maintenance organization shall file an annual report on its grievance procedure, using the "HMO Grievance Report for the Year " Form provided by the Insurance Commissioner to describe its grievance procedure and to report actual grievances filed against the health maintenance organization, their disposition and their underlying causes.

§114-46-6. Regulation of Marketing.

6.1. After a subscriber signs an enrollment application and before the health maintenance organization may process the application changing or initiating the subscriber coverage, the health maintenance organization must verify the intent and desire of the individual to join the health maintenance organization.

a. The verification must be in writing and must be conducted by someone outside the health maintenance organization's marketing department.

b. Each verification, using the Subscriber Verification Form provided by the Insurance Commissioner, shall confirm that:

A. The subscriber intends and desires to join the health maintenance organization;

B. If the subscriber is a Medicare or Medicaid recipient, the subscriber understands that, by joining the health maintenance organization, he or she will be limited to the benefits provided by the health maintenance organization, and Medicare or Medicaid will pay the health maintenance organization for the subscriber coverage;

C. The subscriber understands the applicable restrictions of health maintenance organizations, especially that he or she must use the health maintenance organization providers and secure approval from the health maintenance organization to use health care providers outside the plan; and

D. If the subscriber is enrolled as a member of a health maintenance organization, the subscriber understands that he or she is transferring to another health maintenance organization.

6.2. The health maintenance organization shall not pay a commission, fee, money or any other form of scheduled compensation to any health insurance agent until verification from the subscriber of his or her intent and desire to enroll in the health maintenance organization has been secured and the enrollment process has been completed:

a. The health maintenance organization shall verify the subscriber's intent to enroll by a written notice to the subscriber, using the Subscriber Confirmation Form provided by the Insurance Commissioner:

A. The Subscriber Confirmation Form shall state that the subscriber has transferred from his or her existing coverage to the new health maintenance organization;

B. The Subscriber Confirmation Form shall be accompanied by printed materials explaining the nature of the health maintenance organization and any applicable restrictions and exclusions; and

C. The Subscriber Confirmation Form shall state the subscriber's enrollment date and when benefits will begin; and

b. The enrollment process shall be considered complete seven (7) days after the health maintenance organization mails the Subscriber Confirmation Form and all attachments to the subscriber.