

SB 454

FILED

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WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2006

**ENROLLED**

SENATE BILL NO. 454

(By Senator Minard )

PASSED February 24, 2006

In Effect 90 days from Passage

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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## Senate Bill No. 454

(BY SENATOR MINARD)

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[Passed February 24, 2006; in effect ninety days from passage.]

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AN ACT to amend and reenact §33-25A-3 of the Code of West Virginia, 1931, as amended, relating to removing the Commissioner of Insurance as the attorney in fact for health maintenance organizations for service of process purposes.

*Be it enacted by the Legislature of West Virginia:*

That §33-25A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-3. Application for certificate of authority.**

- 1 (1) Notwithstanding any law of this state to the contrary,
- 2 any person may apply to the commissioner for and obtain
- 3 a certificate of authority to establish or operate a health
- 4 maintenance organization in compliance with this article.
- 5 No person shall sell health maintenance organization
- 6 enrollee contracts, nor shall any health maintenance

7 organization commence services, prior to receipt of a  
8 certificate of authority as a health maintenance organiza-  
9 tion. Any person may, however, establish the feasibility of  
10 a health maintenance organization prior to receipt of a  
11 certificate of authority through funding drives and by  
12 receiving loans and grants.

13 (2) Every health maintenance organization in operation  
14 as of the effective date of this article shall submit an  
15 application for a certificate of authority under this section  
16 within thirty days of the effective date of this article.  
17 Each applicant may continue to operate until the commis-  
18 sioner acts upon the application. In the event that an  
19 application is denied pursuant to section four of this  
20 article, the applicant shall be treated as a health mainte-  
21 nance organization whose certificate of authority has been  
22 revoked: *Provided*, That all health maintenance organiza-  
23 tions in operation for at least five years are exempt from  
24 filing applications for a new certificate of authority.

25 (3) The commissioner may require any organization  
26 providing or arranging for health care services on a  
27 prepaid per capita or prepaid aggregate fixed sum basis to  
28 apply for a certificate of authority as a health maintenance  
29 organization. The commissioner shall promulgate rules to  
30 facilitate the enforcement of this subsection: *Provided*,  
31 That any provider who is assuming risk by virtue of a  
32 contract or other arrangement with a health maintenance  
33 organization or entity which has a certificate may not be  
34 required to file for a certificate: *Provided, however*, That  
35 the commissioner may require the exempted entities to file  
36 complete financial data for a determination as to their  
37 solvency. Any organization directed to apply for a certifi-  
38 cate of authority is subject to the provisions of subsection  
39 (2) of this section.

40 (4) Each application for a certificate of authority shall be  
41 verified by an officer or authorized representative of the  
42 applicant, shall be in a form prescribed by the commis-

43 sioner and shall set forth or be accompanied by any and all  
44 information required by the commissioner, including:

45 (a) The basic organizational document;

46 (b) The bylaws or rules;

47 (c) A list of names, addresses and official positions of  
48 each member of the governing body, which shall contain  
49 a full disclosure in the application of any financial interest  
50 by the officer or member of the governing body or any  
51 provider or any organization or corporation owned or  
52 controlled by that person and the health maintenance  
53 organization and the extent and nature of any contract or  
54 financial arrangements between that person and the health  
55 maintenance organization;

56 (d) A description of the health maintenance organiza-  
57 tion;

58 (e) A copy of each evidence of coverage form and of each  
59 enrollee contract form;

60 (f) Financial statements which include the assets,  
61 liabilities and sources of financial support of the applicant  
62 and any corporation or organization owned or controlled  
63 by the applicant;

64 (g)(i) A description of the proposed method of marketing  
65 the plan;

66 (ii) A schedule of proposed charges; and

67 (iii) A financial plan which includes a three-year projec-  
68 tion of the expenses and income and other sources of  
69 future capital;

70 (h) A statement reasonably describing the service area or  
71 areas to be served and the type or types of enrollees to be  
72 served;

73 (i) A description of the complaint procedures to be  
74 utilized as required under section twelve of this article;

75 (j) A description of the mechanism by which enrollees  
76 will be afforded an opportunity to participate in matters  
77 of policy and operation under section six of this article;

78 (k) A complete biographical statement on forms pre-  
79 scribed by the commissioner and an independent investi-  
80 gation report on all of the individuals referred to in  
81 subdivision (c) of this subsection and all officers, directors  
82 and persons holding five percent or more of the common  
83 stock of the organization;

84 (l) A comprehensive feasibility study, performed by a  
85 qualified independent actuary in conjunction with a  
86 certified public accountant which shall contain a certifica-  
87 tion by the qualified actuary and an opinion by the  
88 certified public accountant as to the feasibility of the  
89 proposed organization. The study shall be for the greater  
90 of three years or until the health maintenance organization  
91 has been projected to be profitable for twelve consecutive  
92 months. The study must show that the health maintenance  
93 organization would not, at the end of any month of the  
94 projection period, have less than the minimum capital and  
95 surplus as required by paragraph (ii), subdivision (c),  
96 subsection (2), section four of this article. The qualified  
97 independent actuary shall certify that: The rates are  
98 neither inadequate nor excessive nor unfairly discrimina-  
99 tory; the rates are appropriate for the classes of risks for  
100 which they have been computed; the rating methodology  
101 is appropriate: *Provided*, That the certification shall  
102 include an adequate description of the rating methodology  
103 showing that the methodology follows consistent and  
104 equitable actuarial principles; the health maintenance  
105 organization is actuarially sound: *Provided, however*, That  
106 the certification shall consider the rates, benefits and  
107 expenses of, and any other funds available for the payment  
108 of obligations of, the organization; the rates being charged  
109 or to be charged are actuarially adequate to the end of the  
110 period for which rates have been guaranteed; and incurred

111 but not reported claims and claims reported but not fully  
112 paid have been adequately provided for;

113 (m) A description of the health maintenance organiza-  
114 tion's quality assurance program; and

115 (n) Such other information as the commissioner may  
116 require to be provided.

117 (5) A health maintenance organization shall, unless  
118 otherwise provided for by rules promulgated by the  
119 commissioner, file notice prior to any modification of the  
120 operations or documents filed pursuant to this section or  
121 as the commissioner may require by rule. If the commis-  
122 sioner does not disapprove of the filing within ninety days  
123 of filing, it shall be considered approved and may be  
124 implemented by the health maintenance organization.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Chandeleur White*  
.....  
Chairman Senate Committee

*R. Brun*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell Helms*  
.....  
Clerk of the Senate

*Bryce R. Smith*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert St. ...*  
.....  
Speaker House of Delegates

The within *is* approved ..... this the *6th* .....  
Day of *March* ....., 2006.

*Paul M. Hancock*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 1 2006

Time. 9:35 am