

HB 4404

FILED

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OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4404**

(By Delegates Kominar, Webster, Mahan, Klempa, Cann,
White, Long, Crosier, Williams and Ashley)



Passed March 8, 2008

In Effect Ninety Days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4404

(BY DELEGATES KOMINAR, WEBSTER, MAHAN, KLEMPA,
CANN, WHITE, LONG, CROSIER, WILLIAMS AND ASHLEY)

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-15E-1, §33-15E-2, §33-15E-3, §33-15E-4, §33-15E-5, §33-15E-6, §33-15E-7, §33-15E-8, §33-15E-9, §33-15E-10, §33-15E-11, §33-15E-12, §33-15E-13, §33-15E-14, §33-15E-15, §33-15E-16 and §33-15E-17, all relating to licensing and regulating discount medical plan organizations and discount prescription drug plan organizations; requiring payment of fees; authorizing proposal of and promulgation of rules, including emergency rules; and providing civil and criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-15E-1, §33-15E-2, §33-15E-3, §33-15E-4, §33-15E-5, §33-15E-6, §33-15E-7, §33-15E-8, §33-15E-9, §33-15E-10, §33-15E-11, §33-15E-12,

§33-15E-13, §33-15E-14, §33-15E-15, §33-15E-16 and §33-15E-17,
all to read as follows:

**ARTICLE 15E. DISCOUNT MEDICAL PLAN
ORGANIZATIONS AND
DISCOUNT PRESCRIPTION DRUG
PLAN ORGANIZATIONS ACT.**

§33-15E-1. Short title.

1 This article shall be cited as the “Discount Medical Plan
2 Organizations and Discount Prescription Drug Plan
3 Organizations Act.”

§33-15E-2. Purpose.

1 The purpose of this article is to establish standards for
2 discount medical plan organizations and discount prescription
3 drug plan organizations in order to better protect consumers
4 from unfair or deceptive marketing, sales and enrollment
5 practices and to facilitate consumer understanding of the role
6 and function of the organizations in providing access to
7 medical or ancillary services.

§33-15E-3. Definitions.

1 For purposes of this article:

2 (1) “Affiliate” means a person that directly, or indirectly
3 through one or more intermediaries, controls, is controlled
4 by, or is under common control with, the specified person.

5 (2) “Ancillary services” includes audiology, dental,
6 vision, mental health, substance abuse, chiropractic and
7 podiatry services.

8 (3) “Control” or “controlled by” or “under common
9 control with” has the same meaning ascribed to them in
10 subsection (d), section two, article forty-six of this chapter.

11 (4) “Discount medical plan” means a business
12 arrangement or contract in which a person, in exchange for
13 fees, dues, charges or other consideration, offers access for
14 its plan members to providers of medical or ancillary services
15 and the right to receive discounts on medical or ancillary
16 services provided under the discount medical plan from those
17 providers. “Discount medical plan” does not include any
18 plan that does not charge a membership or other fee to use
19 the plan’s discount medical card.

20 (5) “Discount prescription drug plan” means a business
21 arrangement or contract in which a person, in exchange for
22 fees, dues, charges or other consideration, provides access for
23 its plan members to providers of pharmacy services and the
24 right to receive discounts on pharmacy services provided
25 under the discount prescription drug plan from those
26 providers. “Discount prescription drug plan” does not
27 include:

28 (A) Any plan that does not charge a membership or other
29 fee to use the plan’s discount prescription drug card;

30 (B) A patient access program; or

31 (C) A Medicare prescription drug plan.

32 (6) “Discount medical plan organization” means an entity
33 that contracts with providers, provider networks or other
34 discount medical plan organizations to offer access to
35 medical or ancillary services at a discount to plan members,
36 provides access for discount medical plan members to the
37 services in exchange for fees, dues, charges or other
38 consideration, and determines the charges to plan members.

39 (7) “Discount prescription drug plan organization” means
40 an entity that contracts with providers, pharmacy networks or
41 other discount prescription drug plan organizations to offer
42 access to pharmacy services to plan members at a discount,
43 provides access for discount prescription drug plan members
44 to the services in exchange for fees, dues, charges or other
45 consideration, and determines the charges to plan members.

46 (8) “Facility” means an institution providing medical or
47 ancillary services or a health care setting, including, hospitals
48 or other licensed inpatient centers, ambulatory surgical or
49 treatment centers, skilled nursing centers, residential
50 treatment centers, rehabilitation centers or diagnostic
51 laboratories or imaging centers.

52 (9) “Health care professional” means a physician,
53 pharmacist or other health care practitioner who is licensed
54 to perform specified medical or ancillary services within the
55 scope of his or her license.

56 (10) “Marketer” means a person that markets, promotes,
57 sells or distributes a discount medical plan, including any
58 entity that places its name on and markets or distributes a
59 discount medical plan pursuant to a marketing agreement
60 with a discount medical plan organization.

61 (11) “Medical services” means any maintenance, care of
62 or preventive care for the human body or care, service or
63 treatment of an illness or dysfunction of or injury to the
64 human body, and includes, physician care, inpatient care,
65 hospital surgical services, emergency services, ambulance
66 services, laboratory services and medical equipment and
67 supplies. “Medical services” does not include pharmacy or
68 ancillary services.

69 (12) “Medicare prescription drug plan” means a plan that
70 provides a Medicare Part D prescription drug benefit in
71 accordance with the requirements of the federal Medicare
72 Prescription Drug, Improvement and Modernization Act of
73 2003, Pub. L. 108-173 § 101 *et seq.*

74 (13) “Member” means any person who pays fees, dues,
75 charges or other consideration for the right to receive the
76 benefits of a discount medical plan or discount prescription
77 drug plan.

78 (14) “Patient access program” means a voluntary
79 program sponsored by one or more pharmaceutical
80 manufacturers that provides free or discounted health care
81 products directly to low income or uninsured individuals
82 either through a discount card or direct shipment.

83 (15) “Person” means an individual, a corporation, a
84 partnership, a joint venture, a joint stock company, a trust, an
85 unincorporated organization, any similar entity or any
86 combination of the foregoing.

87 (16) “Pharmacy services” includes pharmaceutical
88 supplies and prescription drugs.

89 (17) “Provider” means any health care professional or
90 facility that has contracted, directly or indirectly, with a
91 discount medical plan organization to provide medical or
92 ancillary services to members.

93 (18) “Provider network” means an entity that negotiates
94 directly or indirectly with a discount medical plan
95 organization on behalf of more than one provider to provide
96 medical or ancillary services to members.

§33-15E-4. Licensing requirements.

1 (a) A person is required to obtain a license prior to doing
2 business in this state as a discount medical plan organization.

3 (b) The Commissioner shall propose rules for legislative
4 approval in accordance with the provisions of article three,
5 chapter twenty-nine-a of this code, as well as emergency
6 rules in accordance with section fifteen of said article, setting
7 forth the licensing requirements. These rules shall include,
8 at a minimum:

9 (1) All necessary forms and other information considered
10 necessary and required by the Commissioner for processing
11 the license application;

12 (2) Applicable fees;

13 (3) Reciprocity requirements;

14 (4) Time frames for the application and approval process;

15 (5) Conditions of approval of the license application or
16 denial of the license;

17 (6) Renewal process;

18 (7) Notice requirements; and

19 (8) Any other provisions considered necessary by the
20 Commissioner to effectuate the provisions of this article.

§33-15E-5. Minimum capital requirements.

1 (a) Before the commissioner issues a license to any
2 person required to obtain a license under section four of this

3 article, the person seeking to operate a discount medical plan
4 organization shall demonstrate that it has a positive net worth
5 of at least one hundred fifty thousand dollars.

6 (b) Each discount medical plan organization shall at all
7 times maintain a positive net worth of at least one hundred
8 fifty thousand dollars.

§33-15E-6. Surety bond requirements.

1 Each licensed discount medical plan organization shall
2 maintain in force a surety bond in its own name, in an
3 amount not less than thirty-five thousand dollars, in favor of
4 the Commissioner for the benefit of any person who is
5 damaged by any violation of this article. The bond shall
6 cover any violation occurring during the time period during
7 which the bond is in effect and shall be issued by an
8 insurance company licensed to do business in this state. A
9 copy of the bond or a statement identifying the depository,
10 trustee, and account number of the surety account, and
11 thereafter proof of annual renewal of the bond or
12 maintenance of the surety account, shall be filed with the
13 Commissioner.

§33-15E-7. Examinations.

1 The Commissioner may examine the business and affairs
2 of any discount medical plan organization to protect the
3 interests of the residents of this state based on the following
4 reasons, including complaint indices, recent complaints or
5 information from other states, or as he or she deems
6 necessary. An examination shall be performed in accordance
7 with the provisions of section nine, article two of this chapter,
8 except that a discount medical plan organization that is the
9 subject of the examination shall pay the expenses incurred in
10 conducting the examination. Failure by the discount medical

11 plan organization to pay the expenses is grounds for the
12 refusal to renew, revoke or suspend a license to operate as a
13 discount medical plan organization.

§33-15E-8. Charges and fees; refund requirements; bundling of services.

1 (a) A discount medical plan organization may charge a
2 periodic charge as well as a reasonable one-time processing
3 fee for a discount medical plan.

4 (b)(1) All discount medical plan certificates or other
5 document demonstrating membership in the plan issued to
6 persons in this state shall have a notice, prominently printed
7 on the first page of the document or in a similarly
8 conspicuous manner, stating that the member has the right to
9 cancel his or her membership for any reason within thirty
10 days of its receipt. If a member cancels his or her
11 membership in the discount medical plan organization within
12 the first thirty days after the date of receipt of the written
13 document demonstrating membership, the member shall,
14 upon return of the discount medical plan card to the discount
15 medical plan organization, receive a reimbursement of all
16 periodic charges and the amount of any one-time processing
17 fee that exceeds thirty dollars. Notice of cancellation is
18 deemed given when delivered by hand or deposited in a
19 mailbox, properly addressed and postage prepaid to the
20 mailing address of the discount medical plan organization or
21 e-mailed to the e-mail address of the discount medical plan
22 organization.

23 (2) If the discount medical plan organization cancels a
24 membership for any reason other than nonpayment of charges
25 by the member, the discount medical plan organization shall
26 make a pro rata reimbursement of all periodic charges to the
27 member.

28 (c) When a marketer or discount medical plan
29 organization sells a discount medical plan in conjunction with
30 any other products, the marketer or discount medical plan
31 organization shall:

32 (1) Provide the charges for each discount medical plan in
33 writing to the member; or

34 (2) Reimburse the member for all periodic charges for the
35 discount medical plan and all periodic charges for any other
36 product if the member cancels his or her membership in
37 accordance with subdivision (1), subsection (b) of this
38 section.

39 (d) A health carrier that provides a discount medical plan
40 product that is incidental to the insured product is not subject
41 to this section.

§33-15E-9. Record filing and retention requirements.

1 (a)(1) Upon demand by the Commissioner, a discount
2 medical plan organization shall file with the commissioner a
3 list of prospective member fees and charges associated with
4 the discount medical plan.

5 (b) A copy of every form to be used by a discount
6 medical plan organization, including the form for the written
7 document demonstrating membership in the plan and all
8 advertising, marketing materials and brochures, shall be
9 retained by such organization and available for inspection by
10 the Commissioner for at least two years from the date on
11 which such form was last used.

§33-15E-10. Provider agreements; provider listing requirements.

1 (a)(1) A discount medical plan organization shall have a
2 written provider agreement with all providers offering
3 medical or ancillary services to its members. The written
4 provider agreement may be entered into directly with the
5 provider or indirectly with a provider network to which the
6 provider belongs.

7 (2) A provider agreement between a discount medical
8 plan organization and a provider shall provide the following:

9 (A) A list of the medical or ancillary services and
10 products to be provided at a discount;

11 (B) The amount or amounts of the discounts or,
12 alternatively, a fee schedule that reflects the provider's
13 discounted rates; and

14 (C) A written document demonstrating that the provider
15 has agreed that it will not charge members more than the
16 discounted rates.

17 (3) A provider agreement between a discount medical
18 plan organization and a provider network shall require that
19 the provider network have written agreements with its
20 providers that:

21 (A) Contain the provisions described in subdivision (2)
22 of this subsection;

23 (B) Authorize the provider network to contract with the
24 discount medical plan organization on behalf of the provider;
25 and

26 (C) Require the provider network to maintain an
27 up-to-date list of its contracted providers and to provide the
28 list on a monthly basis to the discount medical plan
29 organization.

30 (4) A provider agreement between a discount medical
31 plan organization and an entity that contracts with a provider
32 network shall require that the entity, in its contract with the
33 provider network, require the provider network to have
34 written agreements with its providers that comply with
35 subdivision (3) of this subsection.

36 (5) The discount medical plan organization shall maintain
37 a copy of each of its active provider agreements; each such
38 organization shall also retain a copy of every inactive
39 provider agreement for at least two years after the expiration
40 date of each such agreement.

41 (b) Each discount medical plan organization shall
42 maintain on its Internet website page a current list of the
43 names and addresses of the providers with which it has
44 contracted directly or through a provider network; the address
45 of the website shall be prominently displayed on all of the
46 discount medical plan organization's advertisements,
47 marketing materials, brochures and discount medical plan
48 cards.

§33-15E-11. Marketing requirements.

1 (a) A discount medical plan organization may market
2 directly or contract with other marketers for the distribution
3 of its product.

4 (b)(1) A discount medical plan organization shall have a
5 written agreement with a marketer prior to the marketer's
6 marketing, promoting, selling or distributing the discount
7 medical plan.

8 (2) The agreement between the discount medical plan
9 organization and the marketer shall prohibit the marketer
10 from using advertising, marketing materials, brochures and

11 discount medical plan cards without the discount medical
12 plan organization's approval in writing.

13 (3) The discount medical plan organization shall be
14 bound by and responsible for the activities of a marketer that
15 are within the scope of the marketer's agency relationship
16 with the organization.

17 (c) A discount medical plan organization shall approve in
18 writing all advertisements, marketing materials, brochures
19 and discount cards used by marketers to market, promote, sell
20 or distribute the discount medical plan prior to their use.

§33-15E-12. Annual reports.

1 (a) If the information required in subsection (b) of this
2 section is not provided at the time of renewal of a license
3 under section four of this article, a discount medical plan
4 organization shall file an annual report with the
5 commissioner in the form prescribed by the commissioner,
6 within three months after the end of each fiscal year.

7 (b) The report shall include:

8 (1) Audited financial statements prepared in accordance
9 with generally accepted accounting principals certified by an
10 independent certified public accountant, including the
11 organization's balance sheet, income statement and statement
12 of changes in cash flow for the preceding year, except that,
13 subject to the approval of the commissioner, an organization
14 that is an affiliate of a parent entity that is publicly traded and
15 that prepares audited financial statements reflecting the
16 consolidated operations of the parent entity may instead
17 submit the audited financial statements of the parent entity
18 and a written guaranty that the minimum capital requirements
19 required under section five of this article will be met by the
20 parent entity;

21 (2) Any changes in the list of names and residence
22 addresses of all persons responsible for the conduct of the
23 organization's affairs, together with a disclosure of the extent
24 and nature of any contracts or arrangements with these
25 persons and the discount medical plan organization, including
26 any possible conflicts of interest;

27 (3) The number of discount medical plan members in the
28 state; and

29 (4) Any other information relating to the performance of
30 the discount medical plan organization that may be required
31 by the commissioner.

32 (c) Any discount medical plan organization that fails to
33 file an annual report in the form and within the time required
34 by this section may be fined up to five hundred dollars per
35 day for the first ten days during which the violation continues
36 and up to one thousand dollars per day after the first ten days
37 during which the violation continues. The commissioner may
38 also suspend the organization's authority to enroll new
39 members or to do business in this state while the violation
40 continues.

§33-15E-13. Discount prescription drug plan organizations.

1 (a) A discount prescription drug plan organization shall
2 comply with sections eight, nine, ten and eleven of this article
3 and shall report any of the information described in section
4 twelve of this article in the form and manner as the
5 commissioner may require. A discount prescription drug
6 plan organization is also subject to sections fourteen, fifteen
7 and sixteen of this article.

8 (b) Each discount prescription drug plan organization
9 shall designate and provide the commissioner with the name,

10 address and telephone number of a discount prescription drug
11 plan compliance officer responsible for ensuring compliance
12 with the provisions of this article that are applicable to
13 discount prescription drug plans and discount prescription
14 drug plan organizations.

§33-15E-14. Administrative enforcement actions; injunctions.

1 (a) The commissioner may investigate the business
2 affairs and conduct of every person applying for or holding
3 a discount medical plan organization license and the
4 operational affairs of a discount prescription drug plan
5 organization to determine whether a violation of this article
6 or any rule promulgated hereunder has occurred or is
7 occurring.

8 (b) If the commissioner has cause to believe that a
9 violation of this article or any rule promulgated hereunder
10 has occurred or is occurring and that an enforcement action
11 may be warranted, he or she shall notify the discount medical
12 plan organization or discount prescription drug plan
13 organization in writing, specifically stating the grounds for
14 enforcement action and informing the organization that it
15 may pursue a hearing on the matter in accordance with the
16 provisions of section thirteen, article two of this chapter.

17 (c) If, after notice and hearing, a violation of this article
18 or any legislative rule promulgated under this article is found,
19 the Insurance Commissioner may take one or more of the
20 following enforcement actions:

21 (1) Place a discount medical plan organization on
22 probation or suspend, revoke or refuse to issue or renew the
23 organization's license;

24 (2) Levy a civil penalty on the organization in an amount
25 not exceeding ten thousand dollars for each violation;

26 (3) Issue an administrative order requiring the discount
27 medical plan organization or discount prescription drug plan
28 organization to cease and desist from engaging in the act or
29 practice that constitutes the violation; or

30 (4) Suspend the authority of the discount medical plan
31 organization or discount prescription drug plan organization
32 to enroll new members.

33 (d) In addition to the penalties and other provisions of
34 this article, the Commissioner may seek both temporary and
35 permanent injunctive relief in the circuit court of Kanawha
36 County when a discount medical plan is being operated by a
37 person or entity that is not licensed pursuant to this article or
38 any person has engaged or is engaging in any activity
39 prohibited by this article or any rule adopted pursuant to this
40 article.

§33-15E-15. Criminal penalties.

1 (a) Any person that willfully operates as or aids and abets
2 another operating as a discount medical plan organization in
3 violation of subsection (a), section four of this article, is
4 guilty of a felony and, upon conviction thereof, shall be fined
5 not more than twenty thousand dollars for each unauthorized
6 act or imprisoned in the state correctional facility not less
7 than one nor more than five years, or both fined and
8 imprisoned.

9 (b)(1) A person that collects fees for purported
10 membership in a discount medical plan or discount
11 prescription drug plan and knowingly and willfully fails to

12 provide benefits with a value of one thousand dollars or
13 more. is guilty of a felony and, upon conviction thereof, shall
14 be fined not more than two thousand five hundred dollars or
15 imprisoned in a state correctional facility not less than one
16 nor more than ten years, or both fined and imprisoned.

17 (2) A person that collects fees for purported membership
18 in a discount medical plan or discount prescription drug plan
19 and knowingly and willfully fails to provide benefits with a
20 value of less than one thousand dollars, is guilty of a
21 misdemeanor and, upon conviction thereof, shall be fined an
22 amount not to exceed two thousand five hundred dollars or
23 confined in jail for a term not to exceed one year, or both
24 fined and confined.

§33-15E-16. Insurance fraud unit.

1 The insurance fraud unit created pursuant to the
2 provisions of section eight, article forty-one of this chapter
3 may investigate suspected violations of this article.

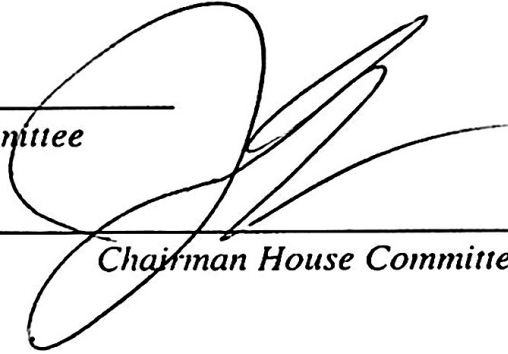
§33-15E-17. Rules.

1 The Commissioner may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to carry out the provisions
4 of this article. The Commissioner may also promulgate
5 emergency legislative rules to carry out the provisions of this
6 article, including rules setting forth the requirements and
7 prohibited practices with regard to the marketing of discount
8 medical plans and discount prescription drug plans and for
9 disclosures to members and prospective members of the
10 plans.

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



Chairman Senate Committee



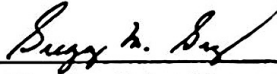
Chairman House Committee

Originating in the House.

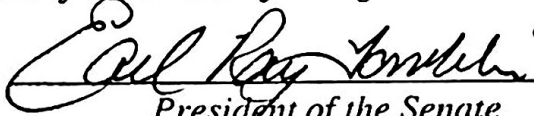
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

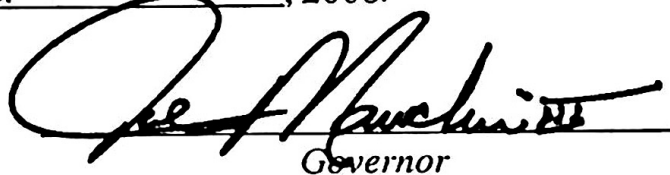


President of the Senate



Speaker of the House of Delegates

The within is approved this the 1st
day of April, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2008

Time 10:00am