

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box

**FILED**

AUG 29 4 02 PM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W.Va. Code §§ 33-2-10, 33-25A-7a, 33-25A-8, 33-25A-8d  
33-25A-34

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 NEW RULE BEING PROPOSED: Series 50

TITLE OF RULE BEING PROPOSED: Emergency Medical Services

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

*B. Keith Huffman, General Counsel*

7.60



STATE OF WEST VIRGINIA  
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON  
Governor

HANLEY C. CLARK  
Insurance Commissioner

August 29, 1996

**HAND DELIVERED**

Ms. Judy Cooper, Director  
Administrative Law Division  
Office of the Secretary of State  
State Capitol  
Charleston, West Virginia 25305

Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

- (1) Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee;
- (2) Consent to Proposed Rule;
- (3) Fiscal Note;
- (4) Brief Summary of the Rule;
- (5) Statement of Circumstances;
- (6) Legislative Rule-Making Review Committee Questionnaire; and
- (7) The agency-approved rule entitled "Emergency Medical Services," (Series 50).

Please contact me if further information is required.

Sincerely,

A handwritten signature in cursive script that reads "B. Keith Huffman".

B. Keith Huffman  
General Counsel

BKH/avn  
Enclosures



STATE OF WEST VIRGINIA  
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON  
Governor

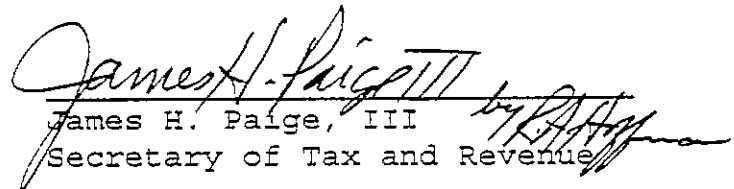
HANLEY C. CLARK  
Insurance Commissioner

CONSENT TO FILING OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent to the filing of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 50, relating to "Emergency Medical Services."

Signed this 26<sup>th</sup> day of July, 1996.

  
James H. Paige, III  
Secretary of Tax and Revenue

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Emergency Medical Services

Type of Rule: XX Legislative  Interpretive  Procedural

Agency: Insurance Commissioner

Address: Post Office Box 50540  
2019 Washington Street, East  
Charleston, West Virginia 25305-0540

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1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	none				
PERSONAL SERVICES	none				
CURRENT EXPENSE	none				
REPAIRS AND ALTERNATIONS	none				
EQUIPMENT	none				
OTHER	none				

2. Explanation of above estimates:

This rule will have no fiscal impact on state, local or federal government.

3. Objectives of these rules:

This proposed rule implements W. Va. Code § 33-25A-34, a new provision of the Health Maintenance Organization Act, W.Va. Code §§ 33-25A-1 et. seq., which was amended during the 1996 legislative session by House Bill 4511. The rule sets forth the standards for provider contracts between a health maintenance organization and a provider of emergency medical services. The rule also requires each health maintenance organization to explain to its members the procedures to be followed in a medical emergency and the circumstances under which non-emergency transportation will be covered under the health maintenance organization's contract with its members.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

This rule is not expected to have an impact on HMOs because emergency medical services are less than 1% of HMO expenses.

C. Economic Impact on Citizens/Public at Large.

This rule is not expected to have an impact on citizens because it does not change existing standards but merely clarifies them.

Date: 26 July 96

Signature of Agency Head or Authorized Representative

Stanley O. Clark

Insurance Commissioner  
Legislative Rule  
Title 114, Series 50

**Emergency Medical Services**

Title 114, Series 50

**BRIEF SUMMARY OF RULE**

This proposed rule implements W. Va. Code § 33-25A-34, a new provision of the Health Maintenance Organization Act, W. Va. Code §§ 33-25A-1 et. seq., which was amended during the 1996 legislative session by House Bill 4511. The rule sets forth the standards for provider contracts between a health maintenance organization and a provider of emergency medical services. The rule also requires each health maintenance organization to explain to its members the procedures to be followed in a medical emergency and the circumstances under which non-emergency transportation will be covered under the health maintenance organization's contract with its members.

Insurance Commissioner  
Legislative Rule  
Title 114, Series 50

**Emergency Medical Services**

Title 114, Series 50

**STATEMENT OF CIRCUMSTANCES**

During the 1996 legislative session, the West Virginia Legislature passed House Bill 4511, which amended the Health Maintenance Organization Act and mandated that the Insurance Commissioner promulgate this rule. The rule sets forth the required standards for provider contracts between a health maintenance organization and a provider of emergency medical services, taking into consideration reimbursement for non-emergency transportation, appropriate use of 911 or community dispatching and members' understanding of emergency procedures.

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER

DATE: AUGUST 29, 1996

LEGISLATIVE RULE TITLE: Emergency Medical Services (Series 50)

1. Authorizing statute(s) citation W.Va. Code §§ 33-2-10, 33-25A-7a, 33-25A-8, 33-25A-8d, and 33-25A-34

2. a. Date filed in State Register with Notice of Hearing:  
July 26, 1996

b. What other notice, including advertising, did you give of the hearing?  
None

c. Date of hearing(s): Comment period ended on  
August 26, 1996

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached XX No comments received                     

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)  
August 29, 1996

f. Name and phone number of agency person to contact for additional information:

B. Keith Huffman

General Counsel

(304) 558-0401

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

b. Date of hearing: Not applicable

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not applicable

d. Attach findings and determinations and reasons:

Attached Not applicable

Attachment to Question 2(d):

One comment on the proposed rule was received during the comment period. A copy of that comment, suggesting three clarifications of the proposed rule, is attached.

A second comment was submitted by Roger Bryant, President of the West Virginia EMS Coalition, after the end of the comment period. While a detailed response to this comment is not required, the Insurance Commissioner's staff nonetheless took Mr. Bryant's comments into consideration and notes that the areas addressed by Mr. Bryant, (1) Appropriate use of "911"; (2) subscriber education as to use of "911"; and (3) Quality of Service, are each dealt with adequately in the proposed rule. These issues are dealt with, respectively, at §§ 4.2; 4.3.a, c and f; and 4.1.c of the rule.

1. SECTION 2 OF THE PROPOSED RULE

John M. Collins of PRIME ONE recommended adding a definition of noncovered non-acute medical services to § 114-50-2 because a health maintenance organization contracting with an emergency service provider may need to identify services not covered under the health maintenance organization's contracts with enrollees. We agree with this recommendation and have amended the proposed rule to add a definition and to renumber two following definitions.

Amended § 114-50-2 of the proposed rule reads as follows:

§ 114-50-2. Definitions.

...

2.11. "Noncovered Non-Acute Emergency Medical Services" means non-acute emergency medical services for which a health maintenance organization is not obligated to pay under its contract with an enrollee.

2.12. "Nonparticipating Provider" or "Noncontracting Provider" means a provider that has not entered into a contract with a health maintenance organization to provide health care services to enrollees of the health maintenance organization.

2.13. "Participating Provider" means a provider that has entered into a contract with a health maintenance organization to provide health care services to enrollees of the health maintenance organization.

2. SECTION 4 OF THE PROPOSED RULE

a. § 114-50-4.1.a.

John M. Collins of PRIME ONE recommended that a copy of each new emergency medical service provider contract be filed with the Insurance Commissioner on the due date of the next quarterly financial statement instead of within thirty days of a contract's execution. We agree with this recommendation and have amended the proposed rule to require the filing of new emergency medical service provider contracts on the due date of the health maintenance organization's next quarterly financial statement.

Amended § 114-50-4.1.a. of the proposed rule reads as follows:

§ 114-50-4. Requirements for emergency medical services.

4.1. If a health maintenance organization enters into a contract with an emergency medical service provider:

a. The health maintenance organization shall file with the commissioner a copy of the executed contract and all exhibits, attachments, addenda, schedules or other documents relevant to the contract forty-five (45) days after the calendar quarter end next following the execution date of an emergency medical service provider contract;

...

b. § 114-50-4.3.f.

John M. Collins of PRIME ONE recommended that the evidence of coverage state that a health maintenance organization will pay a nonparticipating emergency medical service provider's normal charges unless the health maintenance organization and the provider have made other arrangements. Because W. Va. Code § 33-25A-7a(6) requires a health maintenance organization to pay a

nonparticipating provider's "normal charges" for "covered emergency health care services", we have not amended the section as Mr. Collins suggested. We have deleted the words "or covered non-acute" from § 114-50-4.3.f. to clarify that covered acute emergency medical services rendered by an emergency medical service provider are subject to W. Va. Code § 33-25A-7a(6).

Amended § 114-50-4.3.f. of the proposed rule reads as follows:

§ 114-50-4. Requirements for emergency medical services.

...

4.3. A health maintenance organization must explain clearly and concisely in its evidence of coverage:

...

f. That, if an enrollee receives covered acute emergency medical services from a nonparticipating provider, the health maintenance organization will pay the provider's normal charges for the covered emergency medical services rendered, exclusive of any applicable deductibles or copayments to be paid by the enrollee.

# FAX

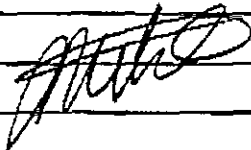
PrimeONEI  
602 Virginia St., E.  
P.O. Box 3043  
Charleston, WV 25328

Date 8/26/96  
Number of pages including cover sheet 4

To: Donna Quesenberry  
Ellen Achibald

From: Mitch Collins

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\_\_\_\_\_  
\_\_\_\_\_

Phone 558-0401  
Fax Phone 558-0412  
CC: \_\_\_\_\_

Phone 353-8707  
Fax Phone 353-8732

**REMARKS:**

- Urgent     For your review     Reply ASAP     Please comment

Empty remarks box for additional notes.

**PRIMEONE**  
*An Anthem Health Plan*

P.O. Box 1109  
Charleston, West Virginia 25324  
1-800-607-7461

August 26, 1996

Direct Dial (304) 353-8707

Ellen R. Archibald, Associate Counsel  
West Virginia Insurance Commissioner  
1124 Smith St.  
P.O. Box 50540  
Charleston, WV 25305-0540

Re: Proposed Rule Series 53 Emergency Medical Services

Dear Ms. Archibald:

I have reviewed the above captioned proposed rule and would like to submit some minor comments for your consideration.

Section 2 of the rule does not contain a definition for non-covered non-acute medical services. The rule itself does not utilize this term which may be the basis for the exclusion. Contracting terms with emergency medical service providers could, however, identify such non-covered services. The commissioner's office should consider adding this definition to the rule.

Section 4.1 a. of the rule requires health maintenance organizations to file with the commissioner a copy of all contracts with emergency medical service providers within 30 days of execution. The commissioner currently requires that copies of new contracts with all other provider types be provided on a quarterly basis to coincide with the filing of the quarterly financial statement. The commissioner's office may wish to consider utilizing this same quarterly standard for this rule for ease of administration by the HMOs as well as for the commissioner's office.

Section 4.3 f of the rule specifies that non-participating providers will be paid normal charges for services rendered to enrollees for covered acute or covered non-acute emergency medical services. The commissioner's office may wish to consider adding a statement to subpart f such as; unless the HMO and provider have made other arrangements. This would allow both parties the flexibility to arrange for services on a single case basis if the need would arise.

Thank you for the opportunity to comment on these proposed regulations.

Sincerely,

  
John M. Collins

=====

**West Virginia EMS Coalition**  
**P.O. Box 5374**  
**Charleston, WV 25361**



## **FAX Memo**

**To:** Hanley Clark  
**From:** Roger Bryant  
**Date:** 8/26/96  
**# Pages** 3 **including this cover.**

### **Message:**

Response TO H.B. 4511 Legislative Rules

*This fax is intended for the sole use of the party indicated above. If you have received this FAX in error, please destroy all copies and notify the sender at 304.345.2312.*

**WEST VIRGINIA EMS COALITION**

## M E M O R A N D U M

TO: HANLEY CLARK, INSURANCE COMMISSIONER

FROM: ROGER BRYANT, PRESIDENT  
WV EMS COALITION *RB*

DATE: AUGUST 26, 1996

RE: RESPONSE TO H.B. 4511 LEGISLATIVE RULES

Filed: July 26, 1996

The WV EMS Coalition supports the proposed rules. However, we feel the rules need additions to certain areas. The following is an outline of specific concerns and suggestions.

## CONCERNS:

1. No provision to prevent the health maintenance organization from creating an alternate communications system to bypass the "911" or community dispatch centers.
2. No provision to ensure the continuation of EMS coverage for a geographic area, in accordance with 16-4C, regardless of participation in a health maintenance organization.

## SUGGESTED RULES:

1. A health maintenance organization may not prohibit enrollees' use of "911" or another method of contacting an emergency medical service provider in an emergency situation. No health maintenance organization shall establish a system which subjects an enrollee to pre-authorization or certification for use of acute emergency medical service.



Page 2  
Hanley Clark

2. A health plan shall include, in any educational materials the plan makes available to its enrollees on the procedures for obtaining emergency services a statement that it is appropriate for an enrollee to use the 911 emergency telephone number for an emergency medical condition. It shall not discourage appropriate use of the 911 emergency telephone number by enrollees with emergency medical conditions. Nor shall it deny coverage or payment for an item or service solely on the basis that an enrollee uses the 911 emergency telephone number to summon treatment for an emergency medical condition.
  
3. The HMO shall certify and demonstrate to the commissioner that it will not conduct business in a given county in such a way as to reduce or eliminate the level or quality of service provided to their subscribers or other citizens of the county. Copies of the plans shall also be submitted to all ambulance providers authorized to provide services in the county.

# WEST VIRGINIA **EMS** COALITION

RECEIVED

AUG 26 1996

WEST VIRGINIA  
'INSURANCE COMMISS'

Rec'd  
4:00 p.m.

CAF

Hand Delivered

## M E M O R A N D U M

TO: HANLEY CLARK, INSURANCE COMMISSIONER

FROM: ROGER BRYANT, PRESIDENT  
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114CSR50

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

SERIES 50  
EMERGENCY MEDICAL SERVICES

- SECTION
- § 114-50-1. General.
  - § 114-50-2. Definitions.
  - § 114-50-3. Emergency Medical Service Provider Contracts.
  - § 114-50-4. Requirements for Emergency Medical Services.
  - § 114-50-5. Severability.

FILED

114CSR50

WEST VIRGINIA LEGISLATIVE RULES 4 02 PM '96  
INSURANCE COMMISSIONER

SERIES 50  
EMERGENCY MEDICAL SERVICES

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

§ 114-50-1. General.

1.1. Scope. The purpose of this rule is to set forth requirements for a health maintenance organization's provision of emergency medical services to its enrollees.

1.2. Applicability. This rule applies to all health maintenance organizations holding a valid certificate of authority granted by the commissioner. All health maintenance organization provider contracts for emergency medical services to enrollees through a health service intermediary shall be subject to 114CSR43.

1.3. Authority. -- W. Va. Code §§ 33-2-10, 33-25A-7a, 8, 8d, 34.

1.4. Filing Date. --

1.5. Effective Date. --

§ 114-50-2. Definitions.

Terms not defined in this rule shall have the meanings given in West Virginia Code § 33-25A-1 et. seq. As used in this legislative rule:

2.1. "Acute Emergency Medical Service" means emergency medical services rendered in response to a request by an enrollee or a person acting on behalf of an enrollee, through "911," a community dispatcher or otherwise, either with the enrollee's permission or without the enrollee's permission if the enrollee is incapacitated, where:

a. there has been no precertification or preauthorization for the services by the health maintenance organization;

b. the emergency medical services were not scheduled in advance; and

c. the person making the request for emergency medical services does so in response to what the person perceives to be an emergency situation.

2.2. "Commissioner" means the Insurance Commissioner of the State of West Virginia.

2.3. "Covered Acute Emergency Medical Services" means acute emergency medical services for which a health maintenance organization is obligated to pay under the health maintenance organization contract with an enrollee.

2.4. "Covered Non-Acute Emergency Medical Services" means non-acute emergency medical services for which a health maintenance organization is obligated to pay under the health maintenance organization's contract with an enrollee.

2.5. "Emergency Medical Services" means acute emergency medical services and non-acute emergency medical services rendered to an enrollee of a health maintenance organization by an emergency medical service provider within the scope of its operations as an emergency medical service provider.

2.6. "Emergency Medical Service Provider" means an entity legally operating as an "emergency medical service provider" as that term is defined in W.Va. Code § 16-4C-3.

2.7. "Emergency Situation" means a situation where the provision of emergency medical services is necessary to evaluate and or treat a medical condition manifesting itself by the sudden and at the time, unexpected onset of symptoms that require immediate medical attention and for which failure to provide medical attention would result in serious impairment to bodily function or serious dysfunction to any bodily organ or part.

2.8. "Incapacitated" means a person who is unable for medical reasons to request or give consent to or receive emergency medical services.

2.9. "Non-Acute Emergency Medical Services" means emergency medical services other than acute emergency medical services including, but not limited to, scheduled transportation services provided by an emergency medical service provider.

2.10. "Noncovered Acute Emergency Medical Services" means acute emergency medical services for which a health maintenance organization is not obligated to pay under its contract with an enrollee.

2.11. "Noncovered Non-Acute Emergency Medical Services" means non-acute emergency medical services for which a health maintenance organization is not obligated to pay under its contract with an enrollee.

2.12. "Nonparticipating Provider" or "Noncontracting Provider" means a provider that has not entered into a contract with a health maintenance organization to provide health care services to enrollees of the health maintenance organization.

2.13. "Participating Provider" means a provider that has entered into a contract with a health maintenance organization to provide health care services to enrollees of the health maintenance organization.

§ 114-50-3. Emergency Medical Service Provider Contracts.

3.1. A contract between a health maintenance organization and an emergency medical service provider must:

a. List and define duties to be assumed by the health maintenance organization and the participating provider, respectively;

b. Specify how the health maintenance organization will determine whether emergency medical services rendered by the participating provider qualify as covered emergency medical services;

c. Require the health maintenance organization to pay the participating provider in full under terms of contract for any valid claim for the covered emergency medical services rendered by the participating provider to an enrollee of the health maintenance organization, but a valid claim shall not include the amount of any deductible or copayment payable by the enrollee;

d. Require the participating provider to meet all applicable standards to which the health maintenance organization is subject;

e. Specify the service area in which the participating provider will provide emergency medical services;

f. Require the participating provider to maintain records of emergency medical services provided to an enrollee of the health maintenance organization;

g. Specify that the health maintenance organization, not its enrollee, is liable for covered emergency medical services provided to the enrollee and that the participating provider may not collect or attempt to collect from an enrollee, by action at law or otherwise, any money for covered emergency medical services rendered to the enrollee, other than a deductible or copayment payable by the enrollee;

h. Require the participating provider to give sixty (60) days advance written notice to the health maintenance organization and the commissioner before canceling the contract for any reason and specify that the health maintenance organization's nonpayment of one or more valid claims is not a valid reason for avoiding the sixty (60) day advance notice of cancellation; and

i. Specify that upon the health maintenance organization's receipt of a participating provider's sixty (60) day cancellation notice, the health maintenance organization may, in its discretion, if requested by the participating provider, terminate the contract in less than sixty (60) days if the health maintenance organization is not financially impaired or insolvent.

**§ 114-50-4. Requirements for Emergency Medical Services.**

4.1. If a health maintenance organization enters into a contract with an emergency medical service provider:

a. The health maintenance organization shall file with the commissioner a copy of the executed contract and all exhibits, attachments, addenda, schedules or other documents relevant to the contract forty-five (45) days after the calendar quarter end next following the execution date of an emergency medical service provider contract;

b. Within thirty (30) days after execution of an emergency medical service provider contract, the health maintenance organization shall file with the commissioner a copy of the executed contract and all exhibits, attachments, addenda, schedules or other documents relevant to the contract;

c. The health maintenance organization shall report any new or deleted emergency medical service providers on the provider list submitted to the commissioner with its quarterly financial statement; and

d. A health maintenance organization is responsible for compliance by the participating provider with all applicable standards required by West Virginia Code § 33-25A-1 et seq. as to any services performed on behalf of the health maintenance organization.

4.2. A health maintenance organization may not prohibit enrollees' use of "911" or another method of contacting an emergency medical service provider in an emergency situation.

4.3. A health maintenance organization must explain clearly and concisely in its evidence of coverage:

a. That neither an enrollee nor a provider is required to obtain preauthorization or precertification for acute emergency medical services;

b. That the health maintenance organization may apply to covered emergency medical services the same deductibles, coinsurance and other limitations that apply to other covered health care services;

c. What is an emergency situation and how the health maintenance organization will determine whether health care services qualify as covered emergency medical services, giving specific examples of situations in which an enrollee should seek emergency medical services by calling the health maintenance organization, "911" or a comparable community dispatcher;

d. That the enrollee will be liable for provider charges for noncovered emergency medical services;

e. Under what conditions non-acute emergency medical services, by an emergency medical service provider or otherwise, will be a covered health care service; and

f. That, if an enrollee receives covered acute emergency medical services from a nonparticipating provider, the health maintenance organization will pay the provider's normal charges for the covered emergency medical services rendered, exclusive of any applicable deductibles or copayments to be paid by the enrollee.

Insurance Commissioner  
Legislative Rule  
Title 114, Series 50

**§114-50-5. Severability.**

5.1. If any provision of this rule or the application of this rule to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected by the holding.