



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: Health TITLE-SERIES: 64-116
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Distribution of Funds from Emergency Medical Services Salary Enhancement Fund

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 16-4C-25

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/17/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/16/2023

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes a formula for the Director of the Office of Emergency Medical Services to use in distributing funds from the Emergency Medical Services Salary Enhancement Fund.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Passage of SB737 (2023) requires promulgation of this rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

A new special revenue account is created in the State Treasury designated as the Emergency Medical Services Salary Enhancement Fund, which is an interest- and earnings-accumulating account.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

\$10 million appropriated by the Legislature, plus grants, gifts, devises, and donations from any public or private source, will be distributed among all 55 counties based upon a formula utilizing factors in the statute and rule.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			10,000,000.00
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			10,000,000.00

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

All interest and other returns derived from the deposit and investment of moneys in the Emergency Medical Services Salary Enhancement Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Fund but shall remain in the fund and be expended as provided in W. Va. Code 16-4C-25.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 64
LEGISLATIVE RULE
DEPARTMENT OF HEALTH
BUREAU FOR PUBLIC HEALTH

SERIES 116
DISTRIBUTION OF FUNDS FROM EMERGENCY MEDICAL SERVICES
SALARY ENHANCEMENT FUND

§64-116-1. General.

1.1. Scope. -- This legislative rule establishes a formula for the Director to use in distributing funds from the Emergency Medical Services Salary Enhancement Fund.

1.2. Authority. -- W. Va. Code §16-4C-25.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2029.

§64-116-2. Application and Enforcement.

2.1. Application. -- This rule applies to the distribution, by the Director, of funds from the Emergency Medical Services Salary Enhancement Fund.

2.2. Enforcement. -- This rule is enforced by the Director of the Office of Emergency Medical Services.

§64-116-3. Definitions.

3.1. Active Emergency Medical Services Personnel -- An Advanced Emergency Medical Technician, Emergency Medical Technician, Emergency Medical Vehicle Operator, or Paramedic who is a paid employee of an ambulance transporting agency and participates in 10 or more 911 call responses in a 12-month period.

3.2. Ambulance Transporting Agency -- A person or entity licensed to provide emergency medical services dispatched through a 911 call center for the purpose of responding to a 911 call.

3.3. County Questionnaire -- Questionnaire supplied to each county annually by the Director to assist in the allocation of funds in accordance with this rule.

3.4. Crisis Response -- Funds designated for and distributed to counties for the sole purpose of providing care to emergency medical services personnel during a mental health crisis by a trained designee.

3.5. Crisis Response Team -- Designated group of personnel trained to provide care to emergency medical services personnel during a mental health crisis.

3.6. Director -- The Director of the Office of Emergency Medical Services, as created by W. Va. Code §16-4C-4, or his or her designee.

3.7. Emergency Medical Services Region -- A defined region of coordinated resources to provide emergency medical services within a geographic area available at <https://www.wvocems.org/files/maps/medical-command-map>.

3.8. Fiscal Year -- 12-month period beginning July 1 and ending June 30.

3.9. Post-Fund Distribution Assessment -- Form supplied to each county annually by the Director to assist in the assessment and accounting of funds distributed in accordance with this rule.

3.10. Primary Agency -- An ambulance transporting agency at which active emergency medical services personnel are employed for 51 percent or more of their working hours.

3.11. Salary Supplementation -- Funds designated for and distributed to counties for the sole purpose of supplementing the salaries of active emergency medical services personnel in accordance with State law and this rule.

§64-116-4. Formula; Allocation of Funds; Distribution.

4.1. The Director shall distribute funds for salary supplementation and crisis response to counties as directed by the State Legislature, this rule, and State law.

4.2. The amount of funds for salary supplementation and crisis response available for distribution to counties by the formula established by subsection 4.4. of this rule is the balance of available funds in the Emergency Medical Services Salary Enhancement Fund as established in W. Va. Code §16-4C-25(a), less any amount withheld by the Director as part of a long-term funding plan.

4.3. Each county shall complete and submit a County Questionnaire attached to this rule as APPENDIX A. The County Questionnaire shall be supplied by the Director on or before August 1 of each year and shall be submitted to the Office of Emergency Medical Services on or before September 1 of each year. The questionnaire shall be used in determining the allocations of funds according to the formula established by subsection 4.4. of this rule. Counties that do not submit a completed County Questionnaire will be given scores of 0.

4.4. The Director shall calculate the amount of funds for salary supplementation and crisis response to be distributed to counties according to the following formula:

4.4.1. Step 1 Crisis Response: 10 percent of the funds available for distribution shall be divided equally among each emergency medical services region, as defined by the Office of Emergency Medical Services, and shall be allocated solely to the enhancement of crisis response services within each region. Within each region, the funds allocated shall be divided among counties according to the number of members each county supports on a crisis response team, as outlined below. These crisis response funds shall be expended for no purpose other than ensuring crisis response teams receive uniform training and coordination through a statewide program to ensure continuity of crisis response services.

4.4.1.a. Crisis response teams:

4.4.1.a.1. Each emergency medical services region shall establish a crisis response team consisting of no less than 10 active members.

4.4.1.a.2. The county commissions comprising each emergency medical services region shall cooperate to recruit crisis response team members. Each county having one or more members serving on a crisis response team shall receive funding according to the formula set forth in subsection 4.4.1.

4.4.2. Step 2 Counties demonstrating the most need: Counties that share at least one border with a neighboring state are assigned a coefficient of 4. Super Rural counties are assigned a coefficient of 4. Rural counties are assigned a coefficient of 2. Urban counties are assigned a coefficient of 0. Rurality is determined by the level of rurality on 51 percent of the zip codes in each county established by the most recent rurality index published by the Centers for Medicare and Medicaid Services available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AmbulanceFeeSchedule>.

4.4.3. Step 3 Existing levy for emergency medical services: Counties with an existing levy for emergency medical services or a special emergency ambulance service fee pursuant to W. Va. Code §7-15-17 are assigned a coefficient of 3.

4.4.4. Step 4 Maximum allowable rate on regular levies:

4.4.4.a. Counties that have reached the maximum allowable rate on all regular levies are assigned a coefficient of 2.

4.4.4.b. Counties that have reached the maximum allowable rate on one half of the regular levies are assigned a coefficient of 1.

4.4.5. Step 5 Additional qualifying factors:

4.4.5.a. Counties that report an emergency medical services personnel vacancy rate of more than 20 percent are assigned a coefficient of 2.

4.4.5.b. Counties that report an emergency medical services personnel vacancy rate of between 10 and 20 percent are assigned a coefficient of 1.

4.4.5.c. Counties that report an emergency medical services personnel annual salary differential of a minimum of 10 percent lower than any bordering county are assigned a coefficient of 1.

4.4.5.d. Counties that report one or more cities or municipalities with no projected budget surplus during a fiscal year are assigned a coefficient of 1.

4.4.6. Step 6 County distribution: County distribution is determined by:

4.4.6.a. Adding the coefficients from Steps 2 through 5 for each county:

4.4.6.b. Tier 1: 50 percent of the available funds shall be divided equally among those counties with a coefficient total of 12 or greater; Tier 2: 35 percent of the available funds shall be divided equally among those counties with a coefficient total of 6, 7, 8, 9, 10, or 11; Tier 3: 15 percent of the available funds shall be divided equally among those counties with a coefficient total of 5 or less.

4.4.6.b.1. If no counties fall within Tier 2, the available funds that would be allocated to Tier 2 counties shall be divided in half; one half shall be redistributed equally among those counties falling within Tier 1, and one half shall be redistributed equally among those counties falling within Tier 3.

4.4.6.b.2. If no counties fall within Tier 3, the available funds that would be allocated to Tier 3 counties shall be redistributed equally among those counties falling within Tier 1.

4.4.6.b.3. If five or fewer counties fall within Tier 1, those counties falling within Tier 1 shall be assigned to Tier 2 and the available funds that would be allocated to Tier 1 counties shall be divided in half; one half shall be redistributed equally among those counties falling within Tier 2, and one

half shall be redistributed equally among those counties falling within Tier 3.

4.4.6.b.4. If five or fewer counties fall within Tier 2, those counties falling within Tier 2 shall be assigned to Tier 3 and the available funds that would be allocated to Tier 2 counties shall be divided in half; one half shall be redistributed equally among those counties falling within Tier 1, and one half shall be redistributed equally among those counties falling within Tier 3.

4.4.6.b.5. If five or fewer counties fall within Tier 3, those counties falling within Tier 3 shall be assigned to Tier 2 and the available funds that would be allocated to Tier 3 counties shall be divided in half; one half shall be redistributed equally among those counties falling within Tier 1, and one half shall be redistributed equally among those counties falling within Tier 2.

4.5. In performing the assessment described in subsection 4.4. of this rule, the Director shall use the most recent information available as provided by each county.

4.6. The Director shall complete the assessments described in subsection 4.4. of this rule as soon as possible but no later than September 15 of each year.

4.7. After completing the assessments described in subsection 4.4. of this rule, the Director shall inform each county in writing of its allocation as soon as possible, but no later than October 1 of each year.

4.8. The Director shall cause funds for salary supplementation and crisis response, together with the post-fund distribution assessment attached to this rule as APPENDIX B, to be distributed to counties according to standard State procedures as soon as possible, but no later than November 1 of each year.

4.9. Counties receiving funds in accordance with this rule that house more than one ambulance transporting agency shall distribute funds to those agencies using a percentage allocation based upon 911 call volume. There is a presumption that active emergency medical services personnel will receive salary supplementation funds from their primary agency.

4.10. Counties receiving funds in accordance with this rule shall complete and submit the post-fund distribution assessment to the Office of Emergency Medical Services on or before December 1 of each year. Counties that fail to distribute funds in accordance with this rule may be disqualified from receipt of salary supplementation funds during the following calendar year.

§64-116-5. Administrative Due Process.

5.1. Any person adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests, or privileges shall do so in a manner prescribed in the Bureau for Public Health's procedural rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.

APPENDIX A 64CSR116. County Questionnaire.

Responding County Name _____ Date Completed _____

County Demographics

2020 County Population _____ County Fiscal Year Beginning Month _____

Current Population Estimate _____ Presence of EMS Specific Levy ___ Yes ___ No

If Yes, list the formal name of the EMS levy as listed on ballots _____

If Yes, when was levy last renewed or enacted (if on first election cycle) _____

List your county's overall levy rate verses the state maximum rate as a percentage _____%

Are there cities, towns, or municipalities in the county who will have budget excesses this FY? ___ Yes
___ No

****Please include the most recent, voter approved levy order or special fee order as addendum****

Ambulance Response Information

Total 911 request for ambulance service for last calendar year _____

Total number of WV Licensed Ambulance Transporting Agencies in county _____

Total number of Active EMS Personnel _____

Total EMVO _____ Total EMT _____ Total Advanced- EMT _____ Total Paramedic _____

Current New Hire Pay Rates (annual)
EMVO \$ _____ EMT\$ _____ Advanced-EMT\$ _____ Paramedic\$ _____

Are/Is the agency(ies) serving your county "short staffed" ___ Yes ___ No

If yes, indicate the number of positions in each category that your county is short (Dedicated to 911 response only)
Total EMVO _____ Total EMT _____ Total Advanced- EMT _____ Total Paramedic _____

Of Contiguous Counties (include out-of-state) to you, list the starting annual salaries for EMS positions.

County Name	EMVO Annual	EMT Annual	A-EMT Annual	Paramedic
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$

Crisis Response Team

Does your county have an organized Crisis Response Team specifically geared toward first responders including, but not limited to, EMS? Yes No

If Yes, number of team members currently trained and deployable _____

If No, Do you have plans to implement a Crisis Response Team? Yes No

If Yes, Date team will be operational _____ Team Liaison Name _____

Cell _____

****Please list each additional team members and their contact information individually as an addendum****

County Commission Signatures

Name _____ County Commission President Street _____ City _____, WV Zip _____ Phone: _____ Cell _____	Name _____ County Commissioner Street _____ City _____, WV Zip _____ Phone: _____ Cell _____	Name _____ County Commissioner Street _____ City _____, WV Zip _____ Phone: _____ Cell _____
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APPENDIX B 64CSR116. Post-Fund Distribution Assessment.

Responding County Name _____ Date Completed _____

****PLEASE PROVIDE THE FOLLOWING INFORMATION FOR EACH AGENCY IN YOUR COUNTY****

Agency Name _____

Total funding allocated by the county commission to agency pursuant to 64CSR116 _____

Please attach as an addendum the following: Name, Provider Number, and amount of salary supplementation distributed to each emergency medical services provider at each agency in your county.

County Commission Signatures		
Name _____ County Commission President	Name _____ County Commissioner	Name _____ County Commissioner
Street _____	Street _____	Street _____
City _____, WV	City _____, WV	City _____, WV
Zip _____	Zip _____	Zip _____
Phone: _____	Phone: _____	Phone: _____
Cell _____	Cell _____	Cell _____