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(Plus all the volunteer
help we can get)

August 28, 2000

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Health

RULE: New Rule, Series 29, Specialized Multipatient Medical Transport

DATE FILED AS AN EMERGENCY RULE: July 19, 2000

OFFICE OF THE SECRETARY OF STATE

AUG 28 4 27 PM '00

FILED

DECISION NO. 12-00

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **disapproved**. A copy of the complete decision with required findings is available from this office.



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EMERGENCY RULE DECISION
(ERD 12-00)

AGENCY: Division of Health
RULE: New Rule, Series 29, Specialized Multipatient Medical Transport
FILED AS AN EMERGENCY RULE: July 19, 2000

- par. 1 The Division of Health (Division) has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State July 19, 2000 and with the LRMRC July 19, 2000.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §16-4C-8 reads:

(a) Every ambulance operated by an emergency medical service agency shall carry at least 2 personnel. At least one person shall be certified in cardiopulmonary resuscitation or first aid and the person in the patient-compartment shall be certified as an emergency medical technician-basic at a minimum, except that in the case of specialized multipatient medical transport, only one staff person is required and that person shall be certified, at a minimum, at the level of an emergency medical technician-basic.

(b) As a minimum the training for each class of emergency medical service personnel shall include:

(1) Emergency medical service attendant: Shall have earned and possess valid certificates from the department or by the authorities recognized and approved by the commissioner;

(2) Emergency medical technician-basis: Shall have successfully completed the course for certification as an emergency medical technical-basic as established by the commissioner or authorities recognized and approved by the commissioner; and

(3) Emergency medical technician-paramedic: Shall have successfully completed the course for certification as an emergency medical technical-paramedic established by the commissioner or authorities recognized and approved by the commissioner.

The foregoing may not be considered to limit the power of the commissioner to prescribe training, certification and recertification standards.

(c) Any person desiring emergency medical service personnel certification shall apply to the commissioner using forms and procedures prescribed by the commissioner. Upon receipt of the application, the commissioner shall determine whether the applicant meets the certification requirements and may examine the applicant, if necessary to make that determination. If it is determined that the applicant meets all of the requirements, the commissioner shall issue an appropriate emergency medical service personnel certificate which shall be valid for a period as determined by the commissioner.

State and county continuing education and recertification programs for all levels of emergency medical service providers shall be valid for a period as determined by the commissioner.

State and county continuing education and recertification programs for all levels of emergency medical service providers shall be available to emergency medical service providers at a convenient site within 100 miles of the emergency medical services offices.

The continuing education program shall be provided at a cost specified in a fee schedule to be promulgated by legislative rule in accordance with the provisions of §29A-3-1 et seq. of this code by the division of health to all nonprofit emergency medical service personnel.

(d) The commissioner may issue a temporary emergency medical service personnel certificate to an applicant, with or without examination of the applicant, when he or she finds that issuance to be in the public interest. Unless suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding 120 days and may not be renewed unless the commissioner finds the renewal to be in the public interest. The expiration date of a temporary certificate shall be extended until the holder is afforded at

least one opportunity to take an emergency medical service personnel training courses within the general area where he or she serves as an emergency medical service personnel, but the expiration date may not be extended for any longer period of time for any other reason.

par. 9. It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

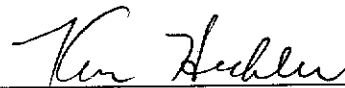
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

This rule is filed in accordance with the intent of SB 612, passed on March 13, 1999, that amended and reenacted W. Va. Code §16-4C-3 & 8 , clarifying the definition of "ambulance" and specifying staffing and personnel requirements for specialized multi patient medical transports.

par. 13 It is the determination of the Secretary of State that this proposal does not qualify as an emergency under the definition of an emergency as defined in §29A-3-15(f).

par. 14 This decision shall be cited as Emergency Rule Decision 12-00 or ERD 12-00 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Health, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
Secretary of State

OFFICE OF THE SECRETARY OF STATE

Aug 28 4 27 PM '00

FILED

Entered _____



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

Joan E. Ohi
Secretary

July 31, 2000

Judy Cooper
Administrative Law Director
Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

Dear Ms. Cooper:

In response to our recent phone call concerning the issue of allowing the proposed Legislative Rule 64 CSR 29 to be entered as an emergency rule, the following supporting information is provided:

This particular rule has been pursued and supported by the EMS community, most notably the WV EMS Coalition. The Coalition has for some time worked tirelessly, both in the court system and the legislative arena, to be allowed to provide non-emergency transportation to potential users. In the past, only certain non-EMS transport services, regulated by the Public Service Commission, provided this level of service. It is felt by the EMS industry that these businesses are increasing in number, and that EMS agencies are falling behind in a market that would generate a needed revenue stream.

After SB 612 was passed in the 1999 legislative session (see attached document), some EMS agencies began to provide this service, even in the absence of a rule (the rule was in the development stage). These EMS agencies are working without the legislative protection afforded by an applicable rule. This will place them at some risk for nearly a year if they continue to provide the service, and the draft rule is only processed as a proposed rule to be considered in the 2001 legislative session.

The inability of EMS agencies to compete in the market is of concern. Even though some agencies, as noted, have already begun to provide this service, there are a number of others that are hesitant to enter the market without sufficient regulatory support. The inability to tap into this revenue stream could cause a hardship to agencies with limited financial resources. Agencies with financial problems continue to grow in number, especially in this age of shrinking health care dollars.

BUREAU FOR PUBLIC HEALTH
Office of Community & Rural Health Services
Office of Emergency Medical Services
350 Capitol Street, Room 515
Charleston, West Virginia 25301-3716
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Judy Cooper
Administrative Law Director
July 31, 2000
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I hope this letter explains why we feel that processing this rule as an emergency is imperative. If you need further information regarding this matter, please feel free to contact me.

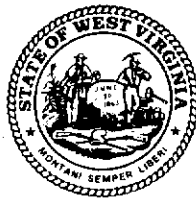
Respectfully,


Jerry Rhodes
Deputy Director

JR/tab

Attachment

pc: Joan E. Ohl
Henry G. Taylor, M.D., M.P.H.
Beth Marquart
Mary J. Huntley
Mark E. King



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

Joan E. Ohi
Secretary

August 8, 2000

OFFICE OF WEST VIRGINIA
SECRETARIAT OF STATE

AUG 10 1 27 PM '00

FILED

Judy Cooper, Director
Administrative Law Division
Office of the Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

Dear Ms. Cooper:

It is my understanding there is a concern that the proposed Legislative Rule §64-CSR-29 regarding Class F Emergency Medical Services (EMS) Vehicles cannot be deemed an emergency. After consultation with the State EMS Medical Director, Dr. William Ramsey, I feel it necessary to relay my belief that the rule should be deemed an emergency and processed accordingly.

The draft of this Rule has been created as a result of legislative action in the form of S.B. 612, passed in 1999, which amended and reenacted West Virginia Code, §16-4C-3 and §16-4C-8. The definition of "ambulance" was changed to include this new class of EMS vehicle, and some staffing and personnel requirements were included.

Consistent with Bureau for Public Health and Department of Health and Human Resources procedures, work team meetings were scheduled and various EMS agencies and associations were called on to lend their expertise and support to the creation of regulatory requirements and guidelines. Involving these constituencies and incorporating their comments took additional time. The Division of Health Legislative Rule §64-CSR-48 (the main EMS rule), is also being revised. However, we will be unable to complete that drafting process any earlier than the 2002 Legislative Session.

BUREAU FOR PUBLIC HEALTH
Office of Nutrition Services
350 Capitol Street, Room 519
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Telephone: (304) 558-0030

Ms. Judy Cooper
August 8, 2000
Page Two

It is vital that we proceed immediately to establish the licensure requirements for Class F EMS vehicles. Since the passage of S.B. 612, several licensed EMS agencies have already begun to provide the new level of service in anticipation that a rule would be forthcoming. Though their action is somewhat premature, we are concerned about this operation continuing in the absence of a protective regulatory umbrella. If we halt the operation, there could be an economic and medical impact to the citizens who have begun to or anticipate accessing this service. Therefore, we believe for the preservation of the health and safety of the public group we serve, this Rule necessitates an emergency filing under West Virginia Code § 29A-3-15(f).

Please keep in mind the information listed above when you consider the emergency status of this Rule. If further information or clarification is needed, please contact me. Thank you for your assistance.

Sincerely,



Henry G. Taylor, M.D., M.P.H.
Commissioner

HGT/ks

cc: Mary Huntley
Mark King
William Ramsey, M.D.