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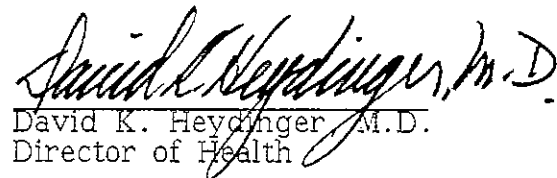
State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

Notice of Adoption of a Legislative Rule Authorized by the Legislature

Legislative Rule: Emergency Medical Services, Chapter 16-4C, Series 48, 1986.

The Director of Health legislative rule Emergency Medical Services is being adopted by this agency and final filed with the Secretary of State. This rule was amended and authorized by the Legislature in Senate Bill 434, Section 64-2-16(4c)(6), passed March 8, 1986, effective from passage.


David K. Heydinger, M.D.
Director of Health

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

FILED

TITLE 64
LEGISLATIVE RULES
DIRECTOR OF HEALTH

SERIES 48
EMERGENCY MEDICAL SERVICES

§64-48-1. General

1.1. Scope - This rule is intended to insure adequate provision of emergency medical services to the citizens of West Virginia; to meet the needs and goals set out in Section 2, Article 4C, Chapter 16 of the West Virginia Code; and to provide clear direction to emergency medical services personnel and providers in West Virginia. The adoption of this rule shall not preclude or the director and the emergency medical services advisory council from altering or amending it, in whole or in part, in accordance with the provisions of Chapter 29A, Article 3, Section 1, et seq. of the West Virginia Code, or from requiring other or additional services or reports, or from instituting other policies and procedures consistent with this rule. This rule not be construed to relieve any person from any duty imposed by the laws of this state.

1.2. Authority - W. Va. Code §16-4C-22 and 6 and §16-12-22

1.3. Filing Date - March 31, 1986.

1.4. Effective Date - March 31, 1986.

1.5. Supersession and Repeal of Former Regulations - This rule supersedes and repeals Mobile Intensive Care Paramedic Rules and Regulations, West Virginia Department of Health Legislative Rules, Chapter 30-3, Series II, formerly West Virginia Board of Medicine Legislative Rules, Chapter 30-3, Series II, 1982).

§64-48-2. Application and Enforcement

2.1. Application

2.1.1. This rule applies to all persons or entities defined in Section 3, 4C, Chapter 16 of the Code of West Virginia and to all other persons entities engaging in the provision of ambulance service or

emergency medical services in West Virginia.

2.1.2. If extreme hardship results from the strict application of any provision herein, or if unusual difficulty is encountered in immediately complying with any provision, application may be made to the director prior to violation of any provision herein for temporary exemption from a particular provision. No application for temporary exemption will be considered by the director unless the person making such application submits a full and factual justification for temporary exemption. It is further expressly intended that the granting of a temporary exemption shall not be a common occurrence, and this subsection is adopted solely to provide for circumstances where strict application of this rule may interfere with the provision of emergency medical services in West Virginia.

2.1.3. The director shall keep a record of temporary exemptions granted Subsection 2.1.2. of this rule and shall make the same available for public review upon request.

2.2. Enforcement - Enforcement of this rule is vested with the director of the West Virginia department of health or his or her lawful designee.

§64-48-3. Definitions

3.1. Statutory Definitions - The definitions contained in Section 3, Article Chapter 16, of the West Virginia Code, are herein expressly adopted.

3.2. Acronyms - The following acronyms are used from time to time in rule, and represent the following terms which shall have the same meaning ascribed to them in Section 3, Article 4C, Chapter 16 of said Code:

(a) EMSAC - "Emergency Medical Services Advisory Council"

(b) EMS - "Emergency Medical Services"

(c) EMSP - "Emergency Medical Services Personnel"

(d) EMS Provider - "Emergency Medical Services Provider"

(e) EMSA - "Emergency Medical Services Attendant"

(f) EMT - "Emergency Medical Technician"

(g) EMT-A - "Emergency Medical Technician - Ambulance"

(h) EMT-I - "Emergency Medical Technician - Intermediate"

(i) EMT-M - "Emergency Medical Technician - Mining"

(j) EMT-P - "Emergency Medical Technician - Paramedic"

(k) MICP - "Mobile Intensive Care Paramedic"

(l) OEMS - "Office of Emergency Medical Services"

3.3. Council - The emergency medical services advisory council.

3.4. Disaster - A natural or man-made occurrence which creates needs for the provision of EMS which exceed the capacity of prompt provision by the EMS providers in the immediate area of such occurrence.

3.5. Certification - The process by which any person acquires a certificate as an EMSP for a level in which he or she is not currently certified.

3.6. Recertification - The process by which any person renews a certificate as an EMSP for a level in which he or she is currently certified.

3.7. EMS Program Serving Any Community Having Thirty (30) or Fewer Active Volunteers - An EMS provider which has no paid employees and which has thirty (30) or fewer persons providing patient care or EMS or who company others who

provide EMS on authorized emergency vehicles.

3.8. Non-Profit EMS Provider - Any person or entity qualifying as a not for provider under the Internal Revenue Code of 1954, as may be amended or under successor sections thereto.

3.9. Quorum - When applied to the EMSAC, a majority of the members thereof, except in the instance when at any meeting of the EMSAC, where a quorum is not present and the director causes to be deposited in the United States mail, postage prepaid, return receipt requested, to each member of MSAC within three (3) days, a notice calling a meeting of the EMSAC at some convenient place in the state of West Virginia two (2) weeks after the meeting at which no quorum was present. Quorum means any number of members of the EMSAC who attend such subsequent meeting. Any member in two (2) consecutive meetings shall be removed from the EMSAC.

3.10. Grammatical Usage - Grammatical usages shall not be deemed to application of this rule. Where one gender is used, the opposite and the neutral are expressly deemed included; in every proper case, singular shall be deemed to include the plural and plural shall be deemed to include the plural and plural shall be deemed to include the singular.

§64-48-4. Certification

4.1. Minimum Educational, Moral and Physical Standards for Certification

4.1.1. Every person seeking certification as an EMSP must be able to read, write and speak the English language.

4.1.2. No person shall be certified as an EMSP unless such person shall have attained the age of eighteen (18) years prior to the issuance of such certificate except that a person aged sixteen (16) years or older may be certified as an EMSP to provide cardiopulmonary resuscitation. Nothing in this rule shall construed to prevent any person from undergoing training prior to attaining the age required for issuance of an appropriate certificate. The director may require any applicant for certification to provide a birth certificate or other evidence of age prior to the issuance of an appropriate certificate.

4.1.3. No person shall be certified as an EMSP if such person is addicted to alcohol or drugs, or if such person has previously been adjudged insane or incompetent.

4.1.4. This rule specifically recognizes the ability of many handicapped perform the tasks of an EMSP and is not intended to prevent certification of any person unless the extent of his or her disability is such as to prevent satisfactory completion of the qualifying examination.

4.1.5. Neither the director, the department of health nor any EMS provider shall unlawfully discriminate against any person by reason of race, sex, creed, handicap or national origin.

4.2. Additional Educational Standards for Certain Classes of Certification

4.2.1. Persons applying for training or certification as an EMT-I, MICP or EMT-P shall be high school graduates or the equivalent. The director may require applicants to furnish proof of such education.

4.2.2. The director may require persons applying for training or certification as an EMT-I, MICP or EMT-P to demonstrate competency, by test or otherwise, in knowledge normally required of EMT's and ability in mathematics.

4.2.3. Inasmuch as many programs for training of EMT-I's, MICP's and EMT-P's are administered through colleges and universities in this state, nothing in this rule shall be construed to prevent such colleges and universities from establishing and maintaining such additional entrance standards as they deem appropriate.

4.3. Additional Character Standards for Certain Classes of Certification

4.3.1. The director finds that services to be performed by EMT-I, MICP EMT-P personnel involve contact with and use of devices commonly as "drug paraphernalia" and of narcotics and other dangerous drugs.

4.3.2. All applicants for training and certification as an EMT-I, MICP EMT-P shall furnish to the director fingerprints and such other information as the director requires, with which the

director shall then cause an examination of the applicant's character and background to be made by the department of public safety and/or such other agencies as deemed appropriate by the director.

4.3.3. If, as a result of such examination, the director finds that the applicant is not eligible for such training and certification, the director shall notify the applicant as provided by Section 10, Article 4C, Chapter 16 of the West Virginia Code, and shall deny the application.

4.4. Prior Certification Required for Certain Classes of Certification

4.4.1. No person shall be certified as an EMT-I, MICP or EMT-P who does not hold a certificate as an EMT or an EMT-A and who has not held such certificate for at least six (6) months prior to application for certification as an EMT-I, MICP or EMT-P.

4.4.2. The provisions of this subsection shall not apply to persons certified under Section 4.5.

4.5. Certification of Physicians, Osteopathic Physicians, Physician Assistants, Registered Nurses and Licensed Practical Nurses

4.5.1. Persons holding a valid license as a physician, osteopathic physician and physician assistant are not required to obtain EMS certification from the director. Registered nurses or practical nurses who have received first aid training are not required to obtain EMS certification from the director.

4.5.2. Any person, including physicians, osteopathic physicians, physician assistants, registered nurses or licensed practical nurses may obtain certification as an EMSA, EMT, EMT-A or EMT-I by completing the necessary training programs as established by the director for these licensed persons and by successfully completing the examination for the class of certification applied for as required by Section 4.10.

4.5.3. Any physician, osteopathic physician, physician assistant, registered nurse or licensed practical nurse may qualify for examinations leading to certification as a MICP or EMT-P by evidencing all of the following:

(a) EMT training and current certification.

(b) Current certification recognized by the director in advanced cardiac life support.

(c) Knowledge of and proficiency in the application of pneumatic antishock requirements, attested to by a licensed physician or osteopathic physician.

(d) Knowledge of and proficiency in the application of various airway devices as attested by a licensed physician or osteopathic physician.

4.5.4. Any physician, osteopathic physician, physician assistant, registered nurse or licensed practical nurse may qualify for certification as an (physician or nurse) by satisfactorily passing the EMT written and practical examination and by satisfying the requirements of Section 4.5.3(b).

(a) A physician or osteopathic physician is not required to maintain current EMT certification, but must have received such training to be eligible for certification as an EMSP (physician).

(b) Training and certification at any level above EMT (e.g., EMT-A, I, MICP, EMT-P), meets the requirement of (a) in Subsection 4.5.3.

4.5.5. Renewal of certifications for such persons enumerated in Subsection 4.5 shall be accomplished in the same manner as that established for other persons holding the same certification.

4.6. Course Curricula

4.6.1. Except as provided in Subsection 4.5, no person shall be certified an EMSP until such person shall have completed a course of study approved by the director.

4.6.2. Any person or agency desiring to conduct a course of study to prepare a person for certification as an EMSP shall submit to the director a course proposal containing a detailed syllabus of materials to be covered. The director shall review such submission in light of statewide requirements established by the procedure set out in Subsection 4.6.3. and shall either approve or disapprove the proposed course of study.

4.6.3. The director or his or her designee shall

meet with the State EMS Curriculum and Training Committee (CTC) from time to time. The CTC consist of such persons as the director shall designate. The director, with the advice of the CTC, shall adopt minimum standard course requirements for each class of certification as EMSP and shall cause the o be published and distributed to interested persons statewide. The director may adopt recognized standard course curricula as satisfying the minimum standards created under this subsection.

4.6.4. Every person or agency desiring to conduct a course of study as aforesaid shall submit to the director with the required course proposal a list of responsible faculty and their qualifications to instruct such course. The director shall review such faculty list and shall either approve or disapprove the same. Nothing in this rule shall be construed to prevent unlicensed persons or persons not fully qualified to conduct an approved course from participation in the instruction thereof while under the direct supervision of an approved course faculty member.

4.7. Provisions of Training for Certification

4.7.1. Nothing in this rule shall be construed to make the receipt of training to become an EMSP a right, nor to require the director to cause a course of study to be conducted in a geographical area or for a particular class of certification for which a need is not demonstrated.

4.7.2. Training shall continue to be coordinated and approved by OEMS, area and regional EMS offices and through college, university and school systems in the same manner in which training is conducted immediately prior to the adoption of this rule.

4.8. Fees for Training

4.8.1. No fee shall be charged by the department of health for training provided to persons who are employed by or provide volunteer services to EMS providers, agencies or organizations, subject to the provisions of section 4.9.

4.8.2. All other persons may be charged a reasonable fee for participation in any course of study for certification as an EMSP.

4.8.3. Nothing in this rule shall be construed to

limit the authority of any college, university or board of education from levying reasonable fees for participation in education at their respective institutions or locations.

4.9. Waiver of Fees for EMSP's

4.9.1. The director finds that the training process for certification as an EMSP places a substantial financial burden upon the State of West Virginia and that the interests of providing competent EMS throughout West Virginia require that trained persons be available to provide services to the citizens of this State.

4.9.2. The director may require of any person who enters a course of study for certification as an EMSP at the expense of the State of West Virginia that such person execute an agreement to serve in some career or volunteer capacity as an EMSP, for a time not in excess of the initial certification period following his or her certification as an EMSP.

4.9.3. In the event that any person who executes an agreement as provided in the immediately preceding subsection and who is subsequently certified as an EMSP shall fail to serve as an EMSP as required by such agreement without good cause, the director may assess such person for the reasonable cost of providing such training. Good cause as provided herein shall be determined by the director and shall be deemed to include physical incapacity or limitation, leaving the State as a requirement of regular employment, and lack of a suitable opportunity for service as an EMSP in the county of residence.

4.9.4. Nothing in this rule shall preclude any person from being trained by any of the aforementioned agencies or institutions and receiving a certificate of completion from such agency or institution. Such certificate of completion, however, shall not automatically meet the requirements for certification as an EMSP.

4.10. Testing

4.10.1. Every applicant for certification as an EMSP prior to such certification, shall demonstrate his or her knowledge and ability by undergoing a written examination and a demonstration of skills, and by attaining a passing score on the same. Passing score shall be the same for all testing programs.

4.10.2. The content of the examinations required by Subsection 4.10.1 shall be determined by the director with the advice of the CTC.

4.10.3. The passing score of the examinations required by Subsection 4.10.1 shall be determined by the director with the advice of the CTC, and such passing score shall be determined prior to the administration of such examination.

4.10.4. The written portions of examinations for certification as a provider of cardiopulmonary resuscitation, EMT-M, EMSA, EMT and EMT-A may be administered orally or by mechanical voice reproduction, to any applicant who documents insufficient reading skills by furnishing such documentation to OEMS at least forty-five (45) days prior to the scheduled examination date. Nothing in this subsection shall be construed to permit waiver of the required practical examination for such applicants.

4.10.5. Applicants for certification shall provide evidence of an intent to affiliate with a recognized provider of emergency medical services or an industry requiring certified EMS personnel.

4.11. Duration of Certification

4.11.1. Certification as an EMSA will be valid for a period of three (3) years from the date of issuance of certification of course completion by a recognized agency, or from the date of EMSA certification examination, whichever is earlier.

4.11.2. Initial certification as an EMT, EMT-M, EMT-A, EMT-I, MICP or EMT-P will be valid for a period of not less than two (2) years, but no more than three (3) years from the date of expiring examination. All certificates shall bear an expiration date of December 31 of the appropriate year.

4.12. Director to Publish Certification Standards

4.12.1. The director shall publish, from time to time, the standards for certification for each class of EMSP in a short and concise form intended to inform all interested persons of the existence and content of such standards and the director shall distribute the same to interested persons in this State.

4.12.2. Nothing in this rule shall be construed to require the director to publish or disseminate the

content of any examination required by Subsection 4.10.

4.13. Reciprocity of Certification with Other States

4.13.1. The director may recognize current certification of any person as an EMSP in any other state as satisfying the requirements for such certification in this State.

4.13.2. The director may certify persons as an EMSP as aforesaid whenever the director deems the courses of study and examinations in such respective other state as being equivalent to the requirements for certification in this State.

4.13.3. After making a finding under Subsection 4.13.2, the director may, in his discretion, immediately certify such applicant as an EMSP in this State or he may require such applicant to undergo immediate examination as provided by Subsection 4.10.

4.13.4. The director shall require of applicants for reciprocal certification evidence of need for certification in this State.

§64-48-5. Recertification

5.1. Adoption of Basic Criteria for Initial Certification

5.1.1. Every applicant for recertification as an EMSP shall maintain the basic criteria for initial certification as set out in Subsections 4.1, 4.2 and 4.3

5.1.2. The director may require any applicant for recertification to submit such information as may be necessary to ensure compliance with Subsection 5.1.1, including information relating to continued good character.

5.2. Training and Continuing Education Requirements

5.2.1. Applicants for recertification as an EMSP shall have completed during their current certification term, training or continuing education as applicable:

5.2.1.1. EMSA: Completion of the training course required for initial certification.

5.2.1.2. EMT, EMT-M, EMT-A:

(a) Completion of an OEMS-approved refresher course, including the learning objectives of the basic EMT course; or

(b) Completion of an OEMS-approved continuing education program, including the learning objectives of the basic EMT course.

5.2.1.3. EMT-I: Completion of an OEMS-approved continuing education program including the learning objectives of the basic EMT-I course.

5.2.1.4. MICP and EMT-P: Completion of an OEMS-approved continuing education program, including the learning objectives of the EMT-P course.

5.2.2. Continuing education hours may be earned in an amount not to exceed twenty (20) percent of the total hours required for time spent as an EMSP working as a member of an ambulance crew. No more than one (1) hour may be awarded for each patient seen by the applicant. The director may require applicants for recertification to submit details of patient care experiences, including citation of relevant OEMS or other relevant prehospital care report numbers.

5.3. Testing for Recertification

5.3.1. Every applicant for recertification as an EMSP shall, prior to such recertification, demonstrate his or her continued knowledge and ability by undergoing an evaluation and a demonstration of practical skills, and by attaining a passing score on the same.

5.3.2. The recertification evaluation required by the immediately preceding subsection may be the same examination or examinations required by Subsection 4.10, or may be an examination intended for recertification, which examination is developed in the same manner as provided by Subsection 4.10.

5.3.3. If any person certified as an EMSP shall fail the recertification evaluation and demonstration of skills, the director shall, upon the recommendation of such person's EMS provider's medical director, extend such certificate for a period of six (6) months in order to afford such person an opportunity to retrain and retest for recertification. Such individual shall

not lose his or her certification during this period for failure to pass any such recertification examination.

5.3.4. Any EMT-I, MICP or EMT-P who maintains the required continuing education credits from the time of last certification or recertification as an EMT may be recertified as an EMT by satisfactorily passing an examination of basic life support skills and knowledge administered by the squad medical director, the squad training officer or an official state agency. Such examination shall have received approval by the director prior to administration.

5.4. Duration of Recertification

5.4.1. EMSA's will be recertified for a period of three (3) years from the date of issuance of certification of course completion by a recognized agency or from the date of the EMSA certification examination, whichever is earlier.

5.4.2. Recertification terms for EMT, EMT-M, EMT-A, EMT-I, MICP and EMT-P shall be for the three (3) calendar years following the expiration date of the current certification, provided that all requirements for recertification are initiated and completed during such current certification period.

5.4.3. An EMT-M may optionally complete an eight (8) hour EMT-M module during the last year of certification and be recertified for one (1) calendar year following the expiration date of current certification, provided that all requirements for recertification are initiated and completed during such current certification period.

5.4.4. Applicants for recertification as EMT, EMT-M, EMT-A, EMT-I, MICP and EMT-P whose previous certification has lapsed shall have completed requirements as set out in Subsection 5.2 and such recertification, if granted, shall be for a period of not less than two (2) years, but no more than three (3) years from the date of examination. Such recertification shall bear an expiration date of December 31 of the appropriate year.

5.5. Fees - The director may charge a reasonable fee for recertification examinations administered under Subsection 5.3.

5.6. Director to Publish Recertification Standards - The provisions of Subsection 4.12 shall apply to

recertification standards as well as to the certification standards.

§64-48-6. Procedure Upon Certification Suspension or Revocation

6.1. Rules to Provide Due Process of Law

6.1.1. The provisions of Sections 9 and 10, Article 4C, Chapter 16 of the West Virginia Code are adopted herein as if fully set out.

6.1.2. It is the intention of this rule to safeguard the citizens of West Virginia by preventing any person who may be unfit or unqualified from performing EMS and to safeguard the interests of EMSP's by affording them due process of law and an opportunity for fair notice and a meaningful hearing.

6.1.3. Those persons adversely affected by the enforcement of these rules desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Board of Health Procedural Rules, Chapter 16-1, Series 1, 1983, and the provisions of this rule.

6.2. Confidentiality of Proceedings

6.2.1. It is the intention of this rule that any action taken by the director prior to the completion of administrative remedies and procedures established by Section 10, Article 4C, Chapter 16 and Article 5, Chapter 29A of the West Virginia Code shall remain confidential to the greatest extent consistent with the public good.

6.2.2. The director shall communicate proposed action prior to the completion of such administrative remedies and procedures only to the affected EMSP, his EMS provider, said provider's medical director and the regional medical director of the region affected.

6.3. Filing Papers

6.3.1. Written communications concerning proceedings under Subsections 6.1 et seq. shall be filed with the director by mailing them to his or her office in the City of Charleston, and the same shall be deemed filed as of the date of the postmark.

6.3.2. Copies of the aforesaid written communications shall be furnished the affected EMSP, his EMS provider, said provider's medical director and the regional medical director for the region affected, and a notation shall be endorsed on all such communications showing that all of said persons have been furnished copies.

6.4. Hearing Examiners

6.4.1. The director may appoint neutral and impartial persons as hearing examiners to receive evidence following a notice of appeal filed pursuant to Section 10, Article 4C, Chapter 16 of the West Virginia Code.

6.4.2. The hearing examiner shall conduct the hearing of such appeal and shall forward the record thereof, together with his or her recommendations, promptly after the completion of such hearing.

6.4.3. The director shall not be bound by the recommendations of any hearing examiner, and shall enter such order as he or she deems appropriate after the hearing.

6.5. Hearings

6.5.1. Hearings shall be open to the public only if the appellant so desires.

6.5.2. The director or hearing examiner shall have the duty to conduct a full, fair and impartial hearing; to take appropriate action to avoid unnecessary delay; to maintain order; to cause oaths to be administered by appropriate public officers; to cause the hearing to be recorded by stenographic or mechanical means; to rule on the admissibility of evidence; and otherwise to conduct the hearing in a fair and orderly fashion.

6.5.3. Parties may appear only in person or may be represented by attorneys-at-law admitted to practice before the courts of this State.

6.5.4. Hearings may be continued for good cause only.

6.5.5. The director or hearing examiner shall not be bound by technical rules of evidence, but may exercise such discretion as will facilitate his or her understanding of the facts in dispute. The director or hearing examiner will be entitled to receive and give

appropriate weight to all evidence bearing on the dispute and to which reasonable people might give credence.

§64-48-7. Reporting

7.1. EMS Providers to Make Yearly Reports to the Director

7.1.1. Every EMS provider shall make a yearly report to the director which contains the following information:

(a) The identity, age and chauffeur's or operator's license number of its employees and members;

(b) The number of patients transported in the prior year;

(c) The fee schedule, if any, applicable to responses and transports;

(d) Information concerning the policy of insurance required by Section 16, Article 4C, Chapter 16 of the West Virginia Code, if applicable;

(e) Copies of any service reciprocity agreements in force;

(f) Such other information as the director may reasonably require.

7.1.2. In order to simplify the reporting process, the director may combine the report required by Subsection 7.1.1 with any other report routinely required or received from EMS providers, including but not limited to the reports required for billing the State department of human services and the Federal social security administration.

7.2. Report of Services Provided under the Authority of Section 15, Article 4C, Chapter 16 of the West Virginia Code; Grounds for Suspension or Revocation

7.2.1. Whenever any EMT-I, MICP or EMT-P provides services under the authority of Section 15, Article 4C, Chapter 16 of the West Virginia Code, he or she shall, within five (5) working days, make a report to the director setting out in detail:

(a) What services were performed;

(b) The identity of patients upon whom such services were performed;

(c) The circumstances justifying the performance of such services; and

(d) Other information as may be required by the director on forms provided.

7.2.2. The EMT-I, MICP or EMT-P making such report shall send copies of the same to his or her EMS provider, said provider's medical director and his or her regional medical director.

7.2.3. Willful failure to make a report as aforesaid, willful misrepresentation of any material facts, providing services when such services are not believed in good faith to be necessary or providing services under Section 15, Article 4C, Chapter 16 of the West Virginia Code when a communications failure or disaster does not exist, shall be deemed grounds for suspension or revocation of an EMSP certificate under Section 9, Article 4C, Chapter 16 of the West Virginia Code.

§64-48-8. Allowable Emergency Medical Procedures

8.1. Statewide Minimum Standards of Care and Allowable Procedures

8.1.1. The director, with the advice of the State critical care committee, shall adopt minimum standards of care and allowable procedures to be performed throughout the State by each class of EMSP. The State critical care committee shall consist of all regional medical directors and such other persons as are required by the director.

8.1.2. Nothing in this rule shall be construed to limit the power of the director to require individual EMSP certification for the number and type of drugs that are approved for use by the EMSP by the squad and regional medical directors.

8.2. Regional Standards of Care and Allowable Procedures

8.2.1. Each regional medical director, with the advice of the regional critical care committee or equivalent body, shall adopt standards of care and allowable procedures to be performed throughout the respective EMS regions of the State by each class of

EMSP, so long as such standards of care and allowable procedures are consistent with those adopted by the director pursuant to Subsection 8.1. Each regional medical director shall furnish the director with copies of all standards of care and allowable procedures proposed or adopted in the respective EMS region.

8.2.2. The regional critical care committee shall consist of the regional medical director, knowledgeable specialty care physicians and other physicians as may be recommended by the regional medical director and appointed by the EMS regional board of directors.

8.2.3. Nothing in this rule shall be construed to prohibit the director, with advice of the state critical care committee, from disapproving regional standards of care and allowable procedures.

8.3. Inter-Regional Operations - Whenever any EMSP normally based in one EMS region travels through or transports any patient into another EMS region of this State, such EMSP may perform services consistent with statewide procedures and further:

(a) If such EMSP is acting under medical control of the regional medical director or his or her designates of such EMSP's home region, such EMSP may perform allowable services of his or her own region; or

(b) If such EMSP is unable to act under such medical control of his or her own region, but is able to contact medical control of the region in which he or she is traveling or transporting a patient, he or she may perform such services in addition to those authorized statewide as are allowed in such latter region and for which such EMSP is trained and certified.

8.4. Medical Control and Command

8.4.1. Each EMS region in the State shall develop a medical control procedure through its critical care committee which addresses the following aspects of prehospital patient care:

8.4.1.1. Treatment protocols shall be designed to provide basic and advanced life support to critically injured or ill patients. Such protocols shall include drug therapy, invasive techniques and stabilizing procedures as well as treatment or

reversal of complications arising from recommended therapeutic agents or procedures. Such treatment protocols must be written and provided to prehospital care ambulance personnel with periodic revisions and updates as needed.

8.4.1.2. Triage protocols shall be designed to permit proper transport of patients to the nearest qualified facility that is equipped and staffed to manage a particular illness or injury. The regional critical care committee, utilizing the result of facility categorization or designation, shall determine which critical care facilities are appropriate for management of patients with serious medical problems related to the following critical care areas:

- (a) Trauma
- (b) Cardiac
- (c) High Risk Infant
- (d) Poisoning
- (e) Alcohol and Drug Detoxification
- (f) Spinal Cord Injury
- (g) Head Injury
- (h) Burns

8.4.1.3. The right of the patient to determine which facility he or she is to be transported shall be respected. It is the responsibility of the EMSP to advise the patient as to the care capability requirements related to the nature of the injury or illness and the recommended nearest appropriate facility which possesses that level of care capability in accordance with medical command triage instructions.

8.4.2. Each regional EMS critical care committee or equivalent professional advisory committee to the regional EMS board of directors will prepare an official policy statement outlining the functions of medical command in their respective EMS regions. Such outline shall include, but not be limited to, the following aspects of medical command

(a) Mechanism(s) of receiving orders from medical command physicians by advanced life support personnel including EMT-I, MICP, EMT-P

and nursing personnel providing prehospital advanced life support services;

(b) Methods of providing twenty-four (24) hour physician availability for radio communications with prehospital EMSP;

(c) Authorized drugs to be used by prehospital personnel within the region;

(d) Methods of establishing medical accountability (e.g., quality assurance programs); and

(e) Methods of evaluating advanced life support personnel for recertification.

8.4.3. The director shall approve a facility as a medical command facility upon recommendation by a regional EMS board of directors only when such facility provides sufficient communication capability, twenty-four (24) hour immediate physician availability, sufficient medical accountability, and meets such other requirements as the director deems appropriate.

8.4.4. All EMSP's shall have access to medical command facilities for the purpose of obtaining prompt medical control to aid in the care of and transport of patients. It is contemplated that such immediate medical control shall be utilized primarily by EMT-1, MICP and EMT-P personnel but shall be available for any EMSP when such EMSP is providing emergency medical care to a patient.

8.4.5. Medical control may be by direct voice order or by written order. In the case of medical control by written order, such order shall be maintained in each appropriate medical command facility. Nothing in this rule shall be construed to require any regional medical director to issue written orders, but the issuance of the same shall be solely at the discretion of each regional medical director.

8.4.6. Every OEMS prehospital care record shall be made available to each regional EMS medical director or his or her designee for the purpose of ensuring compliance with statewide and regional standards of care and for the purpose of improving and monitoring the quality of emergency medical patient care in each region of the State.

§64-48-9. Grants and Funding

9.1. Review of Proposed EMS Projects and Programs to be Funded with State or Federal Funds.

9.1.1. Any person or entity applying for State or Federal funds to fund or partially fund any EMS project or program to be operated after June 8, 1984 shall make applicaiton to the appropriate EMS regiona; office for review and approval of such project or program by the regional EMS board of directors, prior to submission to the directorfor his or her review and approval.

9.1.2. Such application shall identify the need to be met by such project or program and shall justify the proposed method as the way of meeting that need most effectively

9.1.3. Such applicants shall adhere to standard requirements for competitive pricing in state purchasing and shall attach a record of adherence thereto to such application.

9.1.4. The director or his designates, including but not limited to existing area and regional offices and regional boards of directors, shall review the application for funding and shall promptly notify the applicant of the granting or denial of the application or of the need for further information.

9.1.5. In deciding whether to grant or deny the application, the director shall give due regard to the availability of funds, the priority of the need, and the ability of the applicant to efficiently and effectively use public funds.

9.2. Review of Other Proposed Projects and Programs - The director or his designates may review and make recommendations to aid in the development or implementation of any EMS project or program in

this State upon the request of any EMS provider.

9.3. Fair Access to Funding

9.3.1. No EMS provider shall be denied fair access to Federal or State funding.

9.3.2. Fair access to funding shall be afforded all EMS providers by affording fair review of all projects or programs proposed by such EMS providers under subsection 9.1. Nothing in this rule shall be construed to make the receipt of public funds a right nor to permit disbursement of public funds absent a demonstration of need, fiscal responsibility and ability to meet the need presented.

§64-48-10. Authority of EMS Personnel at Emergency Scenes Under Section 18, Article 4C, Chapter 16 of the West Virginia Code

10.1. The EMS line officer in charge of patient care at an emergency scene shall be the highest ranking EMS person present who is affiliated with the operational EMS organization responding with an EMS unit (ambulance).

10.2. In such instances where more than one (1) EMS organization is at an emergency scene, the EMS line officer in charge shall be the highest certified EMS person present responding with an EMS unit (ambulance) and having primary jurisdiction.

§64-48-11. Severability

The provisions of this rule are declared to be severable. The invalidation of any provision of this rule shall not be deemed to render invalid any other provision or any other part of a provision deemed partially invalid.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Health Department

Subject: Proposed rules and regulations governing emergency
medical services

PERTINENT DATES

Filed for public comment: July 8, 1985
Public comment period ended: August 7, 1985
Filed following public comment period: October 31, 1985
Filed LRMRC: October 31, 1985
Filed as emergency:
FN: \$0

ABSTRACT

The proposed rule is a complete rewrite of the former rule necessitated by the passage of Senate Bill 263 which became effective on June 9, 1984. The bill transferred authority over emergency medical services from the Board of Medicine to the Department of Health.

Section 1 is a general section containing the scope, authority, filing date, effective date and supersession and repeal of former regulations. It states that this rule supercedes and repeals Mobile Intensive Care Paramedic Rules and Regulations.

Section 2 relates to application and enforcement of the rule. The rule applies to all persons and entities listed in W. Va. Code. §16-4C-2 and all persons and entities who provide ambulance service or emergency medical services in this State. Enforcement of the rule is vested in the Director of the Department of Health, who may in extreme cases, grant a temporary exemption.

Section 3 is a definition section.

Section 4 relates to certification of emergency medical services personnel.

Section 4.1 relates to minimum educational, moral and physical standards for certification and requires that every person seeking certification be able to read, write and speak English, be eighteen years old, a high school graduate and not addicted to alcohol or drugs.

Section 4.3 provides additional character standards, for certain classes of certification. Applicants for certification as EMT-I, MICP or EMT-P, who come into contact with narcotics and drug paraphernalia are required to furnish fingerprints and are subject to a character and background check, the findings of which determine the applicant's eligibility for training and certification.

Section 4.4 relates to prior certification required for certain classes of certification. Applicants for these certifications must have had a certificate as an EMT or an EMT-A for at least six months.

Section 4.5 relates to certification of physicians, osteopathic physicians, physician assistants, registered nurses and practical nurses who have received first aid training. They are not required to obtain EMS certification and may obtain the other certifications by completing the necessary training programs and successfully completing the applicable examination.

Section 4.6 relates to course curricula. Persons may not be certified as EMSP until they have completed a course of study approved by the Director of the Department of Health. The Director, with the advice of the State EMS Curriculum and Training Committee, is required to adopt minimum standard course requirements. Any person or agency desiring to conduct a course of study must submit a course proposal to the Director.

Section 4.7 mandates the Director, in conjunction with other agencies, to cause courses of study to be provided at convenient sites throughout the State when necessary to assure adequate EMS.

Section 4.8 allows the Department of Health, colleges, universities and boards of education to charge a reasonable fee for any cause of study. The Department may not charge a fee for training provided to persons who are employed by or provide volunteer services to EMS providers, agencies or organizations subject to Section 4.9.

Section 4.9 requires any person who enters a course at the expense of the State to execute an agreement to serve in some career or volunteer capacity as an EMSP for a time not in excess of the initial certification period following his or her certification as an EMSP. Any person who violates such agreement without good cause may be assessed a reasonable fee for the training.

Section 4.10 relates to testing and requires every person certified as an EMSP to demonstrate prior to certification, his

knowledge and ability by passing a written exam and a practical demonstration. Applicants for certification must submit evidence of an intent to affiliate with a recognized provider of emergency medical services or an industry requiring certified EMS personnel.

Section 4.11 states that certification as an EMSA is valid for three years and all other initial certifications are to be valid for not less than two nor more than three years.

Section 4.13 allows the Director to certify applicants for reciprocal certification who can prove a need to be certified in this State and who are certified in a State whose courses of study and examinations are equivalent to the requirements for certification in this State.

Section 5 relates to recertification. It requires all EMSP to maintain the basic criteria for initial certification and requires different continuing education requirements for the different certifications. Prior to recertification, every applicant must undergo an evaluation and a demonstration of practical skills. An applicant failing the evaluation and demonstration may, upon the recommendation of his medical director, have his certification extended for six months to allow him to retrain and retest for certification. Recertification periods range from 1-3 years depending upon the category of certification.

Section 6.1 states that hearings shall be held under the Rules of Procedure for Contested Case Hearings and Declaratory Rulings for the Board of Health.

Section 6.2 requires the Director to keep confidential, those actions taken prior to completion of the administrative remedies and procedures.

Section 6.3 requires that all written communications received by the Director be furnished to the affected EMSP, his EMS provider, the provider's medical director and the regional medical director for the region affected.

Section 6.4 allows the Director to hire hearing examiners. However, he is not bound by the hearing examiner's recommendations.

Section 6.5 requires hearings to be open to the public only if the appellant so desires.

Section 7.1 requires EMS providers to make yearly reports to the Director and specifies that information which must be included in the report.

Section 7.2 states that within five working days of providing services during emergency communication failures and disasters, an EMT-I, MICP or EMP-P must make a detailed report to the Director. Failure to do so is grounds for suspension or revocation of an EMSP certificate.

Section 8.1 requires the Director, with the advice of the State Critical Care Committee, to adopt minimum standards of care and allowable procedures to be performed throughout the State by each class of EMSP. The Committee consists of all regional medical directors and any other persons required by the Director.

Section 8.2 allows regional medical directors, with the advice of the Regional Care Committee, to adopt standards of care and allowable procedures to be performed throughout his region as long as they are consistent with those adopted by the Director.

Section 8.3 relates to those standards which apply to an EMSP who is travelling through or transporting a patient into an EMS region of the State other than his own.

Section 8.4 requires each EMS region to develop written medical control procedures to include treatment protocols and triage protocols. Each regional EMS Critical Care Committee is required to propose an official policy statement outlining the functions of medical command in their respective EMS regions. Medical command facilities must meet certain standards provided in this section.

Section 9 requires persons applying for state or Federal funds to fund or partially fund any EMS project or program to apply to the appropriate EMS regional office for review and approval by the regional EMS board of directors.

Section 10 designates which EMS line officer is to be in charge of care at the scene of an emergency.

AUTHORITY

Statutory authority: W. Va. Code, §§16-4C-6(a) and 16-4C-22

W. Va. Code, §16-4C-6(a) provides as follows:

The director shall have the following powers and duties:

(a) In accordance with chapter twenty-nine-A of this Code, to promulgate rules and regulations regarding the age, training, retraining, testing and certification and recertification of emergency medical service personnel: Provided, that the director may not promulgate any rule or regulation until it is approved by the emergency medical services advisory council....

W. Va. Code, §16-4C-22 provides as follows:

The director is hereby authorized and empowered to make regulations pursuant to the procedures established in chapter twenty-nine-A of this Code for the purpose of carrying out the purposes of this article.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No. Under the above-cited provisions the director has both general and specific authority to promulgate rules and regulations of the type proposed. In compliance with W. Va. Code, §16-4C-6(a), the proposed rule was approved by the West Virginia Emergency Medical Services Advisory Council on June 7, 1985.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes and No. It is clearly the intent of the Legislature that the director promulgate rules and regulations relating to requirements for EMS personnel and for the operation of the EMS Services in the various regions. However, counsel would like to see the rules expanded. A reading of the statute and the proposed rule show that neither are very comprehensible without clear definition as to what duties are required of and what services may be performed by each category of emergency service personnel. Counsel is aware that under the proposed rule the director is to adopt minimum standards of care and allowable procedures to be performed throughout the state by each class (Section 8.1). Counsel is unaware as to whether or not these standards have been developed but without them it is difficult to understand either the statute or the proposed rule.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. There are several unclear or confusing provisions in the proposed rule. Several of the questions which counsel has are as follows:

1. Under Section 3.7, what is an "accompanying other"?
2. Does Section 4.1.4. allow a handicapped person to receive certification if they are unable to perform all of the tasks required for certification?
3. Does the qualification of having received first aid training relate to all those persons listed in Section 4.5.1. or only to practical nurses?
4. Under Section 4.7, is it intended that the director provide courses of study, when necessary, for all classes of emergency personnel?
5. Section 4.1.1 requires applicants to be able to read English. On the other hand, Section 4.10.4 allows a written portion of the examination, for certain certifications, to be administered orally to any applicant who documents insufficient reading skills.
6. In the sections relating to duration of certification and recertification, an indefinite time period is given. Conceivably, one person's certification could be for two years and another's arbitrarily for three years. A definite time period should be stated and should apply to all persons.
7. Section 5.2.2 refers to continuing education hours and the total hours required for time spent as an emergency services personnel working as a member of an ambulance crew. The proposed rule does not designate the hours required.
8. What is the certification procedure for an EMSP and EMSA? The proposed rule seems to provide different procedures and seems to allow the certification of an EMSA who has completed an approved course of study, without taking an examination.
9. The proposed rule refers to fees for recertification examination but makes no mention of fees for the initial certification examination.

10. The application procedure for grants and funding under Section 9 is unclear.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes. The agency has substantially complied with the requirement, however, the material submitted by the agency did not include a description of the rule which the agency proposes to amend as required by W. Va. Code, §29A-3-11(a)(2).

1 Bill 13

2 H. B. 1758

3 (By Delegate Casey)

4 (Introduced February 5, 1986; referred to the
5 Committee on Health and Welfare with the direction)
6 that it later be referred to the Committee on the
7 Judiciary.]

8
9
10 A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section designated section
13 sixteen(four-c)(six), relating to authorizing the director of
14 health to promulgate legislative rules governing emergency
15 medical services.

16 Be it enacted by the Legislature of West Virginia:

17 That article two, chapter sixty-four of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 sixteen(four-c)(six), to read as follows:

21 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
22 LEGISLATIVE RULES.

23 §64-2-16(4c)(6). Director of health.

24 The legislative rules filed in the state register on the
25 thirty-first day of October, one thousand nine hundred eighty-
26 five, modified by the director of health to meet the objections

1758

1 of the legislative rule-making review committee and refiled in
2 the state register on the twenty-seventh day of December, one
3 thousand nine hundred eighty-five, relating to the director of
4 health (rules governing emergency medical services) are
5 authorized.

6

7

8

9 NOTE: The purpose of this bill is to authorize the director
10 of health to promulgate legislative rules governing emergency
11 medical services.

12

13 This section is new; therefore, strike-throughs and
14 underscoring have been omitted.

15

SENATE BILL NO. 441

1 Bill 13

(By Senator R. Williams

2
3
4 [Introduced February 3, 1986

5 referred to the Committee on Health and Human Resources;

6 then to the Committee on the Judiciary

7
8
9
10 A BILL to amend article two, chapter sixty-four of the code of
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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

March 11, 1986

IMPORTANT NOTICE

TO: Kay Howard
FROM: RICH O. HARTMAN, DIRECTOR
RE: LEGISLATIVE RULE Emergency Medical Services (amended by the
1986 Legislature)

THE 1986 LEGISLATURE HAS AUTHORIZED YOUR AGENCY TO FINAL FILE AND
ADOPT THE ABOVE LEGISLATIVE RULE. THIS AUTHORIZATION IS IN S.B. 434
SECTION 64-2-16(4c)(6) PASSED ON March 8, 1986, EFFECTIVE FROM
PASSAGE. YOU HAVE 60 DAYS FROM THAT DATE TO FINAL FILE THE ABOVE
RULE WITH THIS OFFICE. NO RULE WILL BE ACCEPTED AFTER THAT DATE.
YOU MAY ESTABLISH ANY EFFECTIVE DATE FOR YOUR RULE RANGING FROM
THE SAME DATE YOU FINAL FILE TO 90 DAYS FROM THE DATE YOU FINAL
FILE. REMEMBER TO RE-TYPE YOUR RULE IN ITS ENTIRETY FOLLOWING THE
PROPER FORMAT. PLEASE CALL IF YOU HAVE ANY QUESTIONS.