

COMMITTEE SUBSTITUTE

FOR

H. B. 4028

(BY DELEGATE STAGGERS, BUTCHER,
MAHAN, MOYE AND PERRY)

(Originating in the Committee on the Judiciary)
[February 21, 2012]

A BILL to amend and reenact §16-4C-6 and §16-4C-9 of the Code of West Virginia, 1931, as amended, all relating to emergency medical services; authorizing rule-making authority relating to temporary suspension of a certification or license; providing for the immediate temporary suspension of certification of emergency medical service personnel or licensure of emergency medical service in certain circumstances; and providing for a temporary emergency suspension hearing.

Be it enacted by the Legislature of West Virginia:

That §16-4C-6 and §16-4C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6. Powers and duties of commissioner.

1 The commissioner has the following powers and duties:

2 (a) To propose rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code: *Provided*, That the rules have
5 been submitted at least thirty days in advance for review by
6 the Emergency Medical Services Advisory Council, who may
7 act only in the presence of a quorum. The rules may include:

8 (1) Standards and requirements for certification and
9 recertification of emergency medical service personnel,
10 including, but not limited to:

11 (A) Age, training, testing and continuing education;

12 (B) Procedures for certification and recertification, and
13 for denying, suspending, revoking, reinstating and limiting a
14 certification or recertification;

15 (C) Levels of certification and the scopes of practice for
16 each level;

17 (D) Standards of conduct; and

18 (E) Causes for disciplinary action and sanctions which
19 may be imposed.

20 (2) Standards and requirements for licensure and
21 licensure renewals of emergency medical service agencies,
22 including:

23 (A) Operational standards, levels of service, personnel
24 qualifications and training, communications, public access,
25 records management, reporting requirements, medical
26 direction, quality assurance and review, and other
27 requirements necessary for safe and efficient operation;

28 (B) Inspection standards and establishment of
29 improvement periods to ensure maintenance of the standards;

30 (C) Fee schedules for licensure, renewal of licensure and
31 other necessary costs;

32 (D) Procedures for denying, suspending, revoking,
33 reinstating or limiting an agency licensure;

34 (E) Causes for disciplinary action against agencies; and

35 (F) Administrative penalties, fines and other disciplinary
36 sanctions which may be imposed on agencies;

37 (3) Standards and requirements for emergency medical
38 service vehicles, including classifications and specifications;

39 (4) Standards and requirements for training institutions,
40 including approval or accreditation of sponsors of continuing
41 education, course curricula and personnel;

42 (5) Standards and requirements for a State Medical
43 Direction System, including qualifications for a state
44 emergency medical services medical director and regional
45 medical directors, the establishment of a State Medical Policy
46 and Care Committee and the designation of regional medical
47 command centers;

48 (6) Provision of services by emergency medical services
49 personnel in hospital emergency rooms; ~~and~~

50 (7) Authorization to temporarily suspend the certification
51 of an individual emergency medical service provider or the
52 license of an emergency medical service agency without a

53 hearing or prior notice if there is probable cause that the
54 conduct or continued service or practice of any certificate
55 holder or licensee may create a danger to public health or
56 safety, in accordance with the procedures required by section
57 nine of this article. Upon a finding of a physician that serves
58 as a medical director that probable cause exists that a
59 certificate holder or licensee is a danger to public health or
60 safety, the commissioner may cause an emergency
61 suspension and conduct an hearing within ten days; and

62 ~~(7)~~(8) Any other rules necessary to carry out the
63 provisions of this article.

64 (b) To apply for, receive and expend advances, grants,
65 contributions and other forms of assistance from the state or
66 federal government or from any private or public agencies or
67 foundations to carry out the provisions of this article.

68 (c) To design, develop and review a Statewide
69 Emergency Medical Services Implementation Plan. The plan
70 shall recommend aid and assistance and all other acts
71 necessary to carry out the purposes of this article:

72 (1) To encourage local participation by area, county and
73 community officials and regional emergency medical
74 services boards of directors; and

75 (2) To develop a system for monitoring and evaluating
76 emergency medical services programs throughout the state.

77 (d) To provide professional and technical assistance and
78 to make information available to regional emergency medical
79 services boards of directors and other potential applicants or
80 program sponsors of emergency medical services for
81 purposes of developing and maintaining a statewide system
82 of services.

83 (e) To assist local government agencies, regional
84 emergency medical services boards of directors and other
85 public or private entities in obtaining federal, state or other
86 available funds and services.

87 (f) To cooperate and work with federal, state and local
88 governmental agencies, private organizations and other
89 entities as may be necessary to carry out the purposes of this
90 article.

91 (g) To acquire in the name of the state by grant, purchase,
92 gift, devise or any other methods appropriate real and
93 personal property as may be reasonable and necessary to
94 carry out the purposes of this article.

95 (h) To make grants and allocations of funds and property
96 so acquired or which may have been appropriated to the
97 agency to other agencies of state and local government as
98 may be appropriate to carry out the purposes of this article.

99 (i) To expend and distribute by grant or bailment funds
100 and property to all state and local agencies for the purpose of
101 performing the duties and responsibilities of the agency all
102 funds which it may have so acquired or which may have been
103 appropriated by the Legislature of this state.

104 (j) To develop a program to inform the public concerning
105 emergency medical services.

106 (k) To review and disseminate information regarding
107 federal grant assistance relating to emergency medical
108 services.

109 (l) To prepare and submit to the Governor and
110 Legislature recommendations for legislation in the area of
111 emergency medical services.

112 (m) To review, make recommendations for and assist in
113 all projects and programs that provide for emergency medical
114 services whether or not the projects or programs are funded
115 through the Office of Emergency Medical Services. A
116 review and approval shall be required for all emergency
117 medical services projects, programs or services for which
118 application is made to receive state or federal funds for their
119 operation after the effective date of this act; and

120 (n) To take all necessary and appropriate action to
121 encourage and foster the cooperation of all emergency
122 medical service providers and facilities within this state.

**§16-4C-9. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

1 (a) The commissioner may at any time upon his or her own
2 motion, and shall, upon the written complaint of any person,
3 cause an investigation to be conducted to determine whether

4 grounds exist for disciplinary action under this article or
5 legislative rules promulgated pursuant to this article.

6 (b) An investigator or other person who, under the
7 direction of the commissioner or the director, gathers or
8 reports information in good faith to the commissioner or the
9 director, is immune from civil liability.

10 (c) After reviewing any information obtained through an
11 investigation, the commissioner or director shall determine if
12 probable cause exists that the licensee or certificate holder
13 has violated any provision of this article or rules promulgated
14 pursuant to this article.

15 (d) Upon a finding that probable cause exists that the
16 licensee or certificate holder has violated any provision of
17 this article or rules promulgated pursuant to this article, the
18 commissioner or director shall provide a copy of the
19 complaint and notice of hearing to the licensee or certificate
20 holder. Upon a finding of probable cause that the conduct or
21 continued service or practice of any certificate holder or
22 licensee may create a danger to public health or safety, the

23 commissioner may temporarily suspend the certification or
24 license without a hearing or prior notice. In such case, the
25 commissioner shall simultaneously institute proceedings for
26 a temporary emergency suspension hearing in accordance
27 with the applicable rules.

28 (e) The commissioner or the director may enter into a
29 consent decree or hold a hearing for the suspension or
30 revocation of the license or certification or the imposition of
31 sanctions against the licensee or certificate holder.

32 (f) The commissioner or the director issue subpoenas and
33 subpoenas duces tecum to obtain testimony and documents
34 to aid in the investigation of allegations against any person or
35 agency regulated by the article.

36 (g) The commissioner or the director may sign a consent
37 decree or other legal document related to the complaint.

38 (h) The commissioner shall suspend or revoke any
39 certificate, temporary certificate or license when he or she
40 finds the holder has:

41 (1) Obtained a certificate, temporary certificate or license
42 by means of fraud or deceit; or

43 (2) Been grossly incompetent, and/or grossly negligent as
44 defined by the commissioner in accordance with rules or by
45 prevailing standards of emergency medical services care; or

46 (3) Failed or refused to comply with the provisions of this
47 article or any legislative rule promulgated by the commissioner
48 or any order or final decision of the commissioner; or

49 (4) Engaged in any act during the course of duty which
50 has endangered or is likely to endanger the health, welfare or
51 safety of the public.

52 (i) The commissioner or the director may, after notice and
53 opportunity for hearing, deny or refuse to renew, suspend or
54 revoke the license or certification of, impose probationary
55 conditions upon or take disciplinary action against, any
56 licensee or certificate holder for any violation of this article or
57 any rule promulgated pursuant to this article, once a violation
58 has been proven by a preponderance of the evidence.

59 (j) Disciplinary action may include:

- 60 (1) Reprimand;
- 61 (2) Probation;
- 62 (3) Administrative penalties and fines;
- 63 (4) Mandatory attendance at continuing education
64 seminars or other training;
- 65 (5) Practicing under supervision or other restriction;
- 66 (6) Requiring the licensee or holder of a certificate to
67 report to the commissioner or director for periodic interviews
68 for a specified period of time;
- 69 (7) Other disciplinary action considered by the
70 commissioner or director to be necessary to protect the
71 public, including advising other parties whose legitimate
72 interests may be at risk; or
- 73 (8) Other sanctions as set forth by legislative rule
74 promulgated pursuant to this article.
- 75 (k) The commissioner shall suspend or revoke any
76 certificate, temporary certificate or license if he or she finds
77 the existence of any grounds which would justify the denial
78 of an application for the certificate, temporary certificate or
79 license if application were then being made for it.