

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4028**

5 (By Delegate Staggers, Butcher, Mahan, Moye and Perry)

6  
7 [Passed March 10, 2012; in effect ninety days from passage.]

8  
9 AN ACT to amend and reenact §16-4C-6 and §16-4C-9 of the Code of  
10 West Virginia, 1931, as amended, all relating to emergency  
11 medical services; authorizing the commissioner of the Bureau  
12 of Public Health to promulgate rules relating to the temporary  
13 suspension of a certification of an individual emergency  
14 medical service provider; providing that the commissioner may  
15 temporarily suspend the certification of an individual  
16 emergency medical service provider in certain circumstances  
17 prior to a hearing or notice; permitting the commissioner to  
18 rely on information supplied by a physician that serves as a  
19 medical director when temporarily suspending the certification  
20 of an individual emergency medical service provider; and  
21 requiring commissioner institute proceedings for a hearing if  
22 an individual emergency medical provider's certification is  
23 temporarily suspended.

24 *Be it enacted by the Legislature of West Virginia:*

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

1 **ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**

2 **§16-4C-6. Powers and duties of commissioner.**

3 The commissioner has the following powers and duties:

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

9 The rules may include:

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

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

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

17 (C) Levels of certification and the scopes of practice for  
18 each level;

19 (D) Standards of conduct; and

20 (E) Causes for disciplinary action and sanctions which may be  
21 imposed.

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

24 (A) Operational standards, levels of service, personnel  
25 qualifications and training, communications, public access, records  
26 management, reporting requirements, medical direction, quality

1 assurance and review, and other requirements necessary for safe and  
2 efficient operation;

3 (B) Inspection standards and establishment of improvement  
4 periods to ensure maintenance of the standards;

5 (C) Fee schedules for licensure, renewal of licensure and  
6 other necessary costs;

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

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

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

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

14 (4) Standards and requirements for training institutions,  
15 including approval or accreditation of sponsors of continuing  
16 education, course curricula and personnel;

17 (5) Standards and requirements for a State Medical Direction  
18 System, including qualifications for a state emergency medical  
19 services medical director and regional medical directors, the  
20 establishment of a State Medical Policy and Care Committee and the  
21 designation of regional medical command centers;

22 (6) Provision of services by emergency medical services  
23 personnel in hospital emergency rooms;

24 (7) Authorization to temporarily suspend the certification of  
25 an individual emergency medical service provider prior to a hearing  
26 or notice if the commissioner finds there is probable cause that

1 the conduct or continued service or practice of any individual  
2 certificate holder has or may create a danger to public health or  
3 safety: *Provided*, That the commissioner may rely on information  
4 received from a physician that serves as a medical director in  
5 finding that probable cause exists to temporarily suspend the  
6 certification; and

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

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

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

17 (1) To encourage local participation by area, county and  
18 community officials and regional emergency medical services boards  
19 of directors; and

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

22 (d) To provide professional and technical assistance and to  
23 make information available to regional emergency medical services  
24 boards of directors and other potential applicants or program  
25 sponsors of emergency medical services for purposes of developing  
26 and maintaining a statewide system of services.

1 (e) To assist local government agencies, regional emergency  
2 medical services boards of directors and other public or private  
3 entities in obtaining federal, state or other available funds and  
4 services.

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

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

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

16 (i) To expend and distribute by grant or bailment funds and  
17 property to all state and local agencies for the purpose of  
18 performing the duties and responsibilities of the agency all funds  
19 which it may have so acquired or which may have been appropriated  
20 by the Legislature of this state.

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

23 (k) To review and disseminate information regarding federal  
24 grant assistance relating to emergency medical services.

25 (l) To prepare and submit to the Governor and Legislature  
26 recommendations for legislation in the area of emergency medical

1 services.

2 (m) To review, make recommendations for and assist in all  
3 projects and programs that provide for emergency medical services  
4 whether or not the projects or programs are funded through the  
5 Office of Emergency Medical Services. A review and approval shall  
6 be required for all emergency medical services projects, programs  
7 or services for which application is made to receive state or  
8 federal funds for their operation after the effective date of this  
9 act; and

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

13 **§16-4C-9. Complaints; investigations; due process procedure;**  
14 **grounds for disciplinary action.**

15 (a) The commissioner may at any time upon his or her own  
16 motion, and shall, upon the written complaint of any person, cause  
17 an investigation to be conducted to determine whether grounds exist  
18 for disciplinary action under this article or legislative rules  
19 promulgated pursuant to this article.

20 (b) An investigator or other person who, under the direction  
21 of the commissioner or the director, gathers or reports information  
22 in good faith to the commissioner or the director, is immune from  
23 civil liability.

24 (c) After reviewing any information obtained through an  
25 investigation, the commissioner or director shall determine if  
26 probable cause exists that the licensee or certificate holder has

1 violated any provision of this article or rules promulgated  
2 pursuant to this article.

3 (d) Upon a finding that probable cause exists that the  
4 licensee or certificate holder has violated any provision of this  
5 article or rules promulgated pursuant to this article, the  
6 commissioner or director shall provide a copy of the complaint and  
7 notice of hearing to the licensee or certificate holder. Upon a  
8 finding of probable cause that the conduct or continued service or  
9 practice of any individual certificate holder may create a danger  
10 to public health or safety, the commissioner may temporarily  
11 suspend the certification prior to a hearing or notice: *Provided,*  
12 That the commissioner may rely on information received from a  
13 physician that serves as a medical director in finding that  
14 probable cause exists to temporarily suspend the certification:  
15 *Provided, however,* That the commissioner shall simultaneously  
16 institute proceedings for a hearing in accordance with section ten  
17 of this article.

18 (e) The commissioner or the director may enter into a consent  
19 decree or hold a hearing for the suspension or revocation of the  
20 license or certification or the imposition of sanctions against the  
21 licensee or certificate holder.

22 (f) The commissioner or the director issue subpoenas and  
23 subpoenas duces tecum to obtain testimony and documents to aid in  
24 the investigation of allegations against any person or agency  
25 regulated by the article.

26 (g) The commissioner or the director may sign a consent decree

1 or other legal document related to the complaint.

2 (h) The commissioner shall suspend or revoke any certificate,  
3 temporary certificate or license when he or she finds the holder  
4 has:

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

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

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

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

16 (i) The commissioner or the director may, after notice and  
17 opportunity for hearing, deny or refuse to renew, suspend or revoke  
18 the license or certification of, impose probationary conditions  
19 upon or take disciplinary action against, any licensee or  
20 certificate holder for any violation of this article or any rule  
21 promulgated pursuant to this article, once a violation has been  
22 proven by a preponderance of the evidence.

23 (j) Disciplinary action may include:

24 (1) Reprimand;

25 (2) Probation;

26 (3) Administrative penalties and fines;



1 (4) Mandatory attendance at continuing education seminars or  
2 other training;

3 (5) Practicing under supervision or other restriction;

4 (6) Requiring the licensee or holder of a certificate to  
5 report to the commissioner or director for periodic interviews for  
6 a specified period of time;

7 (7) Other disciplinary action considered by the commissioner  
8 or director to be necessary to protect the public, including  
9 advising other parties whose legitimate interests may be at risk;  
10 or

11 (8) Other sanctions as set forth by legislative rule  
12 promulgated pursuant to this article.

13 (k) The commissioner shall suspend or revoke any certificate,  
14 temporary certificate or license if he or she finds the existence  
15 of any grounds which would justify the denial of an application for  
16 the certificate, temporary certificate or license if application  
17 were then being made for it.

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