

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 4869**

By Delegates Statler, Summers, Mallow,  
Burkhammer, Jennings, Toney, Ellington, Riley,  
Barnhart, Butler, and Petitto

[Introduced January 17, 2024; Referred to the  
Committee on Banking and Insurance then the  
Judiciary]

1 A BILL to amend and reenact §33-15-21, §33-16-3i, §33-24-7e, §33-25-8d, and §33-25A-8d of the  
 2 Code of West Virginia, 1931, as amended; relating to clarifying that health insurance  
 3 coverage for emergency services when a prudent layperson acting reasonably would have  
 4 believed that an emergency medical condition existed includes prehospital screening and  
 5 stabilization of emergency condition by ambulance service if the patient declines to be  
 6 transported against medical advice.

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

**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

**§33-15-21. Coverage of emergency services.**

1 From July 1, 1998:

2 (a) Every insurer shall provide coverage for emergency medical services, including  
 3 prehospital services, to the extent necessary to screen and to stabilize an emergency medical  
 4 condition. The insurer shall not require prior authorization of the screening services if a prudent  
 5 layperson acting reasonably would have believed that an emergency medical condition existed.  
 6 Prior authorization of coverage shall not be required for stabilization if an emergency medical  
 7 condition exists. Payment of claims for emergency services shall be based on the retrospective  
 8 review of the presenting history and symptoms of the covered person.

9 (b) The coverage for prehospital screening and stabilization of an emergency medical  
 10 condition shall include ambulance services provided under the provisions of §16-4-1, et seq. of  
 11 this code. The insurer shall pay claims for prehospital screening and stabilization of emergency  
 12 condition by ambulance service if the insured is transported to an emergency room of a facility  
 13 provider or if the patient declines to be transported against medical advice.

14 ~~(b)~~ (c) An insurer that has given prior authorization for emergency services shall cover the  
 15 services and shall not retract the authorization after the services have been provided unless the  
 16 authorization was based on a material misrepresentation about the covered person's health

17 condition made by the referring provider, the provider of the emergency services or the covered  
18 person.

19 ~~(e)~~ (d) Coverage of emergency services shall be subject to coinsurance, copayments and  
20 deductibles applicable under the health benefit plan.

21 ~~(d)~~ (e) The emergency department and the insurer shall make a good faith effort to  
22 communicate with each other in a timely fashion to expedite postevaluation or poststabilization  
23 services in order to avoid material deterioration of the covered person's condition.

24 ~~(e)~~ (f) As used in this section:

25 (1) "Emergency medical services" means those services required to screen for or treat an  
26 emergency medical condition until the condition is stabilized, including prehospital care;

27 (2) "Prudent layperson" means a person who is without medical training and who draws on  
28 his or her practical experience when making a decision regarding whether an emergency medical  
29 condition exists for which emergency treatment should be sought;

30 (3) "Emergency medical condition for the prudent layperson" means one that manifests  
31 itself by acute symptoms of sufficient severity, including severe pain, such that the person could  
32 reasonably expect the absence of immediate medical attention to result in serious jeopardy to the  
33 individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious  
34 impairment to bodily functions; or serious dysfunction of any bodily organ or part;

35 (4) "Stabilize" means with respect to an emergency medical condition, to provide medical  
36 treatment of the condition necessary to assure, with reasonable medical probability that no  
37 medical deterioration of the condition is likely to result from or occur during the transfer of the  
38 individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit or  
39 otherwise delay the transportation required for a higher level of care than that possible at the  
40 treating facility;

41 (5) "Medical screening examination" means an appropriate examination within the  
42 capability of the hospital's emergency department, including ancillary services routinely available

43 to the emergency department, to determine whether or not an emergency medical condition  
44 exists; and

45 (6) "Emergency medical condition" means a condition that manifests itself by acute  
46 symptoms of sufficient severity including severe pain such that the absence of immediate medical  
47 attention could reasonably be expected to result in serious jeopardy to the individual's health or  
48 with respect to a pregnant woman the health of the unborn child, serious impairment to bodily  
49 functions or serious dysfunction of any bodily part or organ.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS COVERAGE.**

**§33-16-3i. Coverage of emergency services.**

1 (a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
2 which this article applies, any entity regulated by this article shall provide as benefits to all  
3 subscribers and members coverage for emergency services. A policy, provision, contract, plan or  
4 agreement may apply to emergency services the same deductibles, coinsurance and other  
5 limitations as apply to other covered services: *Provided*, That preauthorization or precertification  
6 shall not be required.

7 (b) From July 1, 1998, the following provisions apply:

8 (1) Every insurer shall provide coverage for emergency medical services, including  
9 prehospital services, to the extent necessary to screen and to stabilize an emergency medical  
10 condition. The insurer shall not require prior authorization of the screening services if a prudent  
11 layperson acting reasonably would have believed that an emergency medical condition existed.  
12 Prior authorization of coverage shall not be required for stabilization if an emergency medical  
13 condition exists. Payment of claims for emergency services shall be based on the retrospective  
14 review of the presenting history and symptoms of the covered person.

15 (2) The coverage for prehospital screening and stabilization of an emergency medical  
16 condition shall include ambulance services provided under the provisions of §16-4-1, et seq. of

17 this code. The insurer shall pay claims for prehospital screening and stabilization of emergency  
18 condition by ambulance service if the insured is transported to an emergency room of a facility  
19 provider or if the patient declines to be transported against medical advice.

20       ~~(2)~~ (3) An insurer that has given prior authorization for emergency services shall cover the  
21 services and shall not retract the authorization after the services have been provided unless the  
22 authorization was based on a material misrepresentation about the covered person's health  
23 condition made by the referring provider, the provider of the emergency services or the covered  
24 person.

25       ~~(3)~~ (4) Coverage of emergency services shall be subject to coinsurance, copayments and  
26 deductibles applicable under the health benefit plan.

27       ~~(4)~~ (5) The emergency department and the insurer shall make a good faith effort to  
28 communicate with each other in a timely fashion to expedite postevaluation or poststabilization  
29 services in order to avoid material deterioration of the covered person's condition.

30       ~~(5)~~ (6) As used in this section:

31       (A) "Emergency medical services" means those services required to screen for or treat an  
32 emergency medical condition until the condition is stabilized, including prehospital care;

33       (B) "Prudent layperson" means a person who is without medical training and who draws on  
34 his or her practical experience when making a decision regarding whether an emergency medical  
35 condition exists for which emergency treatment should be sought;

36       (C) "Emergency medical condition for the prudent layperson" means one that manifests  
37 itself by acute symptoms of sufficient severity, including severe pain, such that the person could  
38 reasonably expect the absence of immediate medical attention to result in serious jeopardy to the  
39 individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious  
40 impairment to bodily functions; or serious dysfunction of any bodily organ or part;

41       (D) "Stabilize" means with respect to an emergency medical condition, to provide medical  
42 treatment of the condition necessary to assure, with reasonable medical probability that no

43 medical deterioration of the condition is likely to result from or occur during the transfer of the  
 44 individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit or  
 45 otherwise delay the transportation required for a higher level of care than that possible at the  
 46 treating facility;

47 (E) "Medical screening examination" means an appropriate examination within the  
 48 capability of the hospital's emergency department, including ancillary services routinely available  
 49 to the emergency department, to determine whether or not an emergency medical condition  
 50 exists; and

51 (F) "Emergency medical condition" means a condition that manifests itself by acute  
 52 symptoms of sufficient severity including severe pain such that the absence of immediate medical  
 53 attention could reasonably be expected to result in serious jeopardy to the individual's health or  
 54 with respect to a pregnant woman the health of the unborn child, serious impairment to bodily  
 55 functions or serious dysfunction of any bodily part or organ.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE  
 CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH  
 SERVICE CORPORATIONS.**

**§33-24-7e. Coverage of emergency services.**

1 (a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
 2 which this article applies, any entity regulated by this article shall provide as benefits to all  
 3 subscribers and members coverage for emergency services. A policy, provision, contract, plan or  
 4 agreement may apply to emergency services the same deductibles, coinsurance and other  
 5 limitations as apply to other covered services: *Provided*, That preauthorization or precertification  
 6 shall not be required.

7 (b) From July 1, 1998, the following provisions apply:

8 (1) Every insurer shall provide coverage for emergency medical services, including

9 prehospital services, to the extent necessary to screen and to stabilize an emergency medical  
10 condition. The insurer shall not require prior authorization of the screening services if a prudent  
11 layperson acting reasonably would have believed that an emergency medical condition existed.  
12 Prior authorization of coverage shall not be required for stabilization if an emergency medical  
13 condition exists. Payment of claims for emergency services shall be based on the retrospective  
14 review of the presenting history and symptoms of the covered person.

15 (2) The coverage for prehospital screening and stabilization of an emergency medical  
16 condition shall include ambulance services provided under the provisions of §16-4-1, et seq. of  
17 this code. The insurer shall pay claims for prehospital screening and stabilization of emergency  
18 condition by ambulance service if the insured is transported to an emergency room of a facility  
19 provider or if the patient declines to be transported against medical advice.

20 ~~(2)~~ (3) An insurer that has given prior authorization for emergency services shall cover the  
21 services and shall not retract the authorization after the services have been provided unless the  
22 authorization was based on a material misrepresentation about the covered person's health  
23 condition made by the referring provider, the provider of the emergency services or the covered  
24 person.

25 ~~(3)~~ (4) Coverage of emergency services shall be subject to coinsurance, copayments and  
26 deductibles applicable under the health benefit plan.

27 ~~(4)~~ (5) The emergency department and the insurer shall make a good faith effort to  
28 communicate with each other in a timely fashion to expedite postevaluation or poststabilization  
29 services in order to avoid material deterioration of the covered person's condition.

30 ~~(5)~~ (6) As used in this section:

31 (A) "Emergency medical services" means those services required to screen for or treat an  
32 emergency medical condition until the condition is stabilized, including prehospital care;

33 (B) "Prudent layperson" means a person who is without medical training and who draws on  
34 his or her practical experience when making a decision regarding whether an emergency medical

35 condition exists for which emergency treatment should be sought;

36 (C) "Emergency medical condition for the prudent layperson" means one that manifests  
37 itself by acute symptoms of sufficient severity, including severe pain, such that the person could  
38 reasonably expect the absence of immediate medical attention to result in serious jeopardy to the  
39 individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious  
40 impairment to bodily functions; or serious dysfunction of any bodily organ or part;

41 (D) "Stabilize" means with respect to an emergency medical condition, to provide medical  
42 treatment of the condition necessary to assure, with reasonable medical probability that no  
43 medical deterioration of the condition is likely to result from or occur during the transfer of the  
44 individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit or  
45 otherwise delay the transportation required for a higher level of care than that possible at the  
46 treating facility;

47 (E) "Medical screening examination" means an appropriate examination within the  
48 capability of the hospital's emergency department, including ancillary services routinely available  
49 to the emergency department, to determine whether or not an emergency medical condition  
50 exists; and

51 (F) "Emergency medical condition" means a condition that manifests itself by acute  
52 symptoms of sufficient severity including severe pain such that the absence of immediate medical  
53 attention could reasonably be expected to result in serious jeopardy to the individual's health or  
54 with respect to a pregnant woman the health of the unborn child, serious impairment to bodily  
55 functions or serious dysfunction of any bodily part or organ.

**ARTICLE 25. HEALTH CARE CORPORATIONS.**  
**§33-25-8d. Coverage of emergency services.**

1 (a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
2 which this article applies, any entity regulated by this article shall provide as benefits to all

3 subscribers and members coverage for emergency services. A policy, provision, contract, plan or  
4 agreement may apply to emergency services the same deductibles, coinsurance and other  
5 limitations as apply to other covered services: *Provided*, That preauthorization or precertification  
6 shall not be required.

7 (b) From July 1, 1998, the following provisions apply:

8 (1) Every insurer shall provide coverage for emergency medical services, including  
9 prehospital services, to the extent necessary to screen and to stabilize an emergency medical  
10 condition. The insurer shall not require prior authorization of the screening services if a prudent  
11 layperson acting reasonably would have believed that an emergency medical condition existed.  
12 Prior authorization of coverage shall not be required for stabilization if an emergency medical  
13 condition exists. Payment of claims for emergency services shall be based on the retrospective  
14 review of the presenting history and symptoms of the covered person.

15 (2) The coverage for prehospital screening and stabilization of an emergency medical  
16 condition shall include ambulance services provided under the provisions of §16-4-1, et seq. of  
17 this code. The insurer shall pay claims for prehospital screening and stabilization of emergency  
18 condition by ambulance service if the insured is transported to an emergency room of a facility  
19 provider or if the patient declines to be transported against medical advice.

20 ~~(2)~~ (3) An insurer that has given prior authorization for emergency services shall cover the  
21 services and shall not retract the authorization after the services have been provided unless the  
22 authorization was based on a material misrepresentation about the covered person's health  
23 condition made by the referring provider, the provider of the emergency services or the covered  
24 person.

25 ~~(3)~~ (4) Coverage of emergency services shall be subject to coinsurance, copayments and  
26 deductibles applicable under the health benefit plan.

27 ~~(4)~~ (5) The emergency department and the insurer shall make a good faith effort to  
28 communicate with each other in a timely fashion to expedite postevaluation or poststabilization

29 services in order to avoid material deterioration of the covered person's condition.

30 ~~(5)~~ (6) As used in this section:

31 (A) "Emergency medical services" means those services required to screen for or treat an  
32 emergency medical condition until the condition is stabilized, including prehospital care;

33 (B) "Prudent layperson" means a person who is without medical training and who draws on  
34 his or her practical experience when making a decision regarding whether an emergency medical  
35 condition exists for which emergency treatment should be sought;

36 (C) "Emergency medical condition for the prudent layperson" means one that manifests  
37 itself by acute symptoms of sufficient severity, including severe pain, such that the person could  
38 reasonably expect the absence of immediate medical attention to result in serious jeopardy to the  
39 individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious  
40 impairment to bodily functions; or serious dysfunction of any bodily organ or part;

41 (D) "Stabilize" means with respect to an emergency medical condition, to provide medical  
42 treatment of the condition necessary to assure, with reasonable medical probability that no  
43 medical deterioration of the condition is likely to result from or occur during the transfer of the  
44 individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit or  
45 otherwise delay the transportation required for a higher level of care than that possible at the  
46 treating facility;

47 (E) "Medical screening examination" means an appropriate examination within the  
48 capability of the hospital's emergency department, including ancillary services routinely available  
49 to the emergency department, to determine whether or not an emergency medical condition  
50 exists; and

51 (F) "Emergency medical condition" means a condition that manifests itself by acute  
52 symptoms of sufficient severity including severe pain such that the absence of immediate medical  
53 attention could reasonably be expected to result in serious jeopardy to the individual's health or  
54 with respect to a pregnant woman the health of the unborn child, serious impairment to bodily

55 functions or serious dysfunction of any bodily part or organ.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-8d. Coverage of emergency services.**

1 (a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
2 which this article applies, any entity regulated by this article shall provide as benefits to all  
3 subscribers and members coverage for emergency services. A policy, provision, contract, plan or  
4 agreement may apply to emergency services the same deductibles, coinsurance and other  
5 limitations as apply to other covered services: *Provided*, That preauthorization or precertification  
6 shall not be required.

7 (b) From July 1, 1998, the following provisions apply:

8 (1) Every insurer shall provide coverage for emergency medical services, including  
9 prehospital services, to the extent necessary to screen and to stabilize an emergency medical  
10 condition. The insurer shall not require prior authorization of the screening services if a prudent  
11 layperson acting reasonably would have believed that an emergency medical condition existed.  
12 Prior authorization of coverage shall not be required for stabilization if an emergency medical  
13 condition exists. Payment of claims for emergency services shall be based on the retrospective  
14 review of the presenting history and symptoms of the covered person.

15 (2) The coverage for prehospital screening and stabilization of an emergency medical  
16 condition shall include ambulance services provided under the provisions of §16-4-1, et seq. of  
17 this code. The insurer shall pay claims for prehospital screening and stabilization of emergency  
18 condition by ambulance service if the insured is transported to an emergency room of a facility  
19 provider or if the patient declines to be transported against medical advice.

20 ~~(2)~~ (3) An insurer that has given prior authorization for emergency services shall cover the  
21 services and shall not retract the authorization after the services have been provided unless the

22 authorization was based on a material misrepresentation about the covered person's health  
23 condition made by the referring provider, the provider of the emergency services or the covered  
24 person.

25 ~~(3)~~ (4) Coverage of emergency services shall be subject to coinsurance, copayments and  
26 deductibles applicable under the health benefit plan.

27 ~~(4)~~ (5) The emergency department and the insurer shall make a good faith effort to  
28 communicate with each other in a timely fashion to expedite postevaluation or poststabilization  
29 services in order to avoid material deterioration of the covered person's condition.

30 ~~(5)~~ (6) As used in this section:

31 (A) "Emergency medical services" means those services required to screen for or treat an  
32 emergency medical condition until the condition is stabilized, including prehospital care;

33 (B) "Prudent layperson" means a person who is without medical training and who draws on  
34 his or her practical experience when making a decision regarding whether an emergency medical  
35 condition exists for which emergency treatment should be sought;

36 (C) "Emergency medical condition for the prudent layperson" means one that manifests  
37 itself by acute symptoms of sufficient severity, including severe pain, such that the person could  
38 reasonably expect the absence of immediate medical attention to result in serious jeopardy to the  
39 individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious  
40 impairment to bodily functions; or serious dysfunction of any bodily organ or part;

41 (D) "Stabilize" means with respect to an emergency medical condition, to provide medical  
42 treatment of the condition necessary to assure, with reasonable medical probability that no  
43 medical deterioration of the condition is likely to result from or occur during the transfer of the  
44 individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit or  
45 otherwise delay the transportation required for a higher level of care than that possible at the  
46 treating facility;

47 (E) "Medical screening examination" means an appropriate examination within the

48 capability of the hospital's emergency department, including ancillary services routinely available  
49 to the emergency department, to determine whether or not an emergency medical condition  
50 exists; and

51 (F) "Emergency medical condition" means a condition that manifests itself by acute  
52 symptoms of sufficient severity including severe pain such that the absence of immediate medical  
53 attention could reasonably be expected to result in serious jeopardy to the individual's health or  
54 with respect to a pregnant woman the health of the unborn child, serious impairment to bodily  
55 functions or serious dysfunction of any bodily part or organ.

56 ~~(6)~~ (7) Each insurer shall provide the enrolled member with a description of procedures to  
57 be followed by the member for emergency services, including the following:

58 (A) The appropriate use of emergency facilities;

59 (B) The appropriate use of any prehospital services provided by the health maintenance  
60 organization;

61 (C) Any potential responsibility of the member for payment for nonemergency services  
62 rendered in an emergency facility;

63 (D) Any cost-sharing provisions for emergency services; and

64 (E) An explanation of the prudent layperson standard for emergency medical condition.

NOTE: The purpose of this bill is to clarify that health insurance coverage for emergency services when a prudent layperson acting reasonably would have believed that an emergency medical condition existed includes prehospital screening and stabilization of emergency condition by ambulance service if the patient declines to be transported against medical advice.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.