WEST VIRGINIA CODE: §16-60-12

§16-60-12. Rulemaking.

(a) The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment: *Provided*, That no rule may become binding on the State of West Virginia as law until it has been authorized by the Legislature pursuant to the provisions of §29A-3-1 *et seq.* of this code.

(b) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any member state.

(c) Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

(d) Prior to promulgation and adoption of a final rule or rules by the Commission, and at least 60 days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

(1) On the website of the Commission; and

(2) On the website of each member state EMS authority or the publication in which each state would otherwise publish proposed rules.

(e) The Notice of Proposed Rulemaking shall include:

(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(2) The text of the proposed rule or amendment and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person; and

(4) The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

(f) Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(g) The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(1) At least 25 persons;

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(2) A governmental subdivision or agency; or

(3) An association having at least 25 members.

(h) If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

(1) All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

(4) Nothing in this section may be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

(j) The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rule-making record and the full text of the rule.

(k) If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

(l) Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rule-making procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that shall be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety, or welfare;

(2) Prevent a loss of Commission or member state funds;

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(3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(4) Protect public health and safety.

(m) The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

(n) *Applicability of West Virginia Administrative Procedures Act.* —

(1) Notwithstanding any provision of this Compact to the contrary, no rule proposed or promulgated by the Commission may become binding on the State of West Virginia as law until it has been authorized by the Legislature pursuant to the provisions of §29A-3-1 *et seq.* of this code.

(2) Within 30 days of a rule or operating procedure that affects the regulation of emergency medical services in the State of West Virginia is promulgated by the Commission, the Commissioner of the Bureau for Public Health shall propose the rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(3) The Commissioner has emergency rule-making authority. For purposes of this section, the Legislature finds that the promulgation of a rule or operating procedure by the Commission that affects the regulation of emergency medical services in the State of West Virginia constitutes an emergency for the purposes of filing an emergency rule pursuant to §29A-3-15 of this code.

(4) A rejection of a legislative rule proposed pursuant to this subsection shall have the effect of making that rule not binding on the State of West Virginia, notwithstanding any emergency rule previously promulgated pursuant thereto, and notwithstanding the failure of a majority of states to take action to invalidate the rule pursuant to the provisions of subsection (b) of this section.

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