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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4043

(By Delegates Beane, Cann Thompson, Compton,
Faircloth, Amores and Hutchins)



Passed March 14, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4043

(BY DELEGATES BEANE, CANN, THOMPSON, COMPTON, FAIRCLOTH,
AMORES AND HUTCHINS)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-one, article one, chapter thirty-three of said code; to amend article fifteen of said chapter by adding thereto a new section, designated section twenty-one; to amend and reenact section three-i, article sixteen of said chapter; to amend and reenact section seven-e, article twenty-four of said chapter; to amend and reenact section eight-d, article twenty-five of said chapter; and to amend and reenact section eight-d, article twenty-five-a of said chapter, all relating to defining emergency medical services and emergency medical condition; requiring coverage for medical screenings and stabilization of emergency medical conditions; and directing that services be covered for prudent layperson; and requiring reporting to the legislative oversight commission on health and human resources accountability.

Be it enacted by the Legislature of West Virginia:

That section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-one, article one, chapter thirty-three of said code be amended and reenacted; that article fifteen of said chapter be amended by adding thereto a new section, designated section twenty-one; that section three-i, article sixteen of said chapter be amended and reenacted; that section seven-e, article twenty-four of said chapter be amended and reenacted; that section eight-d, article twenty-five of said chapter be amended and reenacted; and that section eight-d, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES,
PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.**

§5-16-8. Conditions of insurance program.

1 The insurance plans provided for in this article shall
2 be designed by the public employees insurance agency:

3 (1) To provide a reasonable relationship between the
4 hospital, surgical, medical and prescription drug benefits
5 to be included and the expected reasonable and customary
6 hospital, surgical, medical and prescription drug expenses
7 as established by the director to be incurred by the
8 affected employee, his or her spouse and his or her
9 dependents. The establishment of reasonable and
10 customary expenses by the public employees insurance
11 agency pursuant to the preceding sentence is not subject
12 to the state administrative procedures act in chapter
13 twenty-nine-a of this code;

14 (2) To include reasonable controls which may include
15 deductible and coinsurance provisions applicable to some
16 or all of the benefits, and shall include other provisions,
17 including, but not limited to, copayments, preadmission

18 certification, case management programs and preferred
19 provider arrangements;

20 (3) To prevent unnecessary utilization of the various
21 hospital, surgical, medical and prescription drug services
22 available;

23 (4) To provide reasonable assurance of stability in
24 future years for the plans;

25 (5) To provide major medical insurance for the
26 employees covered under this article;

27 (6) To provide certain group life and accidental death
28 insurance for the employees covered under this article;

29 (7) To include provisions for the coordination of
30 benefits payable by the terms of the plans with the benefits
31 to which the employee, or his or her spouse or his or her
32 dependents may be entitled by the provisions of any other
33 group hospital, surgical, medical, major medical, or
34 prescription drug insurance or any combination thereof;

35 (8) To provide a cash incentive plan for employees,
36 spouses and dependents to increase utilization of, and to
37 encourage the use of, lower cost alternative health care
38 facilities, health care providers and generic drugs. The
39 plan shall be reviewed annually by the director and the
40 advisory board;

41 (9) To provide "wellness" programs and activities
42 which will include, but not be limited to, benefit plan
43 incentives to discourage tobacco, alcohol and chemical
44 abuse and an educational program to encourage proper
45 diet and exercise. In establishing "wellness" programs,
46 the division of vocational rehabilitation shall cooperate
47 with the public employees insurance agency in
48 establishing statewide wellness programs. The director of
49 the public employees insurance agency shall contract with
50 county boards of education for the use of facilities,
51 equipment or any service related to that purpose. Boards
52 of education may charge only the cost of janitorial service
53 and increased utilities for the use of the gymnasium and
54 related equipment. The cost of the exercise program shall
55 be paid by county boards of education, the public

56 employees insurance agency, or participating employees,
57 their spouses or dependents. All exercise programs shall
58 be made available to all employees, their spouses or
59 dependents and shall not be limited to employees of
60 county boards of education;

61 (10) To provide a program, to be administered by the
62 director, for a patient audit plan with reimbursement up to
63 a maximum of one thousand dollars annually, to
64 employees for discovery of health care provider or
65 hospital overcharges when the affected employee brings
66 the overcharge to the attention of the plan. The hospital
67 or health care provider shall certify to the director that it
68 has provided, prior to or simultaneously with the
69 submission of the statement of charges for payments, an
70 itemized statement of the charges to the employee
71 participant for which payment is requested of the plan;

72 (11) To require that all employers give written notice
73 to each covered employee prior to institution of any
74 changes in benefits to employees, and to include
75 appropriate penalty for any employer not providing the
76 required information to any employee; and

77 (12) To provide coverage for emergency services
78 under offered plans. For the purposes of this subsection,
79 "emergency services" means services provided in or by a
80 hospital emergency facility, an ambulance providing
81 related services under the provisions of article four-c,
82 chapter sixteen of this code or the private office of a
83 dentist to evaluate and treat a medical condition
84 manifesting itself by the sudden, and at the time,
85 unexpected onset of symptoms that require immediate
86 medical attention and for which failure to provide medical
87 attention would result in serious impairment to bodily
88 function, serious dysfunction to any bodily organ or part,
89 or would place the person's health in jeopardy. From the
90 first day of July, one thousand nine hundred ninety-eight,
91 through the thirtieth day of June, two thousand, the
92 following provisions apply: Plans shall provide coverage
93 for emergency services, including any pre-hospital
94 services, to the extent necessary to screen and stabilize the
95 covered person. The plans shall reimburse, less any

96 applicable copayments, deductibles, or coinsurance, for
97 emergency services rendered and related to the condition
98 for which the covered person presented. Prior
99 authorization of coverage shall not be required for the
100 screening services if a prudent layperson acting
101 reasonably would have believed that an emergency
102 medical condition existed. Prior authorization of
103 coverage shall not be required for stabilization if an
104 emergency medical condition exists. In the event that
105 prior authorization was obtained, the authorization may
106 not be retracted after the services have been provided
107 except when the authorization was based on a material
108 misrepresentation about the medical condition by the
109 provider of the services or the insured person. The
110 provider of the emergency services and the plan
111 representative shall make a good faith effort to
112 communicate with each other in a timely fashion to
113 expedite postevaluation or poststabilization services.
114 Payment of claims for emergency services shall be based
115 on the retrospective review of the presenting history and
116 symptoms of the covered person. For purposes of this
117 subdivision: (A) "Emergency services" means those
118 services required to screen for or treat an emergency
119 medical condition until the condition is stabilized,
120 including prehospital care; (B) "prudent layperson"
121 means a person who is without medical training and who
122 draws on his or her practical experience when making a
123 decision regarding whether an emergency medical
124 condition exists for which emergency treatment should be
125 sought; (C) "emergency medical condition for the
126 prudent layperson" means one that manifests itself by
127 acute symptoms of sufficient severity, including severe
128 pain, such that the person could reasonably expect the
129 absence of immediate medical attention to result in serious
130 jeopardy to the individual's health, or, with respect to a
131 pregnant woman, the health of the unborn child; serious
132 impairment to bodily functions; or serious dysfunction of
133 any bodily organ or part; (D) "stabilize" means with
134 respect to an emergency medical condition, to provide
135 medical treatment of the condition necessary to assure,
136 with reasonable medical probability that no medical
137 deterioration of the condition is likely to result from or

138 occur during the transfer of the individual from a facility:
139 *Provided*, That this provision may not be construed to
140 prohibit, limit or otherwise delay the transportation
141 required for a higher level of care than that possible at the
142 treating facility; (E) “medical screening examination”
143 means an appropriate examination within the capability of
144 the hospital’s emergency department, including ancillary
145 services routinely available to the emergency department,
146 to determine whether or not an emergency medical
147 condition exists. The director is to report annually to the
148 legislative oversight commission on health and human
149 resources accountability on the utilization of emergency
150 services, the cost of those services, a comparison of
151 utilization and costs between enrollees of the various plans,
152 and possible plan amendments designed to decrease any
153 inappropriate utilization of emergency services; and (F)
154 “emergency medical condition” means a condition that
155 manifests itself by acute symptoms of sufficient severity
156 including severe pain such that the absence of immediate
157 medical attention could reasonably be expected to result
158 in serious jeopardy to the individual’s health or with
159 respect to a pregnant woman the health of the unborn
160 child, serous impairment to bodily functions or serious
161 dysfunction of any bodily part or organ.

CHAPTER 33. INSURANCE.

ARTICLE 1. DEFINITIONS.

§33-1-21. Emergency services.

1 (a) Emergency services are: those services provided in
2 or by a hospital emergency facility, an ambulance
3 providing related services under the provisions article
4 four-c, chapter sixteen of this code or the private office of
5 a dentist to evaluate and treat a medical condition
6 manifesting itself by the sudden, and at the time,
7 unexpected onset of symptoms that require immediate
8 medical attention and that failure to provide medical
9 attention would result in serious impairment to bodily
10 function, serious dysfunction to any bodily organ or part,
11 or would place the person’s health in jeopardy.

12 (b) From the first day of July, one thousand nine
13 hundred ninety-eight, through the thirtieth day of June,
14 two thousand, the following provisions apply:

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

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

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

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

42 (5) "Medical screening examination" means an
43 appropriate examination within the capability of the
44 hospital's emergency department, including ancillary
45 services routinely available to the emergency department,
46 to determine whether or not an emergency medical
47 condition exists; and

48 (6) "Emergency medical condition" means a
49 condition that manifests itself by acute symptoms of

50 sufficient severity including severe pain such that the
51 absence of immediate medical attention could reasonably
52 be expected to result in serious jeopardy to the
53 individual's health or with respect to a pregnant woman
54 the health of the unborn child, serous impairment to
55 bodily functions or serious dysfunction of any bodily part
56 or organ.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

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

1 From the first day of July, one thousand nine hundred
2 ninety-eight, through the thirtieth day of June, two
3 thousand, the following provisions apply:

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

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

23 (c) Coverage of emergency services shall be subject to
24 coinsurance, co-payments and deductibles applicable
25 under the health benefit plan.

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

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

31 (e) As used in this section:

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

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

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

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

59 (5) "Medical screening examination" means an
60 appropriate examination within the capability of the
61 hospital's emergency department, including ancillary
62 services routinely available to the emergency department,
63 to determine whether or not an emergency medical
64 condition exists; and

65 (6) "Emergency medical condition" means a
66 condition that manifests itself by acute symptoms of

67 sufficient severity including severe pain such that the
68 absence of immediate medical attention could reasonably
69 be expected to result in serious jeopardy to the
70 individual's health or with respect to a pregnant woman
71 the health of the unborn child, serous impairment to
72 bodily functions or serious dysfunction of any bodily part
73 or organ.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

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

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

10 (b) From the first day of July, one thousand nine
11 hundred ninety-eight, through the thirtieth day of June,
12 two thousand, the following provisions apply:

13 (1) Every insurer shall provide coverage for
14 emergency medical services, including pre-hospital
15 services, to the extent necessary to screen and to stabilize
16 an emergency medical condition. The insurer shall not
17 require prior authorization of the screening services if a
18 prudent layperson acting reasonably would have believed
19 that an emergency medical condition existed. Prior
20 authorization of coverage shall not be required for
21 stablization if an emergency medical condition exists.
22 Payment of claims for emergency services shall be based
23 on the retrospective review of the presenting history and
24 symptoms of the covered person.

25 (2) An insurer that has given prior authorization for
26 emergency services shall cover the services and shall not
27 retract the authorization after the services have been
28 provided unless the authorization was based on a material
29 misrepresentation about the covered person's health

30 condition made by the referring provider, the provider of
31 the emergency services or the covered person.

32 (3) Coverage of emergency services shall be subject to
33 coinsurance, co-payments and deductibles applicable
34 under the health benefit plan.

35 (4) The emergency department and the insurer shall
36 make a good faith effort to communicate with each other
37 in a timely fashion to expedite postevaluation or
38 poststabilization services in order to avoid material
39 deterioration of the covered person's condition.

40 (5) As used in this section:

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

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

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

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

68 (E) "Medical screening examination" means an
69 appropriate examination within the capability of the
70 hospital's emergency department, including ancillary
71 services routinely available to the emergency department,
72 to determine whether or not an emergency medical
73 condition exists; and

74 (F) "Emergency medical condition" means a
75 condition that manifests itself by acute symptoms of
76 sufficient severity including severe pain such that the
77 absence of immediate medical attention could reasonably
78 be expected to result in serious jeopardy to the
79 individual's health or with respect to a pregnant woman
80 the health of the unborn child, serous impairment to
81 bodily functions or serious dysfunction of any bodily part
82 or organ.

83 (c) The commissioner shall require periodic reports
84 regarding emergency services utilization and costs
85 provided pursuant to the provisions of this article. Those
86 reports will be provided annually to the legislative
87 oversight commission on health and human resources
88 accountability.

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

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

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

10 (b) From the first day of July, one thousand nine
11 hundred ninety-eight, through the thirtieth day of June,
12 two thousand, the following provisions apply:

13 (1) Every insurer shall provide coverage for
14 emergency medical services, including pre-hospital
15 services, to the extent necessary to screen and to stabilize
16 an emergency medical condition. The insurer shall not
17 require prior authorization of the screening services if a
18 prudent layperson acting reasonably would have believed
19 that an emergency medical condition existed. Prior
20 authorization of coverage shall not be required for
21 stabilization if an emergency medical condition exists.
22 Payment of claims for emergency services shall be based
23 on the retrospective review of the presenting history and
24 symptoms of the covered person.

25 (2) An insurer that has given prior authorization for
26 emergency services shall cover the services and shall not
27 retract the authorization after the services have been
28 provided unless the authorization was based on a material
29 misrepresentation about the covered person's health
30 condition made by the referring provider, the provider of
31 the emergency services or the covered person.

32 (3) Coverage of emergency services shall be subject to
33 coinsurance, co-payments and deductibles applicable
34 under the health benefit plan.

35 (4) The emergency department and the insurer shall
36 make a good faith effort to communicate with each other
37 in a timely fashion to expedite postevaluation or
38 poststabilization services in order to avoid material
39 deterioration of the covered person's condition.

40 (5) As used in this section:

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

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

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

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

68 (E) "Medical screening examination" means an
69 appropriate examination within the capability of the
70 hospital's emergency department, including ancillary
71 services routinely available to the emergency department,
72 to determine whether or not an emergency medical
73 condition exists; and

74 (F) "Emergency medical condition" means a
75 condition that manifests itself by acute symptoms of
76 sufficient severity including severe pain such that the
77 absence of immediate medical attention could reasonably
78 be expected to result in serious jeopardy to the
79 individual's health or with respect to a pregnant woman
80 the health of the unborn child, serous impairment to
81 bodily functions or serious dysfunction of any bodily part
82 or organ.

ARTICLE 25. HEALTH CARE CORPORATIONS.

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

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

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

10 (b) From the first day of July, one thousand nine
11 hundred ninety-eight, through the thirtieth day of June,
12 two thousand, the following provisions apply:

13 (1) Every insurer shall provide coverage for
14 emergency medical services, including pre-hospital
15 services, to the extent necessary to screen and to stabilize
16 an emergency medical condition. The insurer shall not
17 require prior authorization of the screening services if a
18 prudent layperson acting reasonably would have believed
19 that an emergency medical condition existed. Prior
20 authorization of coverage shall not be required for
21 stabilization if an emergency medical condition exists.
22 Payment of claims for emergency services shall be based
23 on the retrospective review of the presenting history and
24 symptoms of the covered person.

25 (2) An insurer that has given prior authorization for
26 emergency services shall cover the services and shall not
27 retract the authorization after the services have been
28 provided unless the authorization was based on a material
29 misrepresentation about the covered person's health
30 condition made by the referring provider, the provider of
31 the emergency services or the covered person.

32 (3) Coverage of emergency services shall be subject to
33 coinsurance, co-payments and deductibles applicable
34 under the health benefit plan.

35 (4) The emergency department and the insurer shall
36 make a good faith effort to communicate with each other
37 in a timely fashion to expedite postevaluation or
38 poststabilization services in order to avoid material
39 deterioration of the covered person's condition.

40 (5) As used in this section:

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

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

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

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

68 (E) "Medical screening examination" means an
69 appropriate examination within the capability of the
70 hospital's emergency department, including ancillary
71 services routinely available to the emergency department,
72 to determine whether or not an emergency medical
73 condition exists; and

74 (F) "Emergency medical condition" means a
75 condition that manifests itself by acute symptoms of
76 sufficient severity including severe pain such that the
77 absence of immediate medical attention could reasonably
78 be expected to result in serious jeopardy to the
79 individual's health or with respect to a pregnant woman

80 the health of the unborn child, serous impairment to
81 bodily functions or serious dysfunction of any bodily part
82 or organ.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

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

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

10 (b) From the first day of July, one thousand nine
11 hundred ninety-eight, through the thirtieth day of June,
12 two thousand, the following provisions apply:

13 (1) Every insurer shall provide coverage for
14 emergency medical services, including pre-hospital
15 services, to the extent necessary to screen and to stabilize
16 an emergency medical condition. The insurer shall not
17 require prior authorization of the screening services if a
18 prudent layperson acting reasonably would have believed
19 that an emergency medical condition existed. Prior
20 authorization of coverage shall not be required for
21 stablization if an emergency medical condition exists.
22 Payment of claims for emergency services shall be based
23 on the retrospective review of the presenting history and
24 symptoms of the covered person.

25 (2) An insurer that has given prior authorization for
26 emergency services shall cover the services and shall not
27 retract the authorization after the services have been
28 provided unless the authorization was based on a material
29 misrepresentation about the covered person's health
30 condition made by the referring provider, the provider of
31 the emergency services or the covered person.

32 (3) Coverage of emergency services shall be subject to
33 coinsurance, co-payments and deductibles applicable
34 under the health benefit plan.

35 (4) The emergency department and the insurer shall
36 make a good faith effort to communicate with each other
37 in a timely fashion to expedite postevaluation or
38 poststabilization services in order to avoid material
39 deterioration of the covered person's condition.

40 (5) As used in this section:

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

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

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

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

68 (E) "Medical screening examination" means an
69 appropriate examination within the capability of the

70 hospital's emergency department, including ancillary
71 services routinely available to the emergency department,
72 to determine whether or not an emergency medical
73 condition exists; and

74 (F) "Emergency medical condition" means a
75 condition that manifests itself by acute symptoms of
76 sufficient severity including severe pain such that the
77 absence of immediate medical attention could reasonably
78 be expected to result in serious jeopardy to the
79 individual's health or with respect to a pregnant woman
80 the health of the unborn child, serious impairment to
81 bodily functions or serious dysfunction of any bodily part
82 or organ.

83 (6) Each insurer shall provide the enrolled member
84 with a description of procedures to be followed by the
85 member for emergency services, including the following:

86 (A) The appropriate use of emergency facilities;

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


89 (C) Any potential responsibility of the member for
90 payment for nonemergency services rendered in an
91 emergency facility;

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

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

96 (c) The commissioner shall require periodic reports
97 regarding emergency services utilization and costs
98 provided pursuant to the provisions of this article. Those
99 reports will be provided annually to the legislative
100 oversight commission on health and human resources
101 accountability.

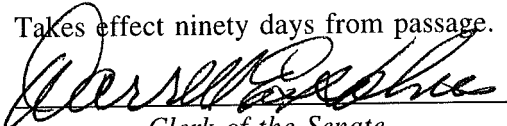
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

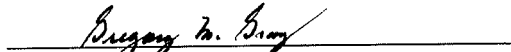

Chairman Senate Committee

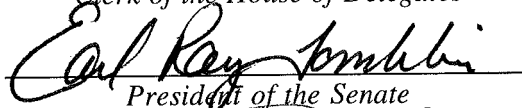

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

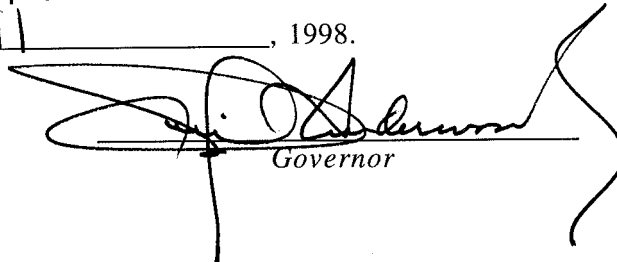

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 1st
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 11:10 am