

**Department of State Health Services
Agenda Item for State Health Services Council
January 30-31, 2008**

Agenda Item Title: Repeal and propose new 25 TAC, §157.11, Requirements for an EMS Provider License
Amend 25 TAC, §157.38, EMS Continuing Education
Amend 25 TAC, §157.44, EMS Instructor Certification

Agenda Number: 4m

Recommended Council Action: (Consumer Affairs Approves)

For Discussion Only

For Discussion and Action by the Council

Background:

The Emergency Medical Services (EMS) Trauma Systems Coordination Unit is in the Regulatory Services Division. The Unit operates on general funds and fee funds; and is responsible for regulation of EMS and designation of trauma hospitals, as well as inspections, site surveys, investigations and technical assistance to EMS providers and Educational programs.

Summary: These three rules establish requirements for:

- 1) emergency medical services (EMS) providers;
- 2) EMS continuing education; and
- 3) EMS instructors, respectively.

The repeal and proposed new §157.11 is necessary to implement two recent legislative changes made to the Texas Health and Safety Code, Chapter 773.

House Bill 10 of the 80th Legislative Regular Session, 2007, requires that all ground transport of patients by stretcher be made by a licensed EMS provider.

House Bill 2827 of the 80th Legislative Regular Session, 2007, requires that the department adopt rules requiring EMS vehicles to be equipped with epinephrine auto-injector device or similar device to treat anaphylaxis treatment and requiring EMS personnel complete continuing education in the administration of anaphylaxis treatment.

New §157.11 also contains some clean-up and other new language concerning: mutual aid, volunteer EMS personnel exemptions, EMS medical director documentation, signage on ambulances, EMS provider advertisements and other licensing requirements. Amendments to §157.38 concern the addition of a new continuing education content area, regarding pediatrics, and also amended two other continuing education areas.

Amendments to §157.44 eliminated skills verification orientation requirements and added wording to allow for instructor examination by non-department entities, clarified curriculum requirements, itemized additional instructor responsibilities and further defined reasons for instructor disciplinary action and surrender of the certificate. The rules comply with the mandatory four-year review of agency rules in Government Code, §2001.039.

Summary of Input from Stakeholder Groups:

Members of the Governor's EMS and Trauma Advisory Council (GETAC) were updated on the pending legislation at the May 2007 meeting. The proposed rule language was to be presented and discussed at the August 2007 GETAC meeting, but the meeting was cancelled due to Hurricane Dean disaster relief preparation. The proposed rules were presented at the November 2007 GETAC meeting and they voted to move the rules forward through the adoption process.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #4m.

Agenda Item Approved by Assistant Commissioner/Director: Kathryn C. Perkins **Date:** 12/19/07

Person Presenting: Maxie Bishop **Program:** State EMS Regulatory Director **Phone No:** 512.834.6737

Final CAM Approved by Consumer Affairs: RMM **Date:** 12/19/07

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 157. Emergency Medical Care

Subchapter B. Emergency Medical Services Provider Licenses

New §157.11

Repeal §157.11

Subchapter C. Emergency Medical Services Training and Course Approval

Amendments §157.38

Subchapter D. Emergency Medical Services Personnel Certification

Amendments §157.44

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §157.11, new §157.11, and amendments to §157.38 and §157.44, concerning the regulation of emergency medical services (EMS) providers, continuing education (CE) and instructors.

BACKGROUND AND PURPOSE

The repeal and proposed new §157.11 is necessary to implement two recent legislative changes to the Texas Health and Safety Code. The Texas Health and Safety Code, Subchapter A, §§773.004 and 773.041 were amended by the 80th Legislative Regular Session, 2007, (House Bill 10) to remove exemptions for physician-directed ground ambulance transfers of patients and to require that all ground transport of patients by stretcher be done by a licensed EMS provider. Texas Health and Safety Code, §773.014 was amended by the 80th Legislative Regular Session (House Bill 2827) to require the department to adopt rules requiring EMS vehicles to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis and requiring EMS personnel to complete continuing education training in the administration of anaphylaxis treatment. New §157.11 also contains some clean-up and other new language regarding mutual aide, volunteer EMS personnel exemptions, EMS medical director documentation, signage on ambulances, EMS provider advertisements, subscription program requirements, and EMS provider operating policies.

The proposed amendments to the graphic in §157.38(c), EMS Continuing Education, added a new continuing education content area, regarding pediatrics, to maintain and enhance EMS personnel's knowledge of pediatric care. Also, continuing education hours were amended in two other areas of the graphic.

The proposed amendments to §157.44, EMS Instructor Certification, clarify instructor responsibilities, curriculum requirements, clarify and add reasons for instructor disciplinary actions and surrender of instructor certification.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 157.11, 157.38 and 157.44 have been reviewed and the

department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

New §157.11 requires ground ambulance transfers of patients by stretcher to be performed by licensed EMS providers. New §157.11 requires EMS vehicles to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis and requires EMS personnel complete continuing education training in the administration of anaphylaxis treatment. New §157.11 clarifies that EMS providers licensed in adjoining states responding to provide mutual aid in Texas may be exempt from holding a Texas EMS provider license, that EMS providers staffed with 75% volunteer personnel are exempt from payment of licensing fees, that EMS providers maintain documentation of medical director contracts, that EMS providers may obtain liability insurance from a company eligible to do business in Texas, that EMS vehicles must comply with federal specifications for body types, that current EMS provider license numbers must be displayed on the provider's ambulance vehicles, that EMS providers must place notices in the local media when providers are unable to provide continuous coverage, that clarifies the location of no smoking signs inside an ambulance, and that clarifies equipment requirements when lower level EMS vehicles are authorized to provide advanced level capabilities. New §157.11 clarifies that EMS provider subscription programs requirements will include written authorization from the highest local elected officials, written authorization by the county judge or city mayor as appropriate, and documentation of the beginning and ending dates of subscription enrollment periods, and requires EMS providers to develop, implement and enforce written operating policies.

Amendments to the graphic in §157.38(c) added a new CE content area, entitled: "Pediatric." The required number of hours for the content area entitled: "Minimum Units in Content Areas" was increased and the required number of hours for the content area, entitled: "Additional Units in any Approved Category" was reduced to reconcile the total number of CE hours required for recertification eligibility.

Amendments to §157.44 eliminated EMS skills verification orientation requirements, added wording to allow for EMS instructor examination by non-department entities, clarified curriculum requirements, itemized additional EMS instructor responsibilities, replaced language outdated as a result of the department's reorganization and further defined reasons for EMS instructor disciplinary action and surrender of the EMS instructor certificate.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each calendar year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering new §157.11 as proposed. The effect on state government will be an increase in revenue to the state of \$36,040 the first calendar year and \$36,040 each year for calendar years two through five due to the additional licensing fees generated through this rule. Existing staff resources should be sufficient with an adjustment of

priorities. Implementation of the proposed section will not result in any fiscal implications for local governments.

Ms. Clack determined that for each calendar year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the repeal and the remaining changes to proposed new §157.11, amendments of §157.38 or §157.44 as proposed. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack has determined that new §157.11 will have a minor effect on small businesses or micro-businesses required to comply with the section as proposed. It is doubtful that many companies will have to alter their business practices significantly to comply with the sections. There are few, if any small businesses and micro-businesses that provide ground vehicle transfer services without already holding an EMS provider license under current regulations. This is because they would not be eligible for Medicare or Medicaid reimbursement without a license. However, there are some anticipated economic costs to persons who are required to comply with the sections as proposed. Some of the providers that held an EMS provider license simply to be eligible for Medicare and Medicaid reimbursement would only register one ambulance and would legally conduct non-emergency transfers with unregistered vehicles. These revisions would require a \$180 fee for each previously unregistered transfer vehicle. Those businesses that provide ground transfer services without already holding an EMS provider license under current regulations would have to obtain an EMS provider license (\$500 license fee) and obtain at least one ambulance vehicle authorization (\$180 vehicle authorization fee) before continuing its ground ambulance transfer service. Most EMS providers already carry on their ambulances medication for the treatment of anaphylaxis. Those who do not and who will now be required to do so will use approximately 12 doses per year of medications to treat anaphylaxis. The average price for anaphylaxis medication will remain at approximately \$75 per dose. There is no anticipated negative impact on local employment.

The remaining changes to new §157.11, and the amendments to §157.38 and §157.44, as noted in this preamble, will not have an adverse economic effect on small businesses.

ECONOMIC IMPACT STATEMENT

Texas Government Code, Chapter 2006, was amended by the 80th Legislature, Regular Session, (House Bill 3430) to require, as a part of the rulemaking process, state agencies to prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses.

The changes to new §157.11 that will require all ground transport of patients by stretcher be done by a licensed EMS provider, using department authorized ambulances, will not effect many small businesses, because most persons that are using motor vehicles to transport patients by stretchers are already licensed as an EMS provider and are using department authorized ambulances, and thus will meet requirements of that portion of the new rule. However, there are

at least fifty small businesses that transport persons or patients by stretcher that will be required to obtain an EMS provider license at a fee of \$500, if they wish to continue such specific practice. There at least fifteen small businesses that are licensed EMS providers who use motor vehicles, not authorized by the department, to transport patients by stretcher that will be required to obtain a department authorization for those vehicles at the fee of \$180 noted in the Small and Micro-Business Impact Statement of this preamble, if they wish to continue to use those vehicles.

The changes to new §157.11 that will require EMS vehicles to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis will not affect many small businesses, because most persons that are licensed EMS providers, already have such devices on most of its ambulances. Those who do not and who will now be required to do so will use approximately 12 doses per year of medications to treat anaphylaxis for a total annual cost of approximately \$900, because the average price for anaphylaxis medication will be approximately \$75 per dose.

REGULATORY FLEXIBILITY ANALYSIS

Texas Government Code, Chapter 2006, was amended by the 80th Legislature, Regular Session, (House Bill 3430) to require, as a part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule.

Changes to new §157.11 that require the department to adopt rules that are consistent with the requirement that all ground transport of patients by stretcher be done by a licensed EMS provider, using department authorized ambulances, and rules that will require EMS vehicles to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis are reflective of new standards mandated by recent legislative changes to the Texas Health and Safety Code, Chapter 773. Because such rule changes are mandated by the legislature, they are considered *per se* consistent with the health, safety, or environmental and economic welfare of the state, and therefore the department need not consider other regulatory methods.

The remaining changes to new §157.11, as noted previously in this preamble, and the amendments to §157.38 and §157.44, as noted in this preamble, mainly give more clarification to the existing rules which are still consistent with the health, safety, environment and economic welfare of the state, while still accomplishing the objectives of said rules.

PUBLIC BENEFIT

Ms. Clack has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is through department inspections to ensure licensed EMS provider compliance with department health and safety regulations.

REGULATORY ANALYSIS

The department has determined that the proposed rule amendments and repeal and adoption of a new rule are not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rule amendments and repeal and adoption of a new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Steve Janda, Manager, Office of EMS / Trauma Systems Coordination, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700 or by email to Steve.Janda@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The rules are authorized by Health and Safety Code, §773.050, which allow the department to set the minimum standard for EMS providers, EMS personnel recertification and EMS instructors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed rules affect the Health and Safety Code, Chapters 773, and 1001; and Government Code, Chapter 531.

Section for repeal.

§157.11. Requirements for an EMS Provider License.

Legend: (Proposed New Rule)
Regular Print = Proposed new language

§157.11. Requirements for an EMS Provider License.

(a) Purpose: Acquiring, issuing, and maintaining an EMS Providers License

(b) Application requirements for an Emergency Medical Services (EMS) Provider License.

(1) Candidates for an initial EMS provider license shall submit a completed application to the department.

(2) A nonrefundable application fee of \$500 per provider plus \$180 for each EMS vehicle to be operated under the license shall accompany the application.

(3) An EMS provider holding a valid license or authorization from another state; whose service area adjoins the State of Texas; who has in place a written mutual aid agreement, with a licensed Texas EMS provider, and who when requested to do so by a licensed Texas EMS provider, responds into Texas for emergency mutual aid assistance, may be exempt from holding a Texas EMS provider license, but will be obligated to perform to the same medical standards of care required of EMS providers licensed in Texas.

(4) A fixed-wing or rotor-wing air ambulance provider, appropriately licensed by the state governments of New Mexico, Oklahoma, Arkansas, or Louisiana may apply for reciprocal issuance of a provider license. A nonrefundable administrative fee of \$500 per provider in addition to a nonrefundable fee of \$180 for each EMS aircraft to be operated in Texas under the reciprocal license shall accompany the application.

(5) An EMS provider that provides emergency prehospital care is exempt from payment of department licensing and authorization fees if the firm is staffed with at least 75% volunteer personnel, has no more than five full-time staff or equivalent, and if the firm is recognized as a Section 501(c)(3) nonprofit corporation by the Internal Revenue Service. An EMS provider who compensates a physician to provide medical supervision may be exempt from the payment of department licensing and authorization fees if all other requirements for fee exemption are met.

(6) Required Documents that shall accompany a license application.

(A) Document verifying volunteer status, if applicable.

(B) Map and description of service area, a list of counties and cities in which applicant proposes to provide primary emergency service and a list of all station locations with address and telephone and facsimile transmission numbers for each station.

(C) Declaration of organization type and profit status.

(D) Declaration of Provider Name.

(E) Declaration of Ownership.

(F) Declaration of Administrator.

(G) Copies of Doing Business Under Assumed Name Certificates (DBA).

(H) Completed EMS Personnel Form.

(I) Staffing Plan that describes how the EMS provider will provide continuous coverage for the service area defined in documents submitted with the EMS provider application.

(J) Completed EMS Vehicle Form.

(K) Declaration of medical director and a copy of the signed contract or agreement with a physician who is currently licensed in the State of Texas, in good standing with the Texas Medical Board, in compliance Texas Medical Board Rules, particularly regarding Emergency Medical Services as outlined in 22 TAC, Part 9, Texas Medical Board, Chapter 197, and in compliance with Title 3 of the Texas Occupations Code.

(L) Completed Medical Director Information Form.

(M) Treatment and Transport Protocols approved and signed by the medical director.

(N) A listing of equipment, supplies and medications; approved and signed by the medical director.

(O) Description of how the provider will conduct Quality Assurance.

(P) Plan for how the provider will respond to disaster incidents including mass casualty situations.

(Q) Copies of written Mutual Aid and/or Inter-local Agreements with EMS providers.

(R) Documentation as required for subscription or membership program, if applicable.

(S) Certificate of Insurance, provided by the insurer, identifying the department as the certificate holder and indicating at least minimum motor vehicle liability coverage for each vehicle to be operated and professional liability coverage. If applicant is a

government subdivision, submit evidence of financial responsibility by self-insuring to the limit imposed by the tort claims provisions of the Texas Civil Practice and Remedies Code.

(i) The applicant shall maintain motor vehicle liability insurance as required under the Texas Transportation Code.

(ii) The applicant shall maintain professional liability insurance coverage in the minimum amount of \$500,000 per occurrence, with a company licensed or deemed eligible by the Texas Department of Insurance to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient.

(T) The applicant shall provide copies of vehicle titles, vehicle lease agreements, copies of exempt registrations if applicant is a government subdivision, or an affidavit identifying applicant as the owner, lessee, or authorized operator for each vehicle to be operated under the license.

(c) EMS Provider License.

(1) License.

(A) Applicants who have submitted all required documents and who have met all the criteria for licensure will be issued a provider license to be effective for a period of two years from the date of issuance.

(B) Licenses shall be issued in the name of the applicant.

(C) License expiration dates may be adjusted by the department to create licensing periods less than two years for administrative purposes.

(D) An application for an initial license or for the renewal of a license may be denied to a person or legal entity who owns or who has owned any portion of an EMS provider service or who operates/manages or who/which has operated/managed any portion of an EMS provider service which has been sanctioned by or which has a proposed disciplinary action/sanction pending against it by the department or any other local, state or federal agency.

(E) The license will be issued in the form of a certificate which shall be prominently displayed in a public area of the provider's primary place of business.

(F) An EMS Provider License issued by the department shall not be transferable to another person or entity.

(2) Vehicle Authorizations.

(A) The department will issue authorizations for each vehicle to be operated by the applicant which meets all criteria for approval as defined in subsection (d) of this section.

(B) Vehicle Authorizations shall be issued for the following levels of service, and a provider may operate at a higher level of service based on appropriate staffing, equipment and medical direction for that level. Vehicle authorizations will include a level of care designation at one of the following levels:

- (i) Basic Life Support (BLS);
- (ii) BLS with Advanced Life Support (ALS) capability;
- (iii) BLS with Mobile Intensive Care Unit (MICU) capability;
- (iv) Advanced Life Support (ALS);
- (v) ALS with MICU capability;
- (vi) Mobile Intensive Care Unit (MICU);
- (vii) Air Medical:
 - (I) Rotor wing; or
 - (II) Fixed wing; and
- (viii) Specialized.

(C) Change of Vehicle Authorization. To change an authorization to a different level the provider shall submit a request with appropriate documentation to the department verifying the provider's ability to perform at the requested level. A fee of \$30 shall be required for each new authorization requested. The provider shall allow sufficient time for the department to verify the documentation and conduct necessary inspections before implementing service at the requested authorization level.

(D) Vehicle Authorizations are not required to be specific to particular vehicles and may be interchangeably placed in other vehicles as necessary. The original Vehicle Authorization for the appropriate level of service shall be prominently displayed in the patient compartment of each vehicle:

(E) Vehicle Authorizations are not transferable between providers.

(F) A replacement of a lost or damaged license or authorization may be issued if requested with a nonrefundable fee of \$10.

(3) Declaration of Business Names and Administration.

(A) The applicant shall submit a list of all business names under which the service is operated. If the applicant intends to operate the service under a name or names different from the name for which the license is issued, the applicant shall submit certified copies of assumed name certificates. The Department shall not issue licenses with an identical name.

(B) A change in the name which the service is operated will require a new application and a prorated fee as determined by the department. A new provider number will be issued.

(C) Name of Administrator must be declared. The applicant shall submit a notarized document declaring the full name of the chief administrator, his/her mailing address and telephone number to whom the department shall address all official communications in regard to the license.

(d) Vehicles.

(1) All EMS vehicles must be adequately constructed, equipped, maintained and operated to render patient care, comfort and transportation safely and efficiently.

(2) EMS vehicles must allow the proper and safe storage and use of all required equipment, supplies and medications and must allow all required procedures to be carried out in a safe and effective manner.

(3) Unless otherwise approved by the department, EMS vehicles must meet the minimum ambulance vehicle body type, dimension and safety criteria as specified in the "Federal Specification for ambulances", KKK-A-1822, published by the U.S. General Services Administration.

(4) All vehicles shall have an environmental system capable of heating or cooling, in accordance with the manufacturer specifications, within the patient compartment at all times when in service and which allows for protection of medication, according to manufacturer specifications, from extreme temperatures if it becomes environmentally necessary. The provider shall provide evidence of an operational policy which shall list the parenteral pharmaceuticals authorized by the medical director and which shall define the storage and/or FDA recommendations. Compliance with the policy shall be incorporated into the provider's Quality Assurance process and shall be documented on unit readiness reports.

(5) When response-ready or in-service, EMS vehicles shall have operational two-way communication capable of contacting appropriate medical resources.

(6) When response ready or in service, EMS vehicles shall be in compliance with all applicable federal, state and local requirements.

(7) All EMS vehicles shall have the name of the provider and a current department issued EMS provider license number prominently displayed on both sides of the

vehicle in at least 2 inch lettering. The license number should have the letters TX prior to the license number. This requirement does not apply to fixed wing air craft.

(e) Substitution, replacement and additional vehicles.

(1) The provider shall notify the department within five business days if the provider substitutes or replaces a vehicle. No fee is required for a vehicle substitution or replacement.

(2) The provider shall notify the department if the provider adds a vehicle to the provider's operational fleet. A vehicle authorization request shall be submitted with a non-refundable vehicle fee prior to the vehicle being placed into service.

(f) Staffing Plan Required.

(1) The applicant shall submit a completed EMS Personnel Form listing each response person assigned to staff EMS vehicles by name, certification level, and department issued certification/license identification number.

(2) An EMS provider responsible for an emergency response area that is unable to provide continuous coverage within the declared service areas shall publish public notices in local media of its inability to provide continuous response capability and shall include the days and hours of its operation. The EMS provider shall notify all the public safety-answering points and all dispatch centers of the days and hours when unable to provide coverage. The EMS provider shall submit evidence that reasonable attempts to secure coverage from other EMS providers have been made.

(g) Minimum Staffing Required.

(1) BLS - when response-ready or in-service, authorized EMS vehicles operating at the BLS level shall be staffed at a minimum with two emergency care attendants (ECA)s.

(2) BLS with ALS capability when response-ready or in-service below ALS two ECA's. Full ALS status becomes active when staffed by at least an emergency medical technician (EMT)-Intermediate and at least an EMT.

(3) BLS with MICU capability - when response-ready or in-service below MICU two ECAs. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(4) ALS - when response-ready or in-service, authorized EMS vehicles operating at the ALS level shall be staffed at a minimum with one EMT Basic and one EMT-Intermediate.

(5) ALS with MICU capability - when response-ready or in-service below MICU shall require one EMT-Intermediate and one EMT. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(6) MICU - when response-ready or in-service, authorized EMS vehicles operating at the MICU level shall be staffed at a minimum with one EMT Basic and one EMT-Paramedic.

(7) Specialized - when response-ready or in-service, EMS vehicles authorized to operate for a specialized purpose shall be staffed with a minimum of two personnel appropriately licensed and/or certified as determined by the type and application of the specialized purpose and as approved by the medical director and the department.

(8) For air ambulance staffing requirements refer to §157.12(f) of this title (relating to Rotor-wing Air Ambulance Operations) or §157.13(g) of this title (relating to Fixed-wing Air Ambulance Operations).

(9) As justified by patient needs, providers may utilize appropriately certified and/or licensed medical personnel in addition to those which are required by their designation levels. In addition to the care rendered by the required staff, the provider shall be accountable for care rendered by any additional personnel.

(h) Treatment and Transport Protocols Required.

(1) The applicant shall submit written delegated standing orders for patient treatment and transport (protocols) which have been approved and signed by the provider's medical director.

(2) The protocols shall have an effective date and an expiration date which correspond to the inclusive dates of the provider's EMS license.

(3) The protocols shall address the use of non-EMS certified or licensed medical personnel who, in addition to the EMS staff, may provide patient care on behalf of the provider and/or in the provider's EMS vehicles.

(4) The protocols shall address the use of all required, additional, and/or specialized medical equipment, supplies, and pharmaceuticals carried on each EMS vehicle in the provider's fleet.

(5) The protocols shall identify delegated procedures for each EMS Certification or license level utilized by the provider.

(6) The protocols shall indicate specific applications, including geographical area and duty status of personnel.

(i) EMS Equipment, supplies, medical devices, parenteral solutions and pharmaceuticals.

(1) The EMS provider shall submit a list, approved by the medical director and fully supportive of and consistent with the protocols, of all medical equipment, supplies, medical

devices, parenteral solutions and pharmaceuticals to be carried. The list shall specify the quantities of each item to be carried and shall specify the sizes and types of each item necessary to provide appropriate care for all age ranges appropriate to the needs of their patients. The quantities listed shall be appropriate to the provider's call volume, transport times and restocking capabilities.

(2) All critical patient care equipment, medical devices, and supplies shall be clean and fully operational. All critical patient care battery powered equipment shall have spare batteries or an alternative power source, if applicable.

(3) All solutions and pharmaceuticals shall be in date and shall be stored and maintained in accordance with the manufacturers and/or U.S. Federal Drug Administration (FDA) recommendations.

(4) The requirements for air ambulance equipment and supplies are listed in §157.12(h) of this title or §157.13(h) of this title.

(j) The following items shall be present on each EMS in-service vehicle and on, or immediately available for, each response-ready vehicle in quantities, sizes and types as specified in the equipment list as required in subsection (i) of this section:

(1) Basic Life Support:

(A) oropharyngeal airways;

(B) portable and vehicle mounted suction;

(C) bag valve mask units, oxygen capable;

(D) portable and vehicle mounted oxygen;

(E) oxygen delivery devices;

(F) dressing and bandaging materials;

(G) rigid cervical immobilization devices;

(H) spinal immobilization devices;

(I) extremity splints;

(J) equipment to meet special patient needs;

(K) equipment for determining and monitoring patient vital signs, condition or response to treatment;

(L) pharmaceuticals, as required by medical director protocols;
(M) An External Cardiac Defibrillator appropriate to the staffing level;
(N) A patient-transport device capable of being secured to the vehicle.
(O) An epinephrine auto injector or similar device capable of treating anaphylaxis.

(2) Advanced Life Support:

- (A) all required BLS equipment;
- (B) advanced airway equipment;
- (C) IV equipment and supplies; and
- (D) pharmaceuticals as required by medical director protocols.

(3) MICU:

- (A) all required BLS and ALS equipment;
- (B) cardiac monitor/defibrillator; and
- (C) pharmaceuticals as required by medical director protocols.

(4) BLS with ALS Capability:

- (A) all required BLS equipment, even when in service or response ready at the ALS level; and
- (B) all required ALS equipment, when in service or response ready at the ALS level.

(5) BLS with MICU Capability:

- (A) all required BLS equipment, even when in service or response ready at the MICU level; and
- (B) all required MICU equipment, when in service or response ready at the either the MICU level.

(6) ALS with MICU Capability:

(A) all required ALS equipment, even when in service or response ready at the MICU level; and

(B) all MICU equipment, when in service or response ready at the MICU level.

(7) In addition to medical supplies and equipment:

(A) a complete and current copy of written protocols approved by the medical director; with a current and complete equipment, supply, and medication list;

(B) operable emergency warning devices;

(C) personal protective equipment for the crew to include at least:

(i) protective, non-porous gloves;

(ii) medical eye protection;

(iii) medical respiratory protection;

(iv) medical protective gowns or equivalent; and

(v) personal cleansing supplies;

(D) sharps container;

(E) biohazard bags;

(F) portable, battery-powered flashlight (not a penlight);

(G) a mounted fire extinguisher;

(H) “No Smoking” signs posted in the patient compartment and cab of vehicle;

(I) emergency response guide book (for hazardous materials)

(8) As justified by specific patient needs, and when qualified personnel are available, providers may appropriately utilize equipment in addition to that which is required by their designation levels. Equipment used must be consistent with protocols and/or patient-specific orders and must correspond to personnel qualifications.

(k) National accreditation. If a provider has been accredited through a national accrediting organization approved by the department and adheres to Texas staffing level

requirements, the department may exempt the provider from portions of the license process. In addition to other licensing requirements, accredited providers shall submit:

- (1) an accreditation self-study;
- (2) a copy of formal accreditation certificate; and
- (3) any correspondence or updates to or from the accrediting organization which impact the provider's status.

(1) Subscription or Membership Services. An EMS provider who operates or intends to operate a subscription or membership program for the provision of EMS within the provider service area shall meet all the requirements for an EMS provider license as established by the Health and Safety Code, Chapter 773, and the rules adopted thereunder, and shall obtain department approval prior to soliciting, advertising or collecting subscription or membership fees. In order to obtain department approval for a subscription or membership program, the EMS provider shall:

(1) Obtain written authorization from the highest elected official (County Judge or Mayor) of the political subdivision(s) where subscriptions will be sold. Written authorization must be obtained from each County Judge if subscriptions are to be sold in multiple Counties.

(A) The County Judge must provide written authorizations if subscriptions sold across an entire County.

(B) The Mayor may provide written authorization if subscriptions are sold exclusively within the boundaries of an incorporated town or city.

(2) Submit a copy of the contract used to enroll participants.

(3) The EMS provider shall maintain a current file of all advertising for the service. Submit a copy of all advertising used to promote the subscription service within ten days after the beginning of any enrollment period.

(4) Comply with all state and federal regulations regarding billing and reimbursement for participants in the subscription service.

(5) Provide evidence of financial responsibility by:

(A) obtaining a surety bond payable to the department in an amount equal to the funds to be subscribed. The surety bond must be on a department bond form and be issued by a company licensed by or eligible to do business in the State of Texas; or

(B) submitting satisfactory evidence of self insurance an amount equal to the funds to be subscribed if the provider is a function of a governmental entity.

(6) Not deny emergency medical services to non-subscribers or subscribers of non-current status.

(7) Be reviewed at least every year; and the subscription program may be reviewed by the department at any time.

(8) Furnish a list after each enrollment period with the names, addresses, dates of enrollment of each subscriber, and subscription fee paid by each subscriber.

(9) Furnish the department beginning and ending dates of enrollment period(s). Subscription service period shall not exceed one year. Subscribers shall not be charged more than a prorated fee for the remaining subscription service period that they subscribe for.

(10) Furnish the department with the total amount of funds collected each year.

(11) Not offer membership nor accept members into the program who are Medicaid clients.

(m) Responsibilities of the EMS provider. During the license period, the provider's responsibilities shall include:

(1) assuring that all response-ready and in-service vehicles are maintained, operated, equipped and staffed in accordance with the requirements of the provider's license;

(2) assuring the existence of and adherence to a quality assurance plan which shall, at a minimum, include;

(A) the standard of patient care and the medical director's protocols;

(B) pharmaceutical storage;

(C) readiness inspections;

(D) preventive maintenance;

(E) policies and procedures;

(F) complaint management; and

(G) patient care reporting and documentation.

(3) monitoring the quality of patient care provided by the service and personnel and taking appropriate and immediate corrective action to insure that quality of service is maintained in accordance with the existing standards of care;

(4) ensuring that all personnel are currently certified or licensed by the department;

(5) assuring that all personnel, when on an in-service vehicle or when on the scene of an emergency, are prominently identified by, at least, the last name and the first initial of the first name, the certification or license level and the provider name. A provider may utilize an alternative identification system in incident specific situations that pose a potential for danger if the individuals are identified by name;

(6) assuring the confidentiality of all patient information in compliance with all federal and state laws;

(7) assuring that Informed Treatment/Transport Refusal forms are obtained from all patients refusing service, or documenting incidents when an Informed Treatment/Transport Refusal form cannot be obtained;

(8) assuring that patient care reports are completed accurately on all patients;

(9) assuring that patient care reports are provided to emergency facilities receiving the patients:

(i) the report shall be accurate, complete and clearly written or computer generated;

(ii) the report shall document, at a minimum, the patient's name, condition upon arrival at the scene; the prehospital care provided; the patient's status during transport, including signs, symptoms, and responses during the transport; the call initiation time; dispatch time; scene arrival time; scene departure time; hospital arrival time; and, the identification of the EMS staff;

(iii) whenever operationally feasible, the report shall be provided to the receiving facility at the time the patient is delivered; and/or

(iv) if in a response-pending status, an abbreviated written report shall be provided at the time the patient is delivered and a full written or computer generated report shall be delivered to the facility within one business day of the delivery of the patient.

(10) assuring that all requested patient records are made promptly available to the medical director or department when requested;

(11) assuring that current protocols, current equipment, supply and medication lists, and the correct original Vehicle Authorization at the appropriate level are maintained on each response-ready and in-service vehicle;

(12) monitoring and enforcing compliance with all policies;

(13) assuring provisions for the appropriate disposal of medical and/or biohazardous waste materials;

(14) assuring ongoing compliance with the terms of first responder agreements;

(15) assuring that all documents, reports or information provided to the department are current, accurate and complete;

(16) assuring compliance with all federal and state laws and regulations and all local ordinances, policies and codes at all times;

(17) assuring that all response data required by the department is submitted in accordance with the department's requirements;

(18) assuring that, whenever there is a change in the name of the provider or the service's operational assumed name, the printed name on the vehicles are changed accordingly within 30 days of the change;

(19) assuring that the department is notified in five business days whenever:

(A) a vehicle is substituted or replaced;

(B) there is a change in the level of service;

(C) there is a change in the declared service area;

(D) there is a change in the official business mailing address;

(E) there is a change in the physical location of the business;

(F) there is a change in the physical location of patient report file storage, to assure that the department has access to these records at all times; and

(G) there is a change of the administrator.

(20) assuring that when a change of the medical director has occurred the department be notified within one business day;

(21) develop, implement and enforce written operating policies and procedures required under this chapter and/or adopted by the licensee. Assure that each employee is provided a copy upon employment and whenever such policies and/or procedures are changed. A copy of the written operating policies and procedures shall be made available to the department on request. Policies at a minimum shall adequately address;

(A) personal protective equipment;

(B) immunizations available to staff;

(C) infection control procedures;

(D) communicable disease exposure;

(E) emergency vehicle operation;

(F) credentialing of new response personnel before being assigned primary care responsibilities. The credentialing process shall include as a minimum:

(i) a comprehensive orientation session of the services policies and procedures, treatment and transport protocols, safety precautions, and quality management process; and

(ii) an internship period in which all new personnel practice under the supervision of, and are evaluated by, another more experienced person, if operationally feasible.

(G) appropriate documentation of patient care; and

(H) vehicle checks, equipment, and readiness inspections.

(22) assuring that manufacturers' operating instructions for all critical patient care electronic and/ or technical equipment utilized by the provider are available for all response personnel;

(23) assuring that the department is notified within five business days of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever:

(A) the vehicle is rendered disabled and inoperable at the scene of the occurrence; or

(B) there is a patient on board.

(24) assuring that the department is notified within 1 business day of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever there is personal injury or death to any person;

(25) maintaining motor vehicle liability insurance as required under the Texas Transportation Code;

(26) maintaining professional liability insurance coverage in the minimum amount of \$500,000 per occurrence, with a company licensed or deem eligible by the Texas Department of Insurance to do business in Texas in order to secure payment for any loss or

damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient;

(27) insuring continuous coverage for the service area defined in documents submitted with the EMS provider application;

(28) responding to requests for assistance from the highest elected official of a political subdivision or from the department during a declared emergency or mass casualty situation;

(29) assuring all EMS personnel receive continuing education training on the provider's anaphylaxis treatment protocols. The provider shall maintain training records to include date, time, and location of such training for all its EMS personnel;

(30) immediately notify the department in writing when operations cease in any service area;

(31) assure that all patients transported by stretcher must be in a department authorized EMS vehicle; and

(32) develop or adopt and then implement policies, procedures and protocols necessary for its operations as an EMS provider, and enforce all such policies procedures and protocols.

(n) License renewal process.

(1) It shall be the responsibility of the provider to request license renewal application information.

(2) Providers shall submit a completed application, all other required documentation and a nonrefundable license renewal fee, no later than 90 days prior to the expiration date of the current license.

(A) If a complete application is received by the department 90 or more days prior to the expiration date of the current license that is to be renewed, the applicant shall submit a non refundable application fee of \$400 per provider plus \$180 for each EMS vehicle.

(B) If a complete application is received by the department 60 or more days, but less than 90 days, prior to the expiration date of the current license that is to be renewed, the applicant shall submit a non refundable application fee of \$450 per provider plus \$180 for each EMS vehicle.

(C) If a complete application is received by the department less than 60 days prior to the expiration of the current license the applicant shall submit a nonrefundable application fee of \$500 per provider plus \$180 for each EMS vehicle.

(D) If the application for renewal is received by the department after the expiration date of the current license, a notice will be sent to the provider explaining they are not eligible to renew, but the license application will be processed and new provider license number issued after satisfying all requirements.

(E) An EMS provider may not operate after the license has expired.

(o) Provisional License.

(1) The department may issue a provisional license if an urgent need exists in a service area if the department finds that the applicant is in substantial compliance with the provisions of this section and if the public interest would be served. A provisional license shall be effective for no more than 45 days from the date of issuance.

(A) A provider may apply for a provisional license by submitting a written request and a nonrefundable fee of \$30.

(B) A provisional license issued by the department may be revoked at any time by the department, with written notice to the provider, if the department finds that the provider is failing to provide appropriate service in accordance with this section or that the provider is in violation of any of the requirements of this title.

(2) An EMS provider may not operate after the license has expired.

(p) Advertisements.

(1) Any advertising by an EMS provider shall not be misleading, false, or deceptive. If an EMS provider advertises in Texas and/or conducts business in Texas by regularly transporting patients to, from, or within Texas, the provider shall be required to have a Texas EMS Provider License.

(2) An EMS provider shall not advertise levels of patient care which cannot be provided at all times. The provider shall not use a name, phrase or language that could mislead the public to believe a higher level of care is being provided.

(3) An EMS provider that has more than five paid staff, but is composed of at least 75% volunteer EMS personnel may advertise as a volunteer service.

(q) Surveys/Inspections.

(1) All initial applicants shall be required to have an initial compliance survey by the department that evaluates all aspects of an applicant's proposed operations including clinical care components and an inspection of all vehicles prior to the issuance of a license.

(2) At renewal, or randomly, or in response to a complaint, or for other good reason the department may conduct an unannounced compliance survey to include inspection of

a provider's vehicles, operations, and/or records to insure compliance with this title at any time, including nights or weekends.

(3) If a re-survey/inspection to insure correction of a deficiency is conducted, the provider shall pay a nonrefundable fee of \$30 per vehicle needing a re-inspection.

(r) Specialty Care Transports. A Specialty Care Transport is defined as the interfacility transfer by a department licensed EMS provider of a critically ill or injured patient requiring specialized interventions, monitoring and/or staffing. To qualify to function as a Specialty Care Transport the following minimum criteria shall be met:

(1) Qualifying Interventions:

(A) patients with one or more of the following IV infusions: vasopressors; vasoactive compounds; antiarrhythmics; fibrinolytics; tocolytics; blood or blood products and/or any other parenteral pharmaceutical unique to the patient's special health care needs; and

(B) one or more of the following special monitors or procedures. mechanical ventilation; multiple monitors, cardiac balloon pump; external cardiac support (ventricular assist devices, etc); any other specialized device, vehicle or procedure unique to the patient's health care needs.

(2) Equipment. All specialized equipment and supplies appropriate to the required interventions shall be available at the time of the transport.

(3) Minimum Required Staffing. One currently certified EMT-Basic and one currently certified or licensed paramedic with the additional training as defined below; or, a currently certified EMT-Basic and a currently certified or licensed paramedic accompanied by at least one of the following: a Registered Nurse with special knowledge of the patient's care needs; a certified Respiratory Therapist; a licensed physician; or, any licensed health care professional designated by the transferring physician.

(4) Additional Required Training for Certified/Licensed Paramedics: Evidence of successful completion of post-paramedic training and appropriate periodic skills verification in management of patients on ventilators, 12 lead EKG and/or other critical care monitoring devices, drug infusion pumps, and cardiac and/or other critical care medications, or any other specialized procedures or devices determined at the discretion of the provider's medical director.

(s) For all applications and renewal applications, the department (or the board) is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

Legend: (Proposed amendments)

Single Underline = Proposed new language

[Bold, Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§157.38. Continuing Education

(a) – (b) (No change.)

(c) Content requirements. Candidates at each certification level shall, at a minimum, accrue department-approved CE in the following content areas.

Figure: 25 TAC §157.38(c)

CONTENT AREAS	ECA	EMT-B	EMT-I	EMT-P
PREPARATORY	3	6	9	12
AIRWAY MANAGEMENT/VENTILATION	3	6	9	12
PATIENT ASSESSMENT	2	4	6	8
TRAUMA	3	6	9	12
MEDICAL	9	18	27	36
SPECIAL CONSIDERATIONS	3	6	9	12
CLINICALLY RELATED OPERATIONS	1	2	3	4
PEDIATRIC	<u>3</u>	<u>6</u>	<u>9</u>	<u>12</u>
MINIMUM UNITS IN CONTENT AREAS	<u>27</u> [24]	<u>54</u> [48]	<u>81</u> [72]	<u>108</u> [96]
ADDITIONAL UNITS IN ANY APPROVED CATEGORY	<u>9</u> [12]	<u>18</u> [24]	<u>27</u> [36]	<u>36</u> [48]
TOTAL REQUIRED FOR RECERTIFICATION ELIGIBILITY	36	72	108	144

(d) – (l) (No change.)

§157.44. Emergency Medical Service Instructor Certification.

(a) General.

(1) (No change.)

(2) An instructor must be currently certified **[as]** at the [least an] emergency medical technician (EMT) level or higher and may not instruct knowledge or skills above the [his] current level of personnel certification.

(3) Instructor certification is dependent on the individual's EMS personnel certification and is subject to the same status as that personnel certification. If the department imposes disciplinary action in accordance with §157.16 of this title (relating to Emergency Suspension, Suspension, Probation, Revocation or Denial of a Provider License) or §157.36 of this title (relating to Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License), the action shall also be imposed automatically and immediately on the individual's instructor [instructor's] certification.

(b) Certification. To obtain certification, a candidate shall:

(1) (No change.)

(2) have active Texas EMS personnel certification;

(3) complete a training program using an instructor training curriculum approved by the department; or

(4) successfully complete a methods of teaching course or other type of instructor training course approved by the department; the course completed shall be a minimum of 40 hours and all requirements shall be completed within one year of the completion date on the course certificate, and the department may exempt those applicants who are already certified in those courses; or

(5) an instructor candidate who has a degree in secondary or higher education, a secondary teaching certificate or is currently certified as an EMS Instructor in another state shall submit documentation to verify the degree, teaching certificate or out-of-state instructor certificate;

(6) [(4)] submit an application to the department with a nonrefundable fee of \$30 to the department, except a fee shall not be required if compensation is not received for instructing training courses or programs; and a course completion document from a department-approved instructor course; and

(7) [(5)] pass the instructor examination administered or approved [conducted] by the department.

(8) [(c)] The instructor candidate who does not pass the department administered exam may have one opportunity to retest by submitting the retest application and \$30 retest fee, if applicable. The retest must be completed no later than one year after the course completion date. The candidate who fails the retest must complete another instructor course to become eligible for instructor certification.

(c) [(d)] Currently certified instructors shall be considered to have met the qualifications in this section.

(d) [(e)] Period of certification. After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of subsection (b) of this section shall be certified as an instructor for two years commencing on the date of issuance of the certificate.

(e) [(f)] Responsibilities. An instructor shall have the following responsibilities:

(1) conduct [conducting] classroom and laboratory sessions in accordance with lesson objectives as assigned by the course coordinator;

(2) conduct [conducting] skills proficiency verifications and other student evaluations as assigned by the course coordinator;

(3) assist [assisting] the course coordinator in preparing and maintaining records and performing other duties necessary to insure the integrity, efficiency and effectiveness of the course; [.]

(4) adhere to the curriculum standards as referenced in §157.32 of this title (relating to Emergency Medical Services Education Program and Course Approval);

(5) adhere to the standards outlined in the department's EMS education and Training Manual;

(6) provide supervision and oversight for assigned courses;

(7) function as the liaison between the students, the course coordinator, the program, and the department;

(8) ensure that the facilities, including the classroom and lab areas, are conducive to a positive learning environment;

(9) ensure that equipment and supplies are clean, in working order, and of adequate quality and quantity to provide a positive learning environment;

(10) properly administer and maintain integrity of the skills proficiency verifications and other student evaluations during a course;

(11) properly and accurately inform students of the requirements, processes, and paperwork necessary for Texas EMS certification or licensure;

(12) properly and accurately inform students of the laws and rules regulating EMS, including requirements for staffing Texas EMS vehicles; and

(13) maintain the overall classroom setting and/or course presentation to ensure the integrity, efficiency, and/or effectiveness of the course.

(f) [(g)] Recertification.

(1) Prior to the expiration of a certificate, the department shall send a notice of expiration to the certificant at the address shown in the current records of the department. It is the responsibility of EMS personnel to notify the department of any change of address.

(2) If a certificant has not received notice of expiration from the department 30 days prior to the expiration, the certificant shall request an application for recertification from the department or download an application from the Internet. Failure to apply for recertification shall result in expiration of the certificate.

(3) To be eligible for recertification, the instructor shall meet recertification requirements during the latest instructor certification period:

(A) maintain active status EMS certification; and

(B) submit the application for recertification and a nonrefundable fee of \$30.

(4) After verification by the department of the information submitted, the candidate who meets the requirements of this section shall be recertified for two years commencing on the day following the expiration of the current certificate.

(g) [(h)] Late recertification.

(1) An application for renewal of a certificate shall be considered late if:

(A) the application and nonrefundable fee are received after the most recent certificate has expired or;

(B) all requirements for recertification are not met prior to the end of the most recent certification period.

(2) An instructor who has not recertified prior to the end of his most recent certification period is not certified.

(h) ~~[(i)]~~ Recertification. To be eligible for recertification, the candidate shall meet the following:

(1) A candidate whose certificate has been expired for 90 days or less may renew the certificate by submitting an application and paying a nonrefundable renewal fee that is equal to 1-1/2 times the normally required application renewal fee for that level as listed in subsection (b)(6) ~~[(b)(4)]~~ of this section;

(2) A candidate whose certificate has been expired for more than 90 days but less than one year may renew the certificate by submitting an application and paying a nonrefundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsection (b)(6) ~~[(b)(4)]~~ of this section.

(3) A candidate must complete all the requirements for recertification no later than one year after the expiration of the most recent certificate.

(4) After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of this subsection shall be recertified for two years commencing on the day of issuance of a certificate.

(5) A candidate whose certification is expired more than one year must meet the requirements of subsection (b) of this section including the completion of another initial course to be certified.

(i) ~~[(j)]~~ Disciplinary action.

(1) Emergency suspension. The department ~~[(bureau chief of the Bureau of Emergency Management)]~~ may issue an emergency order to suspend an instructor if the department ~~[(bureau chief)]~~ has reasonable cause to believe continued activity of the individual constitutes an imminent danger ~~[a threat]~~ to the public health or safety.

(A) An emergency suspension shall be effective immediately without a hearing or written notice to the certificate holder. Notice to the certificant shall be established on the date that a copy of the signed emergency suspension order is sent to the address shown in the current records of the department, or by return receipt. Notice shall also be sent to any sponsoring entity.

(B) If a written request for a hearing is received from the certificate holder within 15 days of the date of notice, the department shall conduct a hearing not later than the 30th day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and appeal from a disciplinary action related to the hearing shall be in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(2) Certification suspension ~~[(Suspension)]~~ or revocation, or application denial. The department may suspend or revoke a certification or deny an application for certification

[An instructor's certification may be suspended or revoked] for, but not limited to, the following reasons:

(A) failing to maintain a current and active Texas [active status] EMS personnel certification at the appropriate level;

(B) failing to comply with the responsibilities of an instructor as in subsection (e) [(f)] of this section;

(C) falsifying or assisting another person in falsifying an application for EMS certification;

(D) falsifying or assisting another person in falsifying a program approval application, a self-study, a course approval application, or any supporting documentation;

(E) falsifying or assisting another person in falsifying a course completion certificate or any other document that records or verifies course activity and/or is a part of the course record;

(F) compromising department or program standards for verification of skills proficiency or falsifying proficiency verification records;

(G) obtaining, or attempting to obtain, or assisting another person in obtaining or attempting to obtain certification or recertification by fraud, deception, falsification, theft, misappropriation, coercion, forgery, or misrepresentation;

[(G) assisting another to obtain or to attempt to obtain personnel certification or recertification by fraud, forgery, deception or misrepresentation;]

(H) failing to complete and submit student documents within the established time frames;

(I) compromising or failing to maintain the order, discipline and fairness of a department-approved course or program;

(J) delivering or allowing inadequate class presentations;

(K) compromising an examination or examination process administered or approved by the department;

(L) cheating or assisting another in cheating on an EMS examination, other evaluation or any other activity offered or conducted by the department, a training program approved by the department, or a provider licensed by the department;

(M) accepting any benefit to which there is no entitlement or benefits in any manner through fraud, deception, falsification, misrepresentation, theft, misappropriation or coercion;

(N) failing to maintain appropriate policies, procedures and safeguards to ensure the safety of students, fellow instructors or other class participants;

(O) allowing recurrent use of inadequate, inoperable, or malfunctioning equipment;

(P) issuing a check to the department which is returned unpaid;

(Q) failing to maintain education course records for initial or continuing education (CE) courses;

(R) demonstrating an unwillingness or inability to comply with the Health and Safety Code and rules adopted thereunder;

(S) failing to give the department true and complete information when asked regarding any alleged or actual violation of the Health and Safety Code, or the rules adopted thereunder, or failing to report a violation;

(T) committing any violation during a probationary period; **[and]**

(U) functioning or attempting to function as an instructor during a period of suspension shall be cause for revocation of the instructor certification[.];

(V) failing to report a violation of the Health and Safety Code Chapter 773, or the rules adopted thereunder;

(W) failure to notify the department when any current student or certified or licensed program employee is arrested or convicted for any crime, upon the instructor's discovery of such;

(X) conviction of a crime which directly relates to the profession of EMS personnel or EMS educators as described in §157.37 of this title (relating to Certification or Licensure of Persons With Criminal Background);

(Y) received a deferred adjudication or deferred prosecution to resolve any criminal charge against the candidate or certificant, which relates to the candidate's or certificant's ability to carry out EMS duties and/or the responsibilities of an EMS Instructor;

(Z) unprofessional conduct such as, but not limited to the following:

- (i) retaliation;
- (ii) discrimination;
- (iii) verbal or physical abuse; or

(iv) inappropriate physical or sexual contact.

(AA) failing to maintain a substantial amount of skill, knowledge and/or academic acuity to timely and/or accurately carry out the duties of an EMS Instructor;

(BB) failing to meet standards as required in this section;

(CC) previous conduct on the part of the applicant during the performance of duties relating to the responsibilities of EMT personnel or an EMS Instructor that is contrary to accepted standards of conduct as described in Chapter 157 of this title;

(DD) disciplinary action relating to a certificate or license issued in another state; and/or

(EE) misrepresenting any requirements for certification or licensure

(3) Notification. If the department proposes to take disciplinary action against an EMS instructor, the certificant shall be notified at the address shown in the current records of the department. The notice must state the alleged facts or conduct warranting the action and state that the certificant has an opportunity to request a hearing.

(A) The certificant may request a hearing within 15 days after the date of the notice. This request shall be in writing and submitted to the bureau chief. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

(B) If the certificant does not request a hearing, after being sent the notice of opportunity, the certificant waives the opportunity for a hearing and the department shall implement its proposal.

(4) Probation. The department may probate any penalty assessed under this section and may specify terms and conditions of any probation issued.

(5) Reapplication.

(A) Two years after the revocation, denial, or the voluntary surrender of an instructor certification while disciplinary action is pending, an individual may petition the department, in writing, for the opportunity to reapply for certification. Expiration of a certificate during the suspension period shall not affect the two-year waiting period required before a petition can be submitted.

(B) The department shall evaluate the petition and may allow or deny the opportunity to submit an application for recertification. The petitioner bears the burden of proving fitness for certification.

(C) In evaluating a petition for permission to reapply for certification the department shall consider, but is not limited to, the following issues:

(i) the likelihood of a repeat of the actions or inactions that led to revocation;

(ii) the petitioners overall record as an instructor;

(iii) letters of support or recommendation;

(iv) letters in protest or nonsupport of the petition; and

(v) the need for the services of an instructor in a given area.

(D) The petitioner shall be notified of the department's decision to allow or deny the submission of reapplication within 60 days of the request.

[(E) An instructor whose certificate expires during a suspension or revocation period may not petition to reapply for certification until the end of the suspension or revocation period.]

(j) Surrender of a certificate. Surrender of a certificate shall not deprive the department of jurisdiction in regard to disciplinary action against the certificant. An individual who wishes to surrender his or her certification prior to the expiration of the certificate may do so by:

(1) completing a Surrender of Certificate statement; and

(2) in the event that a disciplinary action is pending or reasonably imminent, the certificant must acknowledge that the surrender constitutes a pleas of “no contest” to the allegations upon which the disciplinary action is predicated.

(k) For all applications and renewal applications, the department [(or the board)] is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

~~§157.11. Requirements for an EMS Provider License.~~

~~(a) Application requirements for an Emergency Medical Services (EMS) Provider License.~~

~~(1) Candidates for an EMS provider license shall submit a completed application (application, all other required information described in a provider licensing instruction document provided by the Texas Department of Health (department) and a nonrefundable fee) to the department.~~

~~(2) The nonrefundable fee shall be \$150 for each EMS vehicle to be operated unless the license is issued for less than 12 months in which case the nonrefundable fee shall be \$75 for each vehicle.~~

~~(3) If an air ambulance provider advertises in Texas and operates an air ambulance service, the provider shall be required to have a Texas EMS Provider License.~~

~~(4) A rotor wing air ambulance provider from New Mexico, Oklahoma, Arkansas, or Louisiana may apply for reciprocal issuance of a provider license. A nonrefundable administrative fee of \$250 shall accompany the application in addition to the nonrefundable fee in subsection (a)(2) of this section.~~

~~(5) Applicants who have no more than five full-time paid medical and support staff, or the full-time equivalent, and who operate with at least 75% volunteer personnel, are exempt from the payment of fees.~~

~~(b) Licenses and Designations. Candidates who meet all the criteria for licensure shall be issued a provider license. Licenses may be issued for less than two years for administrative purposes. Licensed EMS providers (providers) shall comply with all requirements of their license at all times.~~

~~(1) Licenses. Providers shall be issued a license for a specific number of vehicles. Copies of the license shall be prominently displayed in a public area of the provider's headquarters and in the patient compartment of each of the provider's vehicles.~~

~~(2) Designations. The provider will indicate to the department the number of vehicles designated at each level. Designations are not required to be dedicated to a particular vehicle. A designation at one of the following levels shall be prominently displayed in the patient compartment of each vehicle:~~

~~(A) Basic Life Support (BLS);~~

~~(B) BLS with Advanced Life Support (ALS) capability;~~

~~(C) BLS with Mobile Intensive Care Unit (MICU) capability;~~

~~(D) ALS;~~

~~(E) ALS with MICU capability;~~

~~(F) MICU;~~

~~(G) MICU Air:~~

~~(i) Rotor wing; or~~

~~(ii) Fixed wing; and~~

~~(H) specialized.~~

~~(e) Transfer of licenses and designations. Licenses and designations are not transferable between providers.~~

~~(d) Vehicles.~~

~~(1) All EMS vehicles must be adequately constructed, equipped, maintained and operated to render patient care, comfort and transportation safely and efficiently. EMS vehicles must allow the proper and safe storage and use of all required equipment, supplies and medications and must allow all required procedures to be carried out in a safe and effective manner. Unless otherwise approved by the department, ground vehicles must conform to one of the body types generally recognized as Type I, II, or III.~~

~~(2) When response ready or in service, EMS vehicles shall have operational two-way communication capable of contacting appropriate medical resources, and shall be in compliance with all applicable state and/or federal laws and; except for fixed wing aircraft shall have the name of the provider prominently displayed on both sides of the vehicle. Licensed providers who operate rotor or fixed wing aircraft must comply with all requirements of §157.12 of this title (relating to Rotor wing Air Ambulance Operations) or §157.13 of this title (relating to Fixed wing Air Ambulance Operations).~~

~~(3) Substitution, replacement and additional vehicles.~~

~~(A) If a provider substitutes or replaces a vehicle, there is no fee, but the department shall be notified within 10 days.~~

~~(B) If a provider adds a vehicle to the fleet, a nonrefundable fee is required and the department shall be notified within 10 days of the designation assigned to the vehicle.~~

~~(e) Required Minimum Staffing.~~

~~(1) BLS when response ready or in service two emergency care attendants (ECA)'s.~~

~~(2) BLS with ALS capability—when response ready or in service below ALS—two ECA's. Full ALS status becomes active when staffed by at least an emergency medical technician (EMT) Intermediate and at least an EMT.~~

~~(3) BLS with MICU capability—when response ready or in service below MICU—two ECA's. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.~~

~~(4) ALS—when response ready or in service—one EMT Intermediate and one EMT.~~

~~(5) ALS with MICU capability—when response ready or in service below MICU—one EMT Intermediate and one EMT. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.~~

~~(6) MICU—when response ready or in service—one certified or licensed paramedic and one EMT.~~

~~(7) Specialized—when response ready or in service—two certified or licensed personnel, certification or licensure level determined by the type and application of the vehicle and approved by the medical director.~~

~~(8) For air ambulance staffing requirements refer to §157.12(f) of this title or §157.13(g) of this title.~~

~~(9) As justified by patient needs, providers may utilize appropriately certified and/or licensed medical personnel in addition to those which are required by their designation levels. In addition to the care rendered by the required staff, the provider shall be accountable for care rendered by any additional personnel.~~

~~(f) Protocols. The provider shall submit protocols approved by the provider's medical director identifying procedures for each EMS certification or license level utilized by the provider. Protocols shall also address the use of non-EMS certified or licensed medical personnel who, in addition to the EMS staff provide patient care on behalf of the provider and/or in the provider's EMS vehicles. Physicians, nurses, and other health care practitioners who regularly provide patient care in EMS vehicles shall be EMS certified. The protocols shall address the use of all required, additional, and specialized medical equipment carried by any EMS vehicle in the provider's fleet. Protocols shall have an effective date and an expiration date which corresponds to the effective and expiration dates of the provider's EMS license, and shall indicate specific applications including geographical area and duty status of personnel. For patient care reasons and with appropriate consideration from the medical director, a provider's protocols may be expanded or overridden by on-line medical control, off-line medical direction or by patient-specific orders.~~

~~(g) Equipment and supplies. The provider shall submit an equipment and supply list which is approved by the medical director and which is consistent with, and fully supportive of, the protocols. The list shall specify an adequate variety of sizes and types and shall specify quantities appropriate to the provider's call volume, transport times and restocking capabilities. All equipment and supplies shall be clean and in working order. During unannounced inspections consideration will be given to equipment and supply deficiencies caused by recent or repeated EMS calls.~~

~~(h) The requirements for air ambulance equipment and supplies are listed in §157.12 (h) of this title or §157.13 (h) of this title.~~

~~(i) At least the following equipment and supplies shall be present on each in-service vehicle and on, or immediately available for, each response ready vehicle at all times:~~

~~(1) BLS:~~

~~(A) oropharyngeal airways;~~

~~(B) portable and vehicle mounted suction;~~

~~(C) bag valve mask units, oxygen capable;~~

~~(D) portable and vehicle mounted oxygen;~~

~~(E) oxygen delivery devices;~~

~~(F) dressing and bandaging materials;~~

~~(G) rigid cervical immobilization devices;~~

~~(H) spinal immobilization devices;~~

~~(I) extremity splints;~~

~~(J) equipment to meet special patient needs;~~

~~(K) equipment for determining and monitoring patient vital signs, condition or response to treatment;~~

~~(L) medications as required by protocols;~~

~~(M) Automatic External Defibrillator (AED) or equivalent; and~~

~~(N) patient transport device capable of being secured to the vehicle.~~

~~(2) ALS or BLS with ALS capability:~~

~~(A) all required BLS equipment;~~

~~(B) advanced airway equipment; and~~

~~(C) IV equipment and supplies.~~

~~(3) MICU, BLS with MICU capability, ALS with MICU capability:~~

~~(A) all required BLS and ALS equipment; and~~

~~(B) cardiac monitor/defibrillator (in lieu of AED).~~

~~(4) In addition to medical supplies and equipment:~~

~~(A) protocols approved by the current medical director;~~

~~(B) emergency warning devices;~~

~~(C) personal protective equipment for the crew to include at least:~~

~~(i) protective, non-porous gloves;~~

~~(ii) medical eye protection;~~

~~(iii) medical respiratory protection;~~

~~(iv) medical protective gowns or equivalent; and~~

~~(v) personal cleansing supplies;~~

~~(D) sharps container;~~

~~(E) biohazard bags;~~

~~(F) fire extinguisher; and~~

~~(G) no smoking signs.~~

~~(5) As justified by specific patient needs, and when qualified personnel are available, providers may appropriately utilize equipment in addition to that which is required by their designation levels. Equipment used must be consistent with protocols and/or patient-specific orders and must correspond to personnel qualifications.~~

~~(j) National accreditation. If a provider has been accredited through a national accrediting organization approved by the department and adheres to Texas staffing level requirements, the~~

department may exempt the provider from portions of the license process. In addition to other licensing requirements, accredited providers shall submit:

~~(1) an accreditation self-study;~~

~~(2) a copy of formal accreditation certificate; and~~

~~(3) any correspondence or updates to or from the accrediting organization which impact the provider's status.~~

~~(k) Subscription or Membership Services. An EMS provider who operates or intends to operate a subscription or membership program for the provision of EMS within the provider service area shall meet all the requirements for an EMS provider license as established by the Health and Safety Code, Chapter 773, and the rules adopted thereunder, and shall obtain department approval prior to soliciting, advertising or collecting subscription or membership fees. In order to obtain department approval for a subscription or membership program, the EMS provider shall:~~

~~(1) have a written authorization from the bureau chief elected official of the governmental entity for the provision of subscription emergency prehospital care within that governmental service area;~~

~~(2) submit a sample of the contract for subscription service, membership and/or the application used to enroll participants;~~

~~(3) submit a copy of all advertising used to promote the subscription service at the time of application for each license period. The EMS provider shall maintain a current file of all advertising for the service;~~

~~(4) comply with all state and federal regulations regarding billing and reimbursement for participants in the subscription service;~~

~~(5) provide evidence of financial responsibility by:~~

~~(A) obtaining a surety bond payable to the department in an amount equal to the funds to be subscribed. The surety bond must be issued by a company licensed by or eligible to do business in the State of Texas; or~~

~~(B) submitting satisfactory evidence of self insurance if the provider is a function of a governmental entity;~~

~~(6) not deny EMS to nonsubscribers or subscribers of noncurrent status; and~~

~~(7) be reviewed at least every two years when the provider license is renewed; and the subscription program may be reviewed by the department during spot inspections;~~

~~(8) furnish the names and addresses of all subscribers/members to the department at the beginning of each licensure period in a format mutually acceptable to both the department and the provider; and~~

~~(9) not offer membership nor accept members into the program who are Medicaid clients.~~

~~(1) Responsibilities of the EMS provider. During the license period the provider's responsibilities shall include:~~

~~(1) assuring that all response ready and in-service vehicles are maintained, operated, equipped and staffed in accordance with the requirements of the provider's license;~~

~~(2) monitoring and taking appropriate action regarding the quality of patient care provided by the service;~~

~~(3) monitoring and taking appropriate action regarding the performance of all personnel involved in the provision of EMS; and ensuring that all personnel are properly certified or licensed;~~

~~(4) assuring that continuing education (CE) training is current in accordance with the requirements in §157.38 of this title (regarding Continuing Education);~~

~~(5) assuring that all personnel, when on an in-service vehicle or when on-scene, are prominently identified by name, certification or license level and provider name~~

~~(6) maintaining confidentiality of patient information;~~

~~(7) assuring that all relevant patient care information is supplied to receiving facilities upon delivery of patients;~~

~~(8) assuring that all requested patient records are made promptly available to the medical director;~~

~~(9) making available on each vehicle current protocols, current equipment and supply lists, a copy of the provider license and the correct designation;~~

~~(10) monitoring and enforcing general safety policies including at least personal protective equipment, immunizations and communicable disease exposure and emergency vehicle operation;~~

~~(11) assuring ongoing compliance with the terms of first responder agreements;~~

~~(12) assuring that all documents, reports or information provided to the department are current, truthful and correct;~~

~~(13) maintaining compliance with all applicable laws and regulations;~~

~~(14) submission of run response data upon request by department approved method; and~~

~~(15) notification of the department within 10 days if:~~

~~(A) a vehicle is substituted or replaced;~~

~~(B) a vehicle is added, with submission of the nonrefundable fee if applicable; and/or~~

~~(C) there is a change in the:~~

~~(i) number of any designation level in the fleet;~~

~~(ii) official business address;~~

~~(iii) service director;~~

~~(iv) medical director, with submission of the new agreement; and/or~~

~~(v) physical sublocation or station address.~~

~~(m) License renewal process:~~

~~(1) The department shall notify the EMS provider at least 90 days before the expiration date of the current license at the address shown in the current records of the department. It is the responsibility of the provider to notify the department of any change of address. If a notice of expiration is not received, it is the responsibility of the provider to notify the department and request license renewal application information.~~

~~(2) Providers shall submit a completed application and nonrefundable fee, if applicable, and must verify continuing compliance with the requirements of their license.~~

~~(3) If a provider has not met all requirements for a provider license, the provider may apply for a provisional license by submitting a request and, in addition to the regular nonrefundable licensure fee if applicable, a nonrefundable fee of \$25. One provisional license, valid for not more than 60 days, may be granted only to prevent probable adverse impact to the health and safety of the service community. Without a provisional license, a provider may not operate if there is a lapse in time between license expiration and license renewal.~~

~~(n) Advertisements. If there are more than five paid staff, but the organization is composed of at least 75% volunteer personnel, the provider shall pay a nonrefundable fee but may continue to advertise the service as volunteer. A provider shall not advertise levels of~~

~~designation or types of patient care which cannot be provided. Displays on vehicles which indicate the provider's name or the appropriate designation level of the vehicles shall not be considered advertising.~~

~~(o) Surveys. All initial candidates for a provider license shall be required to have a comprehensive survey by the department prior to the license being granted. Surveys may be conducted for cause on any licensed provider.~~

~~(p) Unannounced inspections. Randomly and/or in response to complaints, the department may conduct unannounced inspections to insure compliance of the provider license holder. Inspections may be conducted at any time, including nights or weekends. The department may review all components of provider licensure during an unannounced inspection. Violations or deficiencies may result in disciplinary action as authorized by §157.16 of this title (relating to Emergency Suspension, Suspension, Probation, Revocation or Denial of a Provider License). The department may grant a reasonable period of time for the provider to correct deficiencies. If the department must reinspect the provider because of noncompliance noted during a previous inspection, the provider shall pay a nonrefundable fee of \$25, if applicable.~~

~~(q) Failure to correct identified deficiencies. Failure to correct identified deficiencies within a period of time determined to be reasonable by the department or if the deficiencies are found to be repeated, the provider shall be subject to disciplinary actions in accordance with §157.16 of this title.~~

~~(q) Failure to correct identified deficiencies. Failure to correct identified deficiencies within a period of time determined to be reasonable by the department or if the deficiencies are found to be repeated, the provider shall be subject to disciplinary actions in accordance with §157.16 of this title.~~

~~(r) For all applications and renewal applications, the department (or the board) is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.~~