

**Department of State Health Services
Agenda Item for State Health Services Council
September 15, 2005**

Agenda Item Title: Amendment to 25 TAC, §157.131 related to the Designated Trauma Facilities and the Emergency Medical Services Account

Agenda Number: 4b

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: Revisions of these sections were necessary to comply with legislative changes in Health and Safety Code Chapter 780, resulting from the passage of House Bill 2470, 79th Texas Legislature, Regular Session, 2005.

Summary: The rule was amended to provide clarification to the rules and is necessary to comply with legislative changes in Health and Safety Code (HSC) 780 resulting from the passage of House Bill 2470, 79th Texas Legislature, Regular Session, 2005. The amendments specifically concern the requirements associated with “in active pursuit” of trauma designation in relation to the Designated Trauma Facilities and Emergency Medical Service Account.

Summary of Stakeholder Input to Date (including advisory committees): The rule was reviewed and endorsed at the May 27, 2005, Governor’s EMS and Trauma Advisory Council (GETAC) meeting. Stakeholders had access to draft copies of the rules at the meeting and had an opportunity to provide input during the Trauma Systems Standing Committees of the Governor’s EMS and Trauma Advisory Council (GETAC). The Standing Committee voted to recommend GETAC to endorse the rules for HHSC rule making process. The amendments reflect consensus achieved by the GETAC, stakeholders, and department staff. Stakeholder comments did not result in any change.

Proposed Motion: Motion to recommend HHSC approval for publication of the rule contained in agenda item # 4b.

Agenda Item Approved by: _____
Presented by: Kathryn C. Perkins, RN, MBA **Title:** Director
Program/Division: HCQS **Contact Name/Phone:** Kathryn C. Perkins 834-6700

Date Submitted
September 7,
2005

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 157 Emergency Medical Care
Subchapter G. Emergency Medical Services Trauma Systems
Amendment §157.131

Proposed Preamble

Proposed Preamble - 2

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §157.131, concerning the designation of Trauma Facilities and the Emergency Medical Services (EMS) Account.

BACKGROUND AND PURPOSE

The amendments of this section are necessary to provide clarification to the rule and to comply with legislative changes in Health and Safety Code, Chapter 780, resulting from the passage of House Bill 2470, 79th Texas Legislature, Regular Session, 2005. Additionally, the amendment was endorsed by the stakeholder group (Governor's EMS and Trauma Advisory Council) and department staff. The department anticipates a strengthening of the EMS/Trauma System due to the addition of new trauma facilities in to the trauma systems as a result of the potential for increased funding for uncompensated trauma care.

SECTION-BY-SECTION SUMMARY

Amendments to §157.131 provide clarification to the rules and are necessary to comply with legislative changes in Health and Safety Code (HSC) 780 resulting from the passage of House Bill 2470, 79th Texas Legislature, Regular Session, 2005. The amendments specifically concern the requirements associated with "in active pursuit" of trauma designation. The amended language allows hospitals not designated to file with the department a letter of intent to trauma designate and comply within 180 days with the following: submit a trauma designation application; submit data to the State EMS/Trauma Registry; and participate in the appropriate Regional Advisory Council. Once the requirements are met, the undesignated hospital is considered "in active pursuit" of designation and is eligible to apply for funding from the uncompensated trauma care from the Designated Trauma Facility and Emergency Medical Services (DTF/EMS) Account. If trauma designation is not attained on or before the second anniversary date of the hospital's notification by the department that it met "in active pursuit" requirements, it must return any funds received for uncompensated trauma care.

Section 157.131 currently limits access to the DTF/EMS Account funding to designated hospitals and undesignated hospitals that met certain "in active pursuit" of designation requirement by December 31, 2003. This rule amendment complies with new statutory language that eliminates the December 31, 2005, deadline and allows additional undesignated hospitals the opportunity to apply for DTF/EMS Account funding after meeting "in active pursuit" of designation requirements.

FISCAL NOTE

Kathryn C. Perkins, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the section is in effect, there will no fiscal implications to state and local governments as a result of enforcing or administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there is no anticipated economic costs to persons who are required to comply with the section as proposed. This was determined by interpretation of the rule that small business and micro-businesses will not be required to alter their business practices in order to comply with this section. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is a strengthening of the EMS/Trauma System.

REGULATORY ANALYSIS

The department has determined that this proposal is 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 amendment does 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, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Stephen C. Janda, Manager, Office of EMS/Trauma Systems Coordination, 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.

STATUTORY AUTHORITY

The proposed amendment is authorized by the Texas Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to

implement the Emergency Medical Services Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation, provision, and administration of health and human services by the department.

The amendment affects the Health and Safety Code, Chapters 773 and 780.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

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

§157.131. Designated Trauma Facility and Emergency Medical Services Account.

(a) Extraordinary emergency--An event or situation which may disrupt the services of an EMS/trauma system.

(1) – (4) (No change.)

(5) Trauma care--Care provided to patients who underwent treatment specified in at least one of the following ICD-9 (International Classification of Diseases, 9th Revision, of the National Center of Health Statistics) codes: between 800[.00] and 959.9, including 940[.0]-949[.0] (burns), excluding 905[.0]-909[.0] (late effects of injuries), 910[.0]-924[.0] (blisters, contusions, abrasions, and insect bites), 930[.0] – 939[.0] (foreign bodies), and who underwent an operative intervention as defined in paragraph (9) of this subsection or was admitted as an inpatient for greater than 23-hours or who died after receiving any emergency department evaluation or treatment or was dead on arrival to the facility or who transferred into or out of the hospital.

(6) – (9) (No change.)

(10) Active pursuit of department designation as a trauma facility -- means that an undesignated **[by December 31, 2003, a]** licensed facility **[hospital]**, applying for **[a]** designation from the department as a trauma facility after September 1, 2005, must submit to the department **[have submitted]:**

(A) a statement of intent to seek designation;

(B) **[(A)]** a timely and sufficient **[complete]** application to the department's trauma facility designation program or appropriate agency for trauma verification;

(C) **[(B)]** evidence of participation in Trauma Services Area (TSA) Regional Advisory Council (RAC) initiatives;

(D) **[(C)]** evidence of a hospital trauma performance improvement committee; and

(E)**[(D)]** data to the department's EMS/Trauma Registry.

(11) – (13) (No change.)

(b) (No change.)

(c) Allocations. The EMS allocation shall be not more than 2%, the TSA allocation shall be not more than 1%, and the hospital allocation shall be at least 96% of the funds appropriated from the account, after the **[any amount necessary to maintain the]** extraordinary emergency reserve of \$500,000 has been deducted.

(1) Allocation Determination. Each year, the department **[bureau of emergency management]** (department) shall determine:

(A) – (E) (No change.)

(2) – (4) (No change.)

(d) Eligibility requirements. To be eligible for funding from the account, all potential recipients (EMS Providers, RACs, Registered First Responder Organizations and hospitals) must maintain active involvement in regional system development. Potential recipients also must meet requirements for reports of expenditures from the previous year and planning for use of the funding in the upcoming year.

(1) – (4) No change.)

(5) Hospital Allocation. To be eligible for funding from the hospital allocation, a hospital must be a department designated trauma facility or in active pursuit of a department designation as a trauma facility or a Department of Defense hospital that is a department designated trauma facility or in active pursuit of a department designation as a trauma facility.

(A) – (D) (No change.)

(E) A department [TDH]-designated trauma facility in receipt of funding from the hospital allocation that fails to maintain its designation [through December 31, 2005], must return an amount as follows to the account **[by no later than January 31, 2006]**:

(i) 1 to 60 days expired/suspended [lapsed] designation during any given state biennium: 0% of the facility's hospital allocation for the state biennium when the expiration/suspension occurred [FY04 and FY05];

(ii) ~~61~~**[60]** to 180 days expired/suspended [lapsed] designation during any given state biennium: 25% of the facility's hospital allocation for the state biennium when the expiration/suspension occurred [FY04 and FY05] plus a penalty of 10%;

(iii) greater than ~~181~~**[180]** days expired/suspended [lapsed] designation during any given state biennium: 100% of the facility's hospital allocation for the biennium when the expiration/suspension occurred [FY04 and FY05] plus a penalty of 10%; and

(iv) (No change.)

(F) A facility in active pursuit of designation before September 1, 2005, that [but] has not achieved department [TDH]-trauma designation by December 31, 2005, must return to the account by no later than January 31, 2006, all funds received from the hospital allocation in FY04 and FY05 plus a penalty of 10%.

(G) A undesignated facility in active pursuit of designation requirements in subsection (a)(10) of this section after September 1, 2005, that has not achieved department -trauma designation on or before the second anniversary of the date the facility notified the department of the facility's compliance with subsection (a)(10) of this section, must return to the account any funds received from the account, plus a penalty of 10%.

(H) A facility must comply with paragraphs (E) - (G) of this subsection and have no outstanding balance owed to the department prior to receiving any future disbursements from the designated trauma facility and emergency medical services account.

(e) Calculation Methods. Calculation of county shares of the EMS allocation, the RAC shares of the TSA allocation, and the hospital allocation.

(1) – (2) (No change.)

(3) Hospital allocation.

(A) – (C) (No Change)

[(D) In the first year of distribution, the hospital allocation formula for Level I, II, III and IV trauma facilities and those facilities in active pursuit of designation shall be: ((the facility’s reported costs of uncompensated trauma care) divided by (the total reported cost of uncompensated trauma care by qualified hospitals that year)) multiplied by (total money available for facilities minus the amount referred to in subparagraph (A)(i) of this paragraph).]

(D) [(E)] The **[In subsequent years of distribution, the]** hospital allocation formula for Level I, II, III and IV trauma facilities and those facilities in active pursuit of designation shall be: ((the facility’s reported costs of uncompensated trauma care) minus (any collections received by the hospitals for any portion of their uncompensated care previously reported for the purposes of this section) divided by (the total reported cost of uncompensated trauma care by qualified hospitals that year)) multiplied by (total money available for facilities minus the amount distributed in subparagraph (A)(i) of this paragraph).

(E) [(F)] For purposes of subparagraph D **[subparagraphs (D- E)]** of this paragraph, the reporting period of a facility’s uncompensated trauma care shall apply to costs incurred during the preceding calendar year.

(F) [(G)] Hospitals should have a physician incentive plan that supports the facility's participation in the trauma system.

(f) (No change.)