

**Department of State Health Services
Council Agenda Memo for State Health Services Council
November 20-21, 2013**

Agenda Item Title: Amendment to a rule concerning Emergency Medical Services (EMS) provider licensing

Agenda Number: 4.f

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

EMS Trauma Systems Coordination Unit:

- is in the Regulatory Services Division;
- is responsible for the regulation of emergency medical services (EMS) and designation of trauma facilities;
- performs inspections, site surveys, and investigations and provides technical assistance for EMS; and
- operates on general revenue and fee funds.

The unit regulates approximately 60,000 EMS personnel licensees, 2500 EMS educators, 1000+ EMS providers (ambulance services), and 165 EMS training programs, and designates 265 trauma facilities.

EMS Statistics FY 2013:

Total Licenses:	1034
Total Renewal License Issued:	478
Total Ambulances Inspection:	984
New Licenses Issued:	69
Pre-licensure EMS Providers Inspections:	131

Summary:

The purpose of the amendment is to implement Senate Bill 8 and House Bill 3556, 83rd Legislature, Regular Session, 2013, which amended Health and Safety Code, Chapter 773, Subchapter C. The intent for the new standards is to prevent fraud, waste, and abuse by privately owned EMS providers that predominately provide non-emergency but medically necessary ambulance transportation services. The cost of obtaining an EMS license is relatively low and set by statute and this does not provide a substantial barrier or disincentive for becoming a provider. An example of a non-emergency transport would be transporting a dialysis patient from home or nursing facility to a dialysis center for treatment and then returning that patient home following the dialysis treatment.

The new standards include:

- a letter of credit, a surety bond, and local governmental approval to provide ambulance transportation services within its boundaries;
- the provider to have a medical director;
- an Administrator of Record (AOR) declared by the provider who serves as a primary point of contact for the EMS provider license applicant and works exclusively for that provider; and
- educational requirements for the AOR and a criminal history background check for the AOR and representatives of the EMS Provider.

The statute exempts EMS providers directly operated by a governmental entity from many of these additional requirements.

Key Health Measures:

The rule changes are anticipated to reduce incidents of fraud, waste, and abuse by licensed EMS providers. For fraudulent providers that have been removed as a Medicare or Medicaid provider, they will not be able to reopen for business by obtaining an EMS license under another corporate name or alias.

The rule changes will also reduce the number of license application submitted for privately owned EMS providers that predominately provide non-emergency ambulance transportation services.

Measurement of these outcomes may include:

- Monitoring the number of EMS provider license applicants that were denied due to professional experience and qualifications of the owners and management.
- Tracking disciplinary actions against EMS providers annually.
- Routinely monitoring the Medicaid Exclusions Lookup.
- Obtaining the number of EMS provider license applicants that were denied due to findings from the criminal background check.

Summary of Input from Stakeholder Groups:

The Governor’s EMS Trauma Advisory Council (GETAC) met on August 23, 2013, and reviewed a draft rule, but took no formal action at the meeting. GETAC decided to collect more data and include the rule as an agenda item at their November 25, 2013 meeting. Based on feedback from GETAC at the August 25th meeting, DSHS revised the rule to include specific qualifications for the applicant. Between the August 23rd meeting and the November 25th meeting, eight separate stakeholder group sessions were held around the state for additional feedback on this rule.

At these stakeholder group meetings, DSHS staff discussed the statutory reason for the attached revised rule and answered questions. The feedback from stakeholders during these meetings was mostly positive once clarification on the content of the revisions was provided. Additional stakeholder feedback will be gathered at the November 23-25, 2013 GETAC meetings.

Proposed Motion:

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

Approved by Assistant Commissioner/Director: Kathryn C. Perkins, R.N., M.B.A. **Date:** 11/6/13

Presenter: Joseph Schmider **Program:** EMS State Director **Phone No.:** 512/834-6736

Approved by CCEA: Carolyn Bivens **Date:** 11/6/13

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 157. Emergency Medical Care
Subchapter B. Emergency Medical Services Provider Licenses
Amendment §157.11

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §157.11, concerning Emergency Medical Services (EMS) provider licensing.

BACKGROUND AND PURPOSE

These amendments are necessary to comply with Health and Safety Code, Chapter 773, Subchapter C, which requires the department to issue EMS provider licenses in accordance with this chapter.

Senate Bill (SB) 8 and House Bill (HB) 3556, 83rd Legislature, Regular Session,, 2013, amended Health and Safety Code, §773.0571, which requires applicants for an EMS provider license to have professional experience and qualifications, employ a medical director, and imposes a prohibition on applicants who have been excluded from participation in the State Medicare and Medicaid programs.

SB 8 and HB 3556 added Health and Safety Code, §773.05711, which requires a letter of credit and a surety bond for applicants that participate in the Medicaid managed care program operated under Government Code, Chapter 533, or in the medical assistance program operated under Human Resources Code, Chapter 32, or in the child health plan program operated under Health and Safety Code, Chapter 62.

SB 8 and HB 3556 added Health and Safety Code, §773.05712, which requires licensed EMS providers to declare an administrator of record, obtain a criminal history review and requires initial and continuing educational components for the providers' administrators.

HB 3556 added Health and Safety Code, §773.0573, requiring a letter of approval from a local governmental entity from the location of which the new EMS provider applicant plans to operate.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 157.11 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

Amendments to §157.11 signify a difference between requirements for new, initial applicants, and those EMS providers already licensed that are renewing or meeting current licensing requirements. These amendments stipulate that an EMS provider declare an administrator of record and further provide that the administrator shall be employed or otherwise compensated by no more than one EMS provider, must be an Emergency Medical Technician or other licensed health care professional, shall attain a criminal history review, and shall complete initial training and annual continuing education. These amendments require an EMS provider applicant to employ a medical director; provide evidence of professional experience such as having basic comprehension regarding the administrative licensing rules for EMS providers, and policies pertaining to budgeting and medical control. These amendments further require an applicant to provide a letter of approval from the local municipality or county, a letter of credit, a surety bond (if participating in Medicaid) and stipulate that the applicant may not be excluded from participation in the State Medicaid program. An amendment also prohibits an EMS provider from expanding operations to or stationing an EMS vehicle other than the municipality or county from which the provider obtained the letter of approval. Finally, amendments allow for exemptions for an EMS provider that is directly operated by a municipality, county, emergency services district, hospital, or EMS volunteer provider.

FISCAL NOTE

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

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT AND COST TO PERSONS

Ms. Clack has also determined that there will be limited fiscal implications to EMS provider license applicants that qualify as small or micro-businesses as a result of enforcing and administering §157.11 as proposed. Costs may be incurred by an EMS provider due to statutory requirements that mandate initial training and continuing education for the administrator of record. Fees for surety bonds will be necessary for compliance with Medicaid participation. These fiscal implications are not expected to be substantial.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Clack has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption and enforcement of this section. The public benefit anticipated as a result of enforcing or administering these sections, is that the incidence of fraud, waste and abuse by licensed EMS providers will be significantly reduced.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. A "major environmental rule" is defined to mean a rule with 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 Jane Guerrero, Office of EMS/Trauma Systems Coordination, Health Care and Quality Section, Division of Regulatory Services, Department of State Health Services, Mail Code 1876, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6700, or by email to Jane.Guerrero@dshs.state.tx.us. Comments will be accepted for 30 days following the publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendment is authorized by the Health and Safety Code, Chapter 773; 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 and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapters 773 and 1001.

Legend: (Proposed Amendment)

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

§157.11. Requirements for an EMS Provider License.

(a) (No change)

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

(1) An applicant **[Candidates]** for an initial EMS provider license shall submit a completed application to the department.

(2) - (4) (No change)

(5) An applicant for an EMS provider license 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 **[Documents]** that shall accompany a license application.

(A) - (E) (No change)

(F) Declaration of Administrator of record and any subsequently filed declaration of a new administrator shall declare the following.

(i) The administrator of record is not employed or otherwise compensated by another private for-profit EMS provider.

(ii) The administrator of record meets the qualifications required for an emergency medical technician certification or other health care professional license with a direct relationship to EMS and currently holds such certification or license issued by the State of Texas.

(iii) The administrator of record has submitted to a criminal history record check at the applicant's expense as directed in §157.37 of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds).

(iv) The administrator of record has completed an initial education course approved by the department on state and federal laws and rules that affect EMS.

(v) The applicant will assure that its administrator of record will complete the requirement of eight hours annual continuing education related to the state and federal laws and rules related to EMS.

(vi) An EMS provider that is directly operated by a governmental entity, is exempt from this subparagraph which includes a municipality, county, emergency services district, hospital, or EMS volunteer provider.

(vii) An EMS provider that held a license on September 1, 2013, and has an administrator of record who has at least eight years of experience providing EMS, the administrator of record is exempt from clauses (ii) and (iv) of this subparagraph.

(G) - (J) (No change)

(K) Declaration of an employed 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 with Texas Medical Board rules [**Rules**], particularly regarding EMS [**Emergency Medical Services**] as outlined in 22 Texas Administrative Code, Part 9, Texas Medical Board, Chapter 197, and in compliance with Title 3 of the Texas Occupations Code.

(L) - (T) (No change)

(U) The applicant shall provide documentation of the following, showing that the applicant, including its management staff possesses sufficient professional experience and qualifications related to EMS:

(i) an attestation that its management staff have read the Texas Emergency Healthcare Act and the department's EMS rules in this chapter;

(ii) proof of one year experience or education provided by a nationally recognized organization on emergency medical dispatch processes;

(iii) proof of one year experience or education provided by a nationally recognized organization concerning EMS billing processes;

(iv) proof of one year experience or education provided by a nationally recognized organization on medical control accountability; and

(v) proof of one year experience or education provided by a nationally recognized organization on quality improvement processes for EMS operations.

(V) A copy of a letter of credit for the obtaining or renewing of an EMS Providers license, issued by a federally insured bank or savings institution:

(i) in the amount of \$100,000 for the initial license and for renewal of the license on the second anniversary of the date the initial license is issued;

(ii) in the amount of \$75,000 for renewal of the license on the fourth anniversary of the date the initial license is issued;

(iii) in the amount of \$50,000 for renewal of the license on the sixth anniversary of the date the initial license is issued;

(iv) in the amount of \$25,000 for renewal of the license on the eighth anniversary of the date the initial license is issued;

(v) that shall include the names of all of the parties involved in the transaction;

(vi) that shall include the names of the persons or entity, who owns the EMS provider operation and to whom the bank is issuing the letter of credit;

(vii) that shall include the name of the person or entity, receiving the letter of credit; and

(viii) an EMS provider that is directly operated by a governmental entity is exempt from this subsection.

(W) A copy of the surety bond in the amount of \$50,000 issued to and provided to the Health and Human Services Commission by the applicant, participating in the medical assistance program operated under Human Resources Code, Chapter 32, the Medicaid managed care program operated under Government Code, Chapter 533, or the child health plan program operated under Health and Safety Code, Chapter 62. An EMS provider that is directly operated by a governmental entity is exempt from this subparagraph.

(X) Documentation evidencing applicant or management team has not been excluded from participation in the state Medicaid program;

(Y) A copy of a governmental entity letter of approval that shall:

(i) be from the governing body of the municipality in which the applicant is located and is applying to provide EMS;

(ii) be from the commissioner's court of the county in which the applicant is located and is applying to provide EMS, if the applicant is not located in a municipality;

(iii) include the attestation that the addition of another licensed EMS provider will not interfere with or adversely affect the provision of EMS by the licensed EMS providers operating in the municipality or county;

(iv) include the attestation that the addition of another licensed EMS provider will remedy an existing provider shortage that cannot be resolved through the use of the licensed EMS providers operating in the municipality or county; and

(v) include the attestation that the addition of another licensed EMS provider will not cause an oversupply of licensed EMS providers in the municipality or county.

(7) Paragraph (6)(Y) of this subsection does not apply to renewal of an EMS provider license or a municipality, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(8) An EMS provider is prohibited from expanding operations to or stationing any EMS vehicles in a municipality or county other than the municipality or county from which the provider obtained the letter of approval under this subsection until after the second anniversary of the date the provider's initial license was issued, unless the expansion or stationing occurs in connection with:

(i) a contract awarded by another municipality or county for the provision of EMS;

(ii) an emergency response made in connection with an existing mutual aid agreement; or

(iii) an activation of a statewide emergency or disaster response by the department.

(9) Paragraph (8) of this subsection does not apply to renewal of an EMS provider license or a municipality, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(10) Paragraph (8) of this subsection does not apply to fixed or rotor wing EMS providers.

(c) - (s) (No change)