

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 157. Emergency Medical Care
Subchapter G. Emergency Medical Services Trauma Systems
New §157.132, Regional Trauma Account

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes new §157.132, concerning the disbursement of funds for uncompensated trauma care and emergency medical services (EMS), generated by photographic traffic signal enforcement.

BACKGROUND AND PURPOSE

The proposed rule is necessary to comply with Senate Bill 1119, 80th Legislature, 2007, which added Health and Safety Code, Chapter 782, and requires the Executive Commissioner to use money appropriated from the regional trauma account that was created as a dedicated account in the general revenue fund of the state treasury as a result of the implementation of a photographic traffic signal enforcement system and the use of a percentage of the monies collected to help fund trauma facilities and EMS to fund uncompensated care provided by designated trauma facilities and county and regional EMS located in the area served by the trauma service area (TSA) regional advisory council (RAC) that serves the local authority submitting money.

SECTION-BY-SECTION SUMMARY

The new rule describes the formula for disbursement of monies for designated trauma facilities, EMS providers, and RACs that serve the local authority submitting the money under Transportation Code, §707.008. The Regional Trauma Account is a dedicated account in the general revenue fund of the state treasury. In any fiscal year, 96% of the money is appropriated from the Regional Trauma Account to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department; 2% of the money is appropriated from the Regional Trauma Account for county and regional EMS; 1% of the money is appropriated from the Regional Trauma Account for distribution to the 22 TSA RACs; and 1% of the money is appropriated from the Regional Trauma Account to fund administrative costs of the Health and Human Services Commission.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, determined that if funding is appropriated for each year of the first five years that the section will be in effect, there will be positive fiscal implications to state and local governments as a result of enforcing or administering the section as proposed concerning the EMS/Trauma System. If appropriated, the department anticipates that the proposed new rule will increase funding available to hospitals, EMS providers and RACs thus strengthening the EMS/Trauma System. However, the fiscal impact on the state and units of local governments as a result of enforcing or administering the

section as proposed cannot be definitively estimated because it is unknown how many cameras might be installed for traffic enforcement, how many municipalities would install them, at what schedule, and at what allowable expense, among other factors. There is an anticipated cost associated with the new rule resulting from the need to provide technical assistance, contract development and contract management to the designated trauma facilities, licensed EMS providers, and RACs regarding the availability and distribution of funds from the newly created Regional Trauma Account. One percent of the fund appropriated from the Regional Trauma Account is dedicated to the Health and Human Services Commission.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

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

PUBLIC BENEFIT

In addition, Ms. Clack 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 the increased funding availability to designated trauma facilities, licensed EMS providers, and RACs, thereby strengthening the state 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 proposal 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 Steve Janda, Office of EMS/Trauma Systems Coordination, Health Care Quality Section, Division of Regulatory Services, Department of State

Health Services, P. O. Box 149347, 1100 West 49th Street, Austin, Texas 78714-9347, (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 rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new rule is authorized by 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 and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

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

§157.132. Regional Trauma Account.

(a) Definitions. The following words and terms, when used in this section, shall have the meanings as defined in §157.122 of this title (relating to Trauma Services Areas), §157.123 of this title (relating to Regional Emergency Medical Services/Trauma Systems), §157.131 of this title (relating to Designated Trauma Facility and Emergency Medical Services Account), and the following meanings.

(1) Local authority--A county, municipality, or other local entity as defined in Transportation Code, §541.002.

(2) City of licensure--The city in which an ambulance provider is licensed by the Department of State Health Services (department).

(3) Regional Trauma Account--An account established under Health and Safety Code, Chapter 782.

(4) Qualified hospital--A hospital determined to be eligible for the hospital allocation under the requirements in subsection (c) of this section.

(b) Allocations. The hospital allocation shall be 96%, emergency medical services (EMS) allocation shall be 2%, and the trauma service area (TSA) regional advisory councils' (RAC) allocation shall be 1% of the funds appropriated from the account. The money under this subsection shall be distributed in proportion to the amount deposited to the Regional Trauma Account by the local authority.

(1) Hospital Allocation Distribution Process. The department shall distribute funds directly to qualified hospitals from the hospital allocation to subsidize a portion of uncompensated trauma care provided. Funds distributed from the hospital allocations shall be made based on:

(A) the percentage of the hospital's uncompensated trauma care cost in relation to total uncompensated trauma care cost reported by qualified hospitals that year in the TSA in which the local authority submitting money under Transportation Code, §707.008, is located; and

(B) availability of funds deposited into the Regional Trauma Account.

(2) EMS Allocation Distribution Process. The department shall contract with each eligible RAC to distribute the EMS allocation to eligible EMS providers. Prior to distribution of the local authority's share to eligible EMS providers, the RAC shall submit a distribution proposal, to the department for approval.

(A) The EMS allocation shall be distributed directly to eligible recipients without any reduction in the total amount allocated by the department and shall be used as an addition to current county EMS funding of eligible recipients, not as a replacement.

(B) The department shall evaluate each RAC's distribution plan based on the following:

(i) fair distribution process to all eligible providers;

(ii) needs of the EMS providers; and

(iii) evidence of consensus opinion for eligible entities.

(C) A RAC opting to use a distribution plan from the previous fiscal year shall submit, to the department, a letter or email of intent to do so.

(D) Eligible EMS providers may opt to pool funds or contribute funds for a specified RAC purpose.

(3) TSA Allocation Distribution Process. The department shall contract with eligible RACs to distribute the TSA allocation. Prior to distribution of the TSA allocation, the RAC shall submit a budget proposal to the department for approval. The department shall evaluate each RAC's budget according to the following:

(A) all funds received by the RAC, including funds not expended in the previous fiscal year must be accounted for;

(B) no ineligible expenses allowed;

(C) appropriate mechanism is used by RAC for budgetary planning; and

(D) funding is identified by budget categories.

(c) Eligibility Requirements. To be eligible for funding from the account, all potential recipients (EMS Providers, RACs and hospitals) must maintain active involvement in regional system development. Potential recipients must also meet requirements for reports of expenditures from the previous fiscal years.

(1) Hospital Eligibility. To be eligible for funding from the hospital allocation, a hospital must be a department designated trauma facility and licensed in the area served by the trauma service area RAC in which the local authority submitting money into the Regional Trauma Account is located.

(A) To receive funding from the hospital allocation, an application must be submitted within the time frame specified by the department and include the following:

(i) name of facility;

(ii) location of facility including mailing address, city and county;

(iii) Texas Provider Identifier (TPI number) or accepted federal identification number.

(B) The application must be signed and sworn to before a Texas Notary Public by the chief financial officer, chief executive officer and the chairman of the facility's board of directors.

(C) A copy of the application shall be distributed by Level I, II, or III facilities to their trauma medical director and trauma program manager and by Level IV facilities to the physician director and the trauma program manager.

(D) Additional information may be requested at the department's discretion.

(E) A qualified hospital in receipt of funding from the hospital allocation that fails to maintain its designation must return an amount as follows to the account:

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

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

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

(iv) the department may grant an exception to this subparagraph of this paragraph if it finds that compliance with this section would not be in the best interests of the persons served in the affected local system.

(F) A facility must comply with subparagraphs (A) - (E) of this paragraph and have no outstanding balance owed to the department prior to receiving any disbursements from the Regional Trauma Account.

(2) EMS Eligibility. To be eligible for funding from the EMS allocation, an EMS provider must maintain provider licensure as described in §157.11 of this title (relating to Requirements for an EMS Provider License), and meet the following requirements:

(A) provide EMS and/or emergency transfers in the TSA in which the

local authority submitting money into the Regional Trauma Account is located;

(B) city of licensure must be within the TSA in which the local authority submitting money into the Regional Trauma Account is located or the EMS provider must be contracted to provide EMS and/or emergency transfers in the TSA in which the local authority submitting money into the Regional Trauma Account is located; and

(C) be an active member of the RAC for the TSA; and also

(i) meet that RAC's definition of participation;

(ii) demonstrate utilization of the RAC regional protocols regarding patient destination and transport; and

(iii) demonstrate active participation in the regional system performance improvement (PI) program.

(3) RAC Eligibility. To be eligible for funding from the TSA allocation, a RAC must:

(A) be officially recognized by the department as described in §157.123 of this title and have a local authority within its TSA that deposits revenue into the Regional Trauma Account;

(B) be incorporated as an entity that is exempt from federal income tax under §501(a) of the United States Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under §501(c)(3) of the code;

(C) submit documentation of ongoing system development activity and future planning;

(D) have demonstrated that a regional system PI process is ongoing by submitting to the department the following:

(i) lists of committee meeting dates and attendance rosters for the RAC's most recent fiscal year;

(ii) committee membership rosters which include each member's organization or constituency; or

(iii) lists of issues being reviewed in the system PI meetings; and

(E) submit all required EMS allocation eligibility items addressed in paragraph (2)(C)(i) - (iii) of this subsection.

(d) Calculation Methods. Calculation of the hospital allocation, the EMS allocation and

the RAC share of the TSA allocation will be formulated by the RAC for each respective TSA based on the total amount of revenue deposited into the Regional Trauma Account from the local authorities in each TSA.

(1) Hospital allocation.

(A) There will be one annual application process from which all distributions from the hospital allocation in a given fiscal year will be made. The department will notify all qualified hospitals at least 90 days prior to the due date of the annual application. Based on the information provided in the application, each facility shall receive:

(i) an equal amount, with an upper limit of \$50,000, from up to 15% of the hospital allocation; and

(ii) an amount for uncompensated trauma care as determined in subparagraphs (B) - (C) of this paragraph, less the amount received in clause (i) of this subparagraph.

(B) If the total cost of uncompensated trauma care exceeds the amount appropriated from the account, minus the amount referred to in subparagraph (A)(i) of this paragraph, the department shall allocate funds based on a facility's percentage of uncompensated trauma care costs in relation to the total uncompensated trauma care cost reported by qualified hospitals in their respective trauma service area for that fiscal year.

(C) The hospital allocation formula for Level I, II, III and IV trauma facilities shall be: ((the facility's reported costs of uncompensated trauma care) minus (any collections received by the hospital 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 all qualified hospitals that year in their respective trauma service area)) multiplied by (total money deposited in the Regional Trauma Account by the local authorities in the area served by their trauma service area RAC minus the amount distributed in subparagraph (A)(i) of this paragraph).

(D) For purposes of paragraph (1) of this subsection, the reporting period of a facility's uncompensated trauma care shall apply to costs incurred during the preceding calendar year.

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

(2) EMS allocation. An eligible EMS provider's share of the EMS allocation shall be based on the amount of revenue deposited into the Regional Trauma Account for the TSA in which the local authority submitting money is located.

(3) TSA allocation. A RAC's share of the TSA allocation shall be based on the amount of revenue deposited into the Regional Trauma Account for the TSA in which the local

authority submitting money is located.