

**Department of State Health Services
Council Agenda Memo for State Health Services Council
November 4, 2009**

Agenda Item Title: Amendments to rules concerning statewide Out-of-Hospital Do Not Resuscitate (DNR) Order protocol, criteria for denial and disciplinary actions for Emergency Medical Services (EMS) personnel, and certification and licensure of persons with criminal backgrounds

Agenda Number: 7e

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: Regulation of Emergency Medical Services personnel, firms, and education programs is located within the Health Care Professionals strategy. Functions include establishment of standards; licensing; compliance (inspections, site surveys, and investigations) enforcement; and technical assistance. There are approximately 56,000 EMS personnel in Texas. Each year, the program takes approximately 330 disciplinary actions; this included 28 suspensions last year. The program performs background checks on all initial and renewal EMS applicants. These checks produce an average of 1,300 “hits” per month, of which 200 need a full investigation.

The unit operates on fee funds received from applicants and licensees and general revenue to supplement for the regulation of EMS volunteers who pay no fees.

Summary: The purpose of the amendments is to protect the public by performing a thorough criminal history check that will keep persons with certain criminal convictions, such as registered sex offenders, from becoming certified as EMS personnel. The proposed amendments will also allow persons to request a prescreening evaluation of their criminal history prior to entering an EMS training course to determine their eligibility for certification. This will keep providers from investing time and money in an individual that is not eligible for EMS certification. In addition, the amendments provide for expanded signature allowances on the Out-of-Hospital Do Not Resuscitate form.

The amendments are necessary to comply with House Bill (HB) 846, HB 2585, and HB 2845 of the 81st Legislature, Regular Session, 2009. The rules also comply with the four-year review of agency rules required by Government Code, Section 2001.039.

The amendments allow DSHS to prescreen an individual’s criminal history prior to enrolling in a training program. DSHS will require a fee of \$50 to screen these persons and it is believed that approximately 300 persons will seek this evaluation per year.

The amendments require the denial or revocation of an EMS certification or license, if the person is convicted of certain serious offenses specifically listed in the Code of Criminal Procedure, Article 42.12, Section 3g(a)(1)(A) through (H), such as murder, capital murder, indecency with a child, kidnapping, and aggravated sexual assault. The legislation added a mandatory exclusion from certification for persons convicted of these offenses. Prior to this change, an individual’s criminal history was considered during the application process, but there were no provisions for mandatory exclusion. The amendments also establish criteria and guidelines for DSHS to use in prescreening or investigating persons with criminal backgrounds, that do not contain the more serious crimes listed in the Code of Criminal Procedure, Article 42.12.

Additionally, the amendments authorize digital or electronic signatures for certain signatories for advanced directives, including DSHS's form for an Out-of Hospital DNR Order, and allow a notary public to acknowledge a declarant's signature in lieu of two witnesses.

Summary of Input from Stakeholder Groups: The Governor's EMS and Trauma Advisory Council (GETAC), GETAC EMS Committee, GETAC Medical Director's Committee, and the GETAC Education Committee reviewed and voted unanimously for adoption of these rules. Members from Texas Ambulance Association were present and had no comments. Several EMS providers and Fire Departments were involved in the discussions and were present but had no comment. DSHS sent letters to all of the licensed EMS providers and training programs to make them aware of these rules. No comments have been received to date.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #7e

Approved by Assistant Commissioner/Director: Kathy Perkins **Date:** 9/21/09

Presenter: Maxie Bishop **Program:** Office of EMS and Trauma **Phone No.:** (512) 834-6737
Services

Approved by CPCPI: Carolyn Bivens **Date:** 9/14/2009

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 157. Emergency Medical Care
Subchapter B. Emergency Medical Services Provider Licenses.
Amendment §157.25
Subchapter C. Emergency Medical Services Training and Course Approval.
Amendments §157.36, §157.37

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §157.25 concerning statewide Out-of-Hospital Do Not Resuscitate (OOH-DNR) Order protocol, §157.36, criteria for denial and disciplinary actions for Emergency Medical Services (EMS) personnel, and §157.37, certification and licensure of persons with criminal backgrounds.

BACKGROUND AND PURPOSE

The amendments to §157.25 are necessary to comply with House Bill (HB) 2585, 81st Legislature, Regular Session, 2009, that amended Health and Safety Code, §166.002, §166.011, §166.032, §166.082, and §166.083 to authorize digital or electronic signatures for certain signatories for advance directives, including the department's form for an OOH-DNR Order addressed in §157.25; and allows a notary public to acknowledge a declarant's signature in lieu of two witnesses.

The amendments to §157.36 are necessary to incorporate various changes made to the department's crime history rule at §157.37, which was changed to track new requirements in HB 2845, 81st Legislature, Regular Session, 2009.

The amendments to §157.37 are necessary because HB 2845, 81st Legislature, Regular Session, 2009, removes EMS personnel and applicants for EMS certification/licensure from the criminal history review criteria and procedures under Occupations Code, Chapter 53, and creates crime history review criteria under Health and Safety Code, Chapter 773. HB 2845 also amends Health and Safety Code, §773.050, authorizing the department to provide a prescreening criminal history record check of EMS certification candidates prior to their enrollment into a training course. HB 846, 81st Legislature, Regular Session, 2009, adds Health and Safety Code, §773.0415, which allows the department to limit a renewal applicant's requirements to provide any unchanged criminal history information already included in one or more previously filed initial or renewal applications.

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 157.25, 157.36, and 157.37 have been reviewed and the department has determined that reasons for adopting the sections continue to exist.

SECTION-BY-SECTION SUMMARY

Amendments to §157.25 provide for expanded signature allowances on the department's form for an OOH-DNR Order specified in the rule. Amendments to the form allow for digital or electronic signatures on the form for declarants, witnesses, and the attending physician. A statement regarding acknowledgment by the notary public was added, along with space for the notary seal. Added to the instructions on the back of the form are references to the allowance of a notary public acknowledgment in lieu of two witnesses signatures; the allowance of digital or electronic signatures in some cases; and a new revision date. Rule text did not change except for clarifications which updated the agency's name and properly adding the phrase "Out-of-Hospital" in front of "DNR Order" to distinguish it from other types of DNR Orders. The OOH-DNR Order form, which is offered as an attached graphic to the rule, was amended to provide prompts in the electronic version of the form for digital or electronic signatures and for notary acknowledgement and seal.

Amendments to §157.36 are necessary to incorporate various revisions made to the department's crime history rule at §157.37, which was changed to meet requirements made to Health and Safety Code, Chapter 773 by HB 2845 of the 81st Legislature, Regular Session, 2009. Also, references to the "bureau chief" was deleted and replaced with the "commissioner or his/her designee" for clarification.

Amendments to §157.37 are necessary to implement changes made by HB 2845 and HB 846. HB 2845 removes EMS personnel from consideration under the Occupations Code, Chapter 53, and places the crime history review criteria under Health and Safety Code, Chapter 773. HB 2845 adds Health and Safety Code §773.0614, which mandates denial or revocation of an EMS certification or license, if the person is convicted of serious offenses specifically listed in the Code of Criminal Procedure, Article 42.12, §3g(a)(1)(A) through (H), such as murder, capital murder, indecency with a child, kidnapping, aggravated sexual assault, etc. It also sets out criteria for the review of a person's criminal history that does not include these more serious crimes. Pursuant to this legislation, the department has made amendments to §157.37 setting out criteria and guidelines for the department to utilize in prescreening or investigating of persons with criminal backgrounds, that do not contain the more serious crimes listed in the Code of Criminal Procedure, Article 42.12.

Amendments to §157.37, are also proposed to implement a prescreening criminal history record check. Recent legislation amends Health and Safety Code, §773.050, authorizing the department to provide a criminal history prescreening for a person interested in pursuing EMS certification to determine the person's eligibility for EMS certification prior to the person's enrollment into an EMS training course.

HB 846 adds Health and Safety Code, §773.0415, which allows the department to limit the information required for an EMS certification applicant to provide when renewing a certificate or license. Unchanged criminal history information will not have to be continually provided. New criminal history information relevant to the period occurring after the date of the last application must be provided. Proposed rule language will implement this process for certificate renewal.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that §157.37 is in effect, there will be fiscal revenue implications to the state as a result of enforcing or administering the section allowing the department to charge a fee for a voluntary prescreening evaluation request from persons with a questionable criminal history. The department has decided to require a fee of \$50 to screen these persons and it is believed that approximately three hundred persons will seek this evaluation per year. There may be an increase in revenue to the state of \$15,000 per year for the next five fiscal years. Implementation of §157.37 will not result in any fiscal implications for local governments.

Ms. Clack has also determined that for each year of the five years that §157.25 and §157.36 are in effect, there will not be fiscal implications to the state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Clack has determined that there will be no effect on small businesses or micro-businesses as a result of the proposed sections. These rules will not require these entities to alter their business practices to comply with the sections as proposed. There is no adverse economic impact on small businesses or micro-businesses, and therefore, an economic impact statement and regulatory flexibility analysis are not required.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There will be a fee of \$50 to any person requesting to have their criminal background evaluated. The department will provide the prescreening criminal history check, which is not mandatory. There is no anticipated impact on local employment.

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. A public safety benefit is anticipated as a result from enforcing and regulating these sections. A thorough criminal history check will keep persons with certain criminal convictions, such as registered sex offenders, from becoming certified as EMS personnel. Allowing persons to request a prescreening evaluation of their criminal history prior to entering an EMS training course will determine their eligibility for certification. This will keep a provider from investing time and money in an individual only to realize the person is not eligible for EMS certification.

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 amendments 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 Jane Guerrero, Manager, Office of EMS/Trauma Systems Coordination, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, MC 1876, P.O. Box 149347, Austin, Texas 78714-9347 or by email to jane.guerrero@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 amendments are authorized by Health and Safety Code, §166.002, §166.011, §166.032, §166.082, and §166.083 to allow digital or electronic signatures and a notary's acknowledgment for certain signatories on the department's form for an OOH-DNR Order; Health and Safety Code, Chapter 12, which allows the department to set fees in amounts necessary for the department to administer this subchapter; Health and Safety Code, §773.0614, which allows the department to deny eligibility for EMS certification, or deny or revoke EMS certification or licensure based upon a person's criminal history; 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 rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 12, 166, 773, and 1001; and Government Code, Chapters 531 and 2001.

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

§157.25. Out-of-Hospital Do Not Resuscitate (OOH-DNR) Order.

(a) Purpose. The purpose of this section shall be to establish a statewide OOH-DNR protocol as required in the Health and Safety Code, Title 2, Chapter 166.

(b) Out-of-Hospital DNR order. An OOH-DNR **[A DNR]** order may be issued by an attending physician for any patient. That attending physician has responsibility for ensuring that the form is filled out in its entirety and that the information regarding the existence of an **[a]** OOH-DNR order is entered into the patient's medical record.

(c) Protocol development. An **[A]** OOH-DNR protocol in accordance with this section, shall apply to all out-of-hospital settings including cardiac arrests which occur during interfacility transport. The protocol shall include the following:

(1) a copy of the Department of State Health Services **[Texas Department of Health]** (department) standardized OOH-DNR order form listing the designated treatments that shall be withdrawn or withheld. Those treatments shall be:

(A) - (E) (No change.)

(2) (No change.)

(3) an on-site OOH-DNR dispute resolution process which includes contacting an appropriate physician.

(d) Recordkeeping. Records shall be maintained on each incident in which an OOH-DNR order **[out-of-hospital DNR order]** or OOH-DNR identification device is encountered by responding healthcare professionals, and the number of cases where there is an on-site revocation of the DNR order shall be recorded.

(1) The data documented should include:

(A) (No change.)

(B) whether an identification device or an **[a]** OOH-DNR form was used to confirm DNR status and patient identification number;

(C) any problems relating to the implementation of the OOH-DNR order;

(D) - (E) (No change.)

(2) (No change.)

(3) If the patient is transported, the original OOH-DNR order or a copy of the original order will be kept with the patient.

(4) Copies of the original OOH-DNR order may be put on file with concerned parties, and the original order shall remain in the possession of the patient, a legal guardian, or the healthcare facility responsible for the patient's care.

(e) Out-of-state OOH-DNR Orders. Personnel may accept an OOH-DNR [**out-of-hospital DNR**] order or device that has been executed in any other state, if there is no reason to question the authenticity of the order or device.

(f) Failure to honor an OOH-DNR [**a DNR**] order. If there are any indications of unnatural or suspicious circumstances, the provider shall begin resuscitation efforts until such time as a physician directs otherwise.

(g) (No change.)

(h) Out-of-Hospital DNR Form. The executive commissioner [**Bureau of Emergency Management**] or the commissioner's [**their**] appointees shall furnish the department's OOH-DNR order forms to physicians, clinics, hospitals, nursing homes, hospices and home health agencies throughout the state upon request.

(1) (No change.)

(2) The form shall be 8-1/2 inches by 11 inches, printed front and back, and in the format specified by the department [**board**] as follows.

Figure: 25 TAC §157.25(h)(2) [**Figure: 25 TAC §157.25(h)(2)**]

(i) Out-of-Hospital DNR Identification devices. As an optional means of identification, a patient may obtain, at patient's expense, an OOH-DNR [**Out-of-Hospital (OOH) DNR**] device. An OOH-DNR device, as approved by the Texas Department of State Health Services, must meet the following requirements:

(1) An intact, unaltered, easily identifiable plastic identification OOH-DNR bracelet, with the word "Texas" (or a representation of the geographical shape of Texas and the word "STOP" imposed over the shape) and the words "Do Not Resuscitate", shall be honored by qualified EMS personnel in lieu of an original OOH-DNR Order form.

(2) An intact, unaltered, easily identifiable metal bracelet or necklace inscribed with the words, "Texas Do Not Resuscitate - OOH" shall be honored by qualified EMS personnel in lieu of an OOH-DNR Order form.

(3) The person or entity who provides an OOH_DNR identification device to an individual shall send with the identification device a statement with the words, "Pursuant to [Texas] Health and Safety Code, §166.090 this identification device may only be worn by a person who has executed a valid out-of-hospital DNR order."

§157.36. Criteria for Denial and Disciplinary Actions for EMS Personnel and Applicants and Voluntary Surrender of a Certificate or License.

(a) Emergency Suspension. The commissioner or his/her designee shall [**Bureau Chief, Bureau of Emergency Management (bureau) may**] issue an emergency suspension order to any emergency medical services (EMS) certificant or licensee if the commissioner or his/her designee [**bureau chief**] has reasonable cause to believe that the conduct of any certificant or licensee creates an imminent danger to public health or safety.

(1) An emergency suspension issued by the commissioner or designee [**bureau chief**] shall be effective immediately without a hearing on [**or**] notice to the certificant or licensee. Notice to the certificant or licensee 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.

(2) - (3) (No change.)

(b) Disciplinary Action. The department may suspend, revoke, or refuse to renew an EMS certification or paramedic license, or may reprimand a certification or paramedic license for, but not limited to, the following reasons: [**Nonemergency suspension, decertification and revocation of a certificant or paramedic licensee. The department may suspend or decertify an EMS certificant or suspend or revoke a licensed paramedic for, but not limited to, the following reasons:**]

(1) - (6) (No change.)

(7) failure to follow the medical director's protocol, performing advanced level or invasive treatment without medical direction or supervision, or practicing beyond the scope of certification or licensure;

(8) - (16) (No change.)

(17) cheating and/or assisting another to cheat on any department examination or the examination of any provider licensed by the department or any institution or entity conducting EMS training or providing an EMS examination;

(18) - (19) (No change.)

(20) having received disciplinary action relating to an EMS certificate or license or another health provider certificate or license [**suspended or revoked**] issued in another state or in a U.S. Territory or in another nation, or having received disciplinary action relating to

another health provider certificate or license issued in Texas; [, while holding a Texas EMS certificate or license;]

(21) failing or refusing to timely give the department full and complete information requested by the department [and cooperation, upon request];

(22) failing to notify the department of a change in his or her criminal history within 30 business days of the issuance of a court order, which resulted in him or her being convicted or placed on a deferred adjudication community supervision or deferred disposition for any criminal offense, other than any class C misdemeanor not directly related to EMS or other than any offense noted in §157.37(e)(5) of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds);

[(22) failing to notify the department within 30 days of final sentencing of any criminal offense which resulted in final conviction as defined in §157.37(c) of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds);]

(23) failing to notify the department within 10 business days of his or her being arrested, charged or indicted for any criminal offense, other than any class C misdemeanor not directly related to EMS or other than any offense noted in §157.37(e)(5) of this title;

[(23) having been convicted of any misdemeanor or felony in accordance with the provisions of §157.37 of this title;]

(24) failing to notify the department of a change in his or her criminal history within 2 business days of the issuance of a court order, which resulted in him or her being convicted or placed on deferred adjudication community supervision, or deferred disposition for any offense noted in §157.37(e)(5) of this title;

[(24) failing to complete any portion, including submission of fingerprints, of the criminal history evaluation process within 60 days of notification to do so, in accordance with provisions in §157.37 of this title;]

(25) failing to notify the department within 2 business days of his or her being arrested, charged or indicted for a criminal offense noted in §157.37(e)(5) of this title;

[(25) failing to notify the department within 10 days of an arrest for any alcohol or drug related offense;]

(26) having been convicted or placed on deferred adjudication community supervision, or deferred disposition for a criminal offense that directly relates to the duties and responsibilities of EMS personnel, as determined by the provisions of §157.37 of this title, except that a person's EMS certification or paramedic license shall be revoked if the certificant or licensed paramedic is convicted, or placed on deferred adjudication community supervision or deferred disposition for a criminal offense, noted in s §157.37(e)(5) of this title.

[(26) engaging in any conduct that jeopardizes or has the potential to jeopardize the health or safety of any person;]

(27) failing to timely complete any portion of the criminal history evaluation process, including submission of fingerprints, or timely providing information requested by the Department within 60 days of notification to do so, in accordance with provisions in §157.37 of this title;

[(27) abusing alcohol or drugs to such an extent that in the opinion of the bureau chief, the health or safety of any persons is, or may be, endangered;]

(28) engaging in any conduct that jeopardizes or has the potential to jeopardize the health or safety of any person;

[(28) engaging in any activity that betrays the public trust and confidence in EMS;]

(29) abusing alcohol or drugs to such an extent that [in the opinion of the bureau chief,] the health or safety of any persons is, or may be, endangered;

[(29) engaging in any conduct listed in §157.37(a)-(c) of this title whether or not resulting in a conviction.]

(30) engaging in any activity that betrays the public trust and confidence in EMS;

(31) failing to maintain a substantial amount of skill, knowledge and/or academic acuity to timely and/or accurately perform the duties or meet the responsibilities required of a certified emergency medical technician or licensed paramedic.

(c) Criteria for Denial of EMS Certification, or Paramedic Licensure. **[Criteria for denial of certification or licensure.]** An EMS certification or paramedic [A certificate or] license may be denied for, but not limited to, the following reasons:

(1) (No change.)

(2) previous conduct **[on the part]** of the applicant during the performance of duties **[relating to the responsibilities]** that are similar to those required of EMS personnel, whether performed as a volunteer or for compensation, but which such previous conduct that was committed [that] is contrary to accepted standards of conduct as described or required in this section or Health and Safety Code, Chapter 773;

(3) having been convicted or placed on deferred adjudication community supervision, or deferred disposition for a criminal offense that directly relates to the duties and responsibilities of EMS personnel, as determined by the provisions of §157.37 of this title, except that a person's application for EMS certification or paramedic license shall be denied if

the applicant is convicted, or placed on deferred adjudication community supervision or deferred disposition for a criminal offense, described in §157.37(e)(5) of this title;

[(3) conviction of a crime which directly relates to the profession of EMS personnel as described in §157.37 of this title;]

(4) receiving disciplinary action relating to a certificate or license issued to the applicant in Texas, in another state or in a U.S. territory or in another nation;

(5) - (6) (No change.)

(7) misrepresenting any requirements for certification, recertification, licensure, or licensure renewal;

(8) staffing an EMS vehicle deemed to be in service while the person's previously issued certification or license is expired, suspended or has been revoked; and/or

[(8) making a plea of no contest in any criminal action which relates or could relate to the candidate's ability to carry out EMS duties;]

(9) failing to maintain a substantial amount of skill, knowledge and/or academic acuity to timely and/or accurately perform the duties or meet the responsibilities required of a certified emergency medical technician or licensed paramedic.

[(9) receiving a deferred adjudication in a criminal action which relates or could relate to the candidate's ability to carry out EMS duties; and/or]

[(10) staffing an EMS vehicle deemed to be in service while the person's previously issued certification or license is expired, suspended or has been revoked; and/or]

(d) Notification. If the department proposes to suspend, revoke, or not renew an EMS certificate or license, or reprimand a certificant or licensed paramedic, or deny a person's application for an EMS certification or paramedic license, or disqualify a prescreening petition's eligibility to acquire an EMS certification or paramedic license, the certificant, licensed paramedic, applicant or petitioner shall be notified at the address as shown in the current records of the department. The notice must state the alleged facts or conduct to warrant the proposed action and state that the individual may request an appeal hearing. [If the department proposes to deny, suspend, revoke, or probate a certificate or license, the holder of same shall be notified at the address as shown in the current records of the department. The notice must state the alleged facts or conduct to warrant the proposed action and state that the certificant or licensee may request a hearing.]

(e) Appeal Hearing Request. [Hearing request.]

(1) A request for an appeal [a] hearing shall be in writing and submitted to the department [bureau chief] and postmarked within 15 days after the date of the notice. The

appeal hearing and any appeal from that hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

(2) If the applicant, certificant, licensed paramedic, or petitioner [licensee] does not request a hearing in writing within 15 days after notice, the individual is deemed to have waived the opportunity for an appeal [a] hearing and the department may take the proposed action.

(f) Probation.

(1) The department may probate the suspension of an EMS certification or paramedic license and as a probationary condition may require the certificant or licensee to:

(A) report regularly to the department on matters that are the basis of the probation;

(B) limit practice to the areas prescribed by the department;

(C) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation; and/or

(D) complete or continue to meet certain requirements or conditions related to the circumstances surrounding the certificant's or licensee's rule violations or background to assure that he or she will continue to meet and maintain general EMS standards.

(2) Because of certain circumstances or conduct in the background of a person making an initial application for an EMS certification or paramedic license, the department may grant the certification or license, but place the person on probation, subject to the person meeting certain probationary conditions during the certification or licensure period to assure that the person will meet and maintain general EMS standards.

(3) Any person, whose EMS certification or paramedic license has been revoked by the department and who later regains certification or licensee under this section, shall be placed on probation for one year and be required to meet certain conditions to assure that he or she will meet and maintain general EMS standards.

[(f) Probation. The department may probate any penalty assessed under this section and my specify terms and conditions of any probation issue. Any revocation of a license or decertification under this section shall require that any future EMS certificate or license issued by the department to the same individual begin with a probationary period of not less than one year.]

(g) Reapplication.

(1) Two years after denial, **[decertification or]** revocation of a license, or the voluntary surrender of a certificate or license while disciplinary action is pending, an individual

may petition the department in writing for reapplication for certification or licensure. Expiration of a certificate or license during the suspension period shall not affect the two-year waiting period required before a petition can be submitted.

(2) (No change.)

(3) The department may allow the petitioner to file an application for certification or licensure if there is proof that the health, safety, and confidence of the public will be protected.

(4) The department may deny any petitioner if, in the judgement of the commissioner or designee [bureau chief], the reason for the original action continues to exist or if the petitioner has failed to offer sufficient proof that there is no longer a threat to public health, safety, and/or confidence.

(5) (No change.)

(h) (No change.)

(i) Notification of disposition. A copy of the order of final disposition of proposed disciplinary action shall be sent to any licensed EMS provider, first responder organization, medical director, institution or facility with which the certificant or licensee is known to be associated at the address shown in the current records of the department.

§157.37. Certification or Licensure of Persons With Criminal Backgrounds.

(a) Purpose. This section lists guidelines and criteria for establishing the eligibility of persons with criminal backgrounds for certification or continued certification as emergency medical services (EMS) personnel or licensure or continued licensure as paramedics. The Department of State Health Services (department) will apply the requirements of the Health and Safety Code, Chapter 773, Subchapter C, and will consider and review the criteria listed in the Health and Safety Code, Chapter 773, Subchapter C, §773.0615, §773.0616, and §773.0617 to determine a person's EMS certification eligibility before enrollment in an EMS education and training course, or to determine whether to deny, suspend or revoke an EMS certification or paramedic license based upon the person's criminal history. [It is also the purpose of this section to apply the requirements of the Occupations Code, Chapter 53, Subchapter B, and to consider and review the criteria listed in the Occupation Code, Chapter 53, Subchapter B, §53.022 and §53.023. The Texas Department of Health (department) may deny, decertify, revoke, and/or suspend a certificate or license to persons who have committed a felony or misdemeanor to include, but not limited to, those in this section.]

(b) Department Access to Criminal History Record Information. [Access to criminal history record information.]

(1) The department is entitled to obtain criminal history information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division,

or any other law enforcement agency to investigate and determine the EMS certification eligibility of a person who has filed a petition for a pre-enrollment criminal history prescreening or an initial application for EMS certification or a reciprocity application for EMS certification or paramedic licensure or the continued certification/licensure eligibility of a certificant or licensed paramedic. **[candidate for EMS personnel certification, recertification, licensure or renewal and to investigate the continued eligibility of a certificant/licensee.]**

(2) A person who has filed a petition for a pre-enrollment criminal history prescreening or an initial application for EMS certification or a reciprocity application for EMS certification or licensure or an EMS certificant or licensed paramedic who has disclosed a criminal history record or who has a known criminal history record shall timely submit a complete set of his or her fingerprints along with the appropriate processing fee to the Texas Department of Public Safety (DPS), as required under the Government Code, §411.087 and/or §411.110.

[(2) A candidate for EMS certification/licensure or an EMS certificant/licensed paramedic who has disclosed a criminal history record or who has a known criminal history record shall be required to submit a completed set of fingerprints as required under the Government Code, §411.087 and/or §411.110.]

(3) With respect to a prescreening petitioner or an applicant for EMS certification or licensure who has a criminal history record, the department is authorized to close a petition or [an] application file and deem that the petition or application is withdrawn when the petitioner or applicant has failed to respond to the department's request(s) for information during its prescreening or investigation [for eligibility determination under the Occupations Code, Chapter 53 Subchapter B; Health and Safety Code, Chapter 773; or the rules adopted there under] within 60 days of said request(s).

(c) Petition for Criminal History Prescreening. The department may provide a prescreening criminal history record check for persons interested in pursuing an EMS certification or licensure to determine the person's eligibility for certification before enrolling in an EMS educational or training program approved by the department. A petition for prescreening is not considered an application for initial or renewal certification or licensure. To request a criminal history prescreening, the petitioner shall:

(1) submit a completed Petition for Criminal History Prescreening form;

(2) submit a nonrefundable fee of \$50;

(3) complete and return all Criminal History Prescreening documents provided to the petitioner by the department and timely provide documents and information requested by the department.

(4) submit his or her complete fingerprints along with the appropriate processing fee to the Texas Department of Public Safety, as required under the Government Code, §411.087 and/or §411.110;

(5) submit or arrange for submission of all court documentation to the department, including final court orders noting sentencing information, conditions of probation, releases from probation, revocation of probation, and any other information relating to the petitioner's criminal history, or other information requested by the department;

(6) shall inform the department of any new court actions or petitioner's criminal activities that have developed or become a part of his or her criminal history, to include, but not be limited to, any new arrests, criminal charges or indictments, criminal investigations, motions to revoke probation, etc. since filing the prescreening petition with the department; and/or

(7) be subject to a department criminal history investigation, if and when the petitioner subsequently files an application for EMS certification.

(d) Limitation on Information Required for Certification/License Renewal. For the renewal of an EMS certification or paramedic license, the department:

(1) may not require an applicant to provide any unchanged criminal history information already included in one or more of the applicant's previously filed initial or renewal applications for EMS certification or paramedic licensure; and

(2) may require the applicant to provide only new information relevant to the period occurring since the date of the applicant's last initial or renewal application for EMS certification or paramedic licensure, including information relevant to any new department requirement applicable to the certification or license held by the applicant.

(e) [(c)] Criminal History Evaluation Criteria[convictions].

(1) For a person who has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for any offense, other than those listed under paragraph (5) of this subsection, that [When the conviction of a felony or misdemeanor] relates directly to the duties and responsibilities of EMS personnel, the department may:

(A) deny to the person an initial or renewed EMS certification or paramedic licensure or the person's opportunity to take a certification or paramedic licensure examination; [deny to a person the opportunity for eligibility for a certificate or license;]

(B) disqualify the person's eligibility to acquire an EMS certificate or paramedic license [disqualify a person from receiving a certificate or license]; or

(C) [decertify,] revoke or suspend the person's EMS [an existing] certification or paramedic license.

(2) In determining [considering] whether an offense, [a crime] other than those listed under paragraph (5) of this subsection relates directly to the duties and responsibilities [occupation] of EMS personnel, the department shall consider and review the following:

(A) the Health and Safety Code, Chapter 773, Subchapter C, §773.0615 [Occupations Code, Chapter 53, Subchapter B, §53.022];

(B) the nature and seriousness of the crime;

(C) the relationship of the crime to the purposes for requiring a certificate or license to engage in the occupation;

(D) the extent to which involvement in EMS would afford a certificant or licensee an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and

(E) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the EMS profession.

(3) In determining the fitness to perform the duties and discharge the responsibilities of emergency medical services personnel for a person who has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, any offense other than those listed under paragraph (5) of this subsection the department shall consider, in addition to the factors listed in paragraph (2) of this subsection:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated, after release, or since imposition of deferred adjudication community supervision, or receiving deferred disposition; and

(F) other evidence of the person's fitness, including letters of recommendation from:

(i) prosecutors, law enforcement officers, correctional officers, or community supervision officers who prosecuted, arrested, or had custodial or other responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) any other person in contact with the person.

(G) the petitioner, applicant, certificant, or licensed paramedic has the responsibility, to the extent possible, to obtain and provide to the department the recommendations of the persons required by subparagraph (F) of this paragraph; and

(H) in addition to providing evidence related to the factors under paragraph (2) of this subsection, the petitioner, applicant, certificant, or licensed paramedic shall furnish proof in the form required by the department that the petitioner, applicant, certificant, or licensed paramedic has:

(i) maintained a record of steady employment;

(ii) supported the applicant's or certificate holder's dependents;

(iii) maintained a record of good conduct; and

(iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the petitioner, applicant, certificant, or licensed paramedic has been convicted, been placed on deferred adjudication community supervision, or received deferred disposition.

(4) [(3)] The following crimes are considered to directly relate to the certification and licensure of EMS personnel because of their nature and seriousness and because they impact the ability to carry out the duties and responsibilities associated with patient care and public safety and shall be considered and reviewed:

(A) offenses under the Health and Safety Code, Chapter 773;

(B) under the Transportation Code, except offenses for which points are assessed under the Transportation Code, §708.052;

(C) offenses under the Alcoholic Beverage Code;

(D) offenses under the Health and Safety Code, Texas Controlled Substances Act, Chapters 481, 482 and 483, relating to substance abuse;

(E) offenses under Department of Public Safety of the State of Texas, Government Code, Chapter 411, Subchapter H, relating to the license to carry a concealed handgun;

(F) offenses under the following titles of the Texas Penal Code:

(i) Title 4 - offenses of attempting or conspiring to commit any of the offenses in this clause;

- (ii) Title 5 - offenses against the person;
- (iii) Title 6 - offenses against the family;
- (iv) Title 7 - offenses against property;
- (v) Title 8 - offenses against public administration;
- (vi) Title 9 - offenses against public order and decency;
- (vii) Title 10 - offenses against public health, safety, and morals;
- (viii) Title 11 - offenses involving organized crime.

and/or

(G) Offenses listed in subparagraph (F)(i)-(viii) of this subsection are not exclusive in that the department may consider similar criminal convictions from other state, federal, foreign or military jurisdictions which, although not listed in paragraph (F)(i)-(viii) indicate the lack of ability, capacity, or fitness of the individual to perform the duties and responsibilities of EMS personnel.

(5) A person shall be disqualified from eligibility to acquire an EMS certification, or a person's initial or renewal application for EMS certification or paramedic licensure shall be denied, or a person's EMS certification or paramedic license, whether active or inactive, shall be revoked if the petitioner, applicant, certificant, or licensed paramedic is convicted of or place on deferred adjudication community supervisor or deferred disposition for:

(A) an offense listed in Code of Criminal Procedure, Article 42.12, §3g(a)(1)(A) through (H), as follows:

- (i) murder;
- (ii) capital murder;
- (iii) indecency with a child;
- (iv) aggravated kidnapping;
- (v) aggravated sexual assault;
- (vi) aggravated robbery;
- (vii) substance abuse offenses, as described in Health and Safety Code, Chapter 481, for which punishment is increased under:

(I) Health and Safety Code, §481.140, regarding the use of a child in the commission of an offense; or

(II) , Health and Safety Code, §481.134(c), (d), (e) or (f), regarding an offense committed within a drug free zone, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under one of those subsections;

(viii) sexual assault;

(B) an offense, other than an offense described by subparagraph (A) of this paragraph, committed on or after September 1, 2009, for which the person is subject to register as a sex offender under Code of Criminal Procedure, Chapter 62.

[(d) Criteria for eligibility and continued eligibility. The department will apply the criteria outlined in the Occupations Code, Chapter 53, Subchapter B, §53.023. In applying the criteria, it shall be the responsibility of the candidate/certificant/licensee to obtain and send the department the entire court record for each criminal offense and recommendations of the prosecution, and/or law enforcement and/or correctional authorities regarding the offense(s). The candidate/certificant/licensee shall also furnish documentation acceptable to the department of prior/current employment status, evidence of court-ordered and/or voluntary rehabilitation, evidence of good conduct in their community, and evidence of payment of all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which they have been convicted.]

[(1) The department believes that those certified/licensed in the EMS profession shall conduct the occupation with honesty, trustworthiness and integrity. The department shall consider, review and take action against those candidates/certificants/licensees who during the course of the criminal history evaluation, or by nature of their conviction of certain crimes, exhibit to the department an inability or unwillingness to follow those requirements.]

[(2) As authorized under the Occupations Code, Chapter 53, Subchapter B, §53.021(b), upon a certificant/licensee's felony conviction, felony probation revocation, revocation of parole or revocation of mandatory supervision which results in incarceration, their certificate/license shall be decertified/revoked.]

[(e) Procedures for denying, decertifying, revoking, suspending, or probating a certificate or license to persons with criminal backgrounds can be found in §157.36(c)-(k) of this title (relating to Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License).]

(f) Documentation Required During Criminal History Prescreening or Investigation. During a criminal history prescreening or investigation, it shall be the responsibility of the prescreening petitioner, applicant for EMS certification or paramedic licensure, or certificant or licensed paramedic to obtain and send to the department for each criminal offense in his or her

criminal history the entire court record, including final court orders noting sentencing information, conditions of probation, revocation of or release from probation, and any other information relating to the petitioner's criminal history, or requested by the department, along with any recommendations of the prosecution, and/or law enforcement and/or correctional authorities regarding the offense(s). The petitioner, applicant, certificant, or licensed paramedic shall also furnish documentation acceptable to the department of prior/current employment status, evidence of court-ordered and/or voluntary rehabilitation, evidence of good conduct in their community, and evidence of payment of all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which they have been convicted, placed on deferred adjudication community supervision, deferred disposition.

(g) Notice and Appeal Procedures. Notice and appeal procedures in §157.36(d) and (e) of this title is applicable for a person that the department proposes disqualification from eligibility to acquire an EMS certification, or denial of an application for EMS certification or paramedic licensure, or suspension or revocation of a EMS certification or paramedic license based on the requirements and/or criteria outlined in this section as it relates to a person's criminal history record for any offense other than those listed under subsection (e)(5) of this section.