

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13P .1401, .1402, .1403, and .1405

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection to these Rules because staff does not believe they fall within the statutory authority of the Medical Care Commission, but instead are properly assigned to the rulemaking authority of the Secretary of Health and Human Services.

Staff believes that these Rules, which establish a treatment program for the Office of Emergency Management Services to provide to personnel subject to disciplinary action with treatment for chemical addiction and restricted practice privileges, falls within the rulemaking authority of the Secretary. Specifically, staff believes that these Rules implement the following statutory charge:

§ 143-509. Powers and duties of Secretary.

The Secretary of the Department of Health and Human Services has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall accomplish all of the following:

...

(13) Establish programs for aiding in the recovery and rehabilitation of EMS personnel who experience chemical addiction or abuse and programs for monitoring these EMS personnel for safe practice. (1973, c. 208, s. 3; 1981, c. 927; 1989, c. 74; 1995, c. 94, s. 34; 1997-443, s. 11A.118(a); 2001-220, s. 1; 2003-392, s. 2(e); 2009-363, s. 1.)

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In the History Note of the Rules, the agency cites to two statutes – G.S. 131E-159(f) and 143-508(d)(10).

G.S. 131E-159(f) states:

(f) The Department may deny, suspend, amend, or revoke the credentials of an emergency medical responder, emergency medical technician, advanced emergency medical technician, paramedic, emergency medical dispatcher, or emergency medical services instructor in any case in which the Department finds that there has been a substantial failure to comply with the provisions of this Article or the rules issued under this Article. Prior to implementation of any of the above disciplinary actions, the Department shall consider the recommendations of the EMS Disciplinary Committee pursuant to G.S. 143-519. The Department's decision to deny, suspend, amend, or revoke credentials may be appealed by the applicant or credentialed personnel pursuant to the provisions of Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

G.S. 143-508(d)(10) states:

(d) The North Carolina Medical Care Commission shall adopt rules to do all of the following:

...

- (10) Establish standards and criteria for the denial, suspension, or revocation of emergency medical services credentials for emergency medical services agencies, educational institutions, and personnel including the establishment of fines for credentialing violations.

Staff does not believe these Rules are implementing these cited statutes. As noted in a Request for Technical Changes, the rules in this Section may well be within the credentialing authority of the Medical Care Commission under G.S. 143-508(d)(10), but staff believes the Rules are also clearly within the authority of the Secretary. Therefore, staff recommends objection to these Rules for lack of statutory authority as the Medical Care Commission does not have the sole authority to promulgate them.

§ 131E-159. Credentialing requirements.

(a) Individuals seeking credentials as an emergency medical technician, advanced emergency medical technician, paramedic, emergency medical responder, emergency medical dispatcher, or emergency medical services instructor shall apply to the Department using forms prescribed by that agency. The Department's representatives shall examine the applicant by either written, practical, or written and practical examination. The Department shall issue appropriate credentials to the applicant who meets all the requirements set forth in this Article and the rules adopted for this Article and who successfully completes the examinations required for credentialing. Emergency medical technician, emergency medical responder, emergency medical dispatcher, advanced emergency medical technician, paramedic, and emergency medical services instructor credentials shall be valid for a period not to exceed four years and may be renewed if the holder meets the requirements set forth in the rules of the Commission. The Department is authorized to revoke or suspend these credentials at any time it determines that the holder no longer meets the qualifications prescribed.

(b) The Commission shall adopt rules setting forth the qualifications required for credentialing of emergency medical responders, emergency medical technicians, advanced emergency medical technicians, paramedics, emergency medical dispatchers, and emergency medical services instructors.

(c) Individuals currently credentialed as an emergency medical technician, advanced emergency medical technician, paramedic, emergency medical responder, and emergency medical services instructor by the National Registry of Emergency Medical Technicians or by another state where the education/credentialing requirements have been approved for legal recognition by the Department of Health and Human Services, in accordance with rules promulgated by the Medical Care Commission, and who is either currently residing in North Carolina or affiliated with a permitted EMS provider offering service within North Carolina, may be eligible for credentialing as an emergency medical technician, advanced emergency medical technician, paramedic, emergency medical responder, and emergency medical services instructor without examination. This credentialing shall be valid for a period not to exceed the length of the applicant's original credentialing or four years, whichever is less.

(d) An individual currently credentialed as an emergency medical dispatcher by a national credentialing agency, or by another state where the education/credentialing requirements have been approved for legal recognition by the Department of Health and Human Services, in accordance with rules issued by the Medical Care Commission, and who is either currently residing in North Carolina or affiliated with an emergency medical dispatcher program approved by the Department of Health and Human Services offering service within North Carolina, may be eligible for credentialing as an emergency medical dispatcher without examination. This credentialing shall be valid for a period not to exceed the length of the applicant's original credentialing or four years, whichever is less.

(e) Duly authorized representatives of the Department may issue temporary credentials with or without examination upon finding that this action will be in the public interest. Temporary credentials shall be valid for a period not exceeding 90 days.

(f) The Department may deny, suspend, amend, or revoke the credentials of an emergency medical responder, emergency medical technician, advanced emergency medical technician, paramedic, emergency medical dispatcher, or emergency medical services instructor in any case in which the Department finds that there has been a substantial failure to comply with the provisions of this Article or the rules issued under this Article. Prior to implementation of any of the above disciplinary actions, the Department shall consider the recommendations of the EMS Disciplinary

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Committee pursuant to G.S. 143-519. The Department's decision to deny, suspend, amend, or revoke credentials may be appealed by the applicant or credentialed personnel pursuant to the provisions of Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) An individual who applies for EMS credentials, seeks to renew EMS credentials, or holds EMS credentials is subject to a criminal background review by the Department. At the request of the Department, the Emergency Medical Services Disciplinary Committee, established by G.S. 143-519, shall review criminal background information and make a recommendation regarding the eligibility of an individual to obtain initial EMS credentials, renew EMS credentials, or maintain EMS credentials. The Department and the Emergency Medical Services Disciplinary Committee shall keep all information obtained pursuant to this subsection confidential. The Medical Care Commission shall adopt rules to implement the provisions of this subsection, including rules to establish a reasonable fee to offset the actual costs of criminal history information obtained pursuant to G.S. 143B-952.

(h) A person who is required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes, or who was convicted of an offense which would have required registration if committed at a time when such registration would have been required by law, shall not be granted EMS credentials. The Department shall not renew the credentials of any person who would be ineligible for EMS credentials under this subsection. (1967, c. 343, s. 3; 1973, c. 476, s. 128; c. 725; c. 1224, s. 1; 1975, c. 612; 1983, c. 775, s. 1; 1987, c. 495, s. 2; 1993, c. 135, s. 1; 1997-443, ss. 11A.118(a), 11A.129E; 2001-210, s. 1; 2003-392, s. 2(b); 2007-411, s. 1; 2011-37, s. 1; 2014-100, s. 17.1(hhh); 2015-290, s. 3.)

§ 143-508. Department of Health and Human Services to establish program; rules and regulations of North Carolina Medical Care Commission.

(a) The State Department of Health and Human Services shall establish and maintain a program for the improvement and upgrading of emergency medical services throughout the State. The Department shall consolidate all State functions relating to emergency medical services, both regulatory and developmental, under the auspices of this program.

(b) The North Carolina Medical Care Commission shall adopt, amend, and rescind rules to carry out the purpose of this Article and Articles 7 and 7A of Chapter 131E of the General Statutes regardless of other provisions of rule or law. These rules shall be adopted with the advice of the Emergency Medical Services Advisory Council. The Department of Health and Human Services shall enforce all rules adopted by the Commission. Nothing in this Chapter shall be construed to authorize the North Carolina Medical Care Commission to establish or modify the scope of practice of emergency medical personnel.

(c) The North Carolina Medical Care Commission may adopt rules with regard to emergency medical services, not inconsistent with the laws of this State, that may be required by the federal government for grants-in-aid for emergency medical services and licensure which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(d) The North Carolina Medical Care Commission shall adopt rules to do all of the following:

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- (1) Establish standards and criteria for the credentialing of emergency medical services agencies to carry out the purpose of Article 7 of Chapter 131E of the General Statutes.
- (2) Establish standards and criteria for the credentialing of trauma centers to carry out the purpose of Article 7A of Chapter 131E of the General Statutes.
- (3) Establish standards and criteria for the education and credentialing of emergency medical services personnel to carry out the purpose of Article 7 of Chapter 131E of the General Statutes.
- (4) Establish standards and criteria for the credentialing of EMS educational institutions to carry out the purpose of Article 7 of Chapter 131E of the General Statutes.
- (5) Establish standards and criteria for data collection as part of the statewide emergency medical services information system to carry out the purpose of G.S. 143-509(5).
- (6) Implement the scope of practice of credentialed emergency medical services personnel as determined by the North Carolina Medical Board.
- (7) Define the practice settings of credentialed emergency medical services personnel.
- (8) Establish standards for vehicles and equipment used within the emergency medical services system.
- (9) Establish standards for a statewide EMS communications system.
- (10) Establish standards and criteria for the denial, suspension, or revocation of emergency medical services credentials for emergency medical services agencies, educational institutions, and personnel including the establishment of fines for credentialing violations.
- (11) Establish standards and criteria for the education and credentialing of persons trained to administer lifesaving treatment to a person who suffers a severe adverse reaction to agents that might cause anaphylaxis.
- (12) Establish standards for the voluntary submission of hospital emergency medical care data.
- (13) Establish occupational standards for EMS systems, EMS educational institutions, and specialty care transport programs. (1973, c. 208, s. 2; c. 1224, s. 2; 1997-443, s. 11A.118(a); 2001-220, s. 1; 2002-179, s. 13; 2003-392, s. 2(d).)

§ 143-509. Powers and duties of Secretary.

The Secretary of the Department of Health and Human Services has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall accomplish all of the following:

- (1) After consulting with the Emergency Medical Services Advisory Council and with any local governments that may be involved, seek the establishment of a Statewide Emergency Medical Services System, integrated with other health care providers and networks including, but not limited to, public health, community health monitoring activities, and special needs populations.
- (2) Repealed by Session Laws 1989, c. 74.
- (3) Establish and maintain a comprehensive statewide trauma system in accordance with the provisions of Article 7A of Chapter 131E of the General Statutes and the rules of the North Carolina Medical Care Commission.

- (4) Establish and maintain a statewide emergency medical services communications system including designation of EMS radio frequencies and coordination of EMS radio communications networks within FCC rules and regulations.
- (5) Establish and maintain a statewide emergency medical services information system that provides information linkage between various public safety services and other health care providers.
- (6) Credential emergency medical services providers, vehicles, EMS educational institutions, and personnel after documenting that the requirements of the North Carolina Medical Care Commission are met.
- (7), (8) Repealed by Session Laws 2001-220, s. 1, effective January 1, 2002.
- (9) Promote a means of training individuals to administer life-saving treatment to persons who suffer a severe adverse reaction to agents that might cause anaphylaxis. Individuals, upon successful completion of this training program, may be approved by the North Carolina Medical Care Commission to administer epinephrine to these persons, in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment. This training may also be offered as part of the emergency medical services training program.
- (10) Establish and maintain a collaborative effort with other community resources and agencies to educate the public regarding EMS systems and issues.
- (11) Collaborate with community agencies and other health care providers to integrate the principles of injury prevention into the Statewide EMS System to improve community health.
- (12) Establish and maintain a means of medical direction and control for the Statewide EMS System.
- (13) Establish programs for aiding in the recovery and rehabilitation of EMS personnel who experience chemical addiction or abuse and programs for monitoring these EMS personnel for safe practice. (1973, c. 208, s. 3; 1981, c. 927; 1989, c. 74; 1995, c. 94, s. 34; 1997-443, s. 11A.118(a); 2001-220, s. 1; 2003-392, s. 2(e); 2009-363, s. 1.)