

DHHS / OSMB Review
Permanent Rule Amendment without Substantial Economic Impact

Agency Proposing Rule Change

North Carolina Medical Care Commission

Contact Persons

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Impact Summary:

State government: Yes - minimal (estimated savings)
Local government: No
Substantial impact: No
Federal government: No
Small businesses: No
Individuals: Yes – minimal (estimated savings)

Titles of Rule Changes and Statutory Citations

Note: No statutory changes were involved in the revision of these rules.

See proposed text of these rules in the Appendix

10A NCAC 13P

Section .0500 – EMS Personnel

Criminal Histories 10A NCAC 13P .0511 (Amend)

Authorizing Statutes

Gen. Stat. § 114-19.21

Gen. Stat. § 131E-159(g)

Gen. Stat. § 143-508(d)(3),(10)

Background

Under the authority of Gen. Stat. §143-509, the North Carolina Medical Care Commission (MCC) has the responsibility for the adoption of the emergency medical and trauma rules for the citizens of North Carolina. To ensure these rules are kept contemporary and conform with industry standards, the MCC routinely makes revisions to the Subchapter 13P, Emergency Medical Services and Trauma Rules, in collaboration with stakeholders, clients, state and local officials, and members of the general public. This set of rule amendments and adoptions is the result of these on-going efforts and when codified, will strengthen the emergency medical regulations keeping the citizens and visitors of North Carolina safe and provided with the best possible health treatment and care.

Agency Procedure for Conducting Criminal History Background Checks

Gen. Stat. § 131E-159 requires individuals seeking, maintaining, or renewing their EMS credential to undergo a criminal history background check. This process begins when an applicant signs a disclosure statement which either details their criminal history or states that the applicant has no criminal history. Additionally, the applicant must affirm they have been a resident of North Carolina for the past five years. If the applicant indicates a criminal history or residency less than five years, a national criminal background check is required using the applicant's fingerprints. This national background check is conducted by the State Bureau of Investigation with their findings provided to the OEMS.

Another method of determining a person's criminal history is through a contractual agreement with the Administrative Office of the Courts (AOC) criminal history database. Even if the applicant fails to disclose a criminal history, once the individual has completed eligibility requirements and is eligible for issuance of the credential, their information is entered into the OEMS credentialing and information system (CIS) database. Through an electronic interface between the AOC and CIS databases the applicant will be identified and required to undergo the national criminal history background check.

Once the credential has been issued, the daily cross-check between the AOC and CIS databases will identify any individual who is arrested within the previous 24 hours. This person is then contacted and required to undergo the national criminal history background check. Of course, it is not uncommon for the OEMS to await adjudication by the court before requiring this additional history check. The OEMS' decision to await adjudication is based upon the nature and severity of the charge(s).

The current steps undertaken to obtain the national criminal history background check are as follows:

- The individual is notified via certified mail they must undergo the national criminal history check. This notification requires the individual to submit to the OEMS the required processing fee of \$38.00, which when received will be provided to the SBI for conducting the national check;
- Upon receipt of the processing fee, the OEMS will send an authorization letter back to the applicant instructing them to proceed with the fingerprinting;
- The applicant goes to their local Sheriff's Department and has their fingerprints taken after paying an additional fingerprinting fee of \$10.00 to \$15.00 to the Sheriff's Department.
- The individual submits their fingerprint card to the SBI;
- The SBI conducts the national criminal history background check.
- The SBI forwards their findings on the applicants national check to the OEMS;
- The OEMS makes payment to the SBI for having conducted the criminal history check using the money received from the applicant. The OEMS does not keep any of these funds to cover administrative costs. All funds are provided directly to the SBI in their totality;
- The OEMS contacts the applicant and either (1) issues their credential, or (2) requires them to undergo additional screening prior to issuance of their credential. This may

require the applicant to appear before the North Carolina EMS Disciplinary Committee. This credential may ultimately be denied (suspended or revoked for a person holding an active credential) based on the seriousness of the offense(s).

Summary of Revision and its Anticipated Fiscal Impact

As a result of improvements in technology, **Rule .0511** is being amended to address the allowance of live scan electronic fingerprinting in lieu of card fingerprinting for criminal history background checks. Also, this rule clarifies the applicant's requirement to pay the Department of Justice (DOJ) processing fee prior to the issuance of the EMS credential. This fee is already being paid when the applicant uses fingerprint cards for the processing of the criminal history. Therefore, the only change is to require the payment to be received by the OEMS prior to the issuance of the credential. This change will eliminate the likelihood of issuance of a credential when the applicant is delinquent on payment of the DOJ fee. This rule would not impact the number of applicants undergoing criminal background checks.

Fiscal Impact – Agency (OEMS)

The OEMS has received a detailed list from the DOJ that reflects the North Carolina Law Enforcement agencies that have changed from paper card fingerprinting to electronic scan fingerprinting. The process for live scan fingerprinting is the same for card fingerprinting. Once an individual has been identified warranting a national criminal history background check, the OEMS sends the person under criminal history review the notification requiring the individual to undergo fingerprinting and to make payment of the \$38.00 processing fee prior to being authorized for fingerprinting. This letter is sent certified mail. Upon receipt of the processing fee, the OEMS sends an authorization form back to the individual, which they present at the local law enforcement agency and which instructs the agency to submit the electronic fingerprints directly to the SBI.

The OEMS deposits the processing fee into an account under the Division of Health Service Regulation's cash management plan. Once each month, the fees received for the criminal history background checks are paid directly to the SBI out of this account by the Division. No funds are expended from the agency budget for the criminal history background check, nor are any funds retained by the OEMS for the collection of the criminal history information.

Although the process for OEMS remains the same, the Office will incur some savings. Currently, OEMS sends the fingerprint card by certified mail at a cost of \$6.03 per mailing. Using electronic fingerprinting, the authorization form is sent by normal postage rates at a rate of \$0.47 per mailing, thus saving \$5.56 per person or up to \$6,116.00 total savings statewide per year assuming only electronic fingerprinting is used and about 1,100 required criminal background checks per year (based on historic data).

Fiscal Impact – SBI

By switching from the paper to electronic fingerprinting, there is an actual savings to the SBI for those individuals that have to undergo the fingerprinting more than once because of the poor

quality and unusable condition of some fingerprint cards. Prior to converting to electronic fingerprinting, 90 individuals had to undergo repeated fingerprint attempts per year. Notification to the individual that the fingerprints submitted were unusable, instructing the individual to repeat the fingerprinting and provision of the replacement fingerprint card was managed by the SBI. The fingerprint cards are provided to the SBI by the Federal Bureau of Investigation; therefore, there is no cost to the SBI for the number of fingerprint cards issued. However, the cost to the SBI is for the postage for repeat mailing of the fingerprint cards at approximately \$6.03 per mailing for certified mail, or a total of \$543 in savings per year, assuming about 90 individuals need to repeat the fingerprinting.

The processing fee charged pursuant to Gen. Stat. § 114-19.21 is the same for card fingerprints or live scan fingerprinting. Therefore, there is no change in the actual processing fees; however, because of the elimination of postage for repeated fingerprinting attempts, the total annual savings to the SBI as described above is estimated at about \$540.

Fiscal Impact – Sheriff’s Departments / Law Enforcement Agencies

There is no change in the process for fingerprinting resulting from this rule change. There is no substantial difference in the time it takes to conduct the fingerprinting using the paper form versus using the electronic scanning. The fee charged by the authorized law enforcement agency is the same for card fingerprints or live scan fingerprinting.

Some law enforcement agencies provide a card copy from the live scan and provide this to the OEMS; however, this is not required nor is it a standard practice. These cards are filed in accordance with the agency’s record retention schedule, even though the information provided by the SBI on the criminal history background check was based upon the live scan fingerprinting. The fee charged for conducting the fingerprinting is set by the law enforcement agency and is paid directly by the person under criminal history review. Again, this fee is independent from and in addition to the processing fee charged by the SBI. This fee is paid directly to the Sheriff’s Department at the time of fingerprinting.

The OEMS has no involvement with this transaction. All fees and charges to fingerprint the individual are solely handled between the individual and specific law enforcement agency. Therefore, there is no fiscal impact to the Law Enforcement agencies in switching from using the paper form and using electronic scanning.

Fiscal Impact – Persons Subject to Criminal History Background Checks

There are actual savings realized by the individuals subject to fingerprints. First, all individuals subject to the national criminal history background check no longer have to send a separate letter with their completed fingerprint card to SBI, since under the proposed rules the local enforcement agency would submit the fingerprints electronically directly to SBI. There are approximately 1,100 persons per year affected by this national history check. The fingerprint card is sent by certified mail at a cost of \$6.03 per mailing. The authorization form is sent by normal postage rates at a rate of \$0.47 per mailing. By only having to send one letter to the

OEMS instead of two letters as was necessary when using the fingerprint cards, this has an overall savings of \$5.56 per person or \$6,116.00 total savings statewide per year.

Second, there are rare occurrences (approximately 90 individuals per year) whereby the fingerprint card was unusable because of poor quality of the fingerprints. This required the SBI to send up to two additional cards to the individual in an attempt to obtain a usable sample. This required the individual to expend the local law enforcement fingerprinting fee (\$10.00 to \$15.00) each time until a usable sample was obtained. Additionally, this caused these individuals to also expend the cost of return postage for each additional card submitted back to the SBI. By switching to electronic fingerprinting, these individual's no longer submit unusable fingerprints and realize an individual savings of 10.00 - \$15.00 plus .47 for postage per person, or \$900.00 - \$1,350.00 fingerprinting fee plus 42.30 postage for a total of \$942.30 - \$1,392.30 statewide per year.

Fiscal Impact Summary

The aggregate financial impact of these proposed permanent rules changes on all persons and entities affected is negligible. The fiscal impact to the program reflects an annual savings estimated as follows:

SBI	\$543 (normal mail postage for additional fingerprint cards)
OEMS	\$6,116 (certified mail postage)
Individuals Statewide	\$942 to \$1,392 (postage / fingerprinting fees)

Therefore, the total program savings is estimated from \$7,600 to about \$8,000 annually.

APPENDIX

10A NCAC 13P .0511 is proposed for amendment as follows:

10A NCAC 13P .0511 CRIMINAL HISTORIES

(a) The criminal background histories for all individuals who apply for EMS credentials, seek to renew EMS credentials, or hold EMS credentials shall be reviewed pursuant to G.S. 131E-159(g).

(b) In addition to Paragraph (a) of this Rule, the OEMS shall carry out the following for all EMS Personnel whose primary residence is outside North Carolina, individuals who have resided in North Carolina for 60 months or less, and individuals under investigation that may be subject to administrative enforcement action by the Department under the provisions of Rule .0701(e) of this Subchapter:

- (1) obtain a signed consent form for a criminal history check;
- (2) obtain fingerprints on an SBI identification ~~card; and~~ card or live scan electronic fingerprinting system at an agency approved by the North Carolina Department of Justice, State Bureau of Investigation;
- (3) obtain the criminal history from the Department of ~~Justice.~~ Justice; and
- (4) collect any processing fees from the individual identified in Paragraph (a) or (b) as required by the Department of Justice pursuant to G.S. 114-19.21 prior to conducting the criminal history background check.

(c) An individual is not eligible for initial or renewal of EMS credentials if the applicant refuses to consent to any criminal history check as defined in Rule .1508(19) and as required by G.S. 131E-159(g). Since payment is required before the fingerprints may be processed by the State Bureau of Investigation, failure of the applicant or credentialed EMS personnel to pay the required fee in advance shall be considered a refusal to consent as defined in Rule .1508(19) of this Subchapter for the purposes of issuance or retention of an EMS credential.

History Note: Authority G.S. 143-508(d)(3),(10); 131E-159(g); 114-19.21;

Eff. January 1, 2009. 2009;

Amended Eff. July 1, 2012.