

DHHS / OSBM Review
Permanent Rule Re-adoption with Substantive Changes and
without Substantial Economic Impact

Agency Proposing Rule Change

North Carolina Medical Care Commission

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Authorizing Statutes

G.S. 131E-155.1

Other Relevant Statutes

G.S. 150B-18

G.S. 150B-21.3A

Federal Court Order of Permanent Injunction

On October 15, 2008, the Honorable Louise W. Flanagan, Chief United States District Judge, United States District Court for the Eastern District of North Carolina, Western Division issued an Order of Permanent Injunction; Case No. 5:07-cb-00222-FL, *Med-Trans Corporation, Plaintiff, v. Dempsy Benton, Secretary of the North Carolina Department of Health and Human Services, in his official capacity; Robert J. Fitzgerald, Director, Division of Health Service Regulation, North Carolina Department of Health and Human Services, in his official capacity; Lee B. Hoffman, Chief of the Certificate of Need Section, Division of Health Service Regulation, North Carolina Department of Health and Human Services, in her official capacity; Drexdal Pratt; Chief of the Office of Emergency Medical Services; Division of Health Service Regulation, North Carolina Department of Health and Human Services, in his official capacity, Defendants*, that directly affected language contained in the 10A NCAC 13P EMS and trauma rules.

Note: This order of permanent injunction enjoined the Department and Office of Emergency Medical Services from enforcing regulatory authority on any rule conflicting the statutory and regulatory authority of the Federal Aviation Administration under the Airline Deregulation Act of 1973 for the regulation of air medical programs and aircraft equipment and permitting requirements.

Title of Rule Proposed for Re-Adoption With Substantive Changes

10A NCAC 13P .0204 EMS Provider License Requirements (*See Appendix A.*)

The MCC, Rule Review Commission and the Joint Legislative Procedure Oversight Committee approved the subchapter report with classifications for the 10A NCAC 13P rules on May 15, 2015, January 21, 2016, and February 2, 2016, respectively. This rule is being readopted with substantive change to comply with the Permanent Injunction. Paragraphs (a)(1), (a)(4), (b), and (c) of the current rule were enjoined by the federal order. Therefore, these paragraphs have been changed and paragraph (d) has been added to bring the .0204 rule into full compliance with the injunction.

Sources of Salary Information Used to Support Employee Costs Associated with These Rule Changes

All annual salaries used throughout this fiscal note are based on a work schedule of 2,080 hours per year and include salaries plus fringe benefit estimates. The hourly rates are estimated using salary grade ranges for state employees, and position titles for county government and non-governmental personnel. These hourly rates also include hourly wage plus fringe benefit estimates.

State Government Employees

Throughout this fiscal note any references to staff salaries are based on the figures in Table 2 below.

Table 2.

Salary Grade to Represent Comparable Position	Average Annual Compensation	Cost/Hr.
Technical level positions (sg 70-74)	~\$66,500	~\$32
Clerical level positions (sg 59- 61)	~\$47,850	~\$23

¹ References to OEMS staff hourly salaries are an average for each salary range grade based on the position levels including fringe currently budgeted for agency employees.

County Government Employees

References to county government staff hourly salaries are an average for each position considered by the OEMS to be comparable to agency staff, including fringe cost estimates at a rate of 55%, and considered appropriate to complete any change in rule requirements that require staff time.

Table 3

Position	Average Annual Compensation	Cost/Hr.
EMS Assistant Director/Operations Officer	~\$77,500	~\$37

¹ These positions are classified in the *University of North Carolina School of Government "County Salaries in North Carolina 2015"* <http://www.sog.unc.edu/node/32441>

Non-Governmental Entities

For private EMS agency employees, the OEMS chose to use some county government employee positions for administrative and support staff that were considered by OEMS staff in their professional judgment comparable to the positions identified for state government reflected in Table 3 using the same salary sources for each.

Summary of Revision and its Anticipated Impact

Rule .0204 – EMS Provider License rule is being readopted with substantive changes to include the requirement for EMS providers that utilize non-transport vehicles providing Advanced-EMT and/or Paramedic level services without ambulance transport vehicles to obtain an EMS provider license. Historically, this licensing requirement was enforced through agency policy. The Medical Care Commission has proposed adding this requirement to this rule.

There are no fees associated with this adding this licensing requirement, and to-date all providers affected by this requirement are already in compliance. There are currently 23 non-transport providers licensed in North Carolina. Of these, two are local government agencies and 21 are non-governmental (private/volunteer) agencies. The following figures represent an approximation of expenditures already made by these providers and represent the cost to license each additional new applicant. Complying with the other requirements listed in the rules would have essentially no impact, as the providers would take nearly all of the actions necessary to comply with the rules even in the absence of the rules.

The OEMS estimates that it takes approximately 2 hours to complete the application. At \$37 per hour the cost to complete and process the application is \$74. At 23 providers statewide, the total cost is approximately \$1,700, with the costs split between private entities (~\$1,550) and local government entities (~\$150).

The time for OEMS staff to review the application is 1 hour at ~\$32 per hour. For the 23 applications, the total review time is ~\$750. The time to process and mail the license is 15 minutes per application at a cost of \$23 per hour. At four applications per hour, the total cost of processing and mailing is ~\$130. The total cost to the OEMS for processing and licensing is ~\$880.

The exemption for air medical programs for identifying their service area and obtaining EMS System affiliation as reflected in paragraph (d) of this proposed rule change is the result of the federal injunction prohibiting the State of North Carolina from imposing these requirements. The federal judge ruled that these criteria are under the jurisdiction of the Federal Aviation Administration and not subject to state law. There is no fiscal or economic impact associated with complying with the injunction since all licensed air medical program providers are licensed and operating.

Impact Summary

	Costs	Benefits	Frequency of Costs/Benefits
Federal Government	\$0	\$0	
State Government	~\$880	\$0	Recurring each six years
Local Government	~\$150	\$0	Recurring each six years
Private Entities	\$1,550	\$0	Recurring each six years
Total	~\$2,580	\$0	

Developmental Steps Taken to Create the Final Draft of the 10A NCAC 13P .0204 Rule

The EMSAC established a task force to develop and approve rules for the OEMS. At the May 13, 2014, EMSAC meeting, the council members voted unanimously to support moving forward with rulemaking. In the interim, the periodic review of rules was conducted for the Emergency Services and Trauma Rules, Subchapter 10A NCAC 13P the council members voted unanimously to support moving forward with rulemaking. The MCC, Rule Review Commission and the Joint Legislative Procedure Oversight Committee approved the subchapter report with classifications for the 10A NCAC 13P rules on May 15, 2015, January 21, 2016, and February 2, 2016, respectively. Following the periodic rules review process, this rule was identified for re-adoption with substantive change. A draft of this rule was presented to the EMSAC at the November 10, 2015, meeting seeking comments, and an endorsement was provided to move forward with rulemaking at the February 9, 2016 EMSAC meeting.

The proposed rule is amended to include the requirement for EMS providers that utilize non-transport vehicles providing Advanced-EMT and/or Paramedic level services without ambulance transport vehicles to obtain an EMS provider license, and to ensure full compliance with the federal injunction to exempt air medical programs from affiliating with EMS systems, by striking paragraphs (b) and (c) and renumbering to reflect all changes.

The OEMS will present the final draft of this rule to EMSAC at the August 9, 2016, meeting and request approval to initiate rulemaking for the rule re-adoption and for the fiscal note from the MCC at their August 12, 2016, meeting for an effective date of April 1, 2017.

APPENDIX A

10A NCAC 13P .0204 is proposed for re-adoption with substantive changes as follows:

10A NCAC 13P .0204 EMS PROVIDER LICENSE REQUIREMENTS

(a) Any firm, corporation, agency, organization or association that provides non-transportation emergency medical services at the AEMT or Paramedic level shall be licensed by the Department as an EMS Provider by meeting and maintaining the criteria defined in Paragraph (b) of this Rule.

~~(a)~~ (b) Any firm, corporation, agency, ~~organization~~ organization, or association that provides emergency medical transportation services shall be licensed as an EMS Provider by meeting and ~~continuously~~ maintaining the following criteria:

- (1) ~~Be~~ be affiliated as defined in Rule ~~.0102(4)~~ .0102(3) of this Subchapter with each EMS System where there is to be a physical base of operation or where the EMS Provider will provide point-to-point patient transport within the system;
- (2) ~~Present~~ present an application for a permit for any ambulance and EMS non-transporting vehicle that will be in service as required by ~~G.S. 131E-156;~~ G.S. 131E-156, and meet the requirements of Rule .0207, and .0213 of this Subchapter;
- (3) ~~Submit~~ submit a written plan detailing how the EMS Provider will furnish credentialed ~~personnel~~; personnel pursuant to G.S. 131E-158;
- (4) ~~Where~~ where there are franchise ordinances pursuant to ~~G.S.~~ G.S. 153A-250 in effect that cover the proposed service areas of each EMS system of operation, provide written documentation reflecting show the affiliation as defined in Rule .0102(4) of this Subchapter with each EMS System, as required by Subparagraph (a)(1) of this Rule, by being granted a current franchise to operate, or present written documentation of impending receipt of a franchise, from each county. In counties where there is no franchise ordinance in effect, present a signature from each EMS System representative authorizing the EMS Provider to affiliate as defined in Rule .0102(4) .0102(3) of this Subchapter and as required by Paragraph (a)(1) Subparagraph (b)(1) of this Rule;
- (5) ~~Provide systematic, periodic~~ provide inspection, repair, cleaning, and ~~routine~~ maintenance of all EMS responding ground vehicles and maintain records for a period of time determined by the EMS System, and made available for inspection by the OEMS ~~which verify~~ verifying compliance with this Subparagraph;
- (6) ~~Collect~~ collect and within 24 hours electronically submit to the OEMS EMS Care data that uses the EMS data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data ~~Collection,~~" ~~incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. Collection;~~
- (7) ~~Develop~~ develop and implement written operational protocols for the management of equipment, ~~supplies~~ supplies, and medications and maintain records for a period of time determined by the EMS System, and made available for inspection by the OEMS ~~which verify~~ verifying compliance with this Subparagraph. These protocols shall include a methodology:
 - (A) to assure that each vehicle contains the required equipment and supplies on each response;

- (B) for cleaning and maintaining the equipment and vehicles; and
- (C) to assure that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications.

~~(b) In addition to the general requirements detailed in Paragraph (a) of this Rule, if providing fixed wing air medical services, affiliation as defined in Rule .0102(4) of this Subchapter with a hospital as defined in Rule .0102(30) of this Subchapter is required to ensure the provision of peer review, medical director oversight and treatment protocol maintenance.~~

~~(c) In addition to the general requirements detailed in Paragraph (a) of this Rule, if providing rotary wing air medical services, affiliation as defined in Rule .0102(4) of this Subchapter with a Level I or Level II Trauma Center as defined in Rules .0102(35) and (36) of this Subchapter designated by the OEMS is required to ensure the provision of peer review, medical director oversight and treatment protocol maintenance. Due to the geographical barriers unique to the County of Dare, the Medical Care Commission exempts the Dare County EMS System from this Paragraph.~~

~~(d) (c)~~ An EMS Provider may renew its license by presenting documentation to the OEMS that the Provider meets the criteria found in ~~Paragraphs (a) through (e)~~ Paragraph (b) of this Rule.

(d) Air Medical Programs are exempt from the requirements detailed in Subparagraphs (b)(1) and (b)(4) of this Rule.

*History Note: Authority G.S. 131E-155.1(c); ~~143-508(d)(1), (d)(5)~~; 143-508(d)(1); 143-508(d)(5); 143-508 (d)(13);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003;
Amended Eff. January 1, 2004;
Amended Eff. March 3, 2009 pursuant to E.O. 9, Beverly Perdue, March 3, 2009;
Pursuant to G.S. 150B-21(c), a bill was not ratified by the General Assembly to disapprove this ~~rule~~ rule;
Readopted Eff. April 1, 2017.*