

BILL ANALYSIS

Senate Research Center
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H.B. 2845
By: Riddle et al. (Nichols)
Health & Human Services
5/17/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Department of State Health Services is not allowed to consider an applicant's criminal background as a criteria for certification as emergency medical services personnel.

H.B. 2845 amends current law relating to the certification of and disciplinary actions against emergency medical services personnel.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Health is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 773.050, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 53.002, Occupations Code, as follows:

Sec. 53.002. APPLICABILITY OF CHAPTER. Provides that this chapter does not apply to an applicant for certification as emergency medical services personnel under Chapter 773 (Emergency Medical Services), Health and Safety Code, or a person who is licensed by the Texas Medical Board, rather than the State Board of Medical Examiners, the Texas State Board of Pharmacy, the State Board of Dental Examiners, or the State Board of Veterinary Medical Examiners.

SECTION 2. Amends Section 773.050, Health and Safety Code, by amending Subsections (b), (c), (d), (e), and (f) and adding Subsection (h), as follows:

(b) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner), rather than the Texas Board of Health (board), by rule to establish certain minimum standards.

(c) Requires the executive commissioner, rather than the board, to consider the education, training, criminal background, and experience of allied health professionals in adopting the minimum standards for emergency medical services personnel certification and authorizes the executive commissioner to establish criteria for interstate reciprocity of emergency medical services personnel.

(d)-(f) Makes conforming changes.

(h) Authorizes the Department of State Health Services (DSHS) to provide a prescreening criminal history record check for an emergency medical services personnel applicant to determine the applicant's eligibility to receive certification before completion of the educational and training requirements mandated by the executive commissioner. Authorizes DSHS to charge a reasonable fee for the costs associated with prescreening to each applicant who requests prescreening.

SECTION 3. Amends Subchapter C, Chapter 773, Health and Safety Code, by adding Sections 773.0614, 773.0615, 773.0616, and 773.0617, as follows:

Sec. 773.0614. AUTHORITY TO REVOKE, SUSPEND, DISQUALIFY FOR, OR DENY CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL FOR CERTAIN CRIMINAL OFFENSES. (a) Authorizes the commissioner of health (commissioner), in addition to the grounds under Section 773.061 (Disciplinary Actions), to suspend or revoke a certificate, disqualify a person from receiving a certificate, or deny a person the opportunity to take a certification examination on the grounds that the person has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of emergency medical services personnel.

(b) Requires that a certificate holder's certificate be revoked if the certificate holder is convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense listed in Sections 3g(a)(1)(A) (relating to the provisions of Section 3 not applying to Section 19.02, Penal Code (Murder)) a defendant adjudged guilty of an offense under through (H) (relating to the provisions of Section 3 not applying to Section 22.011, Penal Code (Sexual assault)), Article 42.12 (Community Supervision), Code of Criminal Procedure.

Sec. 773.0615. FACTORS CONSIDERED IN SUSPENSION, REVOCATION, OR DENIAL OF CERTIFICATE. (a) Requires the commissioner, in determining whether an offense directly relates to the duties and responsibilities of emergency medical services personnel under Section 773.0614(a), to consider the nature and seriousness of the crime; the relationship of the crime to the purposes for requiring certification to engage in emergency medical services; the extent to which certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of emergency medical services personnel.

(b) Requires the commissioner, 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, a crime to consider, in addition to the factors listed in Subsection (a):

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated, after release, or since imposition of community supervision or deferred adjudication; and
- (6) other evidence of the person's fitness, including letters of recommendation from prosecutors, law enforcement officers, correctional officers, or community supervision officers who prosecuted, arrested, or had custodial or other responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other person in contact with the person.

(c) Provides that the applicant or certificate holder has the responsibility, to the extent possible, to obtain and provide to the commissioner the recommendations of the persons required by Subsection (b)(6).

(d) Requires the applicant or certificate holder, in addition to providing evidence related to the factors under Subsection (b), to furnish proof in the form required by DSHS that the applicant or certificate holder has maintained a record of steady employment; supported the applicant's or certificate holder's dependents; maintained a record of good conduct; and paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or certificate holder has been convicted, been placed on community supervision, or received deferred adjudication.

Sec. 773.0616. PROCEEDINGS GOVERNED BY ADMINISTRATIVE PROCEDURE ACT; GUIDELINES. (a) Provides that a proceeding before the commissioner to consider the issues under Section 773.0615 is governed by Chapter 2001 (Administrative Procedure), Government Code.

(b) Requires the executive commissioner to issue guidelines relating to the commissioner's decision-making under Sections 773.0614 and 773.0615. Requires that the guidelines state the reasons a particular crime is considered to relate to emergency medical services personnel and include any other criterion that may affect the decisions of the commissioner.

(c) Requires the executive commissioner to file the guidelines with the secretary of state for publication in the Texas Register.

(d) Requires DSHS annually to issue any amendments to the guidelines.

Sec. 773.0617. NOTICE AND REVIEW OF SUSPENSION, REVOCATION, DISQUALIFICATION FOR, OR DENIAL OF CERTIFICATION. (a) Requires the commissioner, if the commissioner suspends or revokes a certification, denies a person a certificate, or denies the opportunity to be examined for a certificate under Section 773.0614, to notify the person in writing of the reason for the suspension, revocation, denial, or disqualification; the review procedure provided by Subsection (b); and the earliest date the person may appeal the action of the commissioner.

(b) Authorizes a person whose certificate has been suspended or revoked or who has been denied a certificate or the opportunity to take an examination and who has exhausted the person's administrative appeals to file an action in the district court in Travis County for review of the evidence presented to the commissioner and the decision of the commissioner.

(c) Requires that the petition for an action under Subsection (b) be filed not later than the 30th day after the date the commissioner's decision is final.

SECTION 4. Requires the executive commissioner, not later than January 1, 2010, to issue the guidelines required by Section 773.0616(b), Health and Safety Code, as added by this Act.

SECTION 5. Makes application of Chapter 773, Health and Safety Code, prospective to January 1, 2010.

SECTION 6. Effective date: September 1, 2009.