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SFA BILL ANALYSIS

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Senate Bill 404 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Dale L. Shugars
Committee: Health Policy

Date Completed: 8-12-99

RATIONALE

Emergency medical services (EMS) provide care to thousands of people each year who are experiencing some type of medical emergency. As prescribed in the Public Health Code, the Department of Consumer and Industry Services (DCIS) is responsible for the development, coordination, and administration of EMS systems. An EMS system is a comprehensive and integrated arrangement of the personnel, facilities, equipment, services, communications, and organizations necessary to provide EMS within a particular geographic area.

Part 209 of the Code regulates EMS, and includes provisions that prescribe the duties of the State Emergency Medical Services Coordination Committee; provide for DCIS-appointed local medical control authorities to serve as medical control for EMS within particular geographic regions; require the DCIS to review and approve education programs and curricula for EMS personnel; provide for the licensure of EMS personnel, and for the various levels of licensure; provide for the licensure of ambulance operations; and provide limited immunity for the actions of EMS personnel in conducting EMS activities. Part 209 was adopted in 1990 to replace the Comprehensive Emergency Medical Services Act, which had expired in 1989. It has been amended few times since 1990. Some people believe that some of the provisions of Part 209 need to be updated and revised to ensure the proper delivery of EMS to the public.

CONTENT

The bill would amend Part 209 of the Public Health Code to require the Department of Consumer and Industry Services to develop and implement standards for all EMS education program sponsors, and review and approve education program sponsors; revise current examination standards for obtaining an EMS personnel license, including requiring that an examination adhere to standards developed by certain nationally recognized organizations; require the Emergency Medical Services Coordination Committee to advise the DCIS regarding curriculum changes for EMS education programs; revise the membership of the EMS Coordination Committee; expand immunity from liability provisions for EMS personnel to include services provided in a clinical setting, under certain conditions, and extend immunity to other specified individuals and entities involved in emergency medical services, including persons and entities involved in the development of EMS protocols; expand the current list of protocols that a medical control authority must develop; revise provisions concerning appeals of medical control authority decisions; require that full-time freestanding surgical outpatient facilities be allowed to participate in the development of medical control authority protocols; revise DCIS responsibilities regarding inspection of life support vehicles; and redefine "emergency patient".

DCIS Requirements/Educational Programs

Currently, the DCIS is required to review and approve education programs for EMS personnel. The bill, instead, would require the DCIS to review and approve education program sponsors and ongoing education program sponsors. ("Education program sponsor" would mean a person, other than an individual, that met the standards of the DCIS to conduct training at the following levels: medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, and EMS instructor-coordinator. An ongoing sponsor would be a sponsor that provided continuing education for EMS personnel.)

Approved education and refresher programs would have to be coordinated by a licensed EMS instructor-coordinator commensurate with level of licensure. Approved programs conducted by ongoing education program sponsors would have to be coordinated by a licensed EMS instructor-coordinator.

The bill would require the DCIS to develop and implement standards for all education program sponsors and ongoing education program sponsors based upon criteria recommended by the Statewide Emergency Medical Services Coordination Committee and developed by the Department. The bill also would require the Committee to advise the DCIS concerning requirements for curriculum changes for EMS educational programs; and on minimum standards that each life support agency had to meet for licensure.

An education program sponsor that conducted education programs for paramedics and that received accreditation from the joint review committee on educational programs for the EMT-paramedic or other organization approved by the DCIS as having equivalent expertise and competency in the accreditation of paramedic education programs would be considered approved by the Department, if the education program sponsor submitted an application to the DCIS that included verification of accreditation, and maintained accreditation.

Currently, the DCIS, at least annually, must inspect or provide for the inspection of ambulance operations and nontransport prehospital life support operations. The bill provides instead that, at least annually, the DCIS would have to inspect or provide for the inspection of each life support agency, except medical first response services. (Under Part 209, "life support agency" includes an ambulance operation, nontransport prehospital life support operation, aircraft transport operation, or medical first response service.) As part of the inspection, the DCIS would have to conduct random inspections of life support vehicles. If the DCIS determined that a life support vehicle was out of compliance, the Department would have to give the life support agency 24 hours to bring the vehicle into compliance. If the vehicle were not brought into compliance in that time, the DCIS would have to order it taken out of service until the life support agency demonstrated to the Department, in writing, that the vehicle had been brought into compliance.

The bill provides that receipt of an application by the DCIS for licensure of an ambulance, nontransport prehospital vehicle, or aircraft transport would serve as an attestation to the Department by the operation that applied for the license that the ambulance, nontransport prehospital vehicle, or aircraft transport met the minimum standards require by the DCIS. An inspection would not be required as a basis for licensure renewal, unless otherwise determined by the DCIS.

The bill would eliminate a current requirement that the DCIS promulgate rules to establish and maintain minimum requirements for patient care equipment and safety equipment for life support vehicles; publish lists of the minimum required equipment; and submit proposed changes in requirements to the Statewide Emergency Medical Services Coordination Committee. The bill would require the DCIS to promulgate rules to establish requirements for licensure of life support agencies, vehicles, and individuals licensed to provide emergency medical services, and other rules necessary to implement Part 209. The Department would have to submit all proposed rules and changes to the Statewide EMS Coordination Committee and provide a reasonable time for the Committee's review and recommendations before submitting the rules for public hearing.

The bill would require the DCIS to develop, with the advice of the Committee, an emergency medical services plan that included rural issues.

Currently, Part 209 requires the DCIS to develop a program of hospital inventory; develop a program of categorization of hospital emergency department capabilities; and assist in the development of EMS portions of the Statewide health priorities. The bill would eliminate these provisions.

EMS Examinations/Fees

Part 209 prescribes the requirements that an individual must meet to obtain a license as a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or EMS instructor-coordinator. Among other things, the individual must obtain a passing grade on written and practical examinations prescribed by the DCIS. The bill specifies that within six months of its effective date, except for a medical first responder, to obtain an EMS personnel license an individual would have to pass an examination that was a written and practical evaluation approved or developed by the National Registry of Emergency Medical Technicians, or other organization with equivalent national recognition and expertise in emergency medical services personnel testing and approved by the DCIS.

Within three years after the effective date of the bill, a medical first responder would have to pass a written examination proctored by the DCIS or its designee, and a practical examination approved by the Department. The practical examination would have to be administered by the instructors of the medical first responder course. The DCIS or its designee also could proctor the practical examination. Further, an emergency medical technician, emergency medical technician specialist, or paramedic would have to pass a written examination and a practical examination proctored by the DCIS or its designee. The fee for a required written examination would have to be paid directly to

the National Registry of Emergency Medical Technicians or other organization approved by the DCIS.

The bill would require the DCIS to provide for the development and administration of an examination for EMS instructor-coordinators.

Under Part 209, an applicant for renewal of a license must pay a renewal fee. The fee for an EMS instructor-coordinator is $50. The bill would reduce the fee to $25. Currently, an EMS instructor-coordinator must pay a $100 late fee if he or she attempts to renew a license after it expires. The bill would reduce the late fee to $50. Currently, there is no late fee for a medical first responder; the bill would establish a $50 late fee. If an applicant for renewal of an EMS personal license failed to notify the DCIS of a change of address, he or she would have to pay an additional $20 fee.

The bill specifies that an individual who sought license renewal would not be required to maintain national registry status as a condition of renewal.

Medical Control Authority/Protocols

Part 209 requires the DCIS to designate an organization as a medical control authority for emergency medical services in each Michigan county, or multiple county area. A licensed hospital that operates a service for admitting and treating emergency patients must be given the opportunity to participate in the ongoing planning and development activities of the designated local medical control authority; a medical control authority must be administered by the participating hospitals. The bill provides that each hospital and licensed freestanding surgical outpatient facility that operated a service for treating emergency patients, 24 hours a day, seven days a week, and met the standards established by medical control authority protocols, would have to be given an opportunity to participate in the ongoing planning and development activities. Further, a medical control authority would have to accept participation in its administration by a licensed freestanding surgical outpatient facility if the facility operated a service for treating emergency patients, 24 hours a day, seven days a week, determined by the medical control authority to meet the applicable standards established by medical control authority protocols.

Under Part 209, the participating hospitals within a medical control authority must appoint an advisory body for the authority. The participating hospitals also must appoint a medical director of the authority, with the advice of its advisory body. The bill would require the authority to appoint the medical director, with the advice of the advisory body. Currently, the medical director must be board certified in emergency medicine or practice emergency medicine and be certified in advanced cardiac life support and advanced trauma life support by a national organization approved by the DCIS. Under the bill, if the director were board certified in emergency medicine, he or she would have to be certified by a national organization approved by the DCIS. The bill specifies that the medical director would be responsible for medical control for the EMS system served by the medical control authority.

Under Part 209, a local medical control authority must establish written protocols for the practice of life support agencies and EMS personnel within its region, as specified in the statute. In addition, the bill would require an authority to develop and adopt protocols to do the following:

-- Define the process, actions, and sanctions a medical control authority could use in holding a life support agency or personnel accountable.
-- Ensure that if the medical control authority determined that an immediate threat to the public health, safety, or welfare existed, appropriate action to remove medical control could immediately be taken until the medical control authority had the opportunity to review the matter at a medical control authority hearing. The protocols would have to require that the hearing be held within three business days after the authority's determination.
-- Ensure that if medical control had been removed from a participant in an EMS system, the participant did not provide prehospital care until medical control was reinstated, and that the medical control authority that removed the medical control notify the Department within one business day of the removal.
-- Ensure that a quality improvement program was in place within a medical control authority and provided data protection as provided in Public Act 270 of 1967 (which provides for the release of information for medical research and educational purposes under certain circumstances, and provides for the confidentiality of data).
-- Ensure that an appropriate appeals process was in place.

Currently, the DCIS may deny, revoke, or suspend an EMS personnel license upon finding certain violations as specified in Part 209, including that an individual is not performing in a manner consistent with his or her education or licensure. The bill would add that if an EMS licensee were not performing in a manner consistent with his or her approved medical control authority protocols, the DCIS could deny, revoke, or suspend the individual's license.

Medical Control Authority: Appeals

Under Part 209, a medical control authority must provide an opportunity for an affected person to appeal a decision of the authority; after appeals to an authority have been exhausted, the individual may apply to the DCIS for a variance from the authority's decision. The DCIS may grant a variance if it determines that that action is appropriate to protect the public health, safety, and welfare. The bill would revise these provisions to provide that, following an appeal of a medical control authority decision, the authority could affirm, suspend, or revoke its original decision. After appeals to the authority had been exhausted, the affected participant in an EMS system could appeal the authority's decision to the Statewide Emergency Medical Services Coordination Committee. Currently, the Committee must provide the DCIS with advisory recommendations on appeals of a medical control authority's decisions. The bill would require the Committee to issue opinions on those appeals and make recommendations based on those opinions to the DCIS for resolution of the appeals. The Committee would have to issue an opinion on whether the actions or decisions of the authority were in accordance with the Department-approved protocols of the authority and State law. If the Committee determined in its opinion that the authority's actions or decisions were not in accordance with its approved protocols or with State law, the Committee would have to recommend that the DCIS take any enforcement action authorized under the Code.

Part 209 provides that if an affected person appeals a decision of a medical control authority, the authority must make available the medical and economic information it considered in making its decision. On appeal, the Department is responsible for reviewing and issuing findings regarding that information. Under the bill, the Statewide Emergency Medical Services Coordination Committee would have that responsibility.

Liability Immunity

The bill would expand the liability immunity provisions of Part 209. Currently, unless an act or omission is the result of gross negligence or willful misconduct, the acts or omissions of a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or medical director of a medical control authority or his or her designee, while providing services to a patient outside a hospital, or in a hospital before transferring patient care to hospital personnel, that are consistent with the individual's licensure or additional training required by the medical control authority, do not impose liability in the treatment of a patient on those individuals or any of the individuals listed in Part 209. The bill would extend the immunity to acts or omissions of a covered individual while he or she was providing services to a person in a clinical setting, and to services that were consistent with an approved procedure for a particular education program. Further, the bill would extend immunity to the following individuals:

-- An individual acting as a "clinical preceptor" of a Department-approved education program sponsor. A "clinical preceptor" would be an individual who was designated by or under contract with an education program sponsor for purposes of overseeing the students of an education program sponsor during their participation in clinical training.
-- The medical director and individuals serving on the governing board or committee of the medical control authority, and an employee of the medical control authority.
-- An education program medical director, education program instructor-coordinator, education program sponsor, and education program sponsor advisory committee.
-- A student of a DCIS-approved education program who was participating in an education program-approved clinical setting.
-- An instructor or other staff employed by or under contract to a DCIS-approved education program for the purpose of providing training or instruction for the education program.
-- A life support agency or an officer, member of the staff, or other employee of the life support agency that provided the clinical setting.
-- The hospital, or an officer, member of the medical staff, or other employee of the hospital that provided the clinical setting.

Unless an act or omission was the result of gross negligence or willful misconduct, the acts or omissions of any of the following persons, while participating in the development or implementation of protocols under Part 209, or holding a participant in the EMS system accountable for DCIS-approved protocols under Part 209, would not impose liability in the performance of those functions:

-- The medical director and individuals serving on the governing board, advisory body, or committees of the medical control authority or employees of the medical control authority.
-- A participating hospital or freestanding surgical outpatient facility in the medical control authority or an officer, member of the medical staff, or other employee of the hospital or outpatient facility.
-- A participating agency in the medical control authority or an officer, member of the medical staff, or other employee of the participating agency.
-- A nonprofit corporation that performed the functions of a medical control authority.

EMS Coordination Committee

Part 209 establishes the Emergency Medical Services Coordination Committee in the DCIS, and requires the DCIS Director to appoint the 25 voting members of the Committee. Currently, of the voting members, three must be appointed from a Statewide organization representing labor, that deals with EMS. The bill provides that at least one of the three would have to be a member of the Michigan Professional Fire Fighters Union or its successor agency.

Further, of the 25 voting members two currently must be consumers, at least one of whom is a resident in a county with a population under 100,000. The bill instead would require the appointment of one consumer, and one individual who was an elected official of a city, village, or township located in a county with a population under 100,000.

"Emergency Patient"

Currently, under Part 209, "emergency patient" means an individual whose physical or mental condition is such that he or she is, or may reasonably be suspected or known to be, in imminent danger of loss of life or of significant health impairment. The bill provides instead that "emergency patient" would mean an individual with a physical or mental condition that manifested itself by acute symptoms of sufficient severity, including but not limited to pain, such that a prudent layperson possessing average knowledge of health and medicine could reasonably expect to result in serious dysfunction of a body organ or part; serious impairment of bodily function; or placing the health of the individual or, in the case of a pregnant woman, the health of the patient or the unborn child, or both, in serious jeopardy.

MCL 333.20902 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Providing EMS to the public is a vital component of the overall delivery of health care in the State. In the last three decades emergency medical services have experienced a steady evolution, from funeral home station wagons with a flashing red light to ambulances equipped with sophisticated life-saving machinery run by highly trained personnel. Today's EMS system is composed of several elements that must work together to achieve successful patient outcomes; these components include 9-1-1 communication systems; EMS personnel with various levels of training; equipment; ambulance operations; and hospital emergency rooms and their staff of health professionals. Perhaps to a greater degree than required by any other area of health care, there needs to be a clear determination of the obligations and duties of the personnel involved in EMS systems.

The current provisions that govern EMS systems have applied for nearly 10 years, and many in the EMS community believe that the law needs to be revised to correct various problems, and to address the many changes that have occurred in health care during the past decade. The bill would provide a comprehensive update of EMS provisions. Among other things, the bill would require the implementation of standards for EMS education providers; revise EMS personnel licensing examinations, and institute an examination for medical first responders; require random inspections of ambulance operations; clarify the role of the medical director in medical control authorities; specify the responsibilities of medical control

authorities; expand immunity from liability for EMS personnel, including persons involved in the development of EMS protocols; and add the "prudent layperson" standard to the definition of "emergency patient". These provisions, and others in the bill, would strengthen the efficiency and quality of EMS systems, and ultimately improve the delivery of EMS to the public.

Fiscal Analyst: M. Tyszkiewicz

Supporting Argument

Under the bill, EMS licensure examinations would have to be developed by the National Registry of Emergency Medical Technicians (NREMT) or an equivalent nationally recognized, DCIS-approved testing service. According to testimony submitted to the Senate Health Policy Committee, more than 40 states currently use the NREMT in some manner to provide testing services for their candidates. Instituting the national exam would assure the DCIS that applicants in Michigan received a reliable, valid, legally defensible exam that was developed by a team of expert exam writers. In addition, the DCIS would be able to offer reciprocity, without delay, to nationally registered EMS providers who moved to Michigan.

Supporting Argument

A growing number of freestanding ambulatory care centers offer a valuable resource to treat and/or manage acute injury or illness, and more and more hospitals are choosing to reorganize their operations using this type of facility. It is important that these EMS providers be allowed to participate in medical control authorities' development activities and administration. Reportedly, however, individual authorities now decide, without consistency throughout the State, whether these facilities may participate. Under the bill, medical control authorities would have to accept participation by full-time freestanding surgical outpatient facilities that met the standards established by authority protocols.

Legislative Analyst: G. Towne

FISCAL IMPACT

According to the Department of Consumer and Industry Services, this bill would result in a cost saving to the State, resulting from the change to the national registry examination, of approximately $60,000. Currently the State has a contract with a private firm to prepare the exam. Additionally, the bill would provide for a new $20 fee to be assessed on those licenses who failed to notify the State of a change of address. The Department estimates that approximately 1,500 renewal applications are returned each year, which could generate $30,000 in restricted revenue.

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