

Legislative Analysis



TRAUMA SCENE WASTE MANAGEMENT: REQUIRE PRACTITIONERS TO REGISTER

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House Bills 4458 and 4459
Sponsor: Rep. Fred Miller
Committee: Regulatory Reform

Complete to 3-4-09

A SUMMARY OF HOUSE BILLS 4458 AND 4459 AS INTRODUCED 2-24-09

Together, the bills would amend Part 138 of Article 12 of the Public Health Code, which is entitled "Medical Waste," in order to:

- Establish a system of registration for trauma scene waste management practitioners.
- Transfer regulatory duties for medical waste producing facilities to the Department of Environmental Quality.
- Establish registration fees.
- Change administrative fines for certain violations to civil fines; provide for injunctive relief; and create a criminal penalty for violations of the act.

The bills are tie-barred, meaning that neither can take effect unless both are enacted. Highlights of each bill follow.

House Bill 4458

The bill would amend the code (MCL 333.1104 and 333.13815) to require trauma scene waste management practitioners to register with the Department of Energy, Labor, and Economic Growth (DELEG); establish registration and renewal fees; and prescribe various duties of a practitioner and the department.

In brief, the bill would do the following:

- For the purposes of Section 13815, specify that the term “department” would mean the Department of Energy, Labor, and Economic Growth.
- Require a person to register with the DELEG before operating as a trauma scene waste management practitioner.
- Allow a person who was previously engaged in such activities prior to the bill's enactment to continue to operate as a trauma scene waste management practitioner if he or she notified the department of the intent to continue operating as a practitioner within 30 days of the bill's effective date and submitted an application for registration by the date prescribed by the department. If the application were denied, the person would have to cease operating as a practitioner, but the person could reapply for registration.

- Require applicants for a registration or a renewal of a registration to submit a registration fee of \$75; a written trauma scene waste management plan as specified in the bill; proof of financial responsibility for injury to another person, property damage, or environmental damage arising from the trauma scene waste cleanup and transport activities of the practitioner; and a fee to cover a required background check. Fees collected under the bill would be forwarded to the state treasurer for deposit in the Medical Waste Emergency Response Fund.
- Require a background check of all owners, partners, officers, and key employees. If, based on information received from the background check, the request was denied, DELEG would have to provide the reasons for the denial. The person could reapply under the bill's provisions for the new registration category.
- A certificate of registration would be valid for three years.
- DELEG would have to establish standards within 90 days of the bill's effective date (and on a continuing basis), in consultation with the trauma scene waste management industry and the health care industry, requiring documentation of personal protection to be provided and worn by employees; appropriate technologies and chemicals used at the scene; procedures and equipment appropriate for removing, storing, transporting, and disposing of trauma scene waste; and other necessary standards.
- Require each practitioner to develop a trauma scene waste management plan describing how the above standards would be implemented and require compliance with the plan. The plan would have to be updated every year or within 30 days of a change in a person or site named in the plan or a change in the types of trauma scene waste handled or the methods of handling trauma scene waste.
- Require transport of trauma scene waste to a processing facility that decontaminates or incinerates medical waste for treatment or disposal and prohibit storage of trauma scene waste by a practitioner on his or her premises for more than 7 days.
- Allow DELEG to do routine or unannounced inspections to determine whether a trauma scene waste management practitioner should be registered or to investigate complaints. A registration could be denied, suspended, or revoked upon a determination the practitioner cannot engage in the cleanup or transport of trauma scene waste in a manner that would protect the public health, safety, and welfare and the environment. A notice and opportunity for a contested case hearing would be provided before a suspension or revocation.
- Exempt practitioners from the requirements of Sections 13813 and 13817 (both of which would be amended by House Bill 4459), except that a practitioner would have to make the trauma scene waste management plan available to the department upon request. (Failure to do so would subject the person to a civil fine under HB 4459).
- DELEG would have to post and maintain on its website a current list of registered trauma scene waste management practitioners. A person would be provided with a current list of practitioners upon request.

- A provision relating to the registration fee for a producing facility would be eliminated.

House Bill 4459

The bill would make numerous revisions to the code pertaining to producers of medical waste (MCL 333.13805 et al.). Among the significant revisions, the bill would do the following:

- Remove references to the Interdepartmental Medical Waste Advisory Council and place all regulatory responsibilities with the Department of Environmental Quality (DEQ), including administration of the Medical Waste Emergency Response Fund.
- Add definitions of several terms and revise several current definitions; for example, by including "trauma scene waste" in the definition of "medical waste".
- Include transfer stations where medical waste is stored and a trauma waste management practitioner in the definition of a "producing facility" and therefore subject to the act's requirements. Exclude from that term a funeral home that does not embalm or generate medical waste; a home health agency; a residence; a farm operation or other agricultural business; and a facility licensed by the Department of Human Services that provides residential care services.
- Include physician assistants and acupuncturists in determining the size of a producing facility for registration fee purposes; require producing facilities that are not health facilities, such as tattoo and body art facilities, blood draw stations, pharmacies, and others to register and pay a fee; specify a fee for other categories such as a hospital, health facility, or clinical lab.
- Require labeling of containers of medical waste that will be transported to be carried out in compliance with U.S. Department of Transportation regulations. The transport of materials would have to comply with applicable USDOT hazardous material regulations.
- Revise storage requirements and prohibitions, for example prohibit the storing of transfer station storage containers for more than 7 days without approval of the DEQ.
- Require medical waste to be sorted and separated by type and appropriately labeled. Sharps would have to be separated and disposed of as specified in the bill.
- Require review and approval by the DEQ of all non-department approved medical waste treatment technology before installation or use.
- Require a producing facility to have a medical waste management plan on the premises within 90 days of registering with the DEQ and update the plan at least every three years or within 30 days of certain changes listed in the act.

- Allow DEQ to expend money from the Medical Waste Emergency Response Fund for programs relating to medical waste reduction, management, and education, in addition to current restrictions on fund expenditures.
- Allow DEQ to enter at any reasonable time upon private or public property upon which medical waste is reasonably believed to be located in order to determine compliance with Part 138 or rules promulgated under it.
- Allow DEQ to request the attorney general to bring an action for appropriate relief for violations of Part 138.
- Change current administrative fines to civil fines with civil fines of not more than \$2,500 for each violation and an additional civil fine of not more than \$1,000 for each day the violation continues; and a civil fine of \$500 for failure to register as a producing facility or trauma waste management practitioner or to make available to the DEQ the required medical waste management plan. Fine revenue would be deposited in the state's General Fund.
- Allow a court to order a person who violated Part 138 to pay additional costs, including the cost to contain and remove medical waste and the full value of damage done to the state's natural resources. Revenue collected under this provision would be deposited in the Medical Waste Emergency Fund. (However, if a local unit of government incurred the cleanup costs, the court could order the payment be forwarded to that local unit).
- In addition to the costs described above, a person who violated Part 138, a departmental rule promulgated under this part, or a final order would be guilty of a misdemeanor punishable by not more than six months imprisonment and/or a fine of not more than \$1,000.
- Allow the DEQ to issue cease and desist orders to correct a violation.

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.