

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:)	
)	
EMERGENCY MEDICAL)	DECISION OF DISAPPROVAL
SERVICES AUTHORITY)	OF PROPOSED CHANGES
)	WITHOUT REGULATORY
)	EFFECT
)	
REGULATORY ACTION:)	(Gov. Code, sec. 11349.3)
)	
Title 22, California Code of)	
Regulations)	
)	OAL File No. 2010-1119-01N
Amend Section: 100162)	
_____)	

SUMMARY OF REGULATORY ACTION

The Emergency Medical Services Authority (“EMSA”) proposed to amend section 100162 of title 22 of the California Code of Regulations (“CCR”) pertaining to Emergency Medical Technician-Paramedic licensure forms. On November 19, 2010, EMSA submitted the proposed action to the Office of Administrative Law (“OAL”) as a Title 1 CCR section 100 change without regulatory effect filing for review in accordance with the Administrative Procedure Act (“APA”). On January 4, 2011, OAL disapproved the proposed action. This Decision of Disapproval of Proposed Changes Without Regulatory Effect explains the reasons for OAL’s action.

DECISION

OAL disapproved the above-referenced action for the following reasons:

Violation of APA Procedure. The action does not qualify as a section 100 change without regulatory effect because changes with regulatory effect were made to the content of each newly incorporated form.

Violation of APA Procedure. EMSA’s section 100 statement does not comply with the requirements of Title 1 CCR section 100(b)(3) because it does not explain why each change made to the three incorporated forms qualifies as a change without regulatory effect under Title 1 CCR section 100(a).

DISCUSSION

The adoption, amendment or repeal of regulations is ordinarily accomplished by following the rulemaking procedural and substantive requirements of the Administrative Procedure Act (“APA”). In 1986, OAL adopted a regulation to create a procedure for allowing certain changes in regulations published in the CCR without following the usual APA procedure. OAL’s regulation, found at title 1, CCR, section 100, is based upon the rationale that changes to rules that have no regulatory effect do not involve rulemaking and the belief that following the usual APA rulemaking process for such changes imposed an unnecessary burden with no corresponding benefit.

Section 100 filings are by definition, limited to changes that “[do] not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.” [Emphasis added]. Examples of section 100 filings include renumbering or reordering; deleting a regulatory provision for which all statutory or constitutional authority has been repealed; revising structure, syntax, or grammar; changing an “authority” or “reference” citation for a regulation; or conforming to mandated statutory language.

A. The action does not qualify as a section 100 change without regulatory effect because changes with regulatory effect were made to the content of each newly incorporated form.

This section 100 action amends three forms incorporated by reference in section 100162, “*Date and Filing of Applications*”. Section 100162 is part of EMSA’s Chapter 4. regulations governing “*Emergency Medical Technician – Paramedic*”. The amendments were done by substituting new forms in place of the old forms. The three new forms are:

“Paramedic License Application, Initial California Graduate Applicant, Form # L-01 Revised 07/10”

“Paramedic License Application, Initial Out Of State Applicant, Form # L-01A Revised 07/10”

“EMT-Paramedic Application, License Renewal, Form # RL-01 Revised 02/10”

EMSA claims this action qualifies as a Section 100 change without regulatory effect because it simply replaces the fee amounts listed on the old forms with new fee amounts previously adopted in an amendment to Title 22 CCR section 100171, operative June 18, 2010. EMSA’s section 100 statement in its entirety is as follows:

“The proposed changes to Section 100162 are necessary in order to make the Regulations consistent with current Statutes and Regulations. Section 1797.172(d) of the Health and Safety Code authorizes the EMS Authority to adopt Regulations to establish fees for Paramedic licensure. Section 100171 of

Chapter 4, Article 8, Division 9, Title 22 of the California Code of Regulations establishes those fees. Section 100162 of Chapter 4, Article 8, Division 9, Title 22 of the California Code of Regulations incorporates by reference Forms #L-01, #L-01A, and #RL-01. These forms were last revised in March 2003 (as noted in Section 100162) and reflect the fees that were in place prior to the adoption of the current fee structure. The forms have since been revised to reflect the current fee structure stated in Section 100171. It is necessary to amend the revision dates in Section 100162 to reflect the changes made to the forms necessary to bring them into conformance with Section 100171 of said regulations and Section 1797.172(d) of the Health and Safety Code.” [Emphasis added].

Had EMSA revised the three forms to only “...reflect the current fee structure stated in Section 100171”, this action would have qualified as a change without regulatory effect under Section 100. Unfortunately, each new form was changed to not only reflect the current fee structure but include additional changes with regulatory effect. Additional changes to the three forms include:

Form # L-01 Revised 07/10

- Deleted the option for an applicant to submit a Course Completion Certificate after the paramedic course is completed.
- Deleted the option for an applicant to submit a completed fingerprint card (FD-258) to EMSA directly rather than being required to “...[a]ttach the second copy (after you have had your fingerprints done) of the Request for Live Scan Service form (BCII 8016).”
- Added a requirement that all applicants submit documentation of passing the NREMT written and practical exam that includes “... **the exam and scored date(s) for both the written and practical portions of the exam and your Social Security Number written on the results.**”
- Added a requirement that if the applicant wanted the original documentation of the applicant’s Statement of Citizenship form (IS-01 Form) returned, “...***you must submit a written request, which includes your name and address, that it be returned.***”

Form # L-01A Revised 07/10

- Added “Provide documentation that National Registration is current. (A copy of your National Registry Card will do.)”
- Added “For applicants whose paramedic training occurred outside of the country, provide a copy of paramedic training program completion record.”
- Added the exception of “(Not needed if you went to paramedic school in CA)” to the requirement to provide documentation of training hours.

- Added the exception of “..., unless you were previously licensed in California and this documentation has already been submitted” to the requirement to submit the IS-01 form (Statement of Citizenship, Alienage, and Immigration Status).

Form # RL-01 Revised 02/10

- Added the following to the chart documenting the “Statement of Continuing Education, (Minimum of 48 Hours Required)”:

“(i.e., in a classroom setting or may include on-line CE courses if an instructor is available)

At least 24 hours of CE must be taken in this format and cover the topics listed in the US DOT National Standard Paramedic Curriculum.”

....

“Other Approved Acceptable CE

May include CE course, class or activity instructor; EMT-I, II or paramedic program instructor; precepting; magazine articles for CE credit; advanced topics in subject matter outside the scope of practice of a paramedic but directly relevant to emergency medical care; courses in physical, social or behavioral sciences offered by accredited universities and colleges; structured clinical experience; and media based and/or serial productions.”

- Changed column titles in the CE chart to “Approved Prehospital CE Provider Name” from “Approved CE Provider Name” and “Approved Prehospital CE Provider Number” from “Approved Provider Number”.

These additional changes to the regulatory content of each form listed above go beyond conforming to changed fee amounts and fail to meet the definition of a Section 100 change without regulatory effect because the changes materially alter rights or responsibilities, etc., under each of the forms.

B. EMSA’s section 100 statement does not comply with the requirements of section 100(b)(3) because it does not explain why each change made to the three incorporated forms qualifies as a change without regulatory effect under Title 1 CCR section 100(a).

Title 1 CCR section 100(b)(3) requires any section 100 change without regulatory effect action to be accompanied by the following section 100 statement:

“(b) In submitting a change without regulatory effect to OAL for review the agency shall:

....

(3) submit a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.”

EMSA's section 100 statement for this action is set forth above in its entirety. The statement does not discuss or explain why any of the additional changes to the three forms (beyond reflecting the new fee structure) qualify under section 100 as a change without regulatory effect. This fails to comply with the requirements of Title 1 CCR section 100(b)(3).

EMSA's regulation contact person indicated in a telephone conference on December 23, 2010, that EMSA would supplement the section 100 statement in an effort to demonstrate that all the additional changes to the three newly incorporated forms had previously been adopted in other regulations or statutes. EMSA submitted no additional section 100 justification to OAL and instead requested a formal disapproval decision by OAL in an email sent December 27, 2010.

C. Additional Suggestions.

1. While not a reason for disapproval, OAL notes that EMSA's regulation text did not technically comply with Title 1 CCR section 8. Title 1 CCR section 8 requires any regulation text submitted to OAL for review comply with the following:

“(a) For the purposes of this section:

(1) the term ‘regulation’ includes authority and reference citations; and

(2) the term ‘final text’ means the certified copy of the regulation or order of repeal transmitted to OAL for filing with the Secretary of State and the six copies required by Government Code section 11343.

(b) The final text of the regulation shall use underline or italic to accurately indicate additions to, and strikethrough to accurately indicate deletions from, the California Code of Regulations. Underline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations.”

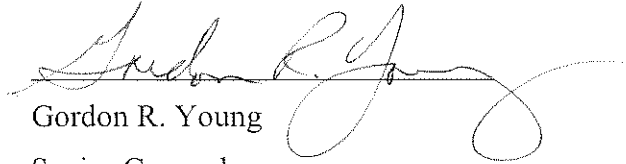
The new forms fail to comply with the requirements of Title 1 CCR section 8(b) because the forms fail to clearly indicate that all of the final text on each new form is added to the CCR.

2. While not a reason for disapproval, OAL notes that EMSA improperly attached its section 100 statement to the Form 400 and regulation text. This is inconsistent with the requirements of Title 1 CCR section 100(b).

CONCLUSION

For the reasons set forth above, OAL has disapproved this action as failing to qualify as “changes without regulatory effect” under Title 1 CCR section 100.

Date: January 11, 2011

A handwritten signature in black ink, appearing to read "Gordon R. Young", written over a horizontal line.

Gordon R. Young

Senior Counsel

For:

DEBRA M. CORNEZ

Assistant Chief Counsel/Acting Director

Original: Dan Smiley, Interim Director

Cc: Adam Morrill