

Emergency Medical Services

Effective date: 5/6/15

SUMMARY OF EXPRESS TERMS

This proposal amends Sections 800.3, 800.6, 800.8, 800.9, 800.15 and 800.16 of Part 800 (Emergency Medical Services) of Title 10 of the Official Code of Rules and Regulations of the State of New York (10 NYCRR) particularly as they relate to certification, recertification and continuing medical education recertification requirements, required conduct of every person certified under Part 800 and the suspension or revocation of certification.

Section 800.3 of 10 NYCRR contains all the definitions that apply to Part 800 (Emergency Medical Services). Definitions amended in this proposal are “emergency medical technician”, “primary territory”, “course sponsor”, and “learning contract”. New definitions added are “continuous practice”, “criminal offense”, “incompetence”, “negligence”, “non-criminal offense”, “patient abandonment”, “patient abuse”, “patient contact”, “regulatory violation”, “scope of practice”, “state approved protocols”, and “treatment”.

Section 800.6 of 10 NYCRR sets forth the Initial Certification Requirements and has been revised to remove the emergency medical technician-defibrillation (EMT-D) category as a level for which certification is available. This section is also revised to reflect the policy of this state to encourage the licensure and employment of person previously convicted of one or more

criminal offenses and incorporate Article 23-A of the Corrections Law into the review of applicants' criminal offenses.

Section 800.8 of 10 NYCRR outlines the Recertification requirements for applicants. This section adds that an applicant must enroll in a recertification course provided by an approved course sponsor as set forth in Section 800.20 (Course Sponsors) and complete the requirements for recertification at the level at which recertification is sought. Also added is that, within one year after passing the practical skills examination, the applicant must pass the State written certification examination for the level at which the certification is sought except at the certified instructor coordinator level and certified lab instructor level. It incorporates Article 23-A of the Corrections Law into the review when people seeking renewals of their certifications have had criminal convictions as defined in Section 800.3.

Section 800.9 of 10 NYCRR contains the Continuing Medical Education Recertification provisions previously titled Continuing Education. This section authorizes candidates who have demonstrated competence in applicable behavioral and performance objectives, and who have demonstrated completion of appropriate continuing medical education may be entitled to have their certification renewed without being required to successfully complete a state practical skills and written examination. It then sets forth the parameters for recertification using continuing medical education and once again applies the provisions of Article 23-A when reviewing the criminal offenses defined in Section 800.3, of those seeking recertification.

Section 800.15 of 10 NYCRR outlines the Required Conduct for every person certified at any level pursuant to Part 800 of 10 NYCRR or Article 30 of the Public Health Law, adhering to currently acceptable prehospital practice standards, maintenance of confidentiality at all times with certain exceptions, and compliance with the terms of a Medical Order of Life Sustaining Treatment (MOLST) form or a non-hospital Do Not Resuscitate (DNR) form, or a patient's DNR bracelet or necklace with certain exceptions.

Section 800.16 of 10 NYCRR sets forth the Suspension or Revocation of Certification provisions. This section refines the criteria for which a suspension or revocation of certification will apply incorporating the new definitions contained in Section 800.3 and failure to meet the requirements contained in Sections 800.6, 800.8, 800.9 and 800.15.

Pursuant to the authority vested in the New York State Emergency Medical Services Council and subject to the approval of the Commissioner of Health by section 3002 of the Public Health Law, Sections 800.3, 800.6, 800.8, 800.9, 800.15 and 800.16 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 800.3 of Part 800 is amended and re-lettered to read as follows:

800.3 DEFINITIONS

The following definitions shall apply to this Chapter unless the context otherwise requires:

[(n) *Emergency medical technician* means a person certified as either an advanced emergency medical technician or an emergency medical technician-basic pursuant to these regulations.]

(n) [(s)] *Certified first responder* means a person certified pursuant to these regulations as a first responder.

(o) *Emergency medical technician [-basic]* means a person certified pursuant to these regulations as an emergency medical technician[-basic].

(p) *Advanced emergency medical technician* means a person certified pursuant to these regulations as an advanced emergency medical technician, an emergency medical technician-critical care, or an emergency medical technician-paramedic.

(s) [(t)] *Certified instructor coordinator* means a person certified pursuant to these regulations to serve as the lead instructor for courses leading to certification as [an emergency medical technician or certified first responder] a certified first responder, emergency medical technician or advanced emergency medical technician. Certified instructor coordinators must be certified, pursuant to these regulations, at or above the level at which they seek to instruct.

(t) [(w)] *Certified laboratory instructor* means a person certified pursuant to these regulations to instruct, in psychomotor skills, candidates in courses leading to certification as an emergency medical technician or certified first responder or advanced emergency medical technician.

(v) *Primary territory* means that area listed on an ambulance or advanced life support first response service certificate [or certificate or registration] in which the service may treat or receive (pick up) patients.

(w) Continuous Practice means a certified individual having:

1. actively provided prehospital patient care during their period of certification, at or below their level of certification; and

2. been a current, active member or employee of an EMS agency recognized by the department, during their period of certification.

(x) *Course sponsor* means a person approved by the department to conduct EMS educational programs as one or more of the following specific types of course sponsor:

(1) *Basic life support course sponsor* - a course sponsor authorized by the department to conduct original and refresher CFR[,] and EMT [and EMT-D] courses.

(2) *Advanced life support course sponsor* - a course sponsor authorized by the department to conduct all basic life support courses, AEMT and EMT-CC original and refresher courses, and the EMT-P original and refresher courses.

(3) *Continuing education course sponsor* - a course sponsor authorized by the department to conduct one or more of the following courses, including, but not limited to: [critical trauma care, ambulance accident prevention seminar, combined EMT refresher/CTC,] certified instructor coordinator, certified lab instructor, certified instructor update, [prehospital pediatric care course, EMS dispatcher course, crash victim extrication, emergency vehicle operator, infection control-workshop,] or other continuing education courses developed by the department. Approval as a continuing education course sponsor is specific to the [actual courses] EMS educational programs that the sponsor is authorized to offer and not all sponsors will be approved to offer all types of courses.

(y) *Learning contract* means [an informal] a written agreement between a student and a course sponsor which specifies requirements to complete the course and the policies of the sponsor.

(ak) *Criminal offense* means, except in exceptional circumstances as determined by the agency, convictions in any jurisdiction for felonies involving murder, manslaughter, assault, sexual abuse, theft, robbery, fraud, embezzlement, drug abuse, or sale of drugs.

(al) *Incompetence* means a lack of, or loss of, skill or knowledge to practice the profession, and/or practicing with negligence, as negligence is defined in this part, on one or more occasions while treating a patient.

(am) *Negligence* means a failure to perform, on one or more EMS calls, as an ordinary, reasonable, similarly situated certificate holder certified at the same level would, based upon the standard of care in the region, as delineated in controlling protocols, curricula, and policies, and as demonstrated by an ordinary, reasonable certificate holder's general standards of practice.

(an) *Non-criminal offense* means findings of inappropriate conduct or misconduct not constituting a criminal offense in any jurisdiction, including, but not limited to, findings by either a designated governmental authority or a court of law of patient abuse, neglect, mistreatment, or misappropriation of patient property; Family Court findings of spousal and/or intimate partner violence; Family Court or other designated governmental entity findings of child abuse, neglect or abandonment; vehicle and traffic findings involving reckless and/or aggressive driving;

findings by any governmental entity of diversion of controlled substances from any health care facility, health care provider, or pharmacy; and any governmental findings involving dishonesty and/or other unethical conduct evincing unfitness to serve the public.

(ao) Patient Abandonment means a certificate holder's willful termination of patient contact prior to delivering the patient for medical evaluation and/or treatment, or securing a proper refusal of medical attention in accordance with applicable protocol. Patient abandonment may be effected through means including, but not limited to, leaving a patient unattended after establishing patient contact, leaving a patient to the care of an EMT certified at a lower level when the certificate holder knew or should have known that the patient required a higher level of care, and/or encouraging the patient and/or bystanders to reject transport to a hospital by ambulance unless it occurs within an organized multi patient/agency response.

(ap) Patient abuse means any inappropriate and/or offensive physical, sexual or verbal contact or interaction with a patient, irrespective of whether the certificate holder is specifically acting in his/her capacity as an EMT when (s)he engages in the abuse, including but not limited to the following:

1. Physical abuse means conduct by a certificate holder which causes, by physical contact, physical injury, or serious or protracted impairment of the physical, mental or emotional condition of a patient, or which causes the likelihood of such injury or impairment. Such conduct may include, but shall not be limited to, slapping, hitting,

kicking, biting, choking, smothering, shoving, dragging, pinching, punching, shaking, sitting upon, burning, cutting, strangling, striking, using corporal punishment, or throwing objects at a patient. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.

2. Psychological abuse means verbal or non-verbal conduct by a certificate holder, directed to a patient, which insults, denigrates, humiliates, shocks, mocks, threatens, harasses, or alarms the patient. Psychological abuse shall not include verbal or non-verbal conduct which has medical or therapeutic purpose or justification.

3. Sexual abuse means conduct by a certificate holder, which subjects a patient to any offense defined in article one hundred thirty, two hundred forty-five of the penal law; or any conduct or communication by a certificate holder that allows, permits, uses or encourages a patient to engage in any act described in two hundred sixty-three of the penal law. Offensive sexual contact or conduct may include, but shall not be limited to, engaging in, or facilitating sexual contact, exposure, performances, photography or any other form of sexual image collection and/or dissemination, irrespective of the patient's receptiveness to the conduct.

(aq) *Patient contact* means that the certificate holder has assessed, the patient and the circumstances in which the patient is found, when responding to a request for emergency

medical services and that the patient has either accepted care or the patient's acceptance of care is implied from the circumstances or from his(her) inability to respond.

(ar) Statutory and/or regulatory violation means any finding or determination by a court or governmental agency holding jurisdiction to adjudicate allegations of violations of EMS laws, regulations and/or protocols.

(as) Scope of practice means the psychomotor skills and knowledge necessary for the minimum competence for each level of New York State EMT certification as approved by the Commissioner.

(at) State-approved protocols means Basic Life Support (BLS) patient care protocols which apply throughout New York State and which are distributed to every certificate holder certified at every level, and protocols established by the Regional Emergency Medical Advisory Committees (REMACs) which are approved and distributed to every certificate holder credentialed by the REMAC.

(au) Treatment means the pre-hospital administration or application of a remedy or remedies by a certificate holder to a patient for a condition, disease or injury when rendering emergency medical services.

Section 800.6 of Part 800 is repealed and a new Section 800.6 is added to read as follows:

800.6 INITIAL CERTIFICATION REQUIREMENTS

To qualify for initial certification, an applicant shall:

(a) file with the department a completed department-approved application form bearing the applicant's original signature in ink, or an electronic application approved by the department;

(b) be at least 18 years of age prior to the last day of the month in which he/she is scheduled to take the written certification examination for the course in which they are enrolled, except that an applicant for a certified first responder must be at least 16 years of age prior to the last day of the month in which he/she is scheduled to take the written certification examination;

(c) satisfactorily complete the requirements of a State-approved course given by a State-approved course sponsor in emergency medical care at one of the following levels for which certification is available:

(1) certified first responder (CFR);

(2) emergency medical technician (EMT);

(3) advanced emergency medical technician;

(4) emergency medical technician-critical care (EMT-CC);

(5) emergency medical technician-paramedic (EMT-P);

(6) certified laboratory instructor (CLI); or

(7) certified instructor coordinator (CIC).

(d) pass the State practical skills examination for the level at which certification is sought within one year of the scheduled written examination date for the course;

(e) after passing the practical skills examination, pass the State written certification examination for the level at which certification is sought within one year of the scheduled written examination date for the course, except at the certified instructor coordinator level and certified lab instructor level;

(f) if the applicant has been convicted of one or more criminal offenses, as defined in §800.3(ak), be found eligible after a balancing of the factors set out in Article 23-A of Corrections Law. In accordance with that Article, no application for a license shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless

(i) there is a direct relationship between one or more of the previous criminal offenses and duties required of this certificate or (ii) certifying the applicant would involve an unreasonable risk to

property or the safety or welfare of a specific individual or the general public. In determining these questions, the agency will look at the eight factors listed under New York State Corrections Law Section 753; and

(g) not have been found guilty or in violation, in any jurisdiction, of any other non-criminal offense or statutory and/or regulatory violation, as those terms are defined in Section 800.3 of this Part, relating to patient safety unless the department determines such applicant would not involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public.

Section 800.8 of Part 800 is repealed and a new section 800.8 is added to read as follows:

800.8 RECERTIFICATION REQUIREMENTS

Applicants for recertification must comply with either section 800.8 or 800.9. To qualify for recertification under this section, an applicant shall:

(a) file with the department a completed department-approved application form bearing the applicant's original signature in ink or an electronic application approved by the department;

(b) have previously held New York State certification at or above the level at which recertification is sought except as provided in section 800.18 of these regulations;

(c) enroll in a recertification course provided by an approved course sponsor (800.20) and complete the requirements for recertification at the level at which recertification is sought;

(d) pass the State practical skills examination for the level at which recertification is sought within one year of the scheduled written examination date for the course;

(e) after passing the practical skills examination, pass the State written certification examination for the level at which certification is sought within one year of the scheduled written examination date for the course, except at the certified instructor coordinator level and certified lab instructor level;

(f) if the applicant has been convicted of one or more criminal offenses, as defined in §800.3(ak), be found eligible after a balancing of the factors set out in Article 23-A of Corrections Law. In accordance with that Article, no recertification shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and duties required of this certificate or (ii) recertification of the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the agency will look at the eight factors listed under New York State Corrections Law Section 753; and

(g) not have been found guilty or in violation, in any jurisdiction, of any other non-criminal offense or statutory and/or regulatory violation, as those terms are defined in Section 800.3 of this Part, relating to patient safety unless the department determines such applicant would not involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public.

Section 800.9 of Part 800 is amended to read as follows:

800.9 CONTINUING MEDICAL EDUCATION RECERTIFICATION

[Candidates for recertification may complete a New York State approved original or refresher course at the appropriate level or engage in continuing education activities in order to maintain their knowledge and skills prior to admission to the practical and written certification examinations.]

1. Continuing Medical Education program. Recertification applicants who have demonstrated competence in applicable behavioral and performance objectives, and who have demonstrated completion of appropriate continuing medical education may, if qualified as set forth in 2 below, have their certification renewed without being required to successfully complete a state practical skills and written examination.

2. To qualify for recertification using continuing medical education, an applicant shall:

(a) be currently certified at the certification level they are seeking;

(b) be a current active member or employee of an agency already registered in the program and authorized to provide the level of care for which the participant is seeking recertification;

(c) be in continuous practice as defined in Section 800.3;

(d) file with the department a completed department-approved application form bearing the applicant's signature in ink, or an electronic application approved by the department;

(e) submit the completed application, through the EMS agency, for recertification postmarked at least 45 days, but not more than 9 months, prior to their current certification expiration date;

(f) if the applicant has been convicted of one or more criminal offenses, be found eligible after a balancing of the factors set out in Article 23-A of Corrections Law. In accordance with that Article, no recertification shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and the duties required of this certification or (ii) recertifying the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the agency will look at the eight factors listed under New York State Corrections Law Section 753; and

(g) not have been found guilty or in violation, in any jurisdiction, of any other non-criminal offense or statutory and/or regulatory violation, as those terms are defined in Section 800.3 of this Part, relating to patient safety unless the department determines such applicant would not

involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public.

Section 800.15 of Part 800 repealed and a new section 800.15 is added to read as follows:

800.15 REQUIRED CONDUCT

Every person certified at any level pursuant to this Part or Article 30 of the Public Health Law shall:

(a) comply with prehospital practice standards, applicable for the geographic region of the State in which the individual is practicing, as established by:

(1) State-approved training curricula and State-approved training standards, in accordance with section 800.20 of this Part;

(2) State-approved protocols developed by State and/or Regional Medical Advisory Committees pursuant to sections 3002-a and 3004-a of the Public Health Law; and

(3) Scope of Practice as defined in Section 800.3; and

(b) maintain, at all times, the confidentiality of any and all patient information to which the certificate holder has access concerning patients alive or deceased, including, but not limited to, patient names, conditions, treatments, descriptions, communications, images or other identifying features, irrespective of whether the patient's name is included, which may be transmitted by electronic or other media, except:

(1) when a certificate holder is acting as part of an organized pre-hospital emergency medical service, the certificate holder responsible for patient care shall accurately complete a pre-hospital care report in a department-approved format for each patient with whom the certificate holder makes patient contact, and shall provide a copy to the hospital receiving the patient and/or to the department's authorized agent for use in the State's quality assurance program; or

(2) when authorized by the patient and/or the patient's representative, the certificate holder may reveal patient information to the extent necessary to collect insurance payments due;
or

(3) when and to the extent otherwise authorized by law; and

(c) comply with the terms of a Medical Order of Life Sustaining Treatment (MOLST), as defined by Article 29-CC of the Public Health Law, form or a non-hospital Do Not Resuscitate (DNR) form, when the patient, family, or other caretaker or person on the scene provides such an order issued on a standard department-issued form, or, when the

patient is wearing on his/her person a department-developed DNR bracelet or necklace identifying the patient as one for whom a non-hospital DNR order has been issued, with the following exceptions:

(1) emergency medical services personnel may disregard a non-hospital Do Not Resuscitate (DNR) order as defined by Article 29-B of the Public Health Law, when:

(i) possessed of a good faith belief that the order has been revoked or that the order has been canceled; or

(ii) family members or others on the scene, excluding emergency medical services personnel, object to the order and a physical confrontation appears likely; and

(2) Hospital emergency service physicians may direct emergency medical services personnel to disregard a non-hospital Do Not Resuscitate (DNR) order if other significant and exceptional medical circumstances warrant disregarding the order; and

(d) not be subjected to criminal prosecution or civil liability, or be deemed to have engaged in unprofessional conduct, for honoring reasonably and in good faith pursuant to subdivision (c) of this section, a non-hospital order not to resuscitate (non-hospital DNR), for disregarding such order pursuant to paragraph (1) or (2) of subdivision (c) of this section, or for other actions reasonably taken in good faith pursuant to subdivision (c) of this section.

Section 800.16 of Part 800 is repealed and a new section 800.16 is added to read as follows:

800.16 SUSPENSION OR REVOCATION OF CERTIFICATION

(a) Any certification issued pursuant to this Part or Article 30 of the Public Health Law may be suspended for a fixed period, revoked or annulled, and the certificate holder may be censured, reprimanded, or fined in accordance with section 12 of the Public Health Law, after a hearing conducted pursuant to section 12-a of the Public Health Law, if the department finds that the certificate holder:

(1) has failed to comply with the requirements of Section 800.15 of this Part;

(2) has been negligent in the performance of his/her EMS duties and practice, as negligence is defined in Section 800.3 of this Part;

(3) has been incompetent in the performance of his/her EMS duties and practice, as incompetence is defined in Section 800.3 of this Part;

(4) has abused a patient, as patient abuse is defined in Section 800.3 of this Part;

(5) has been convicted of one or more criminal offenses, as that term is defined in § 800.3(ak) of this Part, unless, in accordance with Article 23-A of the Corrections Law, the department determines, that (i) there is not a direct relationship between one or more

of the criminal offenses and the duties required of this certificate or (ii) allowing the certificate holder to retain his/her certificate would not involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the agency will look at the eight factors listed under New York State Correctional Law Section 753;

(6) has been found guilty, in any jurisdiction, of any non-criminal offense or statutory and/or regulatory violation, as those terms are defined in Section 800.3 of this Part, relating to patient safety and/or has had any other professional license and/or certification suspended and/or revoked in any jurisdiction, unless the Department determines such certificate holder would not involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public;

(7) has procured, or has attempted to procure, his/her certification or re-certification through any form of fraud or deceit, including, but not limited to, the intentional false representation or misrepresentation, either expressly or by omission, on his/her application for emergency medical services certification or re-certification, of information pertaining to prior convictions, offenses, regulatory violations and actions against other professional licenses and certification held by the certificate holder or having received certification without having completed all the specified requirements;

(8) has responded to a call, provided patient care, or driven an ambulance or

other emergency medical response vehicle while under the influence of alcohol or any other drug or substance which has affected the certificate holder's physical coordination or intellectual functions;

(9) has falsified a patient record and/or misrepresented and/or concealed pertinent information during a patient care investigation, including, but not limited to making deliberate omissions of material fact;

(10) has misappropriated any money or any property from any source during the course of any EMS duty and/or practice, irrespective of whether such misappropriation is prosecuted as a crime;

(11) has abandoned a patient, as patient abandonment is defined in Section 800.3 of this Part;

(12) has knowingly aided or abetted another in practice as an emergency medical technician who is not certified as such;

(13) has held him/herself out as being certified at a higher level than actually certified, or has exceeded his/her authorized scope of practice, as that term is defined in Section 800.3 of this Part; or

(14) has procured certification or recertification without having met the requirements of Sections 800.6, 800.8, or 800.9 of this Part, or Article 30 of the Public Health Law, as applicable.

(b) Notwithstanding subdivision (a), the Commissioner may summarily suspend any certification issued pursuant to this Part 800 or Article 30 of the Public Health Law in accordance with the summary action provisions of Public Health Law Section 16 and State Administrative Procedure Act Section 401.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Article 30 (Emergency Medical Services), Section 3002. Section 3002 sets forth the provisions creating the New York State Emergency Medical Services Council and specifies that it shall have the power, by an affirmative vote of a majority of those present, subject to approval by the Commissioner, to enact, and from time to time, amend and repeal, rules and regulations establishing minimum standards for ambulance services, ambulance service certification, advanced life support first response services, the provision of prehospital emergency medical care, public education, the development of a statewide emergency medical services system, the provision of ambulance services outside of the primary territory specified in the ambulance services' certificate and the training, examination, and certification of certified first responders, emergency medical technicians, and advanced emergency medical technicians; provided, however that such minimum standards must be consistent with the staffing standards established by the staffing standards, ambulance services and advanced life support first response services provisions outlined in PHL Section 3005-a.

Legislative Objectives:

The purpose of PHL Article 30 is to promote the public health, safety and welfare by providing certification for pre-hospital care providers and all advanced life support first response and ambulance services.

Needs and Benefits:

The Department's Bureau of Emergency Medical Services (BEMS) is charged with enforcement of 10 NYCRR Part 800 (State Emergency Medical Services Code). When the NYS EMS system was founded, the original PHL Article 30 and Title 10 New York Codes Rules and Regulations (NYCRR) Part 800 provisions addressed the provision of emergency medical services at the time; incorporating the practices, standards, ethics, morals, crimes and punishments of the day. In the early 1990's, PHL Article 30 and 10 NYCRR Part 800 underwent major revisions so as to reflect changes that had occurred over the previous 20 years in EMS and health care and society as a whole. Moreover, these significant changes were enacted so as the Department could maintain the standard of an essential public health service (EMS) provided in the most responsible manner.

Now again, another 20 years later, the Department is faced with trying to apply outdated rules to a modern system. It is impractical and difficult for the Department to try to update what was long ago determined an essential public health service under rules that no longer apply, as well as try to apply rules from two decades ago to situations that did not exist two decades ago.

Of greatest concern is that the current rules make it difficult for the Department to adequately regulate an essential public health service, and for the Commissioner to adequately protect the health and welfare of patients of that service. Just as the Commissioner relies on clear and specific regulations and standards to monitor and discipline physicians in the course of protecting the public, so too must the Commissioner have clear and specific regulations to monitor and discipline EMS providers in order to protect the public.

Section 800.3 contains the definitions used throughout Part 800. Section 800.6 outlines initial certification requirements, and Sections 800.8 and 800.9 outline recertification requirements and continuing medical education recertification requirements respectively. Section 800.15 specifies the required conduct of every person certified under Part 800 and Section 800.16 sets forth the suspension or revocation of certification provisions. These provisions must be updated and replaced with regulatory language that encompasses the various categories of EMS providers and their authorized scope of practice; clarifies terminology and other provisions; identifies inappropriate conduct by EMS providers; ensures that Corrections Law Article 23-A's balancing test will be used when reviewing applicants and existing providers who have criminal convictions; enhances enforcement of regulatory compliance and discipline of violators; as well as incorporates modern professional standards.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Costs to the regulated parties (EMS providers) will be none; unless the Department finds cause to take action against an EMS provider under the provisions of Sections 800.15 and/or 800.16, at which time (depending on the severity of the case) the EMS provider may be administratively sanctioned including monetary fines, probation, and/or suspension or loss of certification.

Cost to State and Local Government:

Costs to the general public, state and local government will be none. These regulations are directed at the individual EMS provider, not the EMS agency for which the provider works. In that, even if the EMS agency is part of a local municipal government, Department actions taken with respect to Sections 800.15 and or 800.16 will still be upon the individual EMS provider and not the municipality.

Cost to the Department of Health:

Costs to the Department of Health will be none. As stated above these regulations are directed to the individual EMS provider. Department actions taken with respect to Sections 800.15 and or 800.16 will still be upon the individual EMS provider. The Department will not incur any additional costs.

Local Government Mandates:

None. These provisions do not add any additional mandates to local governments.

Paperwork:

No additional new paperwork will be required.

Duplication:

This measure does not duplicate, overlap or conflict with a State or federal statute or rule.

Alternative Approaches:

There are no other viable alternative approaches. Current provisions are outdated and must be updated to reflect appropriate EMS standards and practice.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. This proposal is intended to update outdated

Part 800 provisions with language appropriate and applicable to the modern EMS system of today.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the *New York State Register*.

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

A Regulatory Flexibility Analysis for Small Business and Local Governments is not included in accordance with Section 202-b of the State Administrative Procedure Act (SAPA). This regulation does not impose an adverse economic impact, nor reporting, recordkeeping or other compliance requirements on small businesses or local governments. This rule pertains only to individual persons who are certified by the Department to provide pre-hospital emergency care and treatment to sick or injured persons. Small businesses and local governments cannot violate this rule, and therefore cannot be subject to penalties associated with a violation of this rule.

Cure Period:

A cure period was not included in this rule. This regulation is directed at the individual EMS provider, and not the EMS agency for which the provider works. This proposal would provide standards of conduct, oversight, and disciplinary sanctions for EMS providers. Violations of such standards would pose a threat to public health, safety and well-being of the patients served.

A cure period would not be appropriate under these circumstances.

RURAL AREA FLEXIBILITY ANALYSIS

Pursuant to section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

JOB IMPACT STATEMENT

A Job Impact Statement is not included in accordance with Section 201-a (2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.

ASSESSMENT OF PUBLIC COMMENT

Public comments were submitted to the NYS Department of Health (DOH) in response to the proposed changes to Title 10 NYCRR Part 800. Many of the comments were the same or similar. These comments and the Department of Health's responses are summarized below:

1. COMMENT: Received a letter from the "Legal Action Center", located in New York City, in support of the proposed changes to the Part 800 regulations.

RESPONSE: No response necessary.

2. COMMENT: Concern that Part 800.15(c)(1)(ii) as written implies that any person on the scene of a medical emergency may cancel a valid Do Not Resuscitate (DNR) order.

RESPONSE: This language has not been amended and is specifically contained in PHL Article 29-CCC, section 2994-ee.

3. COMMENT: Concerns that the proposed definition of Patient Abandonment (Part 800.3(ao)) does not allow for the retreat of certified EMS providers in the event that the scene is not safe.

RESPONSE: Included in both the current and proposed regulations, Part 800.15(a)(2) requires certified EMS providers to comply with the State approved protocols developed by State and/or Regional Emergency Medical Advisory Committees pursuant to sections 3002-a and 3004-a of

Article 30. The approved protocols are called *Statewide Basic Life Support Adult and Pediatric Treatment Protocols for EMT and AEMT*

(http://www.health.ny.gov/professionals/ems/pdf/2008-11-19_bls_protocols)

The very first protocol, General Approach to Prehospital Patient Management, Section I (A) requires that all certified EMS providers “assess the scene for safety”.

4. COMMENT: Concerns that the proposed definition of “Patient Abandonment” (Part 800.3(ao)) imposes a duty to act on an “off duty” EMT.

RESPONSE: The definition of “Patient Abandonment” only applies to an individual, whether on or off duty, that willfully terminates patient care once initiated. This definition is in no way conflicting with any part of Article 30, section 3013.

5. COMMENT: Concerns that adding the word “treat” to the definition of “Primary Territory” (Part 800.3(v)) would prohibit an ambulance service, absent from being dispatched or having a mutual aid agreement in place from stopping to render emergency medical assistance should it occur in the course of routine travel.

RESPONSE: The addition of the word “treat” does not substantially change the definition of “Primary Territory”. Adding the word “treat” was intended to clarify the regulation. At present, it is assumed that when an ambulance responds within its primary territory, the patient will not only be transported, but also provided prehospital medical treatment.

6. COMMENT: Received a letter with extensive comments about the following:

- a) “Primary Territory” (Part 800.3(v)) would prohibit an ambulance service, absent from being dispatched or having a mutual aid agreement in place from stopping to render emergency medical assistance should it occur in the course of routine travel.
- b) “Continuous Practice” (Part 800.3(w)) as defined includes the term, “active” and it is not quantifiable.
- c) “Criminal Offense” (Part 800.3(ak)) as defined includes the term “agency” and it is unclear as to which agency the regulation is referring to. Further, a comment that the term “exceptional circumstances” is too broad. Lastly the phrase “any jurisdiction” could include jurisdictions outside of the United States.
- d) “Incompetence” (Part 800.3(al)) comments indicating that a skill of knowledge either exists or does not and the phrase “one or more” is not necessary.
- e) “Negligence” (Part 800.3(am)) should be removed.
- f) “Non-Criminal Offenses” (Part 800.3(an)) concerns that the definition is vague.
- g) “Patient Abandonment” (Part 800.3(ao)) comment that the definition does not indicate whether the patient requires or accepts emergency medical treatment.
- h) “Patient Abuse” (Part 800.3(ap)) comments about the definition
- i) “Patient Contact” (Part 800.3(aq)) comment that the EMS provider should not be required to provide emergency medical treatment to someone who does not require care.

RESPONSE: The following is a response to each element in the letter:

- a) “Primary Territory” (Part 800.3(v)). The addition of the word “treat” does not substantially change the definition of “Primary Territory”. Adding the word “treat” was

intended to clarify the regulation. At present, it is assumed that when an ambulance responds within its primary territory, the patient will not only be transported, but also provided prehospital medical treatment.

- b) “Continuous Practice” (Part 800.3(w)) the term “active” is not intended to be quantifiable. It is intended to describe an individual who is actively responding to and treating patients requiring prehospital medical care.
- c) The term “exceptional circumstances” is included to afford the Department necessary flexibility to address criminal offenses outside of the enumerated offenses. The term agency refers to the Department, as it is the entity that is promulgating and applying the regulations. Lastly, the phrase “any jurisdiction” means precisely that, and could include a jurisdiction outside the United States.
- d) “Incompetence” (Part 800.3(al)). This definition is consistent with similar regulations for other health care professionals.
- e) “Negligence” (Part 800.3(am)) The Department disagrees that this definition should be removed.
- f) The Department disagrees that the definition of “non-criminal offense” is vague. It specifically includes types of entities and offenses.
- g) “Patient Abandonment” (Part 800.3(ao)). This definition includes the term “patient”. Therefore it only refers to willful termination of patient contact prior to delivering the patient for medical evaluation and/or treatment. It does not address an individual that is not a “patient”
- h) “Patient Abuse” (Part 800.3(ap)). This definition is consistent with similar regulations for other health care professionals.

- i) Patient Contact” (Part 800.3(aq)). There is no requirement that an EMS provider should provide emergency medical treatment to someone who does not require care.