



EMS Statutory Roles And Responsibilities

California Fire Service Position Paper



Our History

- Effective January 1, 1981, California's EMS Act of 1980 takes effect; Section 1797.201 is part of this EMS Act.
- In 1981, federal EMS funding under the Emergency Medical Services Systems Act was terminated by the Omnibus Reconciliation Act of 1981.
- In March, 1982, Medicare funds Advanced Life Support services as a distinct prehospital EMS care level.
- In 1983, the **ALS Only** county ordinance was enabled by the California legislature.



California Fire Service Position Paper

Written In Collaboration with:

- California Fire Chiefs Association
- League of California Cities, Fire Chiefs' Department
- California Professional Firefighters



Our History

- In 1984, the California Courts impose a duty upon County's to pay for indigent emergency ambulance transportation.
- In 1984, the federal courts declare that a California state policy exists pertaining to **exclusive municipal ambulance services** sufficient to qualify for federal antitrust immunity in the emergency ambulance transportation market.
- In 1984, the U.S. Supreme Court invalidated local government antitrust immunity when local anticompetitive policies were not pursuant to a **clearly articulated and affirmatively expressed** policy to displace competition with regulation. A general grant of home rule regulatory power was **merely neutral**.



Our History

- In 1967, the California Legislature commanded that all non-administrative firefighters and police officers shall be trained at the **Advanced First Aid** care level. At the time, this was the highest prehospital care level recognized in California.
- In 1970, the California Legislature created the Mobile Intensive Care Paramedic (MICP). The legislature encouraged California's local public agencies to invest in this new program-no dedicated funding was provided.
- During the 1970's, many public safety agencies invested millions of dollars to help create today's EMS system infrastructure and response capabilities.



Our History

- In 1984, Congress responded with the Local Government Immunity Act of 1984; under the Act a local government was not liable for antitrust damages but subject to injunctive relief.
- Effective January 1, 1985, the California Exclusive Operating Area Statutes allow a LEMSA to displace competition with regulation; provisions for **grandfathering and periodic competitive bidding** are included.
- In 1985, the U.S. Supreme Court clarified that local governments enacting anticompetitive policies were immunized if the state policy at issue reasonably contemplated that competition was to be displaced; or if the displacement of competition was a reasonable foreseeable consequence of state policy.

Our History

- In 1985, the U.S. Supreme Court also clarified that local governments were not subject to the **active state supervision** requirement as a condition precedent to antitrust immunity.
- Effective January 1, 1986, San Bernardino County is allowed an exemption to the statewide competitive bid requirements.
- Effective January 1, 1988, the legislative definition of **medical control** is amended from an defined objective authority to a subjective authority.
- After 1988, the authority of a LEMSA using **medical control** is expanded through the state and federal courts.

Our History

- In 2006, a dispute arose regarding whether or not the dispatch and processing of 9-1-1 EMS related emergency calls was a **Type** of prehospital EMS Service within the meaning of Section 1797.201.
- Effective December 31, 2010, the Medicare Fee Schedule funding enhancements terminated. The 1997 mandatory Fee Schedule was now in full effect.
- Effective, March 23, 2010, certain Medicare funding enhancements were retroactively restored under the Patient Protection and Affordable Care Act of 2010 (H.R. 3590) – the era of National Health Care begins...

Our History

- In 1997, the California Supreme Court created **types and levels of services** within Section 1797.201; and decreed that 1797.201 public agencies could not expand into **new types** of prehospital EMS services.
- In 1997, Congress passes the Balanced Budget Act of 1997 mandating Medicare reform and imposing a mandatory nationwide Fee Schedule. The reasonable and customary cost system of reimbursement was at an end. Only one county in upstate New York qualifies for a **non-transport ALS Intercept fee**.
- In 1998, the California Supreme Court decreed that an interruption in Section 1797.201s **continuous operation, without interruption** requirement resulted in **abandonment** of that particular prehospital EMS service Type.

The Need to Collaborate

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Our History

- In 1998, the California state and federal courts incorporated **Basic Life Support** services into an EOAs restrictive covenant provisions; more importantly, all **emergency ambulance** service types were now within the scope of an EOAs restrictive covenant provisions.
- Effective April 1, 2002, the new federal Medicare Fee Schedule took effect. The Fee Schedule to be phased in during a five year period (later extended to 2010). A significant transfer of funds occurs between ground ambulances and rural air ambulances.
- In July, 2004, Medicare extends final Fee Schedule implementation to 2010; and provides for Fee Schedule enhancements for ground providers.

Our Position Recognizes

- A clearly defined medical control authority.
- The proper role of the LEMSA in EMS system planning and administration.
- The need to discharge a County's legal duty to furnish emergency ambulance transportation services to indigents located within the County.

Our Position Recognizes

- *The need to clearly define the legitimate contractual economic expectations of public or private parties that enter into EOA agreements.*
- *The EMS Authority's desire for an integrated statewide EMS system, based on an organized pattern of readiness and response service agreements.*

What Happened?

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Our Position Recognizes

- *The need to ensure that patients receive timely evidence based optimal care within budgetary constraints (including the community's ability to sustain vital services).*
- *The need to protect consumers by ensuring that periodic bidding sets the market price when private competition is displaced by state regulation.*

Why The California Fire Service Position Paper Was Developed

Differing Interpretations of Statutes by Local Emergency Medical Services Agencies (LEMSAs, Fire Service Providers and Local Jurisdictions) Regarding 9-1-1 Dispatch, EMS Services, and Provider Agreements

The result is wasteful litigation using public funds to clarify what should be clarified, at a lower cost, in the public disclosure and planning stages of an EOA RFP process.

We Desire to Achieve

- *The preservation of the statutory rights and obligations of eligible .201 agencies to share in certain administrative aspects of the local EMS system.*
- *This protects our past economic investment in developing California's EMS system infrastructure and provides a rationale basis for continuing such investment.*
- *The continued preservation of our local elected officials ability to administer and manage their investment in California's prehospital EMS system – in sum, the preservation of local control.*

Intent Of The California Fire Service Position Paper

Ensures Governing Boards for Cities, Counties and Fire Districts Have Consistent Understanding of the Rights and Obligations Provided By Health And Safety Code §1797.201

This information enables policy makers to make rationale decisions on what to provide, how much to provide, and what not is within their unilateral authority to provide.

The California Fire Service Position Paper ...



Explains Statutory Authority or "Grandfathered" Rights of the Fire Service Under California's Health and Safety Code, Section 1797.201.

*Asserts that 1797.201 creates a legal obligation upon the responsible agency to continuously maintain, without interruption, prehospital EMS care at **not less than** the existing care Levels and service Types as existed on June 30, 1980.*

In sum, Section 1797.201 is a floor, not a ceiling, above which eligible 1797.201 agencies may go...

The California Fire Service Position Paper ...



Offers an Explanation of the Underlying Financial Factors That Impact EMS System Design, Participation, and Administration.

Asserts that Medicare funding substantially drives California's EMS system design and methods of service delivery, the absence of which creates new financial uncertainty and old controversy; conversely, the introduction of new federal funding streams creates a period of new financial instability and new controversy (e.g., air ambulance).

The California Fire Service Position Paper ...



Clarifies the Statutory Authority and Responsibility of the LEMSAs Under the Emergency Medical Services System and Prehospital Medical Care Personnel Act of 1980 (1980 EMS Act).

Asserts that 1797.201 creates a shared authority between eligible cities and fire districts with a LEMSAs, subject to medical control, to administer and manage certain aspects the prehospital EMS system.

The California Fire Service Position Paper ...



Concludes With Recommendations For Resolving Present Divergences Of Statutory Interpretations And Subsequent Tensions.

This workshop is one such recommendation.

The following recommendations are another.

The California Fire Service Position Paper ...



Describes the Differences in Statutory Interpretations Concerning 9-1-1 Dispatch and Provider Agreements Which Have Resulted In Litigation Between a Fire Agency and LEMSAs.

Asserts that compelled written agreements by regulation, minimum standards, or guidelines cannot be construed as a voluntary waiver of a statutorily enabled rights within the meaning of Section 1797.201.

Recommendations and Solutions

California Fire Service Position Paper

The California Fire Service Position Paper Recommends...

EMS Stakeholder Group be Established Under the Leadership of EMSA To:

- Address Ambulance Contract Provisions and Policy Guidelines
- Develop Regulatory Process To Properly Address EOA Financial Viability

The California Fire Service Position Paper Recommends...

*In order to achieve a viable solution, we must Define key **statutory terms** in an **objective manner** so as to clearly provide notice and an opportunity to be heard by persons impacted by an EOA/RFP award, specifically we must define...*

This is Necessary because the Purpose of an EOA is to...

Displace competition with regulation so that rural areas throughout the state may enjoy minimum levels of prehospital care, including emergency ambulance transportation services.

To accomplish this, the EOA effectuates a wealth transfer of funding from artificially maintained urban area 9-1-1 supra-competitive profits to outlying 9-1-1 rural areas sufficient to achieve a point where marginal revenue equals marginal cost.

The Determinant Factors...

Types and Levels of Services

Scope and Manner of Services

The California Fire Service Position Paper Recommends...

*That the threshold question to be determined, on an individualized basis, is **whether or not the existing geographical rural area, is in fact, not profitable?***

*Where a 9-1-1 rural area can sustain a reasonable profit there is no vital public need to displace competition in the 9-1-1 Urban transport services, the **Interfacility** transport services, the **Critical Care** transport services, the **Special Event** transport services, or the **Air Ambulance** transport services; and intrude upon 9-1-1 PSAPs.*

Types and Levels of Services

***Type of Service** means a distinct, particular range of EMS delivery platforms (e.g., transport and non-transport), of which is comprised of a distinct range of care levels within that Type.*

***Level of Service** means a particular prehospital care level furnished by an authorized person for a distinct scope of practice.*

Types and Levels of Services...Why is this Vital?

*We recognize that under current judicial interpretation that eligible .201 Agencies may increase the **Levels of prehospital EMS Service** (i.e., care levels), but cannot expand into a new **Type of prehospital EMS Service**.*

Thank You

We wish to express our sincere thanks to the EMS Commission and the EMS Authority, as well as our fellow emergency services stakeholder groups in being given the opportunity to present our position and recommendations.

We will be happy to discuss these views at the panel discussion.

Scope and Manner of Services

***Scope of Service** means a distinct, particular range of prehospital EMS service **Types** in which competition is to be displaced in a **particular geographic area** or subarea.*

***Manner of Service** means a distinct, particular range of prehospital EMS service **Levels** in which competition is to be displaced by a **particular EMS provider**.*

Scope and Manner of Services of Services...Why is this Vital?

*Maintaining **Scope and Manner** of prehospital EMS services is the statutory prescription for maintaining an existing grandfathered EOA, or in many RFPs, to maintain a newly awarded contractual EOA.*

This component must be clearly defined and objectively applied so as to achieve the necessary level of active state supervision and enable the application of the periodic bidding requirement.