



May 3, 2010

Via US Mail & E-mail tom.mcginnis@emsa.ca.gov

California EMS Authority
Attn: Tom McGinnis, Transportation Coordinator
1930-9th Street
Sacramento, CA 95811

RE: Comments on Proposed Changes to Emergency Medical Services Authority Guideline Number 141

Dear Mr. McGinnis:

The purpose of this correspondence is to provide comments on the Emergency Medical Services ("EMS") Authority's proposed changes to the Review Criteria and Policy for Transportation and Exclusive Operating Area Component of the EMS Plan Guideline Number 141 ("Proposed Revisions").

After a thorough review of the Proposed Revisions and the Fire Department has strong concerns with the standards and guidelines set forth in the Proposed Revisions. Specifically, it appears that the Proposed Revisions conflict with California Health & Safety Code Sections 1797.201 and 1797.224 and applicable case law.

The Proposed Revisions create a presumption that a Local Emergency Medical Services Agency ("LEMSA") may award the jurisdictional responsibilities of those agencies that provide prehospital emergency medical services pursuant to Section 1797.201 (the "1797.201 agencies") in a competitive bid process. In addition, under the Proposed Revisions, 1797.201 agencies must submit to a competitive bid process and if they do not submit to a competitive bidding process those exclusive jurisdictional responsibilities provided under Section 1797.201 will be unilaterally awarded to a non-1797.201 agency. These standards are in direct conflict with Section 1797.201. Section 1797.201 makes cities and fire districts eligible to provide their preexisting emergency medical services, which were contracted for or provided, on or before June 1, 1980.¹ The authorization to provide these services derives from statute, specifically Section 1797.201, and not from a LEMSA.² As such, a LEMSA cannot preempt the jurisdiction and authority procured from a statute by requiring a 1797.201 agency to participate in a competitive bidding process. This is tantamount to a LEMSA

¹ *County of San Bernardino v. City of San Bernardino*, 15 Cal. 4th 909, 924, 925, 934 (Cal. 1997).

² *Id.* at 924. ("Under section 1797.201, the cities' and fire districts' authorization to provide EMS comes directly from statute, rather than from the local EMS agency.")

contravening authority of 1797.201 agencies without the LEMSA's consent, which has been held invalid by the California Supreme Court.³ Moreover, Section 1797.224 makes it "clear that a city or fire district that has provided emergency medical services 'without interruption since January 1, 1981,' can be assigned exclusive operating areas without going through a competitive bidding process."⁴ As such, the Proposed Revisions conflict with Sections 1797.201 and 1797.224 and would usurp the rights provided by these statutes to 1797.201 agencies, including the Escondido Fire Department.

Furthermore, should a 1797.201 agency go through the competitive bidding process, the level of service would be contractually limited to the level awarded through the process. In comparison, a 1797.201 agency acting under the rights acquired from Section 1797.201 would not have a contractual limitation as to the level of service. As such, a 1797.201 agency proceeding under the competitive bidding process would lose control over the ability to increase or decrease levels of service based on need. The Proposed Revisions fail to note this effect and make no mention of whether a public agency will be required to rebid or whether the bid automatically renews.

In addition, the Proposed Revisions are ambiguous and vague with respect to the manner and scope of evaluation criteria to determine whether a 1797.201 agency provided services without interruption. The standard of the evaluation must be adequately applied by a LEMSA and properly understood by the public and private providers. The evaluation and the criteria for the evaluation are critical because any deviation from the manner and scope of the levels of service would negate a 1797.201 agency's authority. The Proposed Revisions also fail to specifically state which types of prehospital emergency medical services may be lawfully encompassed within an exclusive operating area and which types of services may not be unilaterally awarded to a successful bidder.

In summary, the conflicts between the Proposed Revisions and Sections 1797.201 and 1797.224 need to be reconciled prior to finalizing the Proposed Revisions. In addition, the vague criteria related to the manner and scope of service along with the failure to address effects of the competitive bidding process on the 1797.201 agencies and the types of services awarded under the bidding process need to be addressed.

We appreciate an opportunity to comment on the Proposed Revisions. These are our initial comments on the Proposed Revisions and we reserve the right to provide any additional comments we may have during the public comment period. If you have any

³ *Id.* (“[W]e conclude that under section 1797.201 a county may not contravene the authority of eligible cities and fire districts to continue the administration of their prehospital EMS without the latter's consent ...”).

⁴ *Valley Medical Transp. v. Apple Valley Fire Prot. Dist.*, 17 Cal. 4th 747, 761 (Cal. 1998).

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questions concerning those comments outlined in this correspondence, please feel free to contact me.

Sincerely,



Michael Lowry
Fire Chief



Corrine L. Neuffer
Deputy City Attorney