

REVISED ON AUGUST 11, 2015

**INITIAL STATEMENT OF REASONS
CHAPTER 13 EMS SYSTEMS REGULATIONS
APPEAL PROCEEDINGS TO THE COMMISSION**

Hearing Date: April 27, 2015

Subject Matter of Proposed Regulations: Appeal Process for EMS Plans

Section Affected: Add Section 100450.100 to Division 9 of the California Code of Regulations.

PROBLEM STATEMENT

Existing law requires local emergency medical services agencies (LEMSAs) to annually submit an EMS plan to the Emergency Medical Services Authority (EMSA) for review and approval. Upon approval by EMSA, the LEMSA may implement the plan in their area of jurisdiction. However, if EMSA determines that the plan: 1) does not meet the needs of the persons served; AND 2) is not consistent with coordinating activities in the geographical area served; OR 3) that the plan is not in compliance with EMSA guidelines and/or regulations, EMSA may disapprove the plan.

Health and Safety Code, Section 1797.105(c) permits LEMSAs to appeal, to the Commission on EMS, a decision made by EMSA on its EMS Plan. Some LEMSAs have attempted to appeal our decision to the Commission. However, there is no process in place to hear the appeal. Lack of regulations specifying the appeal process has resulted in pending appeals and the denial of due process under state law.

BENEFITS

The adoption of these regulations will provide due process under state law by establishing a process to appeal a determination by EMSA on a LEMSAs EMS plan. In addition, the regulations will allow two pending appeals to advance forward.

PURPOSE AND NECESSITY OF ADOPTION OF REGULATIONS

PURPOSE

Section 100450.100(a) has been prepared to clarify, interpret, and make specific, the appeal process, within the Administrative Procedures Act (APA), and conducted by the Office of Administrative Hearings (OAH), as the appeal process to be used when a LEMSA wishes to appeal a decision made by EMSA to disapprove its EMS plan.

NECESSITY: The Commission on EMS is authorized by statute to receive appeals from LEMSAs on determinations of its EMS plans. However, the statute is silent as to the manner in which the appeals should be conducted. Neither are there any regulations or rules adopted by the Commission for the process of hearing such appeals.

REVISED ON AUGUST 11, 2015

There are two potential ways in which the Commission may determine a local plan appeal: 1) Directly, by adopting a process whereby an appeal is heard before the Commission itself: OR, 2) Indirectly, by having the appeal heard by a neutral outside entity (i.e. the OAH). The Commission would be the ultimate decision maker by voting to either accept or reject the proposed decision of an administrative law judge (ALJ).

Option #1 – Direct Appeal

The Commission would adopt as its appeal procedure, a process whereby appeals are heard directly before a quorum of the Commissioners. However, regulations would first need to be promulgated to adopt the rules and procedures for the hearing process. The regulations would need to address the timing and procedures for hearings, standards of evidence, how witnesses would be examined (if allowed), etc. The process of adopting regulations through the Office of Administrative Law would take approximately 18 months. In the meantime, there are currently two (2) pending appeals that may not move forward due to the lack of an appeals process. Additionally, a single appeal before the Commission could potentially take multiple days to be heard and potentially extend to more than two Commission meetings, and require that special sessions be scheduled to accommodate this type of process.

Option #2 – Indirect Appeal

The Commission would adopt the appeal process contained within the APA , with hearings conducted by OAH. The appeal would be heard by an ALJ who would make a proposed decision, or recommendation, to the Commission. The Commission would then either adopt or reject the recommendation proposed by the ALJ. The OAH process is already in place and codified in statute and regulation for the conduct of hearings, examination of witnesses, submission of evidence, etc. This would eliminate the need for the Commission to adopt regulations for these provisions. In addition, the OAH has facilities for the conduct of hearings, and ALJs and support staff to handle document filing, schedule hearings and conferences, consider the submission of motions and declarations, etc. Multiple hearing days could be scheduled as necessary and hearings would be conducted according to statute, regulation and adopted rules of court.

Both the Commission and EMSA have agreed that the best option is to adopt the OAH process to hear appeals. This process already exists in statute and regulation and was enacted by the legislature as a fair method with due process and has been used to conduct thousands of hearings in an impartial manner.

PURPOSE

Section 100.450(b) is adopted to specify that an ALJ who is responsible for conducting an appeal hearing, must evaluate evidence that is submitted by both EMSA and the LEMSA who is requesting the appeal.

REVISED ON AUGUST 11, 2015

NECESSITY: This regulation is necessary to ensure that both parties will be permitted to present evidence and testimony at the administrative hearing.

PURPOSE

Section 100450.100(c) is adopted to make specific that the ALJ hearing the appeal by the LEMSA may only provide a recommendation (proposed decision) to the Commission, not a binding decision.

NECESSITY: This regulation is necessary because existing statute authorizes only the Commission to make a determination on an EMS plan appeal. The proposed regulations would authorize ALJs to hear the appeals and provide a proposed decision to the Commission. However, the Commission may reject the ALJs proposed decision. The ultimate decision on the appeal is decided by the Commission.

PURPOSE

Section 100450.100(c) (1) and (2) is adopted to clarify, interpret, and make specific that the only recommendations the ALJ may provide to the Commission is to either sustain or overrule the determination made by EMSA.

NECESSITY: Existing state statute permits LEMSAs to appeal to the Commission, an EMS plan determination made by EMSA. Furthermore, the statute permits the Commission to make only one (1) of two (2) determinations: 1) sustain the determination made by EMSA; OR 2) overrule the determination made by EMSA. Even though OAH will be conducting the hearing and providing a proposed decision to the Commission, their proposed decision must be limited to the same options as exists for the Commission; to either sustain or overrule EMSAs determination.

PURPOSE

Section 100450(d) is adopted to specify the timeframe for the Commission to assemble and vote once they receive the recommendation from the ALJ.

NECESSITY: This regulation is necessary because the Commission meets on a quarterly basis. In order to provide timely decisions to LEMSAs, it was agreed that the next regularly scheduled Commission meeting is a fair and reasonable timeframe in which to provide a decision on appeals.

PURPOSE

Section 100450(e) is adopted to make specific that the only evidence the Commission may consider in making an appeal determination is the evidence of record at the administrative hearing.

NECESSITY: The Bagley-Keen Open Meeting Act of 2004 requires state boards and commissions to publicly notice their meetings, prepare agendas, accept public testimony and generally conduct meetings in public, unless specifically authorized by the Act to meet in closed session. The Commission on EMS meetings is open to the public and public comment on agenda items is welcomed. However, a decision by the

REVISED ON AUGUST 11, 2015

Commission to sustain or overrule a determination by EMSA on an EMS plan should be based solely on the evidence of record at the hearing, not on public comment that is presented after the hearing.

PURPOSE

Section 100450.100(f) is adopted to make specific that the Commission has only three voting options when voting on the ALJs recommendation: 1) adopt the ALJ recommendation; 2) not adopt the ALJ recommendation; or 3) return the recommendation to OAH for re-hearing if the recommendation is inconsistent with the adopted regulations.

NECESSITY: This section is necessary to specify the options available to the Commission when considering a proposed decision. Because the Health and Safety Code only allows the Commission two options when deciding an appeal, all the options of the APA in regards to how an entity may act on a proposed decision are not open to the Commission.

PURPOSE

Section 100450.100(g) is adopted to make specific the voting theory that is required to pass the decision by the Commission (i.e. simple majority, 2/3 majority, etc.)

NECESSITY: It was determined that a simple majority vote of a quorum of the members present at the Commission meeting was the most reasonable option. This is because if all of the Commission members are not present, the decision will have to wait for the next Commission meeting, which would be in three (3) months. By allowing a decision to be made based on a quorum of the Commission members present, it allows for a decision to be made without having to delay the vote to another meeting.

PURPOSE

Section 100450.100(h) is adopted to make specific that whatever decision the Commission agrees to, is final and may not later be overturned, challenged or appealed.

NECESSITY: This regulation is necessary to ensure the appeal process has a final resolution and concludes the appeal process. This is important because the statute does not allow for further proceedings after a final decision has been made.

PURPOSE

Section 100450.100(i) is adopted to share the costs of the appeal hearing equally between both parties. .

NECESSITY: The costs associated with an administrative appeal hearing include administrative costs to OAH, travel costs, court reporter, etc. In order to be fair to both parties, it was determined to share equally the hearing cost of the appeal.

ECONOMIC IMPACT ANALYSIS

The proposed regulations make specific the appeal process a LEMSA must follow when appealing a decision made by EMSA on its EMS plan. Pursuant to Health and Safety Code, Section 1797.105, LEMSAs may appeal EMSAs determination on an EMS plan.

Creation or Elimination of Jobs within the State of California

This regulatory proposal will not create or eliminate jobs within the State of California because these regulations do not make any changes or provide for any new provisions that would affect the creation or elimination of jobs.

The regulations will result in increased hearings to OAH. However, the increase is not substantial, given there are only two (2) hearings pending. Even if all thirty-three (33) LEMSAs requested a hearing, it does not seem feasible that OAH would need to create new positions to hear the appeals.

The regulations could affect the workload of county counsels who will prepare the appeals. However, if the LEMSAs experience workload issues due to the appeal process, they have other options for legal assistance such as the district attorney's office.

Creation of New or Elimination of Existing Businesses within the State of California

This regulatory proposal will not create new or eliminate existing businesses within California because these regulations do not make any changes or provide for any new provisions that would affect the creation of new or elimination of existing businesses within California. Any potential services associated with this regulation such as court reporting or transcription, could be handled by existing businesses within the State.

Expansion of Businesses Currently Doing Business within the State of California

Due to the fairly small number of anticipated hearings per year, this regulatory proposal will not expand businesses currently doing business within California.

Evidence Supporting No Significant Adverse Economic Impact on Business

Pursuant to H&SC, Section 1797.105(c), a LEMSA has the right to appeal a determination made by EMSA on its EMS plan. This statute requires a regulation to implement an appeal process. Implementing an appeal process for LEMSAs will have no adverse economic impact on businesses because the regulation implements an internal administrative process for LEMSAs only. This regulation does not apply to the public or California businesses.

REVISED ON AUGUST 11, 2015

FOR FURTHER INFORMATION

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