Emergency Medical Services Administrators'
Association of California

August 30, 2010

Alameda
Central California
Coastal Valleys
Contra Costa
El Dorado
Imperial
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Los Angeles
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Mountain Valley
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Northern California
Orange
Riverside
Sacramento
San Benito
San Diego
San Francisco
San Joaquin
San Luis Obispo
San Mateo
Santa Barbara
Santa Clara
Santa Cruz
Sierra-Sacramento Valley
Solano
Tuolumne
Ventura

Steve Tharratt, M.D., Director
California EMS Authority
1930 9th Street
Sacramento, California 95811

Dear Dr. Tharratt:

SUBJECT: **PROPOSED CHANGES TO EMSA GUIDELINE 141: REVIEW CRITERIA AND POLICY FOR TRANSPORTATION AND EXCLUSIVE OPERATING AREA COMPONENTS OF THE EMS PLAN**

Enclosed you will find EMSAAC's comments relating to the above-referenced document.

EMSAAC specifically wants to identify two areas which we strongly oppose as drafted: The definition of "Manner and Scope" and the arbitrary ten-year limitation on contracts. As written, both of these areas infringe upon a county's authority and responsibility to implement exclusive operating areas.

Manner and Scope: (Page 5, line 23)

The meaning of EMSA's definition and how it will be applied is unclear. The EMS Act clearly grants counties the authority to plan, implement, and evaluate local EMS systems. Counties, rather than EMSA, are in the best position to determine the significance of changes to their transportation plans. EMSA's attempts to evaluate, for example, the significance of an annexation upon a county's ability to ensure transportation would be arbitrary based upon unidentified criteria. Further, it usurps counties' authorities in managing their EMS transportation systems.

899 Northgate Drive, Suite 104 ❖ San Rafael, CA 94903

Ten-Year Limitation:

There is no statutory requirement for EMSA's arbitrary proposed ten-year limitation on EOA contracts. Typically, EOA contracts involve long-term investments in a county's EMS system infrastructure, e.g., dispatch, communications, vehicle replacements, EMS data systems. Precedents exists for counties to enter into longer term contracts in order to meet local needs, e.g. cable services, power, and taxi and bus systems.

We strongly recommend that this ten-year limitation be removed and substituted with "periodic interval" as identified through an EMS Agency's Transportation Plan and approved by a county's Board of Supervisors.

Very truly yours,

Miles Julihn
President

cc: EMSAAC Board Members

Enc: Comments on EMSA Guideline 141

Comments on Proposed Changes to EMSA Guideline 141;
REVIEW CRITERIA AND POLICY FOR TRANSPORTATION AND
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45-day Public Comment Period
December 7, 2009 – September 1, 2010

SECTION # Line # PAGE #	AGENCY	COMMENT	EMSA RESPONSE
Table of Contents Page 2 and throughout document.	EMSAAC	Change "bidders" to "proposers." EOA's are proposals to provide a system of transportation, not "bid" in the traditional sense of bidding, e.g. low bid	
Section I, page 1, line 25 Add "ONLY"after intended	EMSAAC	Adding the word "only" adds clarity to others who may utilize, inappropriately, this document for other purposes.	
Section I, page 1, line 27	EMSAAC	Delete "clarifying H&SC." This not the proper tool to clarify statutes. Suggest using "interpret" statutes	
Section I, page 1, lines 28, 29, & throughout document	EMSAAC	Delete all references to the existing outdated "EMS Systems Standards and Guidelines. We support reinstating references when document is updated to accurately reflect updated Systems Standards and Guidelines. Referencing an outdated document may unnecessarily complicate review of these Guideline 141.	
Section I, page 2, lines 30 - 35	EMSAAC	There is no statutory requirement to address non-medical transportation. Recommend deletion.	
Section II, page 4,line 15	EMSAAC	Insert "material" between "any" and "reconfiguration"	

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Section II, page 4 Line 19	EMSAAC	Change "creating a RFP" to "issuing an RFP"	
Section I, page 4 line 22	EMSAAC	Replace definition of "Critical Care Transport with the following: "Level of service including emergency medical care and interfacility transport of a critically ill or injured person utilizing equipment and performed by authorized personnel who possess a valid licensure/certificate. Such transports may be performed by paramedics, registered nurses, respiratory therapists, or other personnel with specialized training."	
Section II, page 4, line 25 - 30	EMSAAC	It is unclear what this definition means or how it would be applied by EMSA in its approval or disapproval of a plan or how a "reasonably prudent person would evaluate the same information." Are you requesting payer source information from one EOA contract period to a requested new EOA period? Are you requesting billings v collections?" Are you requesting profit margins?" Are you requesting how the median income of an area has increased/decreased? Is the "reasonably prudent person" intended to be competitors (fire or private sector), The LEMSA administrator, the Board of Supervisors, EMSA? What criteria will EMSA to determine whether an "economic distribution" is good or bad? We recommend this definition be eliminated and replaced with "economic viability" of an EOA as determined by the LEMSA.	

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Section II, page 4 line 43	EMSAAC	Add "ground or air" after the word emergency	
Section II, page 4, lines 3 - 5	EMSAAC	Update definition to reflect State licensure and local accreditation.	
Section II, page 5 lines 5,6	EMSAAC	Add "or formally recognizing the exclusivity of an area treated as exclusive by local government since January 1, 1981 in accordance with 1797.224	
Section II, page 5, line 7	EMSAAC	Add a new definition – Interfacility Transport "Transport that responds to requests for ambulance transportation services from health care facilities via a providers's 7-digit number or 9-1-1. Services may be provided at the BLS, ALS, CCT under the provisions of medical control as specified by the LEMSA medical director.	
Section II, page 5, line 20	EMSAAC	End sentence after "established by a LEMSA." We are not "facilitating" system coordination, and H&SC 1797.85 does not use the word "facilitate" Rather LEMSA's are ensuring a system of emergency transport in accordance with 1797.85 and 1797.224	
Section II, page 5 Line 36	EMSAAC	Clarify the differences between "Level of Exclusivity" and "Type of Exclusivity" and how each applies in EOA's. .	
Section II, page 5 Lines 23 – 26	EMSAAC	The existing definition of manner and scope is unclear and allows arbitrary interpretation on the significance, of some areas, e.g., boundary changes. The definition as	

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		exists serves to restrict counties' abilities to select ambulance providers using the 1797.224 statute. We suggest more clarity in definition of manner and scope: "A determination by LEMSA's that considers whether the provider has continuously served a geographic area for which exclusivity is granted; whether it has shared the marketplace with other providers in the area since that date; whether there has been any substantial interruption in services during the specified period of time. An increase in level of service *e.g. from BLS to ALS, shall not been deemed a change in "manner and scope" An increase or decrease in a provider's geograpic service area will not be deemed a change in manner and scope with respect to that part of its historic service area which it continuously served since January 1, 1981."	
Section II, page 5 Line 27	EMSAAC	Add definition of "Medical Control" H&SC 1797.90	
Section II page 5, lines 28 - 29	EMSAAC	Revise "Non-Exclusive Operating Area" to the following. "An area or subarea open to all LEMSA approved providers" The term "exclusive is ordinarily used,rather than "restricted."	
Section II, page 5, lines 36 – 38	EMSAAC	There is no statutory requirement for a ten-year limitation. This proposed limitation is arbitrary. Entering into agreements for the medical transport over large geographic, often financially fragile areas, may require contractual commitments that extend beyond EMSA's proposed arbitrary ten-year limit. These decisions are properly left to counties' LEMSAs and Boards of Supervisors to determine the length of a contract period. This recommended limitation takes away local planning and control, including consideration of available resources and long-term improvements of an EMS system. Counties often enter into long-term contracts to encourage investments into a system, e.g. cable companies, public transportation, trash pickup, and many more.	

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Section III, page 6, #5, line 29	EMSAAC	The "fiscal impact" upon a county as described here should have no bearing upon EMSA's approval or disapproval of a transportation plan. How would EMSA evaluate "fiscal impact" in considering whether to approve or disapprove a local transportation plan?	
Section III, page 7, line 26	EMSAAC	EMSAAC members understand the need to provide timely responses to EMSA. However, we have consistently maintained that EMSA should also have time requirements for responding to LEMSAs, particularly in this area where RFPs, contracts may be awaiting EMSA comments	
Section III, page 8, lines 3-4	EMSAAC	This language does not address/allow for "emergency" or unforeseen changes, e.g., strikes, sudden inability of an EOA provider to continue service. Suggest language that allows immediate, temporary resolution of unforeseen issues.	
Section III, page 8, line 17	EMSAAC	How does "scope of operations" differ from "Level of Exclusivity on page 5, line 8?	
Section III, page 8, line 23	EMSAAC	As stated earlier, "economic distribution" is not clear. We propose eliminating "economic distribution" and substituting "economic viability"	
Section III, page 9, line 18	EMSAAC	What does "qualified providers" mean. Does EMSA mean "qualified providers" as described in an RFP?	
Section IV, page 11, line 12	EMSAAC	"may establish" appears overly permissive. It is our understanding that in certain circumstances, counties are required to establish EOA's to obtain antitrust immunity. Perhaps this could be clarified in the language.	
Section IV, page 12, lines 36-38	EMSAAC	LEMSA medical directors do not establish the scope of practice for authorized registered nurses or physicians.	
Sec IV C page 13		Does this include cities described in 1797.201 ?	
Section IV b, line	EMSAAC	We continue to question the meaning of "economic	

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23		distribution of calls" and how it would be used by EMSA to approve/disapprove a plan.	
Section IV b 6, page 13, line 40	EMSAAC	"Non-competitive BEHAVIOR SANCTONED BY LEMSAS" We are unclear re the meaning. The implication is that LEMSA's have knowingly or willingly allowed activities that were not allowed in statutes or regulations. We recommend removing or clarify intent.	
Section IV, page 14, line 5	EMSAAC	1797.224 is silent on subcontracting; therefore any reference relating to ability to subcontract should be corrected.	
Section IV, page 15, 3, line 5	EMSAAC	1797.201 should be quoted precisely or not referenced at all.	
Section IV, page 17, line 11-14	EMSAAC	Many counties approve the EOAs based upon recommendation of the LEMSA to do so. The EOA's are approved by normal BOS agenda processes. This section should be clear that it not mandated for counties to pass a resolution or ordinance.	
Section IV, page 17, lines 28 – 40	EMSAAC	As stated earlier, there is no statutory requirement for EMSA's arbitrary ten-year limitation. This limitation may severely limit the powers of the LEMSA to negotiate contracts, especially when the county/LEMSA seeks an investment by the contractor in new technology, e.g.,communications for the benefit of the EMS system. Additionally, it should be made clear in this section and other appropriate sections (perhaps in I A that the role of EMSA under H&SC 1797.6) is to "prescribe and exercise the degree of state direction and supervision over EMS as will provide for state action immunity under federal antitrust laws for activities undertaken by local government entities…." Thus, EMSA "approval" only conveys antitrust immunities; it does not remove a county's authority to establish the EOA.	
Section IV, D page	EMSAAC	Eliminate "public safety agency organization operating in	

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15, line 38		an established EOA" These processes must be conducted by counties/LEMSAs	