Sonoma County EMS Workgroup
DRAFT Meeting Minutes

October 15, 2018 – 9:30-11:00 AM
Sonoma County Water Agency Redwood Conference Rooms
404 Aviation Blvd, Santa Rosa CA 95403

Project Goal: To create a safe, effective system that delivers high-quality field care medicine that is responsive to the community needs of Sonoma County as supported by qualified, committed, and accountable EMS caregivers.

Goal for this meeting: To continue to resolve ways that identified issues will be addressed in the revised EMS Ordinance

Meeting Minutes

Facilitator Chris Thomas opened the meeting with introductions around the room and then a request for any corrections to the notes for 10/15. No corrections were requested.

The results of the previous stakeholder interviews were provided in the form of summary provided by The Abaris Group.

Ray Ramirez, an EMS Attorney who works with California Association of Fire Chiefs was present at the invitation of CVEMSA to provide his viewpoint on legal aspects of Medical Control as well as the role of Local Agency Formation Commissions in the EMS System service delivery process. Ray presented his views and took questions from the group.

Ray informed the group that he has reviewed all the information sent to him and the information available on the website (meeting minutes, position papers, etc.). Based on his review and understanding he believes:

1. The EMS Act (California Health and Safety Code ”HSC” Div. 2.5) makes the Local EMS Agency (LEMSA) Medical Director (MD) responsible for the local EMS system medical management. HSC 1797.201 makes Cities/Fire Districts(FD) subject to medical control directly by statute; no agreement is necessary unlike other providers who the LEMSA must authorize.
2. Medical control scope is very broad and includes establishing certification, licensure and accreditation requirements; drug and equipment lists; training requirements; patient care protocols; triage and transfer agreements between facilities; and dispatch. However, Medical control is not plenary, it has limits .Medical control cannot “supplant” or “contravene” the administrative authority of a City/FD.
3. The power to regulate the local EMS system includes both “administrative” and “medical” authority. The Sonoma County BOS Ordinance recognizes this distinction.

Federal Law

The federal courts illustrate distinction between medical and administrative authority. For air ambulances, the Airline Deregulation Act (ADA) preempts economic regulation by the States and local governments but preserves a State’s Medical Control authority. If a federal court says that a particular area is medical control, then it’s medical control under the EMS Act.

State Law

State law limits medical control. For example, although the MD has medical control over the local EMS system, the law [H&SC § 1798(c)] allows the local Base Hospital Physicians to challenge any LEMSA medical control policy. State law also limits the medical control power over public safety and private EMS aircraft [H&SC § 1797.9].

The common theme is that although medical control power is broad, it is subject to state and federal limits. Medical control over "dispatch" is subject to state law and case law. The "City of San Bernardino (Cal. 1997)" decision illustrates that medical control has limits by addressing two issues – "patient management" and "dispatch." The general rule is that the highest medical authority on-scene has patient management responsibility [H&SC 1798.6]. The general dispatch rule is, absent a MD approved EMD policy, all providers must respond Code 3 (lights and siren). The two Inland Counties EMS Agency (ICEMA) protocols relevant to the case merely said the first paramedic to arrive on-scene is in charge and that all providers must be dispatched at the same dispatch code. These two policies were "consistent" with state law and after reviewing each protocol the Court upheld them as a valid exercise of medical control. But if medical control is plenary, the Court would have upheld them without a detailed review.

Medical control is necessary for giving pre-caller arrival medical instructions, for altering a provider's response mode (C-3 v. C-2), or for altering "who" responds. Some LEMSA's have used the "San Bernardino" for deciding who responds to the call. A LEMSA cannot contravene a City/FD's authority to provide EMS. One federal court has observed that you cannot regulate "indirectly" what you cannot regulate "directly." This means a LEMSA cannot use medical control to "unilaterally" prevent a City/FD from responding. However, a City/FD can "voluntarily" choose to alter the response mode or alter who respond, but the MD must approve the policy. If that policy ends, however, the City/FD retains the authority to respond to call in its jurisdiction.

The "San Bernardino" decision also says a City/FD cannot "create" an administrative EOA, or "expand" into a new "type" of service, or unilaterally terminate a county-authorized provider who is providing EMS where the County/LEMSA retains administrative control. The "San Bernardino" decision says that a City/FD can "increase" EMS levels. Going from BLS to ALS is not a new type of service, but natural progression of EMS and technology changes. For example, EMSA says that going from BLS to ALS is not a change in manner and scope for EOA's.

Local Area Formation Commission (LAFCO)

Q: Can a pubic fire expand ambulance to area not in the jurisdiction, and then expand ambulance to that area?
A: A public agency expanding services must go through LAFCO. LAFCO has exclusive authority for making these decisions and establishing a process for taking LEMSA input. LAFCO is who allocates underlying taxing authorities and brings finality to all reorganizations. LAFCO will not interfere with an existing EOA. However, because the LEMSA may unilaterally terminate a grandfathered EOA, a LEMSA may choose to do so and remove that barrier for assuming ambulance services.

Q: If a City/FD annexes an area, do the .201 rights flow into the annexed area?
A: Yes, if LAFCO determines the City/FD must provide the services. For example, my City annexed 50 SQ miles of unincorporated territory and our .201 responsibilities for dispatch & EMS flowed into the annexed area just like our responsibility for providing fire, police and water/sewer services.

Q: What agency determines if a city or district is a .201 entity?
A: The Legislature has determined who is .201, not the City/FD's.

Medical Control Permits

Some LEMSA's issue a medical control permit. A medical control permit is really a tool to document that a provider has met the local requirements to provide EMS (e.g. staffing, accreditation, drug and

equipment list). This is normally for those entities that the LEMSA has authority to authorize to provide EMS (See H&SC Section 1797.178). A .201 provider does not need a medical control permit but is subject to a LEMSA medical inspection. A LEMSA may charge a reasonable fee for this inspection.

Lomita

Lomita is very instructive. Lomita establishes that: 1) the county is responsible for providing prehospital EMS to all persons within the county, this includes ambulance service; and 2) the county is responsible for the cost of such services. For example, when a private ambulance bills a patient, it is doing so under the county's authority. The County may create its own department, assign EMS to an existing Department (Fire or Sheriff), contract with local agencies, or contract with a private provider. For example, Mono County ambulance have been through the Sheriff's department. The exception to Lomita's rule is .201. If a City/FD is .201, then the City/FD must provide retained EMS at local agency cost (including to county indigents residents), not county general fund. Under Lomita, the State has given the County responsibility for providing EMS but provides no money.

Paramedic Provider Agreements

Q: Is a City/FD "required" to sign a paramedic provider agreement (PPA) under state regulations?
A: No. The San Bernardino decision says City/FD's are authorized "directly by statute" (.201) and that agreements are not required. EMSA has recognized this but refuses to change regulations. The EMSA letter to LACO EMS (October 27, 2008) acknowledges this. A City/FD "may" sign such an agreement but should reserve all .201 responsibilities and rights. For example, the City of Stockton signed a PPA without reserving .201 status and a trial court said Stockton had transferred EMS to the County. The trial court said Stockton's counsel should have reserved that power if this was not a transfer agreement.

Medical Control Discussion – Last 20 Minutes Questions from group with Ray's answers.

Q: James Salvante (CVEMSA) How does the Wedworth Townsend Paramedic Act WTPA (1970) affect 1797.201?
A: Under WTPA, the county was responsible for authorizing all paramedics. Very importantly, under the WTPA providing paramedic service by Cities/FD's was "voluntary." The EMS Act (.201) changed "voluntary" to "mandatory." There is a reason for that, which is why understanding Lomita is important.

Q: Is dispatch under medical control?
A: Yes, subject to limitations. In area under complete county control, the LEMSA/MD may allocate resources in any manner they choose to satisfy Lomita (response modes, who goes). If a .201 City/FD LEMSA cannot unilaterally prevent a public agency from responding.

Q: Aaron Abbott (REDCOM) - does the ability to define acuity fall with medical control from LEMSA MD?
A: Yes. MD has authority to classify call by acuity and for altering the response mode based on that determination. Absent a protocol, everyone must respond C-3.

Q: Can the Medical Director dictate a response diversion from a low-acuity call to a high-acuity call?
A: Yes.

Q: Can a .201 agency have an EMD program?
A: Yes, but the EMD program must have the LEMSA MD's approval. The EMD program may allow ambulance only calls to certain facilities (e.g. "convalescent") if that is what the City/FD wants to do.

Q: Dean Anderson (AMR): Once MD makes standards, does the agency have the ability to not respond at level dictated?
A: There are a few questions in that question. First, the MD must approve all EMD programs but EMD is not mandatory by the LEMSA. The CA Attorney General has opined that EMD programs are permissive. Second, if a response code is "properly" established, the public agency must respond at

that response code. If unit responds C-2 instead of C-3, this is a disciplinary issue for the Fire Chief. Third, most EMD protocols allow for a unit to upgrade from C-2 to C-3 based on local information. I support this discretion.

Closing
The EMS ACT must be interpreted and harmonized with several other relevant statutory schemes and case law (e.g. Lomita, ADA & FAA, LAFCO). That's the hard part. Ray then thanked the group for the invitation to speak.

Chris thanked Ray for his presentation.

Meeting adjourned. Next meeting will be October 29, 2018 at Sonoma County Water Agency 404 Aviation Blvd from 9:30-11:00 in the Redwood Conference Rooms.

Project Website:

https://www.coastalvalleysems.org/about-us/committees/sonoma-county-ems-systems-workgroup.html