

Opinion No. 2013-141

February 18, 2014

The Honorable John Baine
State Representative
Post Office Box 10056
El Dorado, Arkansas 71730-0022

Dear Representative Baine:

This is in response to your request for my opinion on the following questions concerning the Arkansas Trauma System¹

1. Currently hospitals are allowed to “opt out” of pursuing designation as a trauma center. Can an ambulance service decide to “opt out” of the trauma system?
2. Can the trauma system promulgate rules requiring an ambulance service to leave its primary coverage to transport a trauma patient to a higher level trauma center that would result in the ambulance service not providing adequate coverage as established by local contracts or franchise agreements?
3. Can the trauma system promulgate rules requiring an ambulance service to leave its primary coverage to transport a trauma patient to a higher level trauma center that would result in the ambulance service not providing adequate coverage as established by local governments?

¹ The Arkansas Trauma System (hereinafter “System”) was developed pursuant to the Trauma System Act (A.C.A. § 20-13-801–821 (Repl. 2005 and Supp. 2013)). The System was implemented by the Arkansas Department of Health pursuant to A.C.A. § 20-13-804, which was originally enacted under Act 559 of 1993, and then subsequently amended by 393 of 2009 to provide for funding through the Public Health Fund. *Id.* at (b) (Supp. 2013).

4. Can the trauma system promulgate rules requiring a city fire-based ambulance service to leave its primary coverage to transport a trauma patient to a higher level trauma center that would result in the ambulance service not providing adequate coverage as established by the local government and which would result in a reduction in the level of fire protection within the jurisdiction?

RESPONSE

Although I am somewhat uncertain what you mean precisely by “opt out,” no ambulance service is required to apply for a grant under the Trauma System Act. The answer to your first question is therefore “yes,” in the sense that an ambulance service may decide not to participate in any allocation of funds under the Act. For the reasons explained below, it is my opinion that the answer to your remaining questions is “yes.”

Question 1 - Currently hospitals are allowed to “opt out” of pursuing designation as a trauma center. Can an ambulance service decide to “opt out” of the trauma system?

The Trauma System Act² provides for the allocation of funds by the Arkansas Department of Health in the form of grants to “emergency medical services providers, hospitals, or other health care providers *that would like to participate in the program.*”³ Funding is in the form of “start-up grants” and “sustaining grants”:

An emergency medical system care provider or ambulance provider may be eligible for:

- (1) The emergency medical system care provider education start-up grants that are used to support trauma education and trauma readiness; or

² Note 1, *supra*.

³ A.C.A. § 20-13-804(a) (Supp. 2013) (emphasis added).

- (2) The emergency medical system care provider sustaining grants that are used to support ongoing trauma education and trauma readiness.⁴

I have found no other language in the Act to counter the clear implication of the above provisions that participation in the System is voluntary and an ambulance service may decide to participate by applying for a grant. Accordingly, the answer to your first question is “yes,” in the sense that an ambulance service may decide not to participate in any allocation of funds under the Act.⁵

Question 2 - Can the trauma system promulgate rules requiring an ambulance service to leave its primary coverage to transport a trauma patient to a higher level trauma center that would result in the ambulance service not providing adequate coverage as established by local contracts or franchise agreements?

Question 3 - Can the trauma system promulgate rules requiring an ambulance service to leave its primary coverage to transport a trauma patient to a higher level trauma center that would result in the ambulance service not providing adequate coverage as established by local governments?

Question 4 - Can the trauma system promulgate rules requiring a city fire-based ambulance service to leave its primary coverage to transport a trauma patient to a higher level trauma center that would result in the ambulance service not providing adequate coverage as established by the local government and which would result in a reduction in the level of fire protection within the jurisdiction?

Each of these questions raises an issue that I have previously addressed concerning so-called “backfill” arrangements that involve the cross-jurisdictional provision of

⁴ A.C.A. § 20-13-809 (Supp. 2013).

⁵ Because your questions deal with the transportation of trauma patients, I should note that under proposed emergency medical services rules that will soon be effective, all licensed ambulance services will be required to follow new trauma triage guidelines that include calling the Arkansas Trauma Call Center (ATCC) and transporting to the most appropriate hospital. See proposed Arkansas State Board of Health Section of Emergency Medical Services *Rules and Regulations for Emergency Medical Services* at Section XV (available at <http://www.healthy.arkansas.gov> (under Rules and Regulations (“Emergency Medical Services”)). Once implemented, the rules will be available at <http://www.healthy.arkansas.gov/aboutADH/RulesRegs/Ems.pdf>.

The ATCC is the “call center” that was established by the Arkansas Department of Health pursuant to A.C.A. § 20-13-817(a) (Supp. 2013) (part of the Trauma System Act) for the purpose of directing patient transport to the most appropriate hospital. *Id.* at (b).

emergency services.⁶ As I noted in Attorney General Opinion No. 2011-053, "... requiring a backfill plan as a condition of receiving Trauma System grant funds was a regulatory means of addressing the concern ... regarding emergency medical service providers' existing service obligations."⁷ The requirement of "backfill agreements" is thus intended to avoid the situation identified in your questions, in which an ambulance service is unable to meet both local coverage requirements and the Trauma System's transportation requirements.

Considered in light of the above, I take your questions to mean that backfill agreements are not adequate in all circumstances to avoid this situation. I assume that is correct, although I have no information regarding the existence or frequency of such occurrences. In any event, however, it must be concluded that the answer to your questions in this regard is "yes." The fact that this situation may arise is not a basis for avoiding the Trauma System's rules regarding patient transport, in my opinion. As I stated in Opinion 2011-053, these are "practical implications of participation in the Trauma System." It may well be, as I also previously stated, that this matter calls for legislative action. But in the meantime, I can only reiterate that the situation is appropriately addressed to the ambulance service's local counsel, who will be in a position to fully assess these practical concerns.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM:EAW/cyh

Enclosure

⁶ See "Emergency Medical Backfill Agreement" (available at <http://www.healthy.arkansas.gov/programs/Services/hsLicensingRegulation/EmsandTraumaSystems/FormsManualsMemos/Pages/default.aspx>).

⁷ A copy of Op. Att'y Gen. 2011-053 is enclosed for your convenience.