
The following are recent articles highlighting the Chandler and Scottsdale ambulance contracts. These contracts are clearly not legal both at a State and Federal level.

Legal Consult: Municipal Pay-to-Play Arrangements Raise Kickback Concerns

By DOUG WOLFBERG

Many municipalities rely on private companies to provide ambulance service for their citizens. In many cases, the municipality selects a single ambulance company as its exclusive provider, typically through a competitive procurement process using a request for proposals. In recent months, several such RFPs have signaled a disturbing trend and raised significant questions under the federal anti-kickback statute.

The AKS prohibits giving or receiving anything of value in exchange for the referral of health care business that is reimbursable by any federal health care program (Medicare and Medicaid, for instance). But some recent RFPs require the ambulance company winning the bid to pay substantial remuneration to the municipality as a condition of receiving the exclusive contract. This is commonly called a "pay-to-play" arrangement, and such arrangements currently present some of the most complex economic and compliance challenges for ambulance services.

Three Case Studies

Three recent municipal ambulance procurements illustrate the surfacing of such pay-to-play concerns.

Example 1. A city of more than 250,000 people in the Eastern United States issued an RFP that required the winning bidder of the contract to be the municipality's exclusive ambulance provider to pay a "franchise fee" of \$350,000 to the city. One bidder unilaterally proposed to pay the city \$500,000-or nearly 43% more than the fee established by the city-in an attempt to obtain the valuable exclusive ambulance contract.

Example 2. An RFP issued by a city (Scottsdale, Arizona) of approximately 200,000 in the Western United States made it clear that the bidder that proposed to staff more of its ambulances with city firefighter/paramedics would receive a higher score in the RFP evaluations. The winning bidder would be required to pay the city for the salaries, overtime and benefits of those firefighters at rates far exceeding what a private ambulance company would have to pay its own employees for the same work. The RFP also asked potential bidders to provide an open-ended EMS "enhancement fund," which would be used at the sole direction of the city's fire chief. The RFP established no precise amount of required "contributions" to this fund-thus inviting bidders to pour cash into it to improve their chances of winning the contract. In fact, the winning bidder promised to give 175 AEDs as well as bomb-sniffing dogs to the city-in addition to the cash it contributed to the "enhancement fund"-although the RFP required neither of these. When asked about this fund at the pre-bid conference, a city consultant even joked that the city would like to use the money to buy a "red Porsche for the fire chief."

Example 3. This city (Chandler, Arizona) of approximately 175,000 people in the Western United States issued an RFP that required the winning provider to staff ambulances with city firefighters and pay the city the costs of the firefighters' salaries and benefits; locate ambulances in city fire stations and pay rent to the city for the use of that space; pay the city to put new firefighter recruits through their initial training (paying both the recruits' salaries plus their training costs); pay to establish and staff a training vehicle for city firefighters; pay to fill a new "city EMS transport manager" position; and pay into the city's EMS "enhancement fund."

OIG Advisory Opinions

The Centers for Medicare & Medicaid Services Office of Inspector General has addressed pay-to-play issues related to EMS on at least two occasions. In Advisory Opinion 99-5, the OIG concluded that a city could charge a fee to ambulance companies to reimburse the municipality for its legitimate costs of providing EMS dispatch services. In Advisory Opinion

04-10, the OIG concluded that a municipality could award an exclusive ambulance contract to the provider that bid the highest per-call dollar amount to reimburse the city for the costs of its fire department EMS first response. Central to the OIG's rationale in 04-10 was the city's assertion that even the highest per-call fee proposed by the winning bidder would not exceed the city's costs in providing its first response services. The OIG also cited the fact that the arrangement would not adversely impact competition because the city utilized an open, competitive bidding process to select its exclusive provider.

Although Advisory Opinions 99-5 and 04-10 related specifically to the reimbursement of dispatch and first response costs (and have no binding effect on any other municipal RFPs), they appear to have emboldened other municipalities to seek more and more reimbursement from private ambulance companies as a condition of awarding them exclusive contracts. Other municipalities seem to have taken these limited, non-binding Advisory Opinions and used them to justify many unreasonable and unrelated financial demands-perhaps more broadly than the OIG ever intended these Advisory Opinions to be viewed. This creates an unlevel playing field between public and private providers and threatens the economic stability of the commercial ambulance providers that are forced to pony up for unreasonable or indirect "system costs" to secure a 9-1-1 contract.

These aggressive pay-to-play demands also implicate reimbursement policy. The ambulance industry simply cannot afford to be a funding source for local governments to cover general public safety or other municipal services. Medicare is the single largest payer for most ambulance companies, and the federal government intended the Medicare fee schedule to cover such essential ambulance service costs as personnel, equipment, overhead and supplies provided to Medicare beneficiaries-not to supplement municipal taxes. Moreover, federal and state "balance billing" laws and fee caps in many states prevent many ambulance services from passing along these costs to the consumer.

An ambulance company providing reimbursement to cover direct EMS system costs, such as dispatch or even first response is one thing. But requiring substantial payments for marginally related (or even outright questionable) "system costs" as a condition for winning an exclusive city contract is another. Every dollar an ambulance service must pay a municipality to secure a contract is another dollar that cannot go to fund training, capital improvements, QI programs or a salary increase for deserving EMTs and paramedics.

Fortunately, most municipalities that expect payment from their private ambulance companies recognize that the ambulance reimbursement pie is only so big and confine their reimbursement requests to modest payments for dispatch services or per-call first response fees to offset legitimate and direct costs. Some municipalities even pay their private provider a subsidy to ensure a high level of quality and responsiveness, which is difficult to provide on Medicare and insurance reimbursement alone. Those arrangements provide shining examples of effective public-private relationships that will go much farther in ensuring the long-term success and stability of the EMS system than will the short-sighted attempts by some municipalities to squeeze every penny they can out of their local ambulance service. Such practices miss the mark in protecting the public and can only lead to a weaker emergency response system. Perhaps it is time for the OIG to take a closer look at these unintended consequences of their earlier pay-to-play opinions in light of these new municipal pay-to-play RFPs.

Author Note: Thanks to my law partner, Steve Wirth, Esq., and fellow EMS Insider columnist Mike Scarano, Esq., for their reviews of this column and their helpful suggestions.

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Ambulance deal with Chandler halted

By Dennis Welch, Tribune

October 27, 2006

The Arizona Department of Health Services nixed a deal between Chandler and two ambulance companies in order to stop a trend that could send emergency service costs skyrocketing throughout the state.

The decision will not disrupt ambulance service in Chandler, but it could force the city to lay off a dozen firefighters or dole out millions of dollars in salaries.

Part of the agreement, which was created last year, called for Southwest Ambulance and Professional Medical Transport to reimburse Chandler for the salaries of 12 firefighters the city required to work on the ambulances.

Kevin Ray, an assistant attorney general representing the health services department, said this type of arrangement — if repeated by other cities and towns — threatens to drive up costs for the entire state.

Requiring ambulance companies to take on the costs of paying salaries for city employees such as firefighters raises the cost of providing emergency services, Ray said. That would force the department to raise its rates throughout the state.

“These additional and unnecessary costs to the ambulance costs, if unchecked, will undermine the constitutional and statutory authority of the Department to set appropriate rates and charges,” Ray stated in a letter set to the two ambulance providers last week.

Although the deal between the city and the two ambulance firms is already in effect, it still needed the approval of the health services department, which regulates the industry and has the final authority on contracts. To ensure charges don’t differ by city, the department sets a uniform rate. Once costs go up in one area, they must go up everywhere.

Jeff Clark, assistant Chandler fire chief, said a dozen firefighters training in the academy were hired specifically to fill the positions created by the contract. He said it was unclear to the city how the contract would add additional costs.

The city has scheduled a meeting next week with the attorney general’s office to discuss the issue, Clark said. “We don’t know what this means or what it calls for,” he said referring to the Oct. 20 letter from the Department of Health Services.

Likewise, Patrick Cantelme, part owner of Professional Medical Transport, said the state’s decision puts the city in a tough place. “Either it has to pick up the tab for the salaries or it has to fire 12 firefighters,” he said Thursday afternoon.

Cantelme, the former head of the Phoenix Firefighters Union, also disagreed with the state assessment that the deal threatens to undermine the entire system because there’s not much of a difference in cost between a firefighter paramedic hired by the city and nonfirefighter paramedic hired by a private firm.

He contends that PMT would have to pay for paramedic salaries one way or the other.

If the city decides to keep the firefighters, it might have to pay millions of dollars in salaries over the life of the four-year contract. According to the agreement, each firefighter/paramedic position costs \$6,840 per month. That comes to \$82,080 per month, or nearly \$1 million per year.

The state also sent a stern message to other municipalities to warn them against using contract "enhancements" to have private companies pay for city services.

Last year, DHS approved a similar deal in Scottsdale, which also called for PMT to reimburse the city for a dozen firefighters. However, Ray is now calling that decision "problematic" because other cities are following.

In addition to Chandler, Tempe also is considering new contracts for its emergency services and was also mentioned in the DHS letter. However, Tempe Fire Chief Cliff Jones said he would not comment on the contract details while the city was going through the process of selecting a primary emergency ambulance provider.

City fights rejection of pacts

Edythe Jensen

The Arizona Republic

Oct. 28, 2006 12:00 AM

Chandler's ambulance contracts have been rejected by the Arizona Department of Health Services, the city is fighting back and an assistant fire chief spent Friday reassuring firefighters that another newspaper's reports of possible layoffs are false.

It all started with an Oct. 20 letter from Assistant Attorney General Kevin Ray to the two ambulance companies that have been sharing Chandler territory since December - Southwest Ambulance and Professional Medical Transport. It said the state has rejected their contracts with the city because required firefighter staffing on some ambulances could eventually increase costs.

DHS has accepted a similar arrangement in Scottsdale, and Chandler didn't immediately find out about the rejection because the letter was sent only to the ambulance companies, Assistant Fire Chief Jeff Clark said. He and Pat Cantelme, chief executive officer for PMT, said they were "blindsided" by the notice, which came seven months after the contract went into effect and only days before several newly trained firefighters were scheduled to staff Chandler ambulances.

It also comes at a time when Tempe is considering a similar contract arrangement.

Officials from Southwest, which had exclusive ambulance contracts in many Valley cities including Chandler until recently, voiced concern months ago about putting city firefighters on private ambulances.

Southwest spokesman Josh Weiss on Friday declined to discuss details of the DHS ruling but said, "We are working closely with the city to overcome any legal issues that DHS has identified."

In a letter to DHS and the Attorney General's Office dated Friday, Assistant City Attorney Jim Cairns accused DHS of exceeding its authority and violating deadline requirements in state law to reject contracts

within 15 days. Cairns also requested all state documents and correspondence related to the issue.

Andrea Esquer, spokeswoman for Attorney General Terry Goddard, said Ray would not discuss the Chandler correspondence. She said DHS regulates ambulance services and contracts and has no jurisdiction over cities. The agency had rejected the Chandler contract four times over the past seven months but there hasn't been and will not be an interruption in Chandler emergency services pending resolution of the arrangement, she said.

Cairns said if there were previous rejections, the city wasn't notified. "We talked to DHS earlier, and everything was fine. Then all of a sudden they send a letter (to the ambulance companies) without copying us."