

EMERGENCY MEDICAL SERVICES AUTHORITY

10901 GOLD CENTER DRIVE, SUITE 400
RANCHO CORDOVA, CA 95670
(916) 322-4336 FAX (916) 324-2875



DATE: September 12, 2014

TO: Commission on EMS, Lewis Stone, Chair

FROM: Steven A. McGee, Administrative Adviser, Counsel

SUBJECT: Potential processes for appeals before the Commission and EMS Authority recommendation

SUMMARY:

Health and Safety Code Section 1797.105(c) provides that a local EMS Agency (LEMSA) may appeal the non-approval of a local plan to the Commission on EMS. The statute is silent, however, as to what manner the appeal should take place. Neither are there currently any regulations or rules adopted by the Commission for the process of hearing such an appeal. The Commission must adopt a process for the consideration of local EMS plan appeals. There are essentially two 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, and,
2. Indirectly; by having the appeal heard by a neutral outside entity (i.e. the Office of Administrative Hearings), with the Commission voting to either accept or reject the proposed decision of an administrative law judge.

For the reasons explained below, it is the recommendation of the EMS Authority that the Commission adopt as its appeals procedure the indirect process of number 2 above as being an established, fair process for all parties and the best process to allow appeals to be heard in an expeditious manner.

DISCUSSION:**1. Direct Appeals Before The Commission.**

The Commission may adopt as its appeal procedure a process whereby appeals are heard directly before a quorum of the commissioners themselves. Prior to hearing an appeal using this method, regulations would need to be promulgated for adoption of rules and procedures for a hearing process. These regulations would need to address the timing for and the procedures for hearings, standards of evidence, how witnesses would be examined (if allowed), etc. The process of adopting formal regulations through the Office of Administrative Law, which would include public comment and formal adoption by the Commission, would take approximately 18 months. Additionally, it is conceivable that a direct hearing process before the commission may take multiple days to be heard and potentially extend to more than two commission meetings, or require that special sessions be scheduled to accommodate this type of process.

Due to the necessity of promulgating regulations to govern the appeals process, and the potential for additional days for regular meetings or the scheduling of special commission meetings, the EMS Authority does not recommend that the Commission adopt a process that mandates a direct appeal hearing before the Commission itself.

2. Indirect Appeals Process (the APA process).

The Commission may adopt as its appeals procedure an indirect appeals process whereby appeals are heard by another entity, and then the Commission subsequently adopts or rejects a decision proposed by that entity. Adopting this procedure has several key advantages over a direct hearing procedure.

If the matter is heard by an outside neutral entity (i.e., the Office of Administrative Hearings), there is already in place a process codified in statute and regulation for the conduct of hearings, the examination of witnesses, the submission of evidence, etc. This would obviate the need for the commission to have regulations adopted as would be required for a direct hearing process. There is also the advantage of having an existing entity in place that has facilities for the conduct of hearings, and administrative law judges and support staff to handle the filing of documents, 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.

Once a hearing has been conducted and the record closed, the Administrative Law Judge would issue within 30 days a non-binding, proposed decision to either accept or reject the appeal and the reasons for that decision. This decision would be published publicly upon receipt, and a copy of the decision sent to all Commission members. The consideration of the decision would be scheduled as an agenda item at the next Commission meeting. Public comment would be heard concerning the decision, and the Commission would then vote to either adopt or reject the proposed decision. As this appeals process already exists in current statute, this has the additional advantage of ensuring that appeals can be scheduled and heard as quickly as they can be accommodated by the Office of Administrative Hearings, as delay for the adoption of further rules and regulations would not be necessary.

A hybrid of this process, i.e. the utilization of the Office of Administrative Hearings to hear appeals combined with the adoption of additional regulations or rules relating to the conduct of hearings, is neither necessary nor desirable. There already exists in statute and regulation specific rules and processes for the conduct of hearings before the Office of Administrative Hearings (the Administrative Procedures Act). This process has been enacted by the legislature as a fair method with due process and has been used to conduct thousands of hearings in an impartial manner. The adoption of additional rules or regulations is therefore unnecessary to ensure fairness to all parties, and indeed would require that the regulatory process be employed before such hearings could be held. This would delay significantly the appeals process.

RECOMMENDATION:

Based upon the above discussion, it is the recommendation of the EMS Authority that the commission vote to adopt as its process for the conduct of an appeal of a local EMS plan the Administrative Procedures Act that currently exists commencing at California Government Code Section 11370 and its associated regulations. Hearings would be held before the Office of Administrative Hearings. Proposed decisions will be voted upon by a quorum of EMS Commission members in attendance at a regularly scheduled meeting in which discussion of the decision will be noticed on the agenda pursuant to the Bagley-Keene open meetings act.