



EMS System Coordination and HS 1797.201 in 2010

California EMS Authority
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Primacy of System Coordination

- SB 772, Wedworth-Townsend Pilot Paramedic Act (1970)
- SB 125, Garamendi-Torres EMS System Act (1980)
- Goal was to have Coordinated Systems
- Organized at County Level, with significant medical direction
- State Regulation and Coordination



Goals of This Presentation

- Provide a view of the EMS System and its Governance to achieve coordination
- Address some frequent questions
- Clarify some commonly held beliefs and misconceptions
- Present a balanced assessment of the statutes and case law



Court Cases Provide Clarity

- County of San Bernardino v. City of San Bernardino, 15 Cal. 4th 909 (1997)
- Valley Medical Transport v. Apple Valley Fire Protection District, 17 Cal. 4th 747 (1998)
- City of Petaluma v. County of Sonoma, 12 Cal. App. 4th 1239 (1993)



So, What Seems to be the Problem Today?

- *Agreements continue to form the basis of the development of an effective and efficient EMS system, and those agreements should clearly identify the role(s) of a city or fire district*
- *EMSA is unaware of current substantial service disagreements between the fire service and local EMS Agencies in the area of the provision of paramedic services or ambulance services*
- *Our observation that the core issue today appears related to dispatch, and whether HS 1797.201 contemplated "dispatch" as a prehospital type of service and to what extent medical control impacts the decision about who may perform emergency medical dispatch as part of an EMS system*
- *Meaningful involvement by all EMS system participants in the EMS planning process will assist in building trust and collaboration*



Some Considerations?

- Agreements, and an explicit determination of 201 responsibilities and degree of integration into the local system, should be reached between a local EMS agency and an eligible city or fire district under 1797.201
- Local EMS plans should include a verification of a section 1797.201 city or fire district, and at what type of prehospital EMS service, that is submitted to EMSA for approval
- A local Emergency Medical Care Committee should be required at the local EMS level to ensure meaningful involvement by EMS system participants (*Vision Process and State EMS Plan 1.1*)



Organization of EMS Coordination in California



Local EMS Agency Role

- Health and Safety Code 1797.204
- The local EMS agency shall plan, implement, and evaluate an emergency medical services system, in accordance with the provisions of this part, consisting of an organized pattern of readiness and response services based on public and private agreements and operational procedures.



Organization of EMS Coordination in California

- California's "Two Tiered System of Regulation" — County and State
- EMSA's Role
- Local EMS Agency Role
- Role of Medical Control
- Role of EMS Providers

...the role of the state agency, the local agency shall not be diminished or reduced. The local agency shall be responsible for the day-to-day operations of the system, including the recruitment, training, and supervision of personnel, the procurement of equipment, and the maintenance of the system. The local agency shall also be responsible for the coordination of the system with other emergency services, including fire and police. The local agency shall also be responsible for the development and implementation of policies and procedures for the system. The local agency shall also be responsible for the evaluation and improvement of the system. The local agency shall also be responsible for the coordination of the system with other emergency services, including fire and police. The local agency shall also be responsible for the development and implementation of policies and procedures for the system. The local agency shall also be responsible for the evaluation and improvement of the system.



Role of Medical Control

- Overarching concept in the regulatory scheme
- 1798. (a) The medical direction and management of an emergency medical services system shall be under the medical control of the medical director of the local EMS agency. This medical control shall be maintained in accordance with standards for medical control established by the authority.
- (b) Medical control shall be within an EMS system which complies with the minimum standards adopted by the authority, and which is established and implemented by the local EMS agency.
- 1797.220. The local EMS agency, using state minimum standards, shall establish policies and procedures approved by the medical director of the local EMS agency to assure medical control of the EMS system. The policies and procedures approved by the medical director may require basic life support emergency medical transportation services to meet any medical control requirements including dispatch, patient destination policies, patient care guidelines, and quality assurance requirements.



State Role

- Responsible for the coordination and integration of all state activities concerning emergency medical services
- Create Regulations and standards
- Planning and implementation guidelines (HS 1797.103)
- Review and Approval of local EMS plans



Role of EMS Providers

- Critical partners in the EMS infrastructure
- Have significant investment in the provision of EMS
- Not regulatory agencies
- Must have meaningful input into the planning and implementation of the EMS System
- Should be part of the advisory committee structure (ie EMCC, or equivalent)



HEALTH AND SAFETY CODE 1797.201 – WHAT DOES IT MEAN in 2010?



Observations on Integration

- Request of city or fire district
- Contracted for or Provided
- June 1, 1980 is the operative date for evaluation
- County shall enter into an agreement
- Prehospital EMS is not defined (but probably meant either ambulance and/or paramedic service)
- "Prehospital" EMS is not the EMS System
- Cities and fire districts shall continue what they were doing unless a public hearing takes place
- Medical control is still required



HEALTH AND SAFETY CODE 1797.201 – WHAT DOES IT MEAN in 2010?

- Almost 30 years after the implementation of the statute, the issue of the rights or obligations of cities or fire districts under section 1797.201 seems moot given the widespread integration of EMS services throughout California. Those services that had ALS, LALS, or ambulance services in 1980, and wished to continue them, have generally retained that type of service.
- The *San Bernardino* decision notes "As we have seen, the EMS Act aims to achieve integration and coordination among various government agencies and EMS providers, and the Legislature likely contemplated that 1797.201 cities and fire districts would eventually be integrated into local EMS agencies."



201 is "Transitional"

- Transitional
- Agreement was goal
- What was happening in 1980
- May Continue
- What? Ambulance Service, ALS, LALS
- However, no statutory deadline (*San Bernardino*)

tion of emergency services, or else lose the right to operate any emergency medical services at all. In other words, a request by cities and fire districts to enter an EMS agreement with counties is a precondition for the continuing exercise of their control over such services. While we agree that section 1797.201 is "transitional" in the sense that there is a manifest legislative expectation that cities and counties will eventually come to an agreement as to the provision of emergency medical services, we disagree that the statute can be construed to terminate a city or fire district's right to administer such services if it fails to negotiate an agreement with a county by a certain date.



Health and Safety Code 1797.201

- Upon the request of a city or fire district that contracted for or provided, as of June 1, 1980, prehospital emergency medical services, a county shall enter into a written agreement with the city or fire district regarding the provision of prehospital emergency medical services for that city or fire district.
- Until such time that an agreement is reached, prehospital emergency medical services shall be continued at not less than the existing level, and the administration of prehospital EMS by cities and fire districts presently providing such services shall be retained by those cities and fire districts, except the level of prehospital EMS may be reduced where the city council, or the governing body of a fire district, pursuant to a public hearing, determines that the reduction is necessary.
- Notwithstanding any provision of this section the provisions of Chapter 5 (commencing with Section 1798) shall apply.



Is 201 a Symptom or Cause?

- 30 Years later, almost everyone in the system already have defined roles
- 201 not generally a "Cause" of conflict
- Usually, a "Symptom" or legal rationale when disagreement occurs
- Fear and paranoia about "rogue LEMSAs"
- Feeling of lack of EMS system participation

Observation from the San Bernardino Decision

- “Only when a county or local EMS agency attempts to assert its authority in a manner that is contrary to the perceived interests of cities and fire districts would these latter agencies have the occasion to decide whether they wish to formally assert against a county their section 1797.201 rights.”

2 Types of “Prehospital EMS” were probably envisioned to be continued

- May continue to provide PARAMEDIC services (if they were doing it in 1980 under the Wedworth-Townsend Act)
- May continue to provide AMBULANCE service (if they were doing it in 1980)

64 Cal. Rep. 2d 814, 442 P.2d 1001 (1969) (quoting the choice of the word “retained” implies that cities and fire districts are able to exercise the administrative control which they had already exercised as of June 1, 1969, for they can “retain” only those administrative powers that they already possessed. [1969] Thus, if the City controlled a certain domain of prehospital emergency medical services, such as paramedic services, they under section 1797.201 could retain administrative control of those services. But since the City did not exercise administrative control over ambulance services as of 1969, leaving that to the County and the County-authorized provider, that the City cannot be said to “retain” administration of that function.

.201 was part of EMS System Act

- 201 was to enable and reassure cities and fire districts to be able to continue what they were doing in 1980
- Provide for mechanism (through an agreement) to be part of an EMS system
- Provided (but did not set the deadline) for orderly integration into the organized EMS system by existing cities and fire districts.
- Was “never” envisioned by the EMS Act as an acceptable time in the creation of 201?
- If not now...when?

No Independent Verification of .201

- Who determines? How are 201 rights determined?
- No one is granted that responsibility
- Does City and Fire District self-determine?
- Do LEMSAs as part of the EMS plan?
- What about EMSA?
- Obviously benefit to the EMS System if all players clearly understand the relationships
- So is an explicit determination required to move forward?

“Pre-agreement” period

Thus, all parties agree that in the period before entering an agreement, section 1797.201 title and fire districts may retain administration of their own EMS services, section 1797.173 notwithstanding. Where the County acts in the inappropriate assertion that the “pre-agreement” period contemplated by section 1797.201 is of limited duration.

It is true that the phrase “[t]hat such time that an agreement is reached” does indeed suggest agreement on the part of the legislative drafters that “[1925] agreements between cities and counties be reached, and that this “pre-agreement” period would be temporary. As we have seen, the EMS Act aims to achieve integration and coordination among various government agencies and EMS providers, and the Legislature clearly contemplated that section 1797.201 cities and fire districts would eventually be integrated into local EMS agencies. For the statute makes clear that these cities and fire districts must “[1797.201] be integrated through voluntary agreement, and there is no statutory deadline imposed for reaching or reaching such agreement.

Thus, the City in this case retains its right to administer prehospital EMS within its borders. This administrative control, however, is subject to significant constraints. It is to these constraints that we now turn our attention.

.201 Criteria in 2010

- Be a City or Fire District that existed on June 1, 1980.
- Be the same entity that exists on the date of the “.201” eligibility evaluation.
- Provided or contracted (directly) for service on June 1, 1980.
- At one of these types: ALS, LALS, or emergency ambulance services.
- Operate continuously in the same type of service.
- Have not yet entered into a written agreement that intended or contemplated “participation, integration, or coordination” into the local EMS system, for the type they were providing in 1980, including, but not be limited to, ALS, LALS, or emergency ambulance services.



.201 and the "Agreement"

- Preservation of the status quo
- "Agreement" for participation in EMS system
- Once city or fire district integrated into system, 201 provisions stop
- Cannot reclaim 201 by cancelling agreement (*Apple Valley*)
- Cannot achieve the benefits of EMS System without agreement (ie 224)



Type and Level of Service

- Why Important?
- Forms the basis for "changes" to participation in System

Proposing to add prehospital services, an applicant should first seek to avoid the authority over the city provided by Section 1797.201 of the County-Initiated pre-1980 local ordinance, and by avoiding exclusive operation of ambulance services. We conclude, contrary to the Court of Appeals' ruling that City cannot expand into pre-1980 services, it did not preclude as of June 1, 1980.

The starting point of any analysis of the expansion issue is the statute language at section 1797.201 itself. As discussed, the language makes clear that cities and fire districts may only continue to provide emergency medical services if they have done so as of June 1, 1980.

City automatically equates "the existing level" of services referred to in section 1797.201 with an existing "service area" including territory under County jurisdiction. Given its usual ordinary import (County Contract with City of Redwood High School District, supra, 208 Cal. App. 4th 832 at p. 825, citations omitted) the word "level" in this context [1797.201] obviously refers to such matter as the quantity of available staff, vehicles, equipment, etc., and or to the type and character of available EMS services as continuing basic, advanced, or limited advanced life support (see § 1797.60, 1797.62, 1797.62.1, not to a particular geographical area in which such services are offered).



PREHOSPITAL EMS--TYPE AND LEVEL OF SERVICE



Type of Service

- Emergency Ambulance Service, ALS, or LALS defined in HS 1797.85
- Cannot go from Non-Transport to Transport (Court)
- Cannot go from EMT to Paramedic
 - Change in Type of Service (Court)
 - Medical Control (1797.220 and 1798)
 - 1797.178 (ALS and LALS)
 - Possible with LEMSA approval & Agreement



PREHOSPITAL EMS--TYPE AND LEVEL OF SERVICE

- Prehospital emergency medical services, as used in HS 1797.201 in 1980, likely contemplated two types of discrete and severable service levels that were able to be continued at not less than the existing level: Paramedic services and ambulance services.
- The *Petaluma* decision began to define the "types" of emergency medical services as "BLS, LALS, (and) ALS"
- The *Petaluma* decision, and clarified later by the *San Bernardino* decision, identifies that "levels" of services refer "to such matters as the quantity of available staff, vehicles, equipment, etc."



Level of Service

- Locations, Quantity, Operations (*Petaluma*)
- Can increase quantity of personnel, change locations of units, make operational changes
- Internal Dispatch Policies
- Can go from Emergency Medical Responder to EMT because it is within the general definition of basic life support type

Continuation of Prehospital EMS from 1980

- Paramedic → Paramedic
- LALS (EMT-II) → LALS (EMT-II)
- Ambulance Transport → Ambulance Transport
- Basic Life Support → Basic Life Support
 - Does this mean that any city or fire district providing advanced first aid in 1980 is a .201 entity?
 - An agreement would be required if LEMSA agrees to a new type of EMS service (ie Paramedic)

Dispatch?

- Not addressed or contemplated in 201 as a separate "type" of Prehospital EMS
- Subject to Medical Control
 - The San Bernardino decision states that the EMS act views dispatch as a coordinative function of the local EMS agencies that have medical control related to "affecting the speed and effectiveness of the response to medical emergencies"
- Medical Control
 - Medical dispatch, interrogation and pre-arrival instructions
 - When does Medical Control start? Upon first contact with caller who declares a "medical" emergency?

Dispatch is Important Piece of This Discussion

- Key area is Stockton/San Joaquin County
- Now under litigation
- Centers around where medical control begins and role of EMS System coordination

AMBULANCE ZONE EXCLUSIVITY

See: 1999/05 Cal. App. 4th 954, 995 [41] Cal. Rptr. 2d 284/1 The language of section 1797.220 makes clear that the Legislature considered "medical control" in fairly expansive terms encompassing matters directly related to regulating the quality of emergency medical services, including policies and procedures governing dispatch and patient care.

In short, the Patient Management Protocol at issue in this case is consistent with section 1797.6. The inclusion of this protocol and the Dispatch Protocol is also confirmed by section 1797.220 and by the overriding purpose of the EMS Act to affect, using all state of emergency and [922] authority, the provision of emergency medical services. We therefore hold these protocols are not unlawful, and the City is obliged under section 1797.201, to follow them.

in its letter to Senator Garamendi preceding the inclusion of section 1797.201, quoted above, and its mention of "dispatch" appears to refer to mutual dispatch policies. The protocols in question, however, pertain to the spread of such EMS providers other than the City will be dispatched to the scene of an emergency, and how the various EMS providers will interact at the emergency scene. As such, these protocols are consistent with the coordinating [927] function the EMS Act envisions for local EMS agencies. Moreover, both of these protocols are highly relevant to the provision of emergency medical care, affecting the speed and effectiveness of the response to medical emergencies. In light of the language of section 1797.220 and the overall purpose of the EMS Act, we conclude that the issuance of the two protocols is within the scope of the local EMS agency's ability to exercise medical control over the EMS system.

AMBULANCE ZONE EXCLUSIVITY

- HS Code 1797.6, 1797.85, 1797.224
- LEMSA's may create exclusive ambulance areas as part of local EMS plan
- Yes, EMSA must approve the creation of EOAs as part of the local EMS plan
- Yes, there are financial incentives to ensure EMS in both urban and rural areas
- Yes, the County has financial responsibility under W&I Code 17000



Health and Safety Code 1797.6

(a) It is the policy of the State of California to ensure the provision of effective and efficient emergency medical care. The Legislature finds and declares that achieving this policy has been hindered by the confusion and concern in the 58 counties resulting from the United States Supreme Court's holding in *Community Communications Company, Inc. v. City of Boulder, Colorado*, 455 U.S. 40, 70 L. Ed.2d 810, 102 S. Ct. 835, regarding local governmental liability under federal antitrust laws.

(b) It is the intent of the Legislature in enacting this section and Sections 1797.85 and 1797.224 to prescribe and exercise the degree of state direction and supervision over emergency medical services as will provide for state action immunity under federal antitrust laws for activities undertaken by local governmental entities in carrying out their prescribed functions under this division.



Manner and Scope

- Refers to the “marketplace distribution (including economic distribution)”, for a given geographical area or subarea, since 1981 for that type of service (and scope of operations).
- Evaluation is at the Area or subarea (1797.85) rather than the provider.
- May continue operations if no change to “manner and scope”



Health and Safety Code 1797.85

"Exclusive operating area" means an EMS area or subarea defined by the emergency medical services plan for which a local EMS agency, upon the recommendation of a county, restricts operations to one or more emergency ambulance services or providers of limited advanced life support or advanced life support.



3 Options for Delivery of Transport Services in an Areas or Subareas

- Non-Exclusive
- Exclusive, Continued without a Competitive Process (“Grandfathered”)
- Exclusive, with a Competitive Process



Health and Safety Code 1797.224

A local EMS agency may create one or more exclusive operating areas in the development of a local plan, if a competitive process is utilized to select the provider or providers of the services pursuant to the plan. No competitive process is required if the local EMS agency develops or implements a local plan that continues the use of existing providers operating within a local EMS area in the manner and scope in which the services have been provided without interruption since January 1, 1981. A local EMS agency which elects to create one or more exclusive operating areas in the development of a local plan shall develop and submit for approval to the authority, as part of the local EMS plan, its competitive process for selecting providers and determining the scope of their operations. This plan shall include provisions for a competitive process held at periodic intervals. Nothing in this section supersedes Section 1797.201.



Emergency Ambulance Areas



section 1797.201 permits cities and fire districts to retain control of only those services that they had provided or contracted for as of June 1, 1980. a city or fire district that had only a concurrent jurisdiction with the county regarding the provision of emergency medical services may not expand its control by excluding the county provider. Furthermore, as we have seen, section 1797.224 gives the power to grant exclusive operating areas only to counties [1934] and local EMS agencies, not to cities or fire districts. Thus, while cities and fire districts would be able to continue to administer their own emergency medical services operations, they would not be able to bar those that had historically provided such services under a county's or local EMS agency's auspices.

We hold therefore that the City, absent the County's consent, may not expand into ambulance services it did not provide as of June 1, 1980, nor exclude County, the county provider. n4

OBSERVATIONS AND CONSIDERATIONS

HS 1797.224 (1991); (1997 Cal. LEMS 76)

Statement of one of the City's positions. Rather, the reference to section 1797.201 is made, presumably, with the intent to state that a local EMS agency's ability to create EOA's may not supplant this ability of fire districts and fire districts to control EMS operations over 24-hour, day-and-night emergency coverage. Nothing in this reference to section 1797.201 suggests that either a fire district can be allowed to exercise fire services, or to assume that some exclusive operating areas.

The holder of this copy of section 1797.201 is confused by section 1797.224 which provides, in part, that local EMS agencies are not permitted to operate in any area in the jurisdiction of a fire district (EMSA) that is not a fire district. Section 1797.224 provides that the local EMS agencies, and cities and fire districts, operating in emergency operating areas (EOA's) are permitted to provide emergency medical services in the jurisdiction of a fire district, but not to provide such services in the jurisdiction of a fire district. The holder of this copy of section 1797.201 is confused by section 1797.224 which provides, in part, that local EMS agencies are not permitted to operate in any area in the jurisdiction of a fire district (EMSA) that is not a fire district. Section 1797.224 provides that the local EMS agencies, and cities and fire districts, operating in emergency operating areas (EOA's) are permitted to provide emergency medical services in the jurisdiction of a fire district, but not to provide such services in the jurisdiction of a fire district.

It is true that the ability to create EOA's in section 1797.221 is made expressly subject to 1797.201, and the effect would not permit a county or EMS agency to unilaterally displace a city or fire district's authority to operate emergency medical services. But as set out in section 1797.224 permits a local EMS agency from a geographic EOA within the territory of a city or fire district to operate provide, if the city or fire district ceases to provide a certain type of emergency medical service. And nothing in either section 1797.201 or section 1797.224 suggests that once a city or fire district has provided emergency medical services in the jurisdiction [1797.21] [1797.22] either permitted to an EOA, to provide such services, it has the right to nullify the EOA by assuming control of these operations.

Now we persuaded by the Director's argument that, unlike section 1797.224, section 1797.201 does not explicitly state that the requirement that [1797.21] a city or fire district continue EMS until reaching an agreement with the county means "continue without interruption." Section 1797.224 makes clear that a city or fire district may provide emergency medical services without interruption since January 1, 1980, can be assigned exclusive operating areas without going through a competitive bidding process. This statute, which three years after section 1797.201 went into effect, has a significant and purposeful effect.

- ## OBSERVATIONS AND CONSIDERATIONS
- Agreements should be reached between a local EMS agency and an eligible city or fire district under 1797.201, for those areas that have not already done so, that specify and clearly articulate the type of service and role in the EMS system.
 - Local EMS plans should include a review and verification of what constitutes a section 1797.201 city or fire district, and what type of prehospital EMS service that entity provides, as part of an EMS plan that is submitted to EMSA for approval.
 - A local Emergency Medical Care Committee should be required at the local EMS level to ensure meaningful involvement by EMS system participants.

- ## How does 201 relate to 224?
- 201 is jurisdictionally determined and limited, 224 is geographically determined
 - HS 1797.224 is the only section that confers ambulance zone exclusivity
 - .201 doesn't confer exclusivity
 - But it is likely that a .201 city or fire district may qualify under .224, if there no change in manner and scope, and LEMSA creates an EOA

I am looking forward to the panel discussions this afternoon . . .

Thank you!