



All About Florida

July 14, 2008

Lisa M. Walker, Government Analyst
Bureau of Emergency Medical Services
Florida Department of Health
4052 Bald Cypress Way, Bin C-18
Tallahassee, Florida 32399-1738

**Re: July 14, 2008 Certificate of Public Convenience and Necessity
(COPCN) Public Rule Hearing**

Dear Ms. Walker:

The Florida Association of Counties (FAC) would first like to thank the Department of Health (Department) for providing the opportunity to comment on the proposed Certificate of Public Convenience and Necessity (COPCN) rule change. I am submitting this letter on behalf of FAC and the 67 counties in the state of Florida.

Section 401.25, F.S., contains the requirements for licensure as a basic life support (BLS) or advanced life support (ALS) service. Section 401.25(2)(d), F.S., provides that the applicant must obtain a COPCN from each county in which the applicant will operate. The Department's rules regarding COPCN that were effective for the past several years have served the counties well. However, we understand the need to address the Joint Administrative Procedures Committee objection to the existing COPCN rule.

We appreciate the work that the Department and the EMS community has done to develop the proposed modifications to the COPCN rule; however, FAC has several concerns. Specifically, our counties are concerned with the proposed rule as it pertains to mutual aid agreements, air ambulance requirements, the lack of a delayed effective date, and ambiguous language that may encroach on a county's authority to designate the type of service and geographic area in which an EMS provider can deliver services.

Mutual Aid Agreement Clarification

Mutual aid agreements are defined in Section 401.23(16), F.S., as "a written agreement between two or more entities whereby the signing parties agree to lend aid to one another under conditions specified in the agreement and as sanctioned by the governing body of each affected county." Prior drafts of the COPCN rule clarified that mutual aid agreements must be written and must be sanctioned by the governing body of each affected county. FAC believes that this expressed statement in the proposed rule would be very helpful as we understand that such agreements have been interpreted differently throughout the state and often have not met the statutory requirement of securing authorization from the governing body. FAC

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requests that the Department clarifies the nature of mutual aid agreements, perhaps by further defining the term in rule. FAC further requests that the definition expressly clarifies that all mutual aid agreements must be executed according to statute, meaning pursuant to a written agreement that is sanctioned by the governing body of each affected county.

Air Ambulance Issues

The COPCN requirements for air ambulances are ambiguous and confusing. According to the statute, air ambulances are treated differently depending on whether the aircraft is rotary-winged or fixed, and whether the air ambulance service is used in conjunction with another emergency medical service. Specifically, Section 401.251(4)(b), F.S., provides:

“If the air ambulance service uses rotary-winged aircraft in conjunction with another emergency medical service, the air ambulance service must meet the provisions of this section and must meet separate basic life support and advanced life support requirements unique to air ambulance operations as is required by rules of the department. Such service is subject to the provisions of s. 401.25 relating to a certificate of public convenience and necessity; however, a service may operate in any county under the terms of a mutual aid agreement.”

Conversely, the rule forms do not address rotary-winged aircraft; rather, the air ambulance application forms speak to prehospital transports by air ambulances generally, regardless of wing type. Additionally, the noticed rule in 64E-20321(1) requires a COPCN for “any licensee” that provides ALS prehospital or ALS interfacility transfer services. This would imply that every air ambulance that provides these services would be required to have a COPCN. The noticed rule further provides that the subset of air ambulance providers that use a rotary winged aircraft in conjunction with another licensee are allowed to operate in a county under the terms of a mutual aid agreement without complying with certain mutual aid agreement conditions provided in (3). This would imply that only the air ambulances that are rotary winged aircraft that operate in conjunction with another licensee, whether prehospital or interfacility, may operate under a mutual aid agreement. Accordingly, other air ambulance providers may not operate under a mutual aid agreement. Relative to the noticed rule, unlike ground ambulance for which the noticed rule includes expressed provisions, COPCN requirements for air ambulances are not clarified in either the substantive air ambulance section of the rules or the incorporated forms.

Furthermore, the United States Department of Transportation issued an opinion to the Department stating that Florida is preempted by federal law from regulating air carriers that provide air transportation.

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Our concern is that counties could easily have trouble determining whether or under what circumstances they need to grant a COPCN in order to provide for EMS services. This goes more to the scenario where the county wants to allow a provider to provide services within the county, and needs to know whether to issue a COPCN, a mutual aid agreement, or issue both or neither.

Effective Date

The proposed rule revisions may require that counties establish and/or revise their procedures and/or ordinances for granting COPCNs and mutual aid agreements. Particularly, any revisions of existing ordinances will require public hearings. FAC requests that the Department delay the effective date of the rule by at least six months to give counties time to implement the necessary changes.

Clarification of EMS Services Provided and Geographic Service Areas

Under paragraph (2) of 64E-2.0321 of the proposed rule, it seems to suggest that a licensee with a COPCN is authorized to provide a full array of EMS services within an entire county regardless of the particular restrictions of the COPCN. Ambulance treatment and transport, whether emergency or non-emergency, transport or non-transport, prehospital or interfacility, is determined by the county in which the EMS provider operates. The county decides the type of service and geographic area in which EMS can deliver services. We feel that the language needs to clearly state that the licensee shall be authorized to provide services within that county "as authorized by the COPCN".

We realize that this is a complex issue with many complicating factors and we appreciate the work that has taken place thus far. FAC respectfully requests that the Department continue the rule development process in respect to the aforementioned issues. Again, thank you for the opportunity to provide comments and we look forward to working with the Department to establish a clear and concise rule.

Sincerely,



John Wayne Smith
Legislative Director

JWS/HW/rb

cc: Commissioner Rodney Long (Alachua), FAC President-Elect
Commissioner Ilene Lieberman (Broward), FAC First Vice President
Commissioner Doug Smith (Martin), FAC Second Vice President

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Commissioner Teresa Jacobs (Orange), FAC Immediate Past President
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