Attachment D

EMSAAC
EMERGENCY MEDICAL SERVICES ADMINISTRATORS' ASSOCIATION OF CALIFORNIA

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Coastal Valleys
Contra Costa
El Dorado
Imperial
Inland Counties
Kern
Los Angeles
Marin
Merced
Monterey
Mountain-Valley
Napa
North Coast
Northern California
Orange
Riverside
Sacramento
San Benito
San Diego
San Francisco
San Joaquin
San Luis Obispo
San Mateo
Santa Barbara
Santa Clara
Santa Cruz
Sierra-Sac Valley
Solano
Stanislaus
Tuolumne
Ventura
Yolo

info@emsaac.org
www.emsaac.org

April 9, 2024

Assmeblymember Mia Bonta, Chair
Assembly Health Committee
1020 N Street, Suite 390
Sacramento, CA 95814

RE: AB 2973 (Hart) Emergency services – OPPOSE

Dear Assemblymember Bonta,

The Emergency Medical Services Administrators Association of California (EMSAAC), representing the interests of all 34 California Local EMS Agencies (LEMSAs) covering all 58 California counties, write to express our opposition to AB 2973 (Hart). The bill would significantly reduce the medical control authority of the LEMSA medical director and allow a county to establish a de facto monopoly on ambulance services, independent of the the fair and impartial statutory process that has been in place since the enactment of the EMS Act. Alternatively, EMSAAC is supportive of the work that the Emergency Medical Services Authority (EMSA) has recently undertaken to promulgate clear and coolaborative regulations to address these important EMS system design matters (specifically, CCR, Title 22, Chapter 1 – previously referred to as 'Chapter 13' regulations).

AB 2973 places important, medically related, design aspects of local EMS systems under the sole purview of the elected Board of Supervisors, who have minimal or no experience in the practice of EMS. To ensure that local EMS policy flows primarily from professional medical judgment, rather than external or political factors, the Legislature mandated that LEMSAs have a medical director, that the medical director and assistant medical directors be licensed physicians, and that the medical director have "substantial experience in the practice of emergency medicine." (Health and Safety code 1797.202, subds. (a) & (b).). Further, current statute provides that "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."

AB 2973, as proposed, allows a county Board of Supervisors to establish a de facto monopoly on ambulance services without the input of the LEMSA medical director or the strict oversight and approval by the EMSA that would otherwise be mandated by current law to ensure that EMS services provided are equitable and of high quality. This would be true even if a county were allowed to restrict ambulance operations to a private ambulance provider that was not required to participate in an EMSA reviewed/approved and LEMSA managed competitive procurement process. It directly conflicts with the current processes required to establish an exclusive operating area pursuant to HSC 1797.224.

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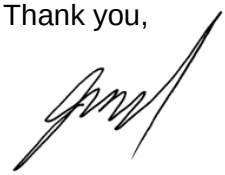
The Emegency Services Act outlines the important roles and responsibilities of the LEMSA in the design, implementation, evaluation, and management of local EMS systems, including the contracting of ambulance providers. According to the California Attorney General's recent Amicus Brief related to these matters:

> "And, under the EMS Act, such oversight plays a vital role in the legislative balancing struck between the administrative need for exclusive providers and the risk that exclusivity poses for patients. While exclusivity can play an important role in the administration of a local EMS plan (County of San Bernardino, supra, 15 Cal.4th at pp. 931-932), it remains the case that local monopoly of emergency services can risk numerous harms to patients. The absence of competition may inevitably lead to higher costs for emergency services, as well as operational inefficiencies that ultimately diminish the quality of care and the equitable access to care. (See United States v. Syufy Enterprises (9th Cir. 1990) 903 F.2d 659, 669 ["Fostering an environment where businesses fight it out using the weapon of efficiency and consumer goodwill is what the antitrust laws are meant to champion."]; see also Berkey Photo, Inc. v. Eastman Kodak Co. (2d Cir. 1979) 603 F.2d 263, 294 [excessive prices, maintained though a monopolist's control of the market, constitute one of the primary evils addressed by antitrust laws].) Of course, it may be true in most instances that the administrative need for an EOA will outweigh these concerns, but EMSA oversight and approval of such arrangements, as the Legislature mandated in section 1797.224, serves to guarantee an independent evaluation of these considerations."

EMSAAC remains opposed to AB 2973, as recently amended as it would still place unnecessary and inappropriate control of the EMS system in the hands of elected officials with limited medical experience and could create structural imbalances, due to lack of a competitive procurement process. The efforts of this bill are also in direct conflict they work that the EMSA has initiated to promulgate regulations to address these important EMS system design matters.

Please reach out to EMSAAC at governmentaffairs@emsaac.org and our lobbyist Darby Kernan at dkernan@mosaicsol.com for any questions or if you would like to discuss our concerns.

Thank you,



John Poland
EMSAAC Legislative Chair

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Attachment D

URBAN COUNTIES
OF CALIFORNIA

April 2, 2024

The Honorable Freddie Rodriguez
Chair, Assembly Committee on Emergency Management
1021 O Street, Room 5140
Sacramento, CA 95814

RE: AB 2973 (Hart): Emergency Services
As Amended March 21, 2024 — CONCERNS
Set for Hearing April 8, 2024, in Assembly Emergency Management Committee

Dear Assemblymember Rodriguez:

On behalf of the Urban Counties of California (UCC), I am writing with respectful concerns to Assembly Bill 2973 (Hart).

The March 21st amendments make several consequential changes to the Emergency Medical Services (EMS) system. First, the bill would place the local emergency medical services agency (LEMSA) medical director and their staff directly under the supervision of the county board of supervisors outside of the existing emergency medical services (EMS) agency structure. Additionally, AB 2973 would require Boards of Supervisors to engage in a competitive process for selecting providers for exclusive operating areas (EOAs) and then exempts contracts with county, city or special district agencies from being exclusive operating areas, in effect exempting those contracts from a competitive process. Finally, the amendments require the Board of Supervisors to review and approve EMS plans.

AB 2973 raises significant concerns with how counties currently select providers for exclusive operating areas, how competitive processes for selecting providers should be structured, and what elements Boards of Supervisors are required to approve in the EMS plan. AB 2973 solely focuses on supervision of the EMS Agency and ambulance services but requires the Board to approve EMS Plans, staying silent on many other LEMSA core functions. It is unclear whether AB 2973 is intended to affect all LEMSA core functions, including disaster response or the designation of Specialty Care Centers. We have concerns that the regional and multi-jurisdictional work being done in urban counties could be undermined by the bill.

AB 2973 seeks to overturn an extensive statutory and case law record that has repeatedly affirmed county responsibility for the administration of emergency medical services and with that, the flexibility to design systems to equitably serve residents throughout their jurisdiction. The measure will result in more litigation and fragmentation of the EMS system.

AB 2973 will have significant consequences on the delivery of emergency medical services. Urban counties strongly urge that further conversation about exclusive operating areas and how competitive processes for selecting providers should be structured occur before the bill proceeds. While AB 2973 may be

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workable in smaller counties, urban counties typically rely on a mix of public and private sector ambulance providers for EMS services. What is the policy rationale for exempting some EMS providers from competitive selection processes and how do urban counties communicate that to the public?

For the reasons outlined above, UCC has significant concerns with AB 2973. Please do not hesitate to contact me for additional information at 916-441-6222 or bgiroux@lhgkgr.com.

Sincerely,

Bob Giroux
Legislative Advocate

cc: The Honorable Gregg Hart, Member, California State Assembly
Members and Consultants, Assembly Committee on Emergency Management

Attachment D

April 4, 2024

Assemblymember Freddie Rodriguez, Chair
Assembly Emergency Management Committee
1020 N Street, Room 360B
Sacramento, CA 95814

Re: Oppose AB 2973

Dear Assembly Member Rodriguez,

On behalf of 911 Ambulance Provider's Medi-Cal Alliance (Alliance) I am writing to register our OPPOSED position to AB 2973. Despite the author's claims, this bill seeks to completely undermine the California EMS Act by eliminating the competitive process for exclusive ambulance contracts. Specifically, the author is seeking to eliminate competitive bidding for exclusive ambulance contracts so that California fire agencies and local governments can access billions in Medicaid funding by using questionable cost reports to generate reimbursement rates nine times higher than what private providers receive.

What the author has failed to disclose in the bill's fact sheet is that the Assemblymember's district fire agency, Santa Barbara County Fire Department (SBCFD), was soundly defeated by a private provider in a competitive bidding process initiated by the County LEMSA, and in accordance with the California EMS Act, for an exclusive ambulance contract. SBCFD lost despite having a nonprofit tax-exempt status, and the financial advantage of what the Alliance believes is an anti-competitive and illegal Medicaid reimbursement structure that generates Medicaid reimbursement above actual cost without taxpayer approval and outside the guidelines of the State Plan Amendment declaration submitted to CMS.

Ultimately, the independent review committee of medical and EMS professionals determined that the services SBFD offered in its bid were inferior to the competing incumbent private provider, and not in the best interests of the community or patients as is required by the California EMS Act. This decision was further solidified when two subsequent appeals initiated by SBCFD determined the selection of the private provider was valid and in the best interests of patient care.

However, the Santa Barbara County Board of Supervisors, facing political pressure to access profits from Medicaid funds, overruled their own LEMSA and the independent committee, and issued the exclusive

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contract to their own County fire department via a county permit in violation of the EMS Act. This resulted in the private provider filing suit and securing an injunction against the County's actions. The California Attorney General filed an amicus brief in support of the private provider's position. The amicus brief is attached to this letter.

Despite the author's claims that this legislation clarifies ambiguity in existing law, the revisions AB 2973 makes to Health & Safety Code 1797.234(b) and (c), sidesteps well-established public contracting requirements and completely undermines the intent of the EMS Act, which is to ensure political pressure does not override equitable access to emergency services and quality patient care. These changes are also contrary to the holding in County of Butte v. Emergency Medical Services Authority (2010) 187 Cal.App.4th 1175, which holds that if the county chooses to delegate its responsibility to provide ambulance services to a LEMSA, it cannot reserve some of the authority for itself. This case further states that the EMS Act authorizes a county to designate a single LEMSA, not two that will share statutory power and duties of the EMS Act.

Moreover, the author's position that AB 2973 is declaratory of existing law is completely contradicted by decades of case law and the State's own Attorney General. In its recent amicus brief filed in support of the private provider challenging Santa Barbara County's illegal actions, the Attorney General reaffirmed the following:

"Prior to passage of the EMS Act, the legal landscape for delivery of prehospital emergency services was "haphazard." (County of San Bernardino v. City of San Bernardino (1997) 15 Cal.4th 909, 914 (County of San Bernardino).) State law required no coordination or integration of operation for EMS, either between neighboring counties or between the State and counties. (Ibid.) The EMS Act brought order to the overall system, creating a two-tiered scheme of regulation and governance touching on "virtually every aspect of prehospital emergency medical services." (Id. at p. 915.)

"...the County's conduct, in canceling its competitive proposal process and exercising unilateral discretion to award a single operating permit to its own fire department, raises serious concerns that cut at the intended functionality and purpose of the EMS Act."

..." in exercising this substantive authority under the permitting ordinance, the County, by awarding a single operating permit, may have created a de facto monopoly on ambulance services without the

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911 AMBULANCE PROVIDER'S ALLIANCE

PRESIDENT
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SECRETARY
TODD VALERI
AMERICAN AMBULANCE

TREASURER
TOM WAGNER
AMERICAN MEDICAL RESPONSE

DIRECTORS
TROY HAGEN
CARE AMBULANCE SERVICE

strict oversight and approval by EMSA that would otherwise be mandated by law to ensure that services provided are equitable and of high quality. These alleged facts, if true, would undercut the careful balancing of interests struck in the EMS Act and, in doing so, weaken the law's patient-focused protections that ensure a statewide quality and equitable access of EMS care."

..." The permitting scheme at issue here, at least as allegedly applied in this case, stands in conflict with this critical component of the EMS Act. Though the County's ordinance purported to establish a non-exclusive system where multiple providers could obtain authorization to operate ambulance services, in the end, County Fire was the only provider issued a permit, creating a de facto EOA for emergency transportation in Santa Barbara County. This result, because it occurred under local regulation that, in theory, allowed for more than one provider to obtain a permit, falls outside of section 1797.224's requirement of state-level review and approval.

"And, under the EMS Act, such oversight plays a vital role in the legislative balancing struck between the administrative need for exclusive providers and the risk that exclusivity poses for patients. While exclusivity can play an important role in the administration of a local EMS plan (County of San Bernardino, supra, 15 Cal.4th at pp. 931-932), it remains the case that local monopoly of emergency services can risk numerous harms to patients. The absence of competition may inevitably lead to higher costs for emergency services, as well as operational inefficiencies that ultimately diminish the quality of care and the equitable access to care. (See United States v. Syufy Enterprises (9th Cir. 1990) 903 F.2d 659, 669 ["Fostering an environment where businesses fight it out using the weapon of efficiency and consumer goodwill is what the antitrust laws are meant to champion."]; see also Berkey Photo, Inc. v. Eastman Kodak Co. (2d Cir. 1979) 603 F.2d 263, 294 [excessive prices, maintained though a monopolist's control of the market, constitute one of the primary evils addressed by antitrust laws].)

There is no ambiguity or uncertainty in the decades of case law that have clearly established the requirements of the EMS Act, or the competitive requirements required when issuing exclusivity for ambulance services. Ultimately, the anti-competitive reimbursement structure that the state has established between public and private ambulance providers has destabilized the market and initiated a gold rush by local governments seeking to capitalize on profits from the Medicaid program at the

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detriment to patient care, equitable service, and the 911 ambulance business owners who have served Californian for over 50 years.

AB 2973 is just an attempt to eliminate the competitive process designed to protect patients from unnecessary charges and ensure equitable care. The author's local fire department lost in a competitive bid reviewed by an independent committee, they appealed the loss twice and lost twice, the County attempted to throw out the competitive process and just give their fire department an exclusive ambulance contract, and the courts and the Attorney General said that is illegal.

This bill does not clarify uncertainty or ambiguity in the law, it undermines the EMS Act. For these reasons, stated above, the Alliance must appose AB 2973.

Please contact Jonathan Feldman should you wish to discuss further at 916-341-0808.

Sincerely,

Johnathon R. Surface
President

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