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GREAT NEWS!

Soon, the Firehouse Laywer will have a new website (the site address will remain the same: www.firehouselawyer.com)!!!

Inside this Issue

A Quagmire is an Area of Soft, Wet Ground: Three House Bills That Help

With the 2015 Regular Legislative Session set to conclude, we at the Firehouse Lawyer feel that three particular house bills (HB) should be addressed here. These are (1) HB 1389, an act relating to the scope of state fire service mobilization (FSM) under RCW 43.43; (2) HB 2077, an act relating to allowing public entities that provide emergency medical services to develop community assistance referral and education services programs; and (3) HB 2007, an act "relating to reimbursement to eligible providers for Medicaid ground emergency transportation services." We applaud the sponsors—and authors—of these three bills. While some issues may remain, all three bills, if signed into law, will solve particular problems that exist today, making the quagmires into more solid ground.

The All-Risk Mobilization Quagmire

HB 1389[1] relates to "the scope of state fire service mobilization." HB 1389 adds a new definition to the FSM: "all risk resources." This definition expands the scope of what resources may be provided during particular disasters, which include, but are not limited to, wildland

[1] A summary of the original bill may be found at http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bills/House%20Bills/1389.pdf

fires, landslides, earthquakes, floods and contagious diseases. And "all risk resources" is added to the definition of "mobilization" under the FSM, thus expanding that definition. HB 1389 does not address reimbursement procedures specifically. However, this bill will have positive consequences, in that it expands the circumstances in which responding fire agencies may request—and receive—reimbursement when operating under RCW 43.43, the Washington State Fire Services Mobilization Plan.

The House Bill Report[2] to HB 1389 reiterates that RCW 43.43 was enacted in the wake of the wildland fires in the Spokane area in 1990. Around that time, an interpretation of RCW 43.43 was set forth in an informal assistant attorney general's opinion. The assistant AG opined that RCW 43.43 only applied to wildland fires. This same rationale was applied by the WSP during the Oso mudslide, which denied state mobilization on the basis of that interpretation. This appears to be the impetus for HB 1389. The Bill Report[3] states that "[I]n fact, the original Washington mobilization plan was intended to be all risk resources for all types of firefighting resources and hazards. Fire districts have always operated as if it was an all-risk plan." HB 1389 contains an amendment to RCW 43.43.961, the declaration of legislative purpose, based on that interpretation.

The new section of this statute proclaims that "[T]he legislature recognizes the vital role that our state's fire service personnel play in responding not just to fires but to disasters of varying types and kinds." This sentiment is already reflected in the chapter: the legislature previously recognized "the possibility of the occurrence of disastrous fires or other disasters of unprecedented size and destructiveness." *See* RCW 43.43.961. However, this new section is not redundant, but absolutely necessary to remind the necessary entities of the importance and broad sweep of state mobilization. And including the "all risk resources" definition under RCW 43.43.960 will add teeth to this new legislative proclamation.

Additionally, the definition of "mobilization" is expanded to include "all risk resources regularly provided by fire departments, fire districts, and regional fire authorities." Consequently, this new definition expands what entities may request reimbursement for state mobilization. A quagmire is "an area of soft, wet ground." See Merriam Webster's Dictionary. But for the above reasons, we applaud the sponsors—and authors—of HB 1389. This legislation should accomplish the main goal--expanding the risks that may be responded to, to include all hazards and not just wildland fires.

The Community Paramedicine Quagmire

HB 2077[4] amends three statutes: RCW 35.21.930; RCW 18.71.200; and RCW 18.71.205.

Currently, RCW 35.21.930 (1) reads that "[A]ny fire department may develop a community assistance referral and education services program to provide community outreach and assistance to residents of its district in order to advance injury and illness prevention within its

[2] The House Bill Report can be located at: http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/House/1389%20HBR%20APP%2015.pdf

[3] It should be noted that a house or senate bill report is not a statement of legislative intent, but provides guidance.

[4] This bill can be located at http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bills/House%20Bills/2077.pdf

community." In other words, a "fire department" may develop a community paramedicine program. The term "fire department" is currently defined as "city and town fire departments, fire protection districts organized under Title 52 RCW, and regional fire [protection service] authorities organized under chapter 52.26 RCW."

HB 2077 amends RCW 35.21.930 (1) as follows: "Any fire department or provider of emergency medical services that levies a tax under RCW 84.52.069 may develop a community assistance referral and education services program to provide community outreach and assistance to residents of its district in order to advance injury and illness prevention within its community." RCW 84.52.069, the EMS levy statute, applies to "a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district." RCW 84.52.069 (1). Consequently, HB 2077 expands who might establish a community paramedicine program. There is no House Bill Report to shed light on the rationale of this bill. However, the companion bill provides some guidance.

The companion bill to HB 2077 is Senate Bill (SB) 5591. Unlike HB 2077, this bill includes a Senate Bill Report[5]. There are some important observations in the Staff Summary to the Bill Report:

> "The Department of Health fully supports the concept of using the existing workforce to meet the needs of patients in the community, but has three concerns: the actual and specific scope of practice of what EMT or community paramedics would be doing; the role of the medical program director; and whether relief from liability in emergency situations would be extended."

The Staff Summary underlines a concern we have had since the community paramedicine concept arose: scope of practice.[6] The Staff Summary goes on to state that "[T]he traditional model of transporting patients to emergency departments often doesn't meet those patients' needs. This is an EMS prevention program, akin to a fire prevention program." Because of the change in the language of RCW 32.51.930 and an acknowledgment that the "traditional model" does not work for all patients, perhaps our legislature recognizes the need for a comprehensive and publicly provided network of community medicine, from the paramedic to the hospital.

A quagmire is "an area of soft, wet ground." But for the above reasons, we applaud the sponsors—and authors—of HB 2077. One thing it clears up is the issue of assigning emergency medical personnel to non-emergent medical issues, by amending certain statutes. The remaining scope of practice issues--as mentioned by DOH--may be resolved once the programs commence operations.

The Medicaid Quagmire

[5] This report can be located at http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/5591%20SBR%20GOS%2015.pdf

[6] See our article on community paramedicine programs at http://www.firehouselawyer.com/archives/v12n02jun2014.pdf

HB 2007[7] is gargantuan. This bill adds two new sections to RCW 41.05, the statute governing the Washington State Health Care Authority (the Authority). HB 2007 is an act "relating to reimbursement to eligible providers for Medicaid ground emergency transportation services." The House Bill Report[8] to HB 2007 reminds us that "[M]edicaid includes coverage for emergency transportation services."

HB 2007 adds two new sections to RCW 41.05. The first section addresses "supplemental Medicaid reimbursements", and the second section addresses intergovernmental transfers, i.e. money transferred from the federal government to state government, and vice versa, and "increased reimbursement."

Section 1 states that an "eligible provider" must receive, in addition to payments received for "medicaid ground emergency medical transportation services"[9], supplemental reimbursement. A provider of Medicaid transport is eligible for supplemental reimbursement when three requirements are satisfied: the provider must (1) perform Medicaid transports to "medicaid beneficiaries"; (2) be enrolled as a Medicaid provider; and (3) be owned or operated by a fire district[10] among other governmental entities. The bill goes further to state that the amount of supplemental reimbursement of Medicaid transport shall not "exceed one hundred percent of actual costs, as determined pursuant to the state medicaid plan." Consequently, HB 2007 is being put forth for cost recovery, not profit.

The bill underlines that an eligible provider is not obligated to participate in this program: participation is voluntary. In order to avail itself of such reimbursement, a provider must enter into an agreement with the Authority. This agreement must set forth provisions for how the provider will reimburse the Department of Health (DOH) for administering the agreement, in addition to implementing the reimbursement methodology. The DOH must seek federal approval to implement this cost-recovery program, presumably for each provider which enters the program. Without federal approval, there can be no supplemental reimbursement. And the DOH shall be the organization that submits claims for "federal financial participation", aka reimbursement, not the provider.

HB 2007 then goes on to espouse a procedure for intergovernmental transfers. The Authority, in consultation with eligible providers, is responsible for implementing a program of intergovernmental transfers with the federal government, "for the purpose of *increasing* reimbursement to eligible providers." The bill outlines the requirements for a provider to receive "increased reimbursement." To be eligible for such reimbursement, a provider must (1) provide ground transportation services to "medicaid managed care enrollees pursuant to a contract or other arrangement with a medicaid managed care plan"; and (2) must be owned or

[7] This bill can be located at http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bills/House%20Bills/2007.pdf

[8] This report can be located at http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/House/2007%20HBR%20APH%2015.pdf

[9] To simplify matters, we will call this "Medicaid transport".

[10] It should also be noted that regional fire authorities will fall satisfy this requirement as well, as they are within the definition of "unit of government" under 42 C.F.R. § 433.50, a federal regulation referenced in HB 2007.

operated by a fire district or RFA, among other governmental entities.

You will notice that unlike the section for supplemental reimbursement, this section does not require that the provider be enrolled as a Medicaid provider. However, "medicaid managed care enrollees" is perhaps ambiguous as compared to "medicaid beneficiaries" in the first section. You will also notice that, similar to the first section, an agreement is necessary for a provider to be considered eligible for increased reimbursement. The difference here is that the contract must be with a managed care plan, not with the Authority, as is required in the first section. Similar to the first section, an eligible provider must reimburse the DOH for its costs in implementing this intergovernmental transfer program. Finally, this new section may be implemented "only if and to the extent that federal participation is available and not otherwise jeopardized." Consequently, these "intergovernmental transfers" require cooperation on both the state and federal levels.

Without enactment of this legislation, obviously fire departments transporting Medicaid patients will not even be able to recover their out-of-pocket costs, under current regulations.

We believe, in reading these three bills, that fire districts—and in some cases, regional fire authorities—are being presented with new and fruitful opportunities, in areas rarely tread. A quagmire is "an area of soft wet ground." Perhaps with the legislative enactment of these three bills, Washington might solidify the ground.