

Medical transportation services, licensure by counties

Number: INFORMAL

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The Honorable James B. Fuller
Representative, District 16
2602 University Boulevard West
Jacksonville, Florida 32217-2113

RE: MEDICAL TRANSPORTATION SERVICES--COUNTIES--LICENSURE. s. 401.25, Fla. Stat.

Dear Representative Fuller:

Thank you for your recent opinion request relating to Chapter 401, Florida Statutes, and medical transportation services. You have asked for assistance in an effort to determine whether it may be necessary to file amendatory legislation on various aspects of this legislation. Attorney General Butterworth has asked me to respond to your letter.

Part III of Chapter 401, Florida Statutes, is entitled the "Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act." [1] The Department of Health is responsible for administration of the act. [2] Among those duties of the department is development of a state comprehensive plan for basic and advanced life support services including:

"(1) Emergency medical systems planning, including the prehospital and hospital phases of patient care, and injury control effort and unification of such services into a total delivery system to include air, water, and land services.

(2) Requirements for the operation, coordination, and ongoing development of emergency medical services, which includes: basic life support or advanced life support vehicles, equipment, and supplies; communications; personnel; training; public education; state trauma system; injury control; and other medical care components.

(3) The definition of areas of responsibility for regulating and planning the ongoing and developing delivery service requirements." [3]

This plan is to be developed and revised biennially. [4] In addition, the Emergency Medical Services Advisory Council is created by section 401.245, Florida Statutes, and is charged with identifying and making recommendations to the Department of Health concerning changes to statutes and administrative rules relating to medical transportation services.

Pursuant to section 401.25, Florida Statutes, anyone who

"furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the business or service of providing pre-hospital or interfacility advanced life support services or basic life support transportation services must be licensed as a basic life support service or an advanced life support service, whichever is applicable, before offering such service to the public." [5]

The Department of Health is required to issue a license for operation to any applicant who complies with certain requirements set forth in section 401.25(2), Florida Statutes. Subparagraph (d) of that section requires that "[t]he applicant [have] obtained a certificate of public convenience and necessity from each county in which the applicant will *operate*[" (e.s.) You ask what "operate" means in this context.

Rule 64E-2.032, Florida Administrative Code, implementing section 401.25, Florida Statutes, appears to more fully explain the statutory requirements. The rule provides that each Florida county may issue a COPCN (Certificate of Public Convenience and Necessity) to an ambulance service which proposes to operate within that county.[6] Subsection (2) of the rule provides:

"The department shall license an ambulance service, and that service may operate in a county in this state, provided the applicant meets the ambulance service requirements of chapter 401, part III, FS., and this rule chapter, and provided further that the ambulance service has first obtained a COPCN:

(a) From each county in which the ambulance service provides or proposes to provide prehospital ALS (advanced life support) services or prehospital BLS (basic life support) transportation services.

(b) From each county within which the ambulance service provides or proposes to provide intracounty, interfacility ALS services or interfacility BLS transportation services.

(c) From each county where the ambulance service provides or proposes to provide interfacility ALS services or BLS transportation services in which the need for such service either originates or terminates, but not from both the county where the need for such service originates and the county where the need for such service terminates unless the county by ordinance pursuant to section 401.25(6), F.S., mandates a COPCN for both."[7]

An ambulance service is also permitted to provide services under its license in a county without the necessity of first having obtained a Certificate of Public Convenience and Necessity from the governing body of the county in cases where such service is provided under the terms of a mutual aid agreement with the county or as part of a coordinated response to a disaster or mass casualty incident. Such a mutual aid agreement must conform described in section 401.23(16), Florida Statutes.

Both the statutes and the administrative rules recognize the authority of a county to issue a COPCN to an ambulance service operating within that county. Section 401.25(6), Florida Statutes, states that

"[t]he governing body of each county may adopt ordinances that provide reasonable standards for certificates of public convenience and necessity for basic or advanced life support services and air ambulance services. In developing standards for certificates of public convenience and necessity, the governing body of each county must consider state guidelines, recommendations of the local or regional trauma agency created under chapter 395, and the recommendations of municipalities within its jurisdiction."

As related above, Rule 64E-2.032, Florida Administrative Code, authorizes counties to issue COPCNs to ambulance services operating within that county upon the compliance of the ambulance services with other requirements set forth in that rule.

The Legislature has specifically stated that Part III, Chapter 401, Florida Statutes, represents "minimum standards for emergency medical services personnel, vehicles, services and medical direction[.]"[8] The act recognizes the authority of counties to regulate activities in this area and only requires that county ordinances establishing standards for COPCNs be "reasonable" and that certain factors be considered.

Thus, to the extent that counties are authorized to act within the scope of the act, it would appear that they may adopt regulations which exceed the requirements contained in state law so long as they comply with the directions contained in Part III, Chapter 401, Florida Statutes.

I trust that these comments will assist you in determining whether legislation amending Part III, Chapter 401, Florida Statutes, is necessary.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] Section 401.2101, Fla. Stat.

[2] Section 401.24, Fla. Stat.

[3] *Ibid.*

[4] See s. 401.24, Fla. Stat.

[5] Section 401.25(1), Fla. Stat. *And see* s. 401.35(2), Fla. Stat., authorizing the Department of Health to adopt rules establishing application requirements for licensure and certification.

[6] Rule 64E-2.032(1), F.A.C.

[7] See s. 401.23(1) and (7), Fla. Stat., for definitions of "[a]dvanced life support" and "[b]asic life support." *And see* s. 401.35(2)(f) and (g), Fla. Stat., providing that the Department of Health is required to establish application requirements for licensure and certification and such applications must include: "(f) A statement reasonably describing the geographic area or areas to be served by the applicant[;]" and "(g) A statement certifying that the applicant will provide continuous service 24 hours a day, 7 days a week, if a basic life support service license or an advanced life support service license is sought."

[8] See s. 401.211, Fla. Stat., expressing legislative intent.