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CALIFORNIA FIRE CHIEFS ASSOCIATION

CALCHIEFS RESPONSE TO EMSAAC POSITION STATEMENT ON "GRANDFATHERING" AND "EXCLUSIVITY" UNDER SECTIONS 201 AND 224 OF THE EMS ACT "Issued August 14, 2017"
Issued August 28, 2017

The California Fire Chiefs Association (CalChiefs) is appreciative of EMSAAC's efforts to provide insight on the two referenced sections of the EMS Act. As stated, the Position Statement is a brief overview to its membership and, though co-authored by a law firm, is not a published legal opinion and should not be relied upon as such relative to EMS delivery decisions. CalChiefs review the EMSAAC Position Paper dated August 14, 2017 is that most of the document is accurate, except for some obvious errors in law or fact. Namely:

1. Page 1, second paragraph, "The EMS Act: A Brief Overview": EMSAAC asserts that EMSA establishes "state standards," which the local EMS agency then applies to local providers. It is well known that EMSA has yet to establish "interpreting regulations" governing the application of "state standards" directly concerning the subject matter that this Position Statement speaks to; and to correct or clarify erroneous "standards" previously adopted. Moreover, the "standards" EMSAAC likely speaks to are not regulations, but merely "guidelines." Guidelines are generally discretionary.

2. Page 1, last sentence, last paragraph, "Section 201 Grandfathering: "**Eligible 201 cities and fire districts grandfathered rights include only the right to control administrative matters such as their staffing levels and where to station their EMS rolling stock and personnel**."

    a. This limitation on administrative authority is not supported by statute or case law. To the extent that EMSAAC asserts otherwise, this is a misstatement of existing law.

3. Page 2, first bullet point, "Understanding the Difference Between Sections 201 and 204": "**Only a city or fire district may qualify for Section 1797.201 grandfathering. Section 1797.201 does not apply to state agencies or departments, counties or community services districts**."

    a. This statement is completely erroneous:

        i. Any special district, that is organized under the Fire Protection Law of 1987 is a "fire district" under Section 1797.201. Accordingly, it may include counties, county water districts, municipal water districts, community service districts and several other types of special districts. If this were not the case, the special district would have no authority to provide EMS in the first instance. To the extent that EMSAAC asserts otherwise, this is a misstatement of existing law.

        ii. Assuming arguendo, that a State agency cannot possess .201 rights and duties because it not organized under the Fire Protection Law of 1987; state law expressly empowers and authorizes a state agency to contract with a city or special district that does. It is the underlying entity that possesses Section 201 duties and responsibilities. To the extent that EMSAAC asserts otherwise, this is a misstatement of existing law.

4. Page 2, fourth bullet, "Understanding the Difference Between Sections 201 and 204": "**Section 201 does not provide the cities and fire districts with exclusive rights to provide services nor does it allow a city or fire district to create exclusivity for others**."

a. This statement is not supported by any case law whatsoever.

b. To the extent that this statement merely implies that cities or fire districts (or anyone but the LEMSA for that matter can create an administrative EOA pursuant to Section 1797.224, then this statement is accurate.

c. To the extent that this statement's limitation is meant to apply to local governments generally or Section 201 cities and fire districts; state and federal law indicates otherwise.

5. Page 2, fifth bullet: "**Section 1797.201 "grandfathering" can only end if the provider requests or entered into an agreement with its LEMSA. Section 224 "grandfathering" is approved for a specific duration (e.g. five years, with a right to extend for one-additional five year period) and must be approved by the LEMSA to continue**."

   a. Concerning historical recognition, this statement is incomplete and incorrect. First, a grandfathered EOA created and assigned using historical recognition is a REVOCABLE PERMIT, conferring no vested property interest to the holder unless expressly created by contract. The LEMSA or County, if County is the LEMSA, may revoke this EOA without cause or by going to competitive bid (e.g., language such as "either party may terminate this agreement…."). A LEMSA may, and should, supplement an EOA assignment using a renewable five-year contract (again, revocable at-will); but many contracts exist with significantly differing terms.

   b. Second, and notably, this document does not talk about "abandonment" and the two-part test for "acquiescence"; which are other mechanisms for transferring the .201 duty to the County.

   c. Third, EMSAACC also fails to mention the duties that .201 imposes, a condition precedent to exercising any .201 rights or responsibilities. Those duties being, "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."

Sincerely,

Michael DuRee, President
California Fire Chiefs Association