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Siren

Spring 2013

A Publication of the California Ambulance Association

2013 Stars of Life | Health Care Reform Summit | CAA Legislative Day

CALIFORNIA AMBULANCE ASSOCIATION

CAA *Vision*

Assure delivery of excellent pre-hospital care to the people of California by promoting recognized industry best practices.

CAA *Mission*

- Serve as the voice and resource on behalf of private enterprise emergency and non-emergency ambulance services.
- Promote high quality, efficient and medically appropriate patient care.
- Advocate the value that pre-hospital care provides in achieving positive patient outcomes.
- Promote effective and fiscally responsible EMS systems and establish standards for system design.

CAA *Leadership*

California Ambulance Association
2520 Venture Oaks Way, Suite 150
Sacramento, CA 95833
(877) 276-1410 (toll free)
(916) 924-7323 (fax)
www.the-caa.org

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Circulation among California's private ambulance providers, elected officials and EMSA administrators.

Chair's *Message*

Helen Pierson | *Chair of the Board*

Exciting Times for the CAA

There is definitely never a dull moment in the CAA. Whether it's traveling throughout the state to get our message across, giving recognition to our EMS personnel or fighting the good fight at the Capitol, the CAA is keeping busy and working hard for the benefit of all ambulance providers.

Our Executive Director, June Iljana, has been traveling throughout the state visiting private ambulance companies to promote membership and acquire a better understanding of our business and the issues that we face. June is committed to the mission of the CAA and that was very well demonstrated by her wonderful presentation at the Member Roundtable on March 11, 2013. She emphasized the importance of getting our message out to our communities, political officials and other providers. We are in an age where social media is the main source of communicating our message to these people. It is because of this that the CAA now has a Facebook page that we encourage all members and nonmembers to become a fan of and "Like."

We recently held our annual "Stars of Life" celebration and Legislative visits. It is truly our industry's proudest time of year. I consider it an honor to give praise and recognition to these wonderful nurses, paramedics, EMT's, dispatchers and EMS personnel that represent us. I would like to take this opportunity to thank all the providers that participated in making this a successful event. We need to take opportunities such as this event to showcase and publicize the important value of private providers and demonstrate how professional and outstanding patient care is administered.

Your Legislative & Agency Relations Committee led by our Legislative Advocate, Chris Micheli and our Committee Chair, Carol Meyer are working tirelessly on several bills that can affect your business and have a permanent effect on our industry. I am asking that all providers focus some time and resources on these issues to help continue to make our voices heard. The association is here to help our industry and I encourage all private providers to join and make our impact even greater in Sacramento. Standing in the background and watching is no longer an option. We can be more effective with strength in numbers.

As you can see, the CAA is continuously being proactive, progressive and striving to be a force to be reckoned with while dealing with the many changes in the State of California facing our industry. I believe that if we all get involved by joining a committee, participating in association events and writing letters to our elected officials, we will achieve our goals in the upcoming years. *

Executive Director's *Report*

June Iljana | *Executive Director*

In the four months since I joined the staff of the CAA, I've had the opportunity to visit ambulance companies in many parts of the state to learn about their needs and interests. I've enjoyed meeting people for whom the provision of pre-hospital care in their communities is not only a job and a business, but a passion. The greatest education I have received thus far is to discover so many people who are experts in the ambulance industry and are very willing to share their knowledge.

During each visit I have asked members and non-members alike "What can the CAA do to contribute to your company's success?" The answers have been varied, ranging from a broad political view to discreet interests. However the single overriding theme has been, "Grow the association." CAA members recognize that in order to improve the environment for the private ambulance industry, we need to have more members so we have a larger voice.

There are about 170 non-government ambulance services in California and only 37 of them are members of the CAA. One factor in our low rate of membership is the cost to join. To reduce cost, we need to increase memberships ... to increase memberships we need to reduce cost. It's very much a chicken/egg issue but we will get there.

More importantly, we are working to ensure that the value you receive for your membership is more than worth any cost. We have been working hard to both increase benefits for members and also to better communicate the benefits you already receive. The biggest benefit, and our greatest challenge to communicate, is the value of combining your voice with those of others to influence change.

CAA is working in the legislature and in the media to raise the profile of the private ambulance industry to ensure that when decisions are made we are considered. You can see the effect of that in Chris Micheli's article about current legislative efforts to roll back the 10% Medi-Cal rate reduction and retroactive reimbursement collections instituted by Governor Brown.

These bills initially would not have helped our industry, but the CAA stood up for our members and got the bills expanded to include ambulance service. In addition, during the Stars of Life Legislative Day at the Capitol, 60 of us visited legislative offices and asked for their "yes" vote on those two bills and the next day CAA Chair Helen Pierson participated in a press conference by Senator Lara, the California Medical Association and other supporters.

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Executive Director's *Update*

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Whether the bills pass the full legislature and are signed in to law or not, getting ambulance recognized as a critical service was a win for all ambulance services. But bear this in mind ... only 37 of you financed the effort and only 60 of us participated in the legislative day. Imagine what we could accomplish if we were all working together.

In addition to re-doubling our efforts to increase membership, we are working to take better advantage of the voice our members already have. We did a survey last month to determine roughly how many people work in private sector EMS. Our rough calculation is that CAA-eligible companies employ 20,000 people in meaningful careers. Those are the numbers we need to rally to effectively influence change. You've seen the effect of massive organizations such as public-sector labor unions. While each individual may not have much influence, combined they can sway decisions from legislative actions to elections.

That is why we are moving forward with a new initiative in the CAA to increase our effective numbers called, "It's your business." You will see and hear more about this soon, but here's a sneak peek:

As a private-sector EMS professional, the long-term health of the private ambulance industry in California directly affects you. It is your business. Take care of it.

Join the California Ambulance Association in telling our local government leaders and our State Legislature that private ambulance companies are a great value for your community.

California's private sector ambulance companies:

- *Employ 20,000 people in meaningful private-sector careers.*
- *Provide communities with top quality pre-hospital care.*
- *Provide a level of response the community requests without waste.*
- *Operate efficiently because they have a bottom line.*
- *Contribute funding to local governments.*
- *Pay business income taxes and property taxes.*
- *Give back to their communities.*

There's no question that there are many aspects of the private ambulance industry that need attention. This one will be foundational. Taking the reins at CAA is a huge challenge, but one I feel prepared to undertake with your support. Please accept my sincere appreciation for your warm welcome to the CAA. I am pleased to be among you and thankful for the opportunity to represent your interests.

CAA Membership is a Business Essential

The business environment, the healthcare sector and the EMS industry are evolving at an ever-increasing pace. At the CAA we are dedicated to providing members with the essential tools, information, resources, and solutions to help your organization grow and prosper. And, the CAA's collective efforts on statewide legislative and regulatory issues are not possible without strong membership support and engagement.

Take your place in California's statewide ambulance leadership

Membership not only saves you money on CAA events and resources, but also keeps you up to date on trends, innovations, and regulatory changes through:

- Leadership on statewide legislative and regulatory issues
- Targeted conferences & educational programs
- Member-only updates and alerts
- Member-only discounts & access to expert resources
- Opportunities to exchange ideas with your colleagues statewide

CALIFORNIA AMBULANCE ASSOCIATION

Join the California Ambulance Association

Go to *www.the-caa.org/membership* for a membership application.

CAA Joins Coalition to Roll Back Medi-Cal Rate Reductions

Chris Micheli | *CAA Legislative Advocate*

The CAA has been seeking legislative, regulatory and legal relief from the 2011 Medi-Cal provider rate cuts contained in AB 97, a budget trailer bill enacted that year. In 2013, the CAA joined forces for the California Medical Association, California Hospital Association, and many other Medi-Cal providers to support AB 900 and SB 640, which would prevent the 10% rate cuts from taking effect.

AB 900 is authored by Assemblyman Luis Alejo (D-Watsonville) and SB 640 is authored by Senator Ricardo Lara (D-Los Angeles). We believe these measures will help stabilize the state's safety net by stopping the imposition of the 10% reimbursement rate reduction to Medi-Cal providers. The CAA has testified in support of both of these bills in the policy committees.

AB 97, the health services trailer bill to the 2011-12 state budget, included an across-the-board 10% reduction in Medi-Cal provider payments. This rate cut impacts many provider types, including physicians, dentists, ambulance companies, pharmacists, and nursing homes. Medi-Cal is the largest Medicaid program of any state in the country, with total enrollment of over 10 million in 2011, and yet the program pays some of the lowest reimbursement rates of any Medicaid program in the nation. If the AB 97 rate cuts are implemented, California will likely hold the dubious distinction of being number one in total Medicaid program enrollment and 50th in provider payments.

California's patient, provider and payor communities want to be a partner with the state in the effort to fully implement federal health reform. Expanding Medi-Cal to meet the Affordable Care Act's (ACA) requirements could mean millions of new Medi-Cal enrollees will be added to the state's already tattered safety net. Further reducing provider payments at the precise time the system is proposed to be expanded to those currently uninsured is the wrong solution for California, and makes the Medi-Cal program an empty promise to California's poor and needy.

Both bills would help to bridge the gap left behind by the underfunding of Medi-Cal and the service costs for ambulance services. There is already a large gap in these costs that often gets transferred to citizens and, with the upcoming expansion of Med-Cal, the gap will only increase in size. Insured individuals are already seeing a rise in their deductibles and co-payments, which will continue to rise if we are not able to solve this issue before Medi-Cal expands its coverage. These bills are a way to fix this issue before it becomes a much larger problem in the very near future.

Without these bills, the CAA is concerned about the following:

- Private-sector ambulance services are essential to the EMS system because they are the most cost-effective means of providing this service to a community.
- Medi-Cal reimbursement rates for private-sector ground ambulances cover just $150 of the $589 hard cost and are far too low to sustain the system.
- Currently, private ambulance services attempt to offset Medi-Cal losses by cost-shifting to private-insurance, but that is not sustainable. Commercial insurers are pushing back.
- Unlike other health care providers, emergency ambulance services cannot reduce access to care for Medi-Cal patients by "opting out" of Medi-Cal or adjust patient loads to offset Medi-Cal losses and ensure financial viability.
- Health care reform changes will exacerbate this problem with as many as two million more people being added to Medi-Cal.
- Private sector ambulance services, air ambulance services, hospitals, and physicians do not have access to additional funds to offset Medi-Cal losses, while public ambulance services do.

The CAA will continue advocating for AB 900 and SB 640 throughout the Legislative Session, as well as pursue our sponsored bill, SB 703, by Senator Ed Hernandez. We hope that this measure will result in an increase in Medi-Cal payments to ambulance providers. ✱

The California Ambulance Association participated in a press conference in support of SB 640 (Lara) which would stop the implementation of the rate cuts contained in AB 97, the health services trailer bill to the 2011-12 state budget.

California CPE Moves Toward Approval – Only Fire Departments Would Benefit

Chris Micheli | *CAA Legislative Advocate*

CAA members should be aware of the Certified Public Expenditure (CPE) Program that was provided by AB 678, which was enacted on October 2, 2011 as Chapter 397. It was authored by current Assembly Health Committee Chairman Richard Pan and Senate Leader Darrell Steinberg. It adds Section 14105.94 to the Welfare and Institutions Code.

AB 678 provides that an eligible provider may receive supplemental Medi-Cal reimbursement, in addition to the rate of payment that the provider would otherwise receive, for Medi-Cal ground emergency medical transportation services and that the supplemental reimbursement shall be equal to the amount of federal financial participation the Department of Health Care Services (DHCS) receives as a result of claims submitted for expenditures for services.

The bill also required the DHCS to promptly seek necessary federal approvals for the implementation of the CPE, including obtaining approval from the federal Centers for Medicare and Medicaid Services for the specified payment methodology to be used to distribute the supplemental reimbursement. The CPE is limited to those entities that are owned or operated by the state, a city, county, city and county, fire protection district, special district, community services district, health care district, or a federally recognized Indian tribe.

The bill provides that the amount certified cannot exceed 100 percent of actual costs, as determined pursuant to the Medi-Cal State Plan, for ground emergency medical transportation services. Finally, the bill provides that the supplemental Medi-Cal reimbursement shall be distributed exclusively to eligible providers on a per-transport basis or other federally permissible basis.

As a part of the CPE, the eligible entities must:

(1) Provide evidence supporting the certification as specified by the department.

(2) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation.

(3) Keep, maintain, and have readily retrievable, any records specified by the DHCS to fully disclose reimbursement amounts to which the eligible provider is entitled, and any other records required CMS.

AB 678 passed through the Legislature because it provides an opportunity to capture substantially more federal dollars for reimbursement to specified Medi-Cal providers. According to the estimates at the time AB 678 was enacted, potentially tens of millions of dollars in federal funds annually, matched by local CPEs, is anticipated.

Unfortunately for private ambulance providers, the CPE does not provide any benefit to the private sector, even though private ambulance providers are a key component of the health care safety net. In fact, the proponents of AB 678 literally took CAA advocacy documents and used the same language to promote the CPE. For example, the author "points out fire departments are an essential part of the health care safety net and are unique because of the mandate to respond, treat and transport all emergency patients without exception and without regard to a patient's ability to pay."

CPEs are one of several mechanisms that a state may employ to obtain federal financial participation and make supplemental payments to Medi-Cal providers without cost to the state General Fund. Under a CPE arrangement, government providers certify their Medicaid expenditures to the state, and the state then obtains federal reimbursement on the basis of these CPEs. Medicaid law allows states to finance the nonfederal share of payments with CPEs as long as the funds are derived from state or local tax revenue and certified by units of local or state government as eligible for federal reimbursement. States are responsible for ensuring that expenditures are eligible for federal reimbursement by reviewing standard cost reports filed annually by each government provider. In no event may the reimbursement rate exceed the equivalent Medicare rate.

AB 678 establishes a new supplemental payment program for publicly owned or operated providers of ground emergency medical transportation services; providers would include those owned or operated by the state, a city, a county, a city or a county, a special district, a community services district, a health care district, or a federally recognized Indian tribe. Provider participation in the program would be voluntary and payment would be above and beyond the provider's current Medi-Cal reimbursement.

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Legislative *Update*

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The CAA's data was quoted in all of the committee analyses as follows:

> Although the actual amount of supplemental payments is unknown, it is reasonable to assume that a provider would work to receive additional reimbursement. The California Ambulance Association states that there are about 715 providers in the state, of which about 77 percent are fire departments. According to the sponsors of this bill, the California Professional Firefighters, it is estimated that about 130 fire departments would be eligible to receive reimbursement pursuant to this bill, among other public providers. The percentage of total transports provided by publicly-owned or operated ground emergency transportation services is unknown.

The following groups were listed in support of AB 678:

- California Professional Firefighters (sponsor)
- California Fire Chiefs Association
- City of South Lake Tahoe
- Cosumnes Fire Department
- Fire Districts Association of California
- League of California Cities
- Long Beach Firefighters, Local 372
- North Tahoe Fire Protection District
- United Firefighters of Los Angeles City, Local 112

The only opposition to the measure was the California Ambulance Association. CAA argued that the bill should have been amended to include private sector ambulance providers. We noted that both the public and private sector 911 providers in California suffer from the same inadequate Medi-Cal reimbursement rates. Unfortunately, while AB 678 would allow local fire departments to use a "Certified Public Expenditure" (CPE) to draw down federal funds to augment severe below-cost Medi-Cal ambulance reimbursement, it also specifically excludes non-fire department providers from the additional federal revenues and creates a fragmented EMS funding system statewide. However, federal statutes and regulations allow the state legislature to distribute the federal funds that are generated from a "Certified Public Expenditure" in the form of an across-the-board Medi-Cal ambulance rate increase, benefiting every type of provider that provides emergency medical services (both public and private).

The CAA has recently learned that this new program is being used to recruit fire departments to participate in the program. The key points are:

- Eligible agencies (public entities) would be entitled to 50% of the gap between cost to provide service and Medi-Cal reimbursement.
- The fire service will calculate the "cost to provide the service" to include all ambulance, personnel, administrative, overhead, and contracted costs, plus a portion of suppression costs calculated based on actual time allocated to EMS. DHCS has approved this approach.
- There is no upper payment limit. DHCS has estimated the reimbursement at $400-$600 million a year.
- In the example provided, a fire department would calculate the cost per transport at almost $2,500 and receive about $1300 per transport in combined Medi-Cal and GEMT reimbursement.
- The program would be retroactive to January 30, 2010 resulting in a huge windfall. For instance, LAFD would receive $75 million in retroactive payments and $30 million annually.
- Non-transporting fire departments are being encouraged to "assume" private transport provider EOAs and partner with the private transport provider in cost sharing.
- They expect the state plan amendment to be approved by the end of the 3rd quarter of this fiscal year and the program to begin.

Although the additional federal funds brought into California's EMS system are badly needed, by excluding private providers from this program, it is actually anti-competitive because it creates an unlevel playing field. In addition, this program will set a precedent for increased reimbursement to EMS and other types of public entities nationwide. The CAA is talking with counties to explore avenues for the county to serve as the public entity on behalf of the private providers so that private providers could still benefit from this program if it goes forward. ✱

Governor Brown Announces Appointments

On April 30, 2013, Governor Edmund G. Brown Jr. announced two new appointments to the California Commission on Emergency Medical Services.

Linda Broyles, 57, of Coronado, has been appointed to the California Commission on Emergency Medical Services. Broyles has been continuous quality improvement coordinator at the Regional Cooperative Care Program since 2006 and clinical coordinator at American Medical Response since 2007. She was base hospital nurse coordinator at Scripps Memorial Hospital La Jolla from 2005 to 2007, and served in various positions at Scripps Mercy Hospital from 1989 to 2005, including base hospital nurse coordinator. Broyles has been a registered nurse since 1977 and a certified emergency nurse since 1990. She is a member of the California Emergency Nurses Association. Broyles earned a Master of Science degree in nursing from California State University, Dominguez Hills. This position does not require Senate confirmation and there is no compensation. Broyles is a Republican.

Richard Johnson, 66, of Mammoth Lakes, has been appointed to the California Commission on Emergency Medical Services. Johnson has been a pediatrician at the Southern Mono Healthcare District since 1996. He has been health officer at the Mono County Health Department since 2002 and Inyo County Health and Human Services Department since 2006. Johnson has also been a clinical specialist for the Infant Botulism Treatment and Prevention Program at the California Department of Public Health since 2003 and an adjunct professor at Biola University since 1991. He was a managing partner and pediatrician at Pediatric Associates of Pasadena from 1979 to 1996. Johnson is chair of the Public Health Emergency Preparedness and Response Committee for the California Conference of Local Health Officers. He is a member of the American Public Health Association and the National Association of City and County Health Officials. Johnson earned a Doctor of Medicine degree from the Albany Medical College of Union University and a Master of Public Health degree from the University of California, Los Angeles, School of Public Health. This position does not require Senate confirmation and there is no compensation. Johnson is a Republican. ✱

Richard Johnson

In Memoriam Kurt Williams

Kurt Williams was a leader and innovator in the healthcare and medical transportation industries for over thirty years. He was Regional CEO for AMR and Operations Section Chief in American Medical Response's (AMR's) National Command Center for the company's Department of Homeland Security FEMA contract.

In recognition of Kurt's work with the San Mateo County, California Emergency Medical Services system he was awarded the prestigious California League of Cities Helen Putnam Award, the National Council for Public Private Partnerships Award, the International Association of Fire Chiefs Award for Excellence, and the International City Managers Association Award for Outstanding Public and Private Partnerships.

An active community leader, Kurt Williams served on numerous boards and committees throughout his career, and was appointed to the State of California Emergency Medical Services Authority Directors Advisory Group; Clark County, Nevada Medical Advisory Board; the Helicopter Medical Advisory Board; and the Greater San Diego Chamber of Commerce CEO Roundtable. He also served on the Board of First Choice Health Care in Seattle, WA. In addition, Kurt had many leadership roles in the American Ambulance Association including Chairman of the AAA Foundation, Co-Chair of Stars of Life, Chair of Bylaws, Region V Director and won the President's Award in 2006 for his work on the Governance Committee.

Kurt Williams was one of 51 thought provoking leaders invited to participate in the World Economic Forum Health Summit in Davos, Switzerland to discuss the worldwide implications of wireless health technology in developed and emerging countries.

Kurt passed away April 21, 2013 and memorial services were held May 4, 2013 in San Diego, CA. ✱

Member News

Hall Critical Care Transport Receives International Accreditation

Hall Critical Care Becomes the Eighth California Service to Receive Prestigious Recognition

On April 6, 2013 The Board of Directors of the Commission on Accreditation of Medical Transport Systems (CAMTS) approved the application for accreditation for Hall Critical Care Transport (CCT). The Commission believes that the two highest priorities of an air or ground medical transport service are patient care and safety of the transport environment.

Hall Critical Care Transport becomes the eighth medical transportation provider in California to receive this internationally recognized accreditation.

The accreditation comes after a three part review process of the Hall Critical Care Transport operation, including
- an intense self-inspection according to CAMTS guidelines
- a thorough review of the application by the CAMTS staff
- an onsite evaluation consisting of CAMTS evaluators spending several days going over every aspect of the Hall CCT operation.

The 21 members of the CAMTS Board of Directors then took action to approve the application for accreditation. Some of the items reviewed during the process included capabilities and resources of the service, communications, safety, training, community outreach, mission types, and maintenance.

Hall Critical Care Transport Founder & President, Harvey L. Hall, said "This accreditation validates the work everyone does every day to make Hall CCT a premier provider of medical transportation services." Hall CCT provides ground and air critical care transport services, and is an integral part of the Hall Ambulance Service family. Hall Ambulance Service Inc. has been serving the medical transportation needs of Kern County residents since 1971. ✱

Paramedics Plus Receives CAAS Accreditation

Paramedics Plus in San Leandro has received accreditation from the Commission on Accreditation of Ambulance Services (CAAS) for its compliance with national standards of excellence. Paramedics Plus recently completed the voluntary review process, which includes a comprehensive application and on-site review by national experts in emergency medical services. With this achievement, Paramedics Plus becomes only the sixteenth ambulance service to be accredited in California.

"This accreditation represents our firm commitment to our patients and the Alameda County communities. We continuously strive to do our best and I view this accreditation as another step towards excellence," said Dale Feldhauser, Chief Operating Officer for Paramedics Plus. "Our staff has been key to our successful completion of the process. I think it gives the feeling of prestige and pride to work in an accredited ambulance service."

The Commission is a non-profit organization, which was established to encourage and promote quality patient care in America's medical transportation system. The Commission's standards often exceed state or local licensing requirements. Paramedics Plus, the 911 service provider for Alameda County since November 2011, has reached these national standards, which not only address the delivery of patient care, but also the ambulance service's total operation and its relationships with other agencies, the general public, and the medical community. ✱

CAA Pending Members

Westmed College
Commercial Member

California Ambulance Sales
Commercial Member

Trinity County Life Support
Active Member

Comments or questions about membership applications should be directed to: Kim Ingersoll: *kingersoll@the-caa.org.*

New Liability for Covered Entities Under HIPAA and the HITECH Act

Mike Scarano | *Foley & Lardner LLP*

On September 23, 2013, the Office for Civil Rights of the Department of Health and Human Services ("OCR") will begin enforcing important new regulations enacted under the Health Information Technology for Economic and Clinical Health ("HITECH") Act, which amends HIPAA. A final rule implementing the HITECH Act was published in the Federal Register on January 25, 2013, but will not be enforced by OCR until September 23, 2013 (the "Compliance Date.")

One of the most significant changes made by the HITECH Act pertains to the role of business associates under HIPAA. A "business associate" is defined as any person or organization who, on behalf of a covered entity (such as an ambulance provider), creates, receives, maintains or transmits protected health information ("PHI"). Business associates include, but are not limited to, billing companies, electronic health record vendors and accounting, legal, actuarial and other administrative services providers who require access to PHI.

Up to now, covered entities generally have not faced liability under HIPAA for the misconduct or negligence of their business associates, so long as the covered entity had no reason to know the business associate would violate HIPAA. As of the Compliance Date, however, this will dramatically change. Under the HITECH Act, covered entities will be liable in accordance with the federal law governing agency for civil or monetary penalties resulting from a violation caused by an act or omission of their business associates or other agents occurring within the scope of that agency relationship. This means that an ambulance provider can be held fully-liable for the violation of its business associate, even though the provider had no reason to know of the business associate's violation. For example, if an ambulance provider's billing company loses an unencrypted laptop with the Social Security numbers or other data regarding thousands of patients, the covered entity can be held fully-liable for that violation. Since fines for HIPAA violations such as lost laptops have in some cases exceeded one million dollars, the exposure is substantial.

Notably, not all business associates will be deemed to be agents of their covered entities. In the preamble to the Final Rule, OCR indicates that in determining whether a business associate is, in fact, an agent of its covered entity, a number of factors which the federal courts have found significant in defining an agency relationship must be considered. The most important factor is whether the covered entity has the right to control the business associate's conduct in the course the business associate performing a service for, or on behalf of, the covered entity. According to OCR, the authority of a covered entity to give detailed instructions or directions to the business associate in connection with the performance of its duties for the covered entity is the primary factor distinguishing an agency relationship from a non-agency relationship. In contrast, if the covered entity's sole recourse in the event it is dissatisfied with its business associate's performance is to terminate the relationship, then the relationship is probably not an agency. Such an analysis will be fact-specific, and should take into account the terms of the agreement between the parties as well as the totality of their relationship. In light of this issue, ambulance providers should draft their business associate agreements, and the underlying service agreements, so that they do not inadvertently establish an agency relationship unless it is important that the covered entity have the right to direct the details of the business associate's work.

The HITECH Act also imposes substantial new obligations on business associates corresponding to most of the duties imposed upon covered entities. These new duties include, but are not limited to, a requirement that the business associate fully comply with the HIPAA security rule. Under the security rule, business associates will be required to implement certain administrative, technical and physical safeguards to protect the PHI under their control. This requires business associates to conduct a risk analysis or gap assessment to determine whether they meet the standards in the HIPAA security rule. Business associates must also comply with most of the requirements of the HIPAA privacy rule.

The HITECH Act further makes significant changes in the exposure business associates face for violations of HIPAA. Up to now, business associates have had liability for violations of HIPAA only under their business associate agreements with their covered entities. In other words, they could be terminated or sued for breach of contract by their covered entities, but they could not be prosecuted or fined by government. In contrast, under the HITECH Act, as of the Compliance Date, business associates will

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be subject to fines and penalties to the same extent as covered entities for violations of HIPAA.

Another important new obligation of business associates is that they must ensure that any subcontractors that create, receive, create, receive, maintain or transmit PHI on behalf of the business associate must agree to the same restrictions and conditions that apply to the business associate with respect to PHI. This will require that business associates enter into written agreements with their subcontractors setting forth the same terms and conditions that are imposed upon the business associate in their business associate agreement with their covered entities. The subcontractors will be deemed to be business associates for purposes of HIPAA, and, like first-tier business associates, will be subject to penalties and fines if they are found noncompliant.

The HITECH Act requires that covered entities and their business associates, as well as first-tier business associates and their subcontractors, enter into business associate agreements – or amend their existing agreements – to comply with the new obligations imposed upon them under the HITECH Act. In recognition of the complexities of revising numerous business associate agreements, OCR is providing additional time for some covered entities and business associates to come into compliance. Depending upon when the parties' original business associate agreement was entered into, the parties' will have up to a full additional year (i.e., until September 2014) to enter into new or revised business associate agreements incorporating the new requirements of the HITECH act.

In revising business associate agreements to comply with the HITECH Act's new requirements, providers might also want to address additional issues. In particular, covered entities might want to address in detail the liabilities and responsibilities of their business associates in the event they are responsible for a breach of unsecured PHI. Notification requirements for such breaches under HIPAA is another area that was dramatically changed by the HITECH Act in a manner that will likely result in more frequent reports.

Finally, in revising their business associate agreements, ambulance providers and other covered entities should be aware that OCR has posted sample business associate agreement provisions on its website. In addition to incorporating the mandatory elements required under the HITECH Act, the OCR template makes certain additional recommendations which should be considered. ✱

Stars of Life

2013 CAA Stars of Life

The California Ambulance Association (CAA) presented its annual **'Stars of Life' Awards** recognizing private ambulance company employees whose efforts have gone above and beyond the call of duty. Twenty-nine paramedics and emergency medical technicians from throughout California were recognized for their lifesaving actions or exceptional professional achievements during a ceremony Tuesday April 23rd in Sacramento.

"While EMS professionals are trained to respond appropriately during medical emergencies, it's a very difficult job. It's important to honor emergency medical service providers for serving our community members during their most vulnerable moments," said Helen Pierson, CAA Board Chairperson for 2013. "The efforts of our Stars of Life, whether during a single life-saving event or a career-long exemplary performance record, stand out among their peers."

Throughout the day, the Stars and their hosts met with members of the State Senate and Assembly to tell their life-saving stories and deliver important first-hand information regarding the essential service provided by California's private sector ambulance services. They had an opportunity to share their concerns about how the state budget crisis, health care reform implementation, Medi-Cal reimbursement policy and proposed legislation affects their patients, their communities and their livelihoods.

The primary message the CAA asked participants to share is that the Medi-Cal payment system not only affects Medi-Cal beneficiaries, but citizens of all ages who have full insurance coverage. They also affect the long-term sustainability of the private ambulance industry including the livelihoods of our 20,000 employees.

Prior to heading to the Capitol, Stars and hosts met for breakfast and were briefed on what to expect over the course of the day.

They were also treated to a welcome from Mari Cantwell, Chief Deputy Director for the Department of Health Care Services which administers the Medi-Cal program. She discussed some of the changes the Medi-Cal program is expecting with the implementation of health care reform, including the addition of millions more recipients to the Medi-Cal rolls.

The day's festivities included an awards dinner at the Sheraton Grand Hotel Tuesday evening during which each Star was honored with a legislative certificate recognizing their accomplishments presented by CAA Board Chair Helen Pierson and Dr. Howard Backer, Director of the California Emergency Medical Services Authority. Dr. Backer delivered an outstanding speech which was a highlight of the evening. Mike Wilkening, Undersecretary for the Health and Human Services Agency, also attended and provided an update on the state's ongoing budget challenges and the progress of Health Care Reform implementation. ✱

Stars of Life

2013 California Ambulance Association Stars of Life Award Recipients

Paramedic Kyle Bush of Schaefer's Gold Cross Ambulance Service in Imperial County was honored for his exceptional work ethic.

Paramedic Arturo Carreon of American Ambulance in Fresno was honored for his contributions as an outstanding paramedic in Fresno.

Paramedic Shawn Crocker of Hall Ambulance Service in Bakersfield was honored for saving the life of a woman in cardiac arrest.

Paramedic Joe DeQuattro of Medic Ambulance Service in Solano County was honored for saving the life of a man in cardiac arrest.

Paramedic Sherard Flores of Schaefer Ambulance in Los Angeles was honored for providing outstanding care to an infant in respiratory distress.

Paramedic Kent Frazier of Hall Ambulance Service in Bakersfield was honored for saving the life of a person suffering a cerebral vascular event.

Paramedic Acina Hansen of San Luis Ambulance in San Luis Obispo was honored for her consistent, high quality patient care and contributions to her organization.

Paramedic Perry Hookey of Medic Ambulance Service in Solano County was honored for his heroic efforts while trying to rescue a man from a burning 18-wheel truck.

Paramedic Alan Hughry of Medic Ambulance Service in Solano County was honored for saving the life of a 6-year old cardiac arrest patient.

Paramedic Sam Humphries of Medic Ambulance Service in Solano County was honored for saving the life of an adult male in cardiac arrest.

Paramedic Anthony Keehne of Schaefer Ambulance in Los Angeles was honored for providing outstanding care to an infant in respiratory distress.

EMT Kelly Kinkade of Riggs Ambulance Service in Merced was honored for her relentless work ethic and promoting EMS careers for youth in Merced County.

Paramedic Nathan Kline of Hall Ambulance Service in Bakersfield was honored for exemplary customer service in Metro Bakersfield.

Paramedic Jonathon Knauf of Mercy Medical Transportation in Escondido was honored for saving the life of a child in cardiac arrest.

EMT Markus Lincoln of Medic Ambulance Service in Solano County was honored for saving the life of a six-year old cardiac arrest patient.

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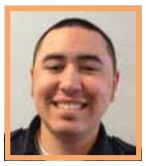
Stars of Life

2013 California Ambulance Association Stars of Life Award Recipients

Paramedic Brian McChristian of Hall Ambulance Service in Bakersfield was honored for saving the life of a woman in cardiac arrest.

Paramedic Monica McGrew of American Ambulance in Fresno was honored for her lifelong commitment to EMS and contributions to her organization.



Emergency Medical Dispatcher Cameron Messer of Medic Ambulance Service in Solano County was honored for his outstanding contributions to his organization.

Paramedic Ken Sexton of Hall Ambulance Service in Bakersfield was honored for his generous donation of hearing aids to a community member.

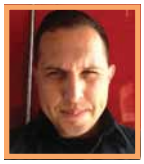
EMT Ray Shanahan of Care Ambulance Service in Orange was honored for his dedication and outstanding leadership within his organization.

Paramedic Amy Shontz of City Ambulance of Eureka was honored for her treatment and extrication of a man who was impaled by a tree branch in a remote area.

Paramedic Robert Smith of Riggs Ambulance Service in Merced was honored for his commitment to high quality patient care and service to his community.

Chiyon Speakman, RN, of Medic Ambulance Service in Solano was honored for her excellent care of a cardiac patient who went into a ventricular tachycardia during transport.

Klatann Thomas of Care Ambulance Service in Orange was honored for his outstanding leadership and commitment to providing EMS to his community.



Paramedic Jesse Torres of Mercy Medical Transportation in Escondido was honored for his commitment to high quality patient care and service to his organization.

EMT Angelica Van Aalst of Care Ambulance Service in Orange was honored for her commitment to quality patient care, outstanding leadership, and service to her community.

EMT John Van Aalst of Care Ambulance Service in Orange was honored for his commitment to quality patient care, outstanding leadership, and service to his community.

EMT Pamela Watson of Medic Ambulance Service in Solano County was honored for her commitment to high quality patient care and contributions to her organizations.

Paramedic Brian White of Hall Ambulance Service in Bakersfield was honored for saving the life of a patient in cardiac arrest.

Stars of Life

Dr. Howard Backer, Director, Emergency Medical Services Authority

Dr. Howard Backer, MD, MPH, FACEP, director of the California Emergency Medical Services Authority, was invited to address attendees at the California Ambulance Association's 2013 Stars of Life Celebration Dinner April 23rd in Sacramento.

Now well into his second year leading EMS at the state level, Dr. Backer has spoken to our membership on several occasions since taking the helm at EMSA and usually provides an overview of the statewide policy issues with which EMSA is engaged such as system design, scope of practice and budgetary issues. As useful as that information is for us, this speech was different and even more valuable.

His remarks were a combination of advice for EMTs and paramedics, a glimpse at where EMS is headed, and a look at how his own experience in emergency medicine and public health have contributed to his vision for EMS. Many in attendance commented that his remarks were "on-point" and reflected genuine respect and appreciation for providers while also challenging us to do better. He came across as a coach for EMS professionals and it could not have been better received. Rather than attempt to paraphrase his remarks, and certainly lose something in the process, we requested permission to re-print them in full.

Good Evening Chairwoman Pierson, Executive Director Iljana, Stars and Heroes, and Ladies and Gentleman.

Thank you, for inviting me here tonight to acknowledge the achievements of our emergency medical services professionals and to share some thoughts on our unique profession.

All of you work for the good of the individual patient and the public at large. Some of you represent the public face of EMS while others represent the critical organization behind the system.

By exhibiting excellence and service above and beyond the call of duty, you epitomize quality EMS services and promote EMS through your commitment and success; therefore, you represent in the best possible light the 60,000 EMTs and 18,000 paramedics who work in California.

EMS services are part of our emergency medical system and bridge public safety and medicine. It is one of the most recognizable public services and one that is taken for granted and expected as a right by every member of the public. We deliver on this safety net promise to respond to every call for medical assistance, regardless of insurance status or demographics.

I would like to reflect on what it takes to be an excellent health care provider while providing this emergency medical service.

It takes intellectual rigor and the ability to make rapid decisions, commitment to continuous learning, a humanitarian conviction, and compassion. In the case of field practice, it sometimes requires bravery.

Our thought process utilizes rapid decision making, similar to what is termed the OODA loop (which stands for observe, orient, decide, and act). This was conceived to describe the process used subconsciously by fighter pilots.

When I left emergency department practice for public health, I thought that I would not be well accepted because this rapid process is not typical of public health where decisions often wait until all the information is available and all parties have been consulted – a process that can be very lengthy.

However, I found public health and government welcomed and needed people who could apply the emergency decision-making process, which is to rapidly assess the situation, consider the evidence that is available at that time and determine whether or not to wait for additional data, then make a decision. The process then re-enters the loop to monitor and reassess the situation, and change course without hesitation if the

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initial decision was not working. Changing approach is often feared in government and some other industries, but it should not be seen as failure, because it is using good judgment and appropriate response.

In order to support and have confidence in your medical decision making process, there are several other qualities you need to develop:

Be a detective. Develop and use acute powers of observation. You learn a huge amount from simply observing the situation, speaking to the patient, seeing how they respond, and noting their functional capacity.

Be a good listener and a critical listener. The patient is trying to tell you what is wrong, but they have varying abilities and color it with their own bias. The family often tries to speak for them, even when the patient can speak on their own. But, do not neglect any sources of information, especially from anyone who was a direct observer.

Have personal integrity. You access people in their homes when they are in a vulnerable condition. Your honesty and integrity must be irreproachable.

As a professional that carries public trust, you are held to a higher personal expectation than many. Don't let your personal problems ruin your career.

Mentor your younger colleagues who may be less mature and have not tempered their actions with judgment or experience.

Accept the medical paradigm. You are working in a medical model, which has significant differences from public safety.

You have already demonstrated your commitment to excellence, but quality assurance has a price of medical review and transparency. Accept the fact that people will be looking over your shoulder at what you do and how you do it. This should not be an issue for conscientious providers.

In addition to your individual practice, our collective practice and our agencies will be evaluated for results. Continuous quality improvement which has led to very high safety and quality standards in other industries, such as the airline industry, and has fairly recently come to medicine. Our safety record in medicine has been a source of professional shame. But we cannot afford to simply learn from our mistakes one-by-one. The key is to improve the system and develop then follow processes based on the best evidence available.

Teamwork does not only mean a strict division of labor, it means using the combined skills, judgment of the team to potentiate one another's skills.

I have reviewed a few disturbing cases when the senior health team member used poor judgment but the other team members remained silent, and the outcome was tragic.

One way to avoid this is to ask your team whether anyone has any other suggestions before carrying out a decision. I use this method during resuscitations where there are many team members from the emergency department present to avoid criticism after the code. Emergency physician also frequently ask their colleagues for their opinion of challenging cases before making final decisions. Humility, not superiority and arrogance, is the virtue in medicine. It is also a safety check.

Practice compassion. When in a crisis, our patients need caring and comforting health care providers. Although technical skills seem most highly valued, it is still the human touch that has the most lasting impact. Many times I have heard patients criticize a colleague that I know was an excellent physician. The reality is that patients don't know how technically expert or knowledgeable you are. They may not remember or understand what you did or didn't do, but they will always remember how you made them feel.

Embrace change. Change is the only constant in medicine, so don't get too attached or invested in particular actions or medications.

During my career, I have seen many practices and treatments come and go. They are at first touted as major scientific advances, then held as the standard of care; then with more experience, found to be useless or worse yet, harmful. Ironically, practice actions are easier to introduce than to eliminate. Do not hold onto procedures and medications that have been disproven or discredited. We are now questioning many of our basic practices – for example, even endotracheal intubation and epinephrine in resuscitation are being examined and do not look nearly as beneficial as we have believed.

Your practice is also changing in larger ways. You do not work independently, but are part of a system to provide optimal medical care. You now identify and triage patients, initiating events that include bypassing certain hospitals and mobilizing whole treatment teams in the receiving hospital. Ironically, this is not considered added scope of practice, like an additional field procedure, but it is increased responsibility and judgment. Moreover, it is part of a larger system-wide patient protocol that is evidence-based, and subject to constant evaluation and performance improvement.

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The drive for efficiency and integrated care will open even more opportunities. For example, there is new interest in non-transport protocols or protocols to transport to other destinations within the health care system. This puts EMS personnel in a new role of integrating care within the health system and bridging gaps in care.

Severely injured or ill patients are usually the easiest to recognize, and it is clear what initial actions to take. The hardest decisions for me were for the patients that I did not admit to the hospital or was not able to diagnose, but I discharged them to see their doctor for further management. For EMS, the decision of who does not need transport and could be evaluated later by their provider will be the hardest or most risky decisions that you can make.

There is a simple decision rule that I use: A tie goes to the patient. When struggling over a decision, to make sure you are not being biased or shaded by pre-conception, apply a simple rule – the Uncle Henry or Aunt Margaret rule – what would you want done if this was a member of your family?

Let me finish by returning to our event at hand – I commend and acknowledge all of you, because of the day-to-day work that you do. The providers that we recognize today encountered events that required quick, determined action or they demonstrated sustained selfless commitment to improving EMS and their communities. These actions may be extraordinary by usual standards but are commonplace among the EMS providers here.

On behalf of the Emergency Medical Services Authority, I congratulate and thank you for your selfless service to the citizens of California. ✱

2013 Health Care Reform Summit:

Public Policy Experts Address CAA Interests

Marjorie Swartz (on the right) from the Assembly Health Committee discussed the health care reform packages moving through the legislature. Pictured with Helen Pierson, CAA Board Chair for 2013.

On the eve of the Stars of Life Celebration last month, the California Ambulance Association hosted a Health Care Reform Summit featuring four speakers who are intimately involved in implementing health care reform in our state. Approximately 40 people attended the series of presentations Monday, April 22nd at the Sheraton Grand Hotel in Sacramento to learn about the status and future of health care reform implementation.

Sandra Shewry, Director of State Health Policy for the California Healthcare Foundation, began the day with an overview of health care reform and implementation of the federal Patient Protection and Affordable Care Act (ACA) which was signed into law in 2010 and upheld (for the most part) by the U.S. Supreme Court in 2012. She outlined the full range of changes to health insurance, provision of care and financing required by the Affordable Care Act and provided current information on which changes have been implemented at this point and which still have to be done by the 2014 start date. Sandra is recognized nationwide as an expert in health care reform issues and she is also a dynamic speaker who was able to lay out this complex topic very clearly and set the stage for the speakers who followed.

Diane Van Maren, Health Consultant for Senate President Pro Tem Darrell Steinberg, and Marjorie Swartz, Principal Consultant to the Assembly Health Committee, gave us a clear look into the specific legislative actions needed to implement the Affordable Care Act in California, the areas where our state has some discretion, and what negotiations are underway between the governor and the legislature to resolve sticking points such as how much to expand Medi-Care.

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Diane and Marjorie were so generous with their time in coming to speak with us and share their knowledge, especially considering how busy they must be right now. As of this morning there were as many as 57 bills being considered in the legislature that mention the Patient Protection and Affordable Care Act. They range from special session bills on how to operate the health benefit exchange and what information insurers can use in setting rates for their insurance products to information technology compliance and background checks on exchange employees.

Our final speaker was David Panush who is the Director of External Affairs for Covered California, our state version of the Health Benefit Exchange insurance marketplace. David conducted a comprehensive presentation on how the health benefit exchange is expected to work including an explanation of the individual and small business programs, different coverage levels, and the timeline for rollout of the exchange. Pre-enrollment will begin this fall and coverage will begin in January 2014. Their big job right now is to qualify all of the health plans who are applying to be part of the exchange and review their plans to ensure they provide the essential health benefits as outlined in the law.

The health care reform summit and all of the speakers who participated were valuable in giving us an idea of what the policymakers are doing on health care reform right now and where the legislature and the administration are focusing.

"The presentations improved our understanding of how the ACA will impact CAA members as health care providers from a revenue standpoint as it relates to reimbursement for services to government beneficiaries," said CAA Board Chair Helen Pierson. "We had an opportunity to share some of our concerns about how adding two million more people to Medi-Cal will affect our ability to provide service. We also gained a better understanding of how the ACA will affect us as employers providing benefits to our workforce. It was valuable in getting us better prepared for health care reform by identifying the things we should be looking at and doing at this point."

While the speakers provided a great deal of information there are questions that they weren't able to address such as, "What provisions will be made to prevent the loss of essential ambulance services resulting from the potentially devastating financial impact of providing ambulance transports to as many as two million more Medi-Cal beneficiaries at a net loss of approximately $439 per transport?" Also, "If the ACA requires states to pay primary care physicians no less than 100% of Medicare payment rates in 2013 and 2014, shouldn't that be expanded to include ambulance service?"

Those questions are still to be addressed as the CAA remains engaged in the process of ACA implementation to help improve healthcare delivery system-wide and ensure that essential ambulance service is recognized as a critical component of the health care safety net which the ACA was created to strengthen. As always, the goals of health care reform are well-aligned with the goals of California's private ambulance service providers: enhance quality and access to care, improve health and reduce cost. ✱

Feature *Article*

HR Best Practices in 10 Minutes – Flat!

Terry Paterson

It can be challenging for an employer in California to know and understand the confusing weave of laws that you are required to follow. This article summarizes some of the key labor law requirements that must be followed to help keep you out of trouble and help you avoid any legal pitfalls.

Meals and Rest Breaks

Rest Breaks

Rest breaks must be provided at the rate of 10 consecutive minutes for each four hours worked. Rest breaks may not be combined with or added on to meal breaks, even at the employee's request. Nor may they be used to allow an employee to come in 10 minutes late or leave 10 minutes early. Rest breaks are paid as time worked and may be controlled by the employer. An employer may require employees to remain on the premises during the 10-minute break.

Meal Breaks

A half-hour (½ hour) meal break generally must be provided for every work period of more than five hours. However, if six hours of work will complete the day's work, the employee may voluntarily choose not to take the meal break. The meal break must begin before the employee has completed their fifth hour of work.

Meal breaks may be unpaid only if:
They are at least 30 minutes long
The employee is relieved of all duty; and
The employee is free to leave the premises.

Meal breaks may be longer than a half-hour at the employer's discretion. A second meal break of no fewer than 30 minutes is generally required for all workdays on which an employee works more than 10 hours.

The Labor Commissioner no longer has the discretion to grant an employer an exemption from the meal break requirements.

Penalties: For each workday an employer fails to "authorize and permit" an employee to take a required break or meal period, the employee is owed on additional hour of pay at the employee's regular rate.

Overtime

There is no law specifying a minimum number of hours for which an employee must be scheduled each shift. Therefore, an employee might be scheduled for a one-hour shift to attend a training meeting.

California is unique in that we have daily as well as weekly overtime laws that must be followed. Once employees work more than eight hours in one day, overtime rules apply.

Employees must be paid one-and-one-half times their regular rate of pay for all time worked in excess of eight hours, up to and including twelve hours, in any one workday, all time worked in excess of forty hours in any one workweek, and for the first eight hours worked on the seventh consecutive workday in any one workweek.

Employees must be paid two times their regular rate of pay for all time worked in excess of twelve hours in any one workday, and for all time worked in excess of eight hours on the seventh consecutive workday in any one workweek. Hours paid, but not worked (i.e. vacation, sick leave, holiday), will not be considered hours worked for the purposes of calculating overtime.

Daily overtime guidelines do not apply to ambulance drivers and attendants scheduled for 24- hour shifts of duty who have agreed in writing to exclude from daily time worked not more than three (3) meal periods of not more than one (1) hour each and a regularly scheduled uninterrupted sleeping period of not more than eight (8) hours. The employer must provide adequate dormitory and kitchen facilities for employees on such a schedule. If the employee is unable to have 8 hours of uninterrupted sleep, then overtime must be paid.

What happens when an employee works unauthorized overtime – is the employer required to pay it? Yes, California law requires that employers pay overtime, whether authorized or not.
An employer can discipline an employee if he or she violates the employer's policy of working overtime without the required authorization. However, California's wage and hour laws require that the employee be compensated for any hours he or she is "suffered or permitted to work, whether or not required to do so." California case law holds that "suffer or permit" means work the employer knew or should have known about. Thus, an employee cannot deliberately prevent the employer from obtaining knowledge of the unauthorized overtime worked, and come back later to claim recovery. The employer must have the opportunity to obey the law.

Ending the Employment Relationship

What should you do if an employee gives you only three days notice that they are going to

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Feature *Article*

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another company? Can you give them their final paycheck when you process payroll next week? What if you fire someone, do you have to give them their check right away?

When the employer/employee relationship ends, you need to ensure that their final paycheck is in order or you may be subject to several penalties.

When an employee gives at least 72 hours notice that they will be leaving your employ, you are required to have their final paycheck ready for them on their last day. If you receive less than 72 hours notice, you have 72 hours from the time of notice to produce their paycheck. If the Company is ending the relationship, then you must have their final paycheck ready for them on their last day.

What happens if an employee receives his/her paycheck late? In addition to paying the correct amount of compensation, employers are expected to pay it on time and in the manner required by law. Penalties for Failure to Pay Wages Due include: Payment to the employee of a days wages earned multiplied by the number of days the paycheck was late.

Example: An employee who earns $10/hr, works 8 hours/day and is due to receive a paycheck on Friday but does not actually receive it until Monday would be awarded $80 x 2 days = $160 by the labor commissioner. Fines to the labor commissioner are $100 for an initial violation, and $200 for subsequent and/or intentional violations. In addition, the state may also impose a penalty equivalent to 25% of the amount of the wages not paid in a timely manner.

Unless you have a signed consent from the employee on the day of termination, you can not take additional deductions from their paycheck for money due to you. For example, if an employee owes you $500 for a laptop that you provided to them and they are leaving your employ, you can not automatically deduct the cost of the laptop from their final paycheck. In order to take the additional deduction out of their final paycheck, you must have them sign a separate form on the day of termination that itemizes the additional discounts and states that they understand it is being taken from their final paycheck. If they refuse to sign it, you must provide them with their paycheck without the additional deduction.

Making Sense of It All

We know how confusing all of these laws can be, and that is where we come in. We are CEA, the California Employers Association. CEA is a not-for-profit human resource employers association that serves over 9,000 businesses throughout California. CEA is committed to providing our members with the information, clarity, and perspective they need to perform in today's business environment.

CEA serves as your trusted human resource specialist. We give you best practices based upon years of in-the-trenches experience. We monitor the trends and keep our members up-to-date on the latest employee relation and labor law information through a series of publications, webinars and educational workshops.

Please join us from the comfort of your own office for one of our upcoming webinars to hone your HR skills even more! In the next few months our webinar topics include; Drug Testing in the Workplace, Pay and Compensation Fundamentals and Dealing with Stress and Burnout, just to name a few.

For more information or assistance please call CEA at 800.399.5331 and visit our website at: www.employers.org. ✱

Managing Workplace Risk: Ten Tips to Help Employees Stay Out of Court

Spencer Hamer, Esq.

As the economy continues to struggle, employers have trimmed payrolls with increased layoffs and terminations. As a result, employment lawsuits have spiked, and employers that have gone years without legal problems are finding themselves hauled into court for the first time. The good news is that by taking simple steps, employers can reduce their lawsuit exposure. Here are ten:

1 Use Job Applications and Background Checks. Job applications are typically an employer's first significant written communication from a prospective employee. Effective applications ask for detailed job and education history, references, and the employee's written promise that everything in the application is accurate. Employers can use this information to look for gaps in work history, evaluate questionable career moves, and contact former employers. When used in conjunction with a background check, discrepancies between the check and the application, such as residential addresses compared to job locations, may surface. In addition, if the employee later sues, the employer can use application fraud as an argument to reduce damages. Employers must ensure that all applications and background checks comply with applicable federal and state law.

2 Establish At-Will Employment. Employees often attempt to claim that their termination was without "good cause," and therefore, the employer is liable for breach of contract. Employees often try to create contracts for good cause termination by pointing to promises of continued employment, progressive discipline policies, or historical treatment of employees at the company. Employers can counter such claims by having employees acknowledge, in writing, that their employment is "at will": that the employer or the employee can terminate the employment relationship at any time or for any (lawful) reason. While it is always good for employers to document performance problems and reasons for termination, at will employment status makes terminations easier to justify, by eliminating any "good cause" requirement.

3 Objectively Document Performance Issues. Many employers have no problem giving timely verbal counseling. But often, due to time pressure, they find it difficult to reduce counselings to writing. When the employee later sues, the employer faces a "he said/she said" credibility contest. Documenting discipline, however, does not always have to be done using a formal disciplinary form. Handwritten notes, a computer journal, and emails can also serve as evidence. Of course, the best approach is to communicate issues in writing to the employee, but some documentation is always better than none. Moreover, when documenting performance issues, make it objective. Instead of "I feel you are not meeting my expectations," use "Who/What/When/Where/Why/How" language: "On Friday at 12:15 p.m., when Ms. Smith arrived ten minutes late for her appointment, you told her, in a rude voice, that she 'better be on time from now on.' This violates company policy on attitude and communication with clients."

4 Use Performance Reviews Wisely. Most employers provide some form of written performance feedback. When used well, reviews document deficiencies, communicate expectations, and coach employees to better performance. But many supervisors have problems confronting employees on tough issues. In addition, by the time the annual review comes around, specific problems may have been forgotten. As a result, when the problem employee is terminated for poor performance files a lawsuit, the personnel file contains glowing reviews. To improve reviews, create a job description that sets forth the duties of the position. Train supervisors to prepare consistent, objective evaluations, using specific examples of good or bad performance. Avoid forms that allow supervisors to simply circle numbers without providing detail. And make sure that every review – even Warren Buffett acknowledges he can get better at his job – addresses areas for improvement. Finally, periodically review the reviews to make sure supervisors are properly completing them.

5 Give Employees A Chance to Improve. Jury analysis reveals that a typical juror is often thinking, "What if this had happened to me?" To be

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prepared for this question, strive for fundamental fairness in performance standards. Many employees genuinely want to improve, so make sure communication is frequent and specific. Provide employees fair notice of their performance problems, offer them assistance where necessary, and give them a chance to improve. Jurors are savvy, and do not react well to obvious attempts to "paper trail" or "sandbag" employees. If you are just going through the motions in your discipline, and reviews, it will probably be evident. Finally, curtail abusive behavior. While general workplace abuse is not, alone, unlawful, allowing unprofessional behavior makes other employment decisions appear suspect.

6 Don't Delay Termination Decisions. Many employers tell employees that their performance will be monitored closely during a 90-day introductory period. This is fine, but employers can often tell in the first week of employment whether an employee is having problems. As soon as performance issues arise, counsel, coach, and assist the employee. If the employee fails to show at least moderate signs of improvement, however, there is often no need to delay termination. In addition, employees often develop a sixth sense about impending terminations. By dragging out the inevitable, employers run the risk that employees will try to prevent termination by raising spurious claims of job-related injury, disability, need for a leave, or whistleblower issues.

7 Stick to Your Story. Employers often feel the need to soften the blow – for example, by making it easier for the employee to get another job – by calling a termination a layoff. In addition, employers often lack confidence in reasons for termination, and try to disguise terminations as economic layoffs. But if the termination is called a layoff, and the employee sues, the employer has an instant credibility issue. Moreover, if the company cannot present evidence that it was suffering financially when the decision was made – evidence which can usually be obtained in litigation from corporate financial statements, customer orders, sales plans, and related documents – the employee will have grounds for calling the termination pretext for an unlawful motive.

8 Make Sure Your Supervisors Know Your Policies. Well-meaning employers often hire a capable Human Resources employee, develop and distribute a handbook, and stand ready to respond properly to employee issues. All this hard work can be quietly undermined by untrained supervisors, who may not respond properly to harassment complaints, do not understand that an employee complaining about overtime pay may have become a whistleblower, or do not recognize an employee's request for time off as a disability accommodation issue. Supervisors do not need to become employment law experts, but they should have sufficient understanding of the company's policies that they can spot and escalate issues to Human Resources. Train supervisors to err on the side of caution, and to report matters whenever in doubt.

9 Oversight Ensures Consistency and Checks Bias. Employers that have decided to terminate often overlook a critical consideration: how other employees have been treated in similar situations. Differential treatment can be used to support claims of discrimination. Before terminating, review prior terminations to see if similar violations resulted in termination. In addition, supervisors are often too close to the issue when deciding to terminate. Building in an extra layer of review helps weed out supervisorial bias and ensure that terminations are not carried out in the heat of the moment or based on incomplete information.

10 Document the Termination and Consider Offering a Release. Document all reasons that led to the termination decision. Ensure that existing policies support the decision, and cite provisions in the handbook or other policies whenever possible. If the employee is being laid off, make sure objective, written layoff criteria have been followed. Communicate the decision, in writing, to the employee, including a brief summary of the reasons for the termination. While the termination letter does not need to provide exhaustive detail as to the reasons, it needs to have specificity. Employees often say that what led them to sue was their employer's failure to articulate a reason for the termination. Conduct the termination meeting in person, and have a witness. Keep the meeting brief. Insruct the employee on end-of-employment issues, such as benefits, return of property, and confidential information. Finally, consider offering severance pay in exchange for a release of claims. Give the employee time to consider the release to blunt claims of duress.

While employees can rely on a variety of state and federal laws to bring claims, employers do not need to sit back and wait to be sued. Proactive steps can be taken in all stages of the employment relationship to minimize risk. ✱

Spencer Hamer, Esq. is a Partner at Michelman & Robinson, LLP and a Member of the Firm's Labor & Employment Department.

This article should not be relied upon as legal advice. Consult a lawyer for advice regarding specific situations.

Member *Profile*

Manteca District Ambulance – Over 60 Years and Still Going Strong!

It wasn't too long ago when if you were stricken ill or seriously injured in Manteca, an ambulance was viewed almost as a luxury. As the burgeoning Central Valley town approached a population of 3,500 in 1950, emergency medical vehicles had to make the 10 mile trek from French Camp – and that's *IF* they were able to come at all!

This is a picture of the original ambulance that served the residents of Manteca and Lathrop in the 1950s.

Local resident Dr. Robert Winters and Manteca Junior Chamber of Commerce member Dale Johnson decided the town could do better. Funds were initially raised on a membership basis – families paid $3 per year, small businesses paid $25 and larger companies paid $50, which all included at least one ride to a local hospital up to 25 miles away (Manteca did not have a hospital at this point).

It took approximately one year to raise the first $3,100, which was required to purchase the original ambulance. After initial success and a positive response from the community, the effort to raise more dollars to lend some permanence to the ambulance company began. While the initial crew of volunteers did a fantastic job and were all thoroughly trained in first aid and emergency care, the members soon realized they needed a paid driver who could be on call 24-hours a day. Many of the volunteers would even go as far as closing their own shops and businesses to make themselves available to give care to their fellow community members. It was these initial civic-minded volunteers who made the first few years of the Manteca District Ambulance possible.

After a resolution passed by the Manteca Junior Chamber of Commerce dissolved their involvement with the volunteer ambulance outfit in 1951, control of the organization was turned over to the newly-formed Manteca District Volunteer Ambulance Service, a non-profit corporation. Manteca attorney John J. McFall took on all of the legal filing responsibilities, and an initial Board of Directors was established to oversee all operations. The first board appointees were Dale Johnson (President), Judge E. Douglass (Vice President), George Milner (Secretary and Treasurer), John J. McFall, Mrs. Sylvia Farley, W.E. Keltner, Oscar Breitenbucher, Dr. Robert C. Winter, William J. Johnson, and Ernest Lefebvre.

Throughout the years, as the Manteca District Ambulance continued to grow and serve the community with first-response and emergency medical care, the communities in the Manteca and neighboring Lathrop areas began to depend on their services. In 1979, the District was able to merge into operating with fully-paid, Paramedic-level staff. This increased level of expertise and knowledge led to the District earning exclusive operating rights in the response areas of Manteca and Lathrop. This Exclusive Operating Area (EOA) agreement put forth in 1980 further entrenched MDA within the area.

Much in the same way the need for emergency medical care and services started the Manteca District Ambulance, Tuolumne

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Member *Profile*

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A Tuolumne County Paramedic assists local fire crews and first responders in giving medical aid to a patient off of a road after a vehicle accident. With many rock formations, steep and rural roads, inclement weather and other obstacles, providing prompt emergency medical care on scene proves to be a challenge for Paramedics and EMTs.

County in the 1980s was facing some of the same logistical problems and issues that Manteca was facing in the 50s. It was (and still is) a predominately rural area, with residences and communities spread far apart and lots of difficult terrain to manage. With the abundance of outdoor activities to partake in (hiking, white-water rafting, snow and water skiing, camping and backpacking, etc.), first responders have to be able to know the terrain and be skilled and physically-fit enough to manage it, let alone provide expert medical aid once they arrived there. Prior to 1977, so-called "Mom and Pop" privately-operated ambulances were all that existed in Tuolumne County – not only could they not effectively provide service to the entire community, but they often experienced fiscal challenges that hampered overall operations. They also consisted solely of volunteers and could not provide Paramedic-level care.

After several talks, the Manteca District Ambulance contracted with Tuolumne County to provide Paramedic Ambulance service to avoid having to subsidize the numerous Mom and Pop ambulance providers. Not only did this partnership between a private, non-profit company (MDA) and a public entity (Tuolumne County) signal the continued growth and success of the Manteca District, it also provided a much-needed service to the rural county nestled in the Sierra Nevada foothills. All of Tuolumne County's 2,200 square miles is exclusively handled by MDA, and they work closely with local law enforcement (Tuolumne County Sheriff's Office, California Highway Patrol and Sonora Police Department), Fire (Tuolumne County Cal-Fire, all community fire departments), dispatch, local Search and Rescue operations, air ambulance services and Sonora Regional Medical Center, the only hospital serving all of Tuolumne County. This ensures community members receive the prompt care they require.

From humble beginnings, the crew of the Manteca District Ambulance now boasts over 90 employees, all of which are experts in their field and exhibit compassion and professionalism to the citizens of their response areas. It takes a special kind of person with a unique set of skills and personality attributes to be able to provide urgent medical care to those in need, and MDA has no shortage of them. For decades, it has served as not only a valued and essential public service, but also a fantastic

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A few of the staff members at the Tuolumne County headquarters in Sonora.

Member *Profile*

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opportunity to make a well-compensated and exciting, varied career in a rural area.

With a talented team comes an increase in possibilities. As the public/private partnership between MDA and Tuolumne County continued to flourish, new equipment and facilities became realities. Increases in technologies have allowed for Paramedics and EMTs to provide care in a quicker, more efficient manner. Tools such as mobile CAD (Computer-Aided Dispatch), electronic billing, GPS systems in ambulances and mobile devices, 12 lead EKGs, Trauma Triage, intraosseous infusion (or IO, the ability to inject directly into bone marrow) and expanded scope medications for the transfer and treatment of critical patients have all gone a long way in dramatically improving the quality and effectiveness of patient care for the people of Manteca, Lathrop and Tuolumne County.

Although the 60+ years of the Manteca District Ambulance have been an unquestioned success, there are still challenges that the company will face moving forward. As the amount of reimbursements associated from patient care costs from state agencies, federal agencies and health care providers continues to diminish, a non-profit company such as MDA will struggle to stay financially solvent. Paramedics and EMTs are focused on saving lives and providing the first emergency care to the injured and ill – they will never refuse care to an individual in need due to monetary or insurance complications. However, if agencies and companies do not reimburse ambulance companies for the employee costs and the care they provide, it will be difficult for ambulance providers to stay fiscally solvent. As new methods of care are introduced, it is critical that the state stays on top of patient care trends and recognizes these valuable, life-saving methods of care as fit for reimbursement.

Throughout its history, the Manteca District Ambulance company has grown by leaps and bounds and has offered compassionate, professional and prompt care. By placing community first, MDA has been able to provide careers for hundreds of local men and women and saved the lives of countless others. While the future may be uncertain, the dedicated, talented and passionate team at Manteca District Ambulance will continue to find ways to prosper and grow, while always providing a valuable community service that is second to none. *

To learn more about Manteca District Ambulance, visit *www.mantecaambulance.org* or call (209) 823-1032.

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