MEMORANDUM OF LAW

DATE: May 19, 1994

TO: Maureen Stapleton, Assistant City Manager

FROM: City Attorney

SUBJECT: Paramedic Billings

INTRODUCTION

In a letter dated April 29, 1994, and received by our office on May 3, you requested an opinion as to whether American Medical Services ("AMS") current billing practices meet the terms of the Paramedic System Management Agreement ("Agreement") between The City of San Diego ("City") and AMS and, if not, what changes would have to made to bring them in conformance with contract requirements. The current dispute focuses on whether AMS is properly interpreting Advance Life Support ("ALS") transport for purposes of billing at an ALS rate. Apparently, AMS interprets the Agreement and the Medicare Coverage Guidelines ("Guidelines") as allowing an ALS rate whenever an ALS ambulance is dispatched, regardless of the type of paramedic functions actually performed. City staff, on the other hand, interprets the Agreement and the Guidelines as restricting AMS to charging ALS rates only when "ALS functions" are performed.

QUESTION PRESENTED

Whether AMS's current billing practices with respect to charging ALS rates are consistent with the Agreement.

ANSWER

As the following will detail, we have reviewed the express language of the Agreement, the incorporated Request for Proposal ("RFP"), the AMS bid and existing Guidelines for ambulance services. Reviewing these materials and construing the Agreement in accordance with the plain meaning of the language, leads us to conclude that AMS billing practices are inconsistent with the Agreement. First, the Agreement provides that an ALS transport will be determined based on whether the functions performed by the paramedics are currently classified as ALS functions in the Guidelines. Thus, the Agreement explicitly ties the classification of a given transport to the functions performed and not to the type of ambulance dispatched.

Second, a related issue stems from the lack of an

exhaustive definition of what constitutes an ALS function. The Agreement establishes the Guidelines as the controlling document for determining what constitutes an "ALS function." Part 3 of the Guidelines contains informational and procedural material for providers of health services. This includes instructions dealing with coverage of services, such as ambulance services, and reasonable charges for such services. Section 5116 of the Guidelines addresses reasonable charges for ambulance services and defines various types of ambulances.

Although the Guidelines do not specifically define ALS function, it does provide an inexhaustive list of paramedic functions typically performed by ALS ambulance personnel. The functions identified in the Guidelines as typical of those performed by ALS ambulance personnel are similar to those identified as ALS services in the RFP. The functions listed in the Guidelines and the RFP are provided as a representative list only, as evidenced by the broad language (i.e., "including, but not limited to") used in both the Guidelines and the RFP to define "ALS function." As City staff correspondence reveals, this inconclusive language was purposefully used to allow adjustments in billing practices as changes in the Guidelines occurred. Such open language seems reasonable under the circumstances with respect to interpreting or defining ALS function. Consequently, either the paramedic function performed by AMS falls squarely within the range of functions outlined in the RFP and the Guidelines or the paramedic function is substantiated as an ALS function by AMS through documentation and reference to the Guidelines.

Finally, it is significant that the Guidelines recognize that ALS ambulances may be dispatched yet Basic Life Support ("BLS") functions are performed by the paramedics. Where a pattern of dispatch is established entailing repeated use of ALS equipment while rendering BLS service, the Guidelines recognize the difference and make payment "based on the customary and prevailing base rate for basic ambulance services." (See attached Guidelines Section 5116.) Thus, even though the Guidelines have an inexhaustive list of what ALS functions may be performed by ALS ambulance personnel, the Guidelines themselves distinguish between the type of equipment dispatched versus the nature of the services provided. As will be seen infra, this distinction is echoed in the contract language.

DISCUSSION

I. The Agreement

A. Functions Performed vs. Type of Ambulance

Section 1 of the Agreement incorporates by reference the

RFP and accompanying Bid materials, except where specifically deleted or modified. This section further declares that the parties' rights, duties and obligations with respect to paramedic system management shall be in accordance with the Agreement, which includes the RFP and accompanying Bid materials.

Section 3 establishes the Agreement as the controlling document when conflicts arise between the Agreement, RFP and American's Bid Proposal. Section 3 provides in relevant part:

> In the event of a conflict or ambiguity regarding what is intended as a result of inconsistent language, commitments, or requirements between the RFP, American's Bid Proposal, and this Agreement the provisions of this Agreement shall control overall ....

With respect to AMS's billing practices regarding ALS rates, Section 2(n) of the Agreement states:

> An ALS transport will be determined by whether the functions performed by the paramedics are currently classified as ALS functions in the Medicare coverage guidelines (emphasis added).

Therefore, in determining whether a transport can be billed at an ALS rate, AMS must look to the paramedic functions performed and not to the type of ambulance dispatched or type of call received. In this connection, the Agreement is unambiguous. Moreover, as Sections 1 and 3 make clear, the Agreement is the only document that controls the rights, duties and obligations of the parties and is the controlling document in the event of conflicts or inconsistencies. Significantly, Section 5116.1 of the Guidelines makes the same distinction noting that the supplier's service should be the controlling factor unless need for an ALS ambulance is "specifically documented on the claim."

B. Definition of ALS Functions

The term ALS function is not specifically defined in any document related to the Agreement. Both the RFP and the Guidelines, however, list certain functions that can be considered an ALS function. For example, the RFP, under Section 5 of the Introduction, defines ALS as follows:

> ALS shall mean special service designed to provide definitive pre-hospital emergency care including, but not limited to, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of specified drugs and other medicinal preparations, and other specified techniques and procedures administered by certified personnel within their scope of practice

> under the medical control of the local EMS agency medical director and the base hospital. (See similar ALS definition in Health and Safety Code Section 1797.52.)

By inference, then, an ALS function would involve any one of these techniques or any other specified technique shown to be a "special service" to provide definitive pre-hospital emergency care. Whether or not any of these techniques were employed and deemed necessary in performing a particular paramedic function thus becomes the significant factor in determining whether the paramedic function or "special service" in question could be reasonably construed as an ALS function. Again, the express language of the Agreement defines ALS in terms of function and not equipment.

According to the Agreement, whether a transport is considered an ALS transport depends on whether the functions performed by the paramedic are currently classified as ALS functions in the Guidelines. The applicable provisions of the Guidelines are discussed in the ensuing section.

II. Medicare Guidelines

A. Authority

Title XVIII of the Social Security Act provides the statutory authority for the broad objectives and operations of the Medicare program. Pursuant to the Social Security Act, the Guidelines provide operating instructions for those entities involved in administering the Medicare program. Relevant to this discussion is Part 3 of the Guidelines--Claims Process, which contains informational and procedural material the "carrier"F

"Carrier" is defined in the Social Security Act as follows:

> (1) with respect to providers of services and other persons, a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services . . . in consideration of premiums or other periodic charges payable to the carrier . . . .

42 U.S.C. ' 1395u(f).

needs for the efficient processing and payment of claims. This includes instructions dealing with coverage of services, reasonable charges, and other pertinent claims procedures.

It is appropriate therefore to refer to relevant sections of the Guidelines to determine when and under what circumstances ALS rates are allowable. Furthermore, as AMS indicated in their letter dated 2/18/94, "the use of Medicare Guidelines suggests that it was used as a reference, not because it defined `functions' per se, but because it provided a standard for

billing ALS transports." The Guidelines contains several provisions that, taken as a whole, provide a standard for billing ALS transport. It is therefore appropriate for the parties to examine all relevant sections of the Guidelines to ascertain the proper billing standards for ambulance services provided by AMS.

B. Applicable Provisions

Section 5116 of Part 3 of the Guidelines addresses reasonable charges for ambulance services. This section includes definitions used in paying for services furnished by ambulance companies. Although ALS function is not specifically defined in the Guidelines, Section 5116 does define ALS ambulance. In defining an ALS ambulance, this section describes various paramedic functions typically administered by ALS ambulance personnel. The relevant language reads:

> Typical of this type of ambulance would be mobile coronary care units and other ambulance vehicles that are appropriately equipped and staffed by personnel trained and authorized to administer IVs (intravenous therapy), provide anti-shock trousers, establish and maintain a patient's airway, defibrillate the heart, relieve pneumothorax conditions and perform other advanced life support procedures or services such as cardiac (EKG) monitoring (emphasis added).

As indicated earlier, a list comprised of similar functions appears in the RFP as representing ALS service. Clearly, this list is inexhaustive as evidenced by its reference to "other advanced life support procedures." However it does provide a benchmark of typical services.

Apart from defining ALS function, the Guidelines also address the issue of determining the base rate allowance for ALS service. Sections 5116.1-5116.7 outline the basis for payment of ALS versus BLS service. Section 5116.1 is particularly relevant to the present situation since it addresses the basis for determining what rates should apply and under what circumstances. The section states in relevant part:

> The ALS reasonable charge may be used ... as a basis for payment whenever an ALS ambulance is used. However, there may be instances when a supplier establishes a pattern of uneconomical care such as repeated use of ALS ambulances in situations in which it should have been known that a less expensive basic ambulance was available and that its use would have been medically appropriate. If you become aware of such a pattern, payment for that ambulance supplier's service should be based on the customary and prevailing base rate for basic ambulance services.

> The reasonable ALS rate should then be allowed only if the need for the ALS ambulance is specifically documented on the claim.

Consequently, this provision authorizes the carrier who recognizes such an "uneconomical" pattern to pay the ambulance supplier based on the "supplier's service" as opposed to the supplier's equipment. Thus, the Guidelines echo the distinction between service and equipment. In addition, this provision indicates an ALS rate is allowed only if the need for an ALS ambulance is specifically documented on the claim. Therefore if the functions performed are not one of the listed ALS functions in the Guidelines or RFP, documentation is required substantiating the claim.

III. Analysis of AMS's Position

The current dispute revolves around AMS's interest in charging an ALS rate for ambulance service in instances where the City staff feels less expensive ambulance service is appropriate. In other words, it appears that AMS's current billing practices are uneconomical. Pursuant to the Agreement and in accordance with the Guidelines, the City has the authority to demand more economical billing practices. The apparatus and parameters for the City engaging in evaluating the necessity for ambulance service provided by a supplier are outlined in sections 5116.1-5116.7 of the Manual.

AMS defended its current billing practices in their 2/18/94 letter to the City. In that letter, AMS challenged the City's reliance on the word "functions" as "misplaced," since ALS "functions" are not specifically defined in the Guidelines or elsewhere. The Agreement, as previously established, governs the rights and obligations of both parties. The Agreement unambiguously ties the determination of a transport to "functions performed" as explained above. AMS is accurate in stating that functions is not specifically defined in the Agreement or the Guidelines. However, AMS also acknowledges that the Guidelines provide illustrative descriptions of ALS functions. Thus, the word "functions" is not wholly without meaning so as to extinguish its operative effect in the Agreement.

As another defense of their current billing practices, AMS also argued that under the Guidelines a transport can be charged at an ALS rate regardless of whether one or more particular functions are performed. Such an interpretation, however, ignores the obvious concern expressed in the Guidelines for potential "uneconomical" employment of ambulance services. Hence, although the Guidelines allow ambulance suppliers to use the ALS reasonable charge as a basis for payment whenever an ALS ambulance is used, the Guidelines immediately follow this billing

policy with the following caveat and qualification:

> However, there may be instances when a supplier establishes a pattern of uneconomical care such as repeated use of ALS ambulances in situations in which it should have been known that a less expensive basic ambulance was available and that its use would have been medically appropriate.

Section 5116.1

Thus, the use of a certain ambulance type is not dispositive when determining the appropriate reasonable charge for ambulance services. The inquiry into the reasonableness of the more expensive charge does not end after it is determined that the more expensive ambulance was used, but rather extends to an examination of the actual functions performed. To do otherwise would render Section 2(n) of the Agreement meaningless since it expressly uses "functions" versus "equipment". It is axiomatic that a contract should be construed to give all provisions a consistent meaning.

AMS also seems to rely heavily on the fact that they routinely perform one or more ALS functions as described in the Guidelines on virtually every transport to justify their position of charging an ALS rate for every transport. Such an interpretation, however, ignores the very distinction quoted above. The whole key to economical care is an evaluation of the overall function. The Guidelines discourages reliance on one criterion in deciding the reasonableness of the rate and promote a case by case analysis of the functions performed by ambulance personnel before a reasonable rate is ascertained.

There are no provisions in the Agreement, including the RFP, or Guidelines that offer an exhaustive list of ALS functions. The applicable provisions simply supply illustrative ALS functions only. Therefore the Agreement requires that the functions performed be the basis for the applicable rate.

CONCLUSION

Based on the foregoing, AMS's current position that they are able to charge an ALS rate regardless of the paramedic functions performed is inconsistent with the Agreement and applicable provisions of the Guidelines. The Agreement unambiguously establishes the paramedic functions performed as the basis for determining whether a transport can be billed at an ALS rate.

From a practical standpoint, if none of the benchmark ALS functions identified in the Guidelines are employed by AMS's paramedic personnel, AMS can nevertheless demonstrate why a particular transport warrants an ALS rate. It is conceivable that over a reasonable period, an exhaustive list of ALS

functions could effectively be created. Thus, if AMS documents and substantiates the need for the more expensive service, the higher ALS rate is justified under the Guidelines that are utilized to construe the contractual provisions.

If after reviewing the audit conducted pursuant to the Public Services and Safety Committee direction as it relates to the billing issue and in light of this memorandum of law it is determined that ALS rates were charged without sufficient documentation and AMS cannot substantiate the need for the ALS functions, then AMS could be in breach of Section 2(n) of the Agreement and written notice could be provided to AMS. AMS would have thirty (30) days pursuant to RFP Section IX 1. A. to correct such default. The City may terminate or cancel Agreement if the breach is not corrected within thirty (30) days.

JOHN W. WITT, City Attorney
By
Elmer L. Heap, Jr.
Deputy City Attorney

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