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Attorneys for Plaintiff West Valley City

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

WEST VALLEY CITY, a municipal corporation;

Plaintiff,

v.

UTAH STATE EMERGENCY MEDICAL SERVICE COMMITTEE, an agency of the State of Utah; UTAH DEPARTMENT OF HEALTH, an agency of the State of Utah; BUREAU OF EMERGENCY MEDICAL SERVICES AND PREPAREDNESS, an agency of the State of Utah,

Defendants.

COMPLAINT
(TIER 2)

Civil No. _____

The Honorable _____

Plaintiff West Valley City ("West Valley"), by and through counsel, hereby complains against defendants Utah State Emergency Medical Services Committee (the "Committee"), the Utah Department of Health (the "Department"), and the Bureau of Emergency Medical Services and Preparedness (the "Bureau") (collectively, the "State Defendants") and for its causes of action alleges as follows:

NATURE OF THE CLAIMS

1. This is an action for judicial review of an administrative rule pursuant to Utah Code § 63G-3-602. Specifically, on or about April 19, 2018, the Committee with the concurrence of the Department and/or the Bureau, purportedly enacted certain amendments to Utah Administrative Code R426-1-200, R426-2-400 and R426-3-500 (collectively, the "Amended Rules"). As set forth below, the Amended Rules have serious unintended and adverse consequences on local governments and emergency ambulance services throughout the state. Additionally, the Amended Rules require a more complex dispatch protocols and force 911 operators to second-guess the medical decisions of highly-trained, medical professionals. As a result, the Amended Rules are dangerous and put patients throughout the state at risk of serious harm and injury.

2. Accordingly, the Amended Rules should be declared unconstitutional and invalid. *See* Utah Code § 63G-3-602(4)(a). Alternatively, the Amended Rules should be stayed and the State Defendants should be ordered to revisit the Amended Rules and follow proper procedures to ensure the Amended Rules comply with Utah Code § 63G-3-201 and all other applicable laws. *See* Utah Code § 63G-3-602(4)(c)-(e).

PARTIES, JURISDICTION, AND VENUE

3. West Valley is a municipal corporation and political subdivision located in Salt Lake County, Utah with a mailing address of 3600 South Constitution Blvd., West Valley City, Utah 84119.

4. The Committee is a state agency created pursuant to Utah Code § 26-1-7 and more particularly described in Utah Code § 26-8a-102. The Committee's duties are defined in Utah Code § 26-8a-104. The Committee's mailing address is P.O. Box 142004, 3760 South Highland Drive, Salt Lake City, Utah 84114-2004.

5. The Department is a state agency created pursuant to Utah Code § 26-1-4. The Department is tasked with, among other things, promoting and protecting the health and wellness of the people within the state of Utah. The Department's mailing address is P.O. Box 141010, Salt Lake City, Utah 84114-1010 and the Department's main building is located at Cannon Health Building, 288 North 1460 West, Salt Lake City, Utah 84116.

6. The Bureau is a state agency, tasked with promoting and overseeing an effective emergency health care system throughout the state. The Bureau's mailing address is P.O. Box 142004, 3760 South Highland Drive, Salt Lake City, Utah 84114-2004.

7. This Court has subject matter jurisdiction over this matter pursuant to Utah Code § 63G-3-602 because it seeks judicial review of an administrative rule. This Court also has subject matter jurisdiction over this matter pursuant to Utah Code § 78A-5-102.

8. Venue is proper in this Court pursuant to Utah Code § 78B-3-307 because West Valley's causes of action arise in Salt Lake County and the State Defendants have their principal

offices in Salt Lake County. Venue is also proper in this Court pursuant to Utah Code § 63G-3-602 because West Valley is located in Salt Lake County.

9. West Valley satisfies the requirements for a waiver of the exhaustion of administrative remedies established by Utah Code § 63G-3-602(2)(b)(i) because (a) the Amended Rules became effective less than six months ago;[1] and (b) West Valley submitted written comments on the Amended Rules to the Committee during the public comment period. *See* 03/15/18 Ltr. from D. Mortensen, attached as Ex. A.

10. West Valley is not currently joining any other party in this action as a defendant.

GENERAL ALLEGATIONS

The State Defendants are Responsible for Overseeing Utah's Emergency Medical Services Systems.

11. The Department is a Utah agency, tasked with, among other things, promoting and protecting the health and wellness of people within the state of Utah.

12. The Bureau is housed within the Department. The mission of the Bureau is to promote an effective and resilient public health, trauma, and emergency health care system, capable of responding to emergencies and disasters through professional development, preparedness, regulation, quality assurance, and partner coordination.

13. The Bureau has three statutory committees, three subcommittees, and various task forces. One of the statutory committees is the Committee, which is composed of 17 members, appointed by the Governor. Members of the Committee generally serve four-year terms. The Committee meets at least four times per year. *See* Utah Code § 26-8a-103.

[1] The effective date for the rules was published in the May 15, 2018 volume of the Utah State Bulletin.

14. The Committee's mission is to promote the development of a statewide emergency medical services system, determine the requirements for the coordination of emergency medical services, and outline the medical supervision of emergency medical service providers. The Committee is authorized to adopt administrative rules, but only with the concurrence of the Department. *See* Utah Code § 26-8a-104.

Ambulance Services Under the Utah Code

15. The Utah Code establishes two types of ground ambulance service: (a) "911 ambulance or paramedic service" ("911 Ambulance Service"); and (b) "non-911 ambulance service" ("Non-911 Ambulance Service").

16. Utah Code § 26-8a-102(1) defines 911 Ambulance Service as

> (1)(a) "911 ambulance or paramedic services" means
>
> (i) either:
>
> (A) 911 ambulance service;
>
> (B) 911 paramedic service; or
>
> (C) both 911 ambulance and paramedic service; and
>
> (ii) a response to a 911 call received by a designated dispatch center that receives 911 or E911 calls.
>
> (b) "911 ambulance or paramedic service" does not mean a seven or ten digit telephone call received directly by an ambulance provider licensed under this chapter.

17. Conversely, under Utah Code § 26-8a-102(14), "Non-911 service means transport of a patient that is not 911 transport under Subsection (1)."

18. Thus, under the Utah Code, whether an ambulance service is designated as "911 Ambulance Service" or "Non-911 Ambulance Service" is determined by the phone number used to request the ambulance service. If an individual requests ground ambulance service by dialing

911, the call is designated as a request for 911 Ambulance Service. On the other hand, if an individual requests ground ambulance service by dialing a seven or ten digit phone number, the call is designated as a request for Non-911 Ambulance Service.

Ambulance Service Under the Administrative Code

19. Despite the clear definitions and delineation of ground ambulance calls set forth in the Utah Code, the Utah Administrative Code supplanted the definition of "Non-911 Ambulance Service." Specifically, before the Amended Rules were enacted, the Utah Administrative Code included a definition of "Inter-facility Transfer" as:

> An ambulance transfer of a patient, who does not have an emergency medical condition as defined in UCA 26-8a-102(6)(a), and the ambulance transfer of the patient is arranged by a transferring physician for the particular patient, from a hospital, nursing facility, patient receiving facility, mental health facility, or other licensed medical facility.

20. Thus, under the Utah Administrative Code before the Amended Rules were enacted, to qualify as Inter-facility Ambulance Service, the request for ambulance service must have met three conditions. First, it must not have been initiated through a 911 call. Second, it must have been arranged by the patient's physician. And, third, the patient must not have been suffering from an emergency medical condition as defined in Utah Code § 26-8a-102(6)(a).[2]

[2] Utah Code § 26-8a-102(6) defines "emergency medical condition" as:

> (a) a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in: (i) placing the individual's health in serious jeopardy; (ii) serious impairment to bodily functions; or (iii) serious dysfunction of any bodily organ or part; or (b) a medical condition that in the opinion of a physician or his designee requires direct medical observation during transport or may require the intervention of an individual certified under Section 26-8a-302 during transport.

21. The Utah Administrative Code does not have a definition of 911 Ambulance Service.

West Valley Is a Licensed and Designated Emergency Medical Service Agency.

22. West Valley is the second largest city in Utah with a population of over 135,000 residents in approximately 38 square miles. For many decades, West Valley has provided the services traditionally associated with a city and continually strives to protect the health, safety and general welfare of its residents.

23. Among other things, West Valley operates fully-equipped police and fire departments, which provide services to West Valley's residents, businesses and visitors throughout West Valley's geographic boundaries.

24. In or about 1998, West Valley applied for and was granted a license to provide paramedic services throughout its geographic boundaries.

25. In or about 2005, West Valley's fire department obtained a license from the Bureau to provide 911 ambulance services throughout the city's geographic boundaries.

26. Since 2005, West Valley has been licensed as the exclusive provider of 911 ambulance transport services throughout its geographic boundaries. During that same time, a third-party, private provider has provided Non-911 Ambulance Services, which have sometimes been referred to as "Inter-facility Transfers."

27. To provide emergency medical and transportation services, West Valley currently employs 110 people, including 96 highly-trained and dedicated firefighters. Approximately 66 of its firefighters are trained as paramedics, 15 are trained as EMT advanced and 15 are trained as EMT basic.

28. To provide 911 Ambulance Services, West Valley currently owns five traditional ambulances and two transport fire engines, which operate as both a fire engine and a fully-equipped ground ambulance. Those seven ambulances are fully equipped and staffed and ready to respond at a moment's notice 24 hours a day, seven days a week, 365 days a year. Indeed, West Valley's fire department responds to more than 10,000 service calls each year, including calls for medical and fire emergencies and other calls for assistance.

29. West Valley contracts with the Valley Emergency Communications Center to provide police, fire, and medical dispatch services.

The Proposed Amended Rules

30. On or about January 8, 2018 at 10:02 a.m., the Committee posted notice ("Notice") of its January 10, 2018 meeting on the Utah Public Notice Website. A copy of the Notice is attached as Exhibit B.

31. In the Notice, the Committee identified as an agenda item: "Rule Amendments (R426-1, R426-2)." The Committee did not include in the Notice an agenda item relating to the proposed amendment of Administrative Rule R426-3.

32. On January 10, 2018, the Committee conducted its public meeting. During that meeting, the Committee discussed amendments to certain administrative rules, including R426-1 and R426-2. Additionally, while it was not identified in the Notice, the Committee discussed a proposed amendment to Administrative Rule R426-3-500.

33. Thereafter, the State Defendants caused the then-proposed Amended Rules, including the proposed amendment to R426-3-500, and the other proposed amendments to rules

R426-1, R426-2, and R426-3 to be published in the February 15, 2018 volume of the Utah State Bulletin. *See* Utah State Bulletin, Vol. 2018, No. 4 at 43-55 (02/15/2018), attached as Ex. C.

34. Specifically, the proposed amendments to the Amended Rules were identified as follows:

a. Proposed Amendment to R426-1-200(29):

([~~[30]~~29) "Inter-facility Transfer" means an ambulance transfer of a patient, who does not have an emergency medical condition as defined in UCA 26-8a-102(6)(a), and the ambulance transfer of the patient originates at [~~is arranged by a transferring physician for the particular patient, from~~] a hospital, nursing facility, patient receiving facility, mental health facility, or other licensed medical facility.

b. Proposed Amendment to R426-2-400:

R-426-2-400 Emergency Medical Service Dispatch Center Minimum Designation Requirements

An emergency medical service dispatch center shall meet the following minimum designation requirements:

(1) Have in effect a selective medical dispatch system approved by the [**~~off-line medical director~~**]Department which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions;[**~~and~~**]

(c) a systemized method which produces consistent results to assist a dispatcher in categorizing incoming calls so that dispatcher can notify the proper licensed provider for the level of care, whether an emergency response or an inter-facility patient transfer is needed, as defined in R426-1-200(29); and

([**e**]d) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration[~~;~~]

c. Proposed Amendment to R426-3-500:

> (15) In areas that are served by more than one transport provider, both providers shall have an agreement addressing first response and transport responsibilities for all types of facilities listed in R426-1-200(29) in effect by June 30, 2018 and shall provide copies to the Department and all impacted PSAP's and dispatch centers. The Department may act as mediator if needed to reach agreement.

These amended rules are collectively referred to as the "Amended Rules."

35. According to the State Defendants, the purpose of the amendments to R426-1 was "to update language to be consistent with Title 26, Chapter 8a, and to clarify definition for inter-facility transfers." Utah State Bulletin, Vol. 2018, No. 4 at 43.

36. According to the State Defendants, the purpose of the amendments to R426-2 was "to update language to be consistent with Title 26, Chapter 8a, and to amend medical dispatch designation requirements." Utah State Bulletin, Vol. 2018, No. 4 at 46. Also according to the State Defendants, the proposed amendment to R426-2 would have a "possible fiscal impact … to local governments who have performed inter-facility transports via the 911 call system when their license does not allow inter-facility services." *Id.* Indeed, the State Defendants stated that "[f]iscal impacts are estimated up to $1,200,000 annual billable inter-facility ambulance patient transports." *Id.*

37. According to the State Defendants, the purpose of the amendments to R426-3 was "to update language to be consistent with Title 26, Chapter 8a, require ambulance providers in recognized over-lapped service areas to have an agreement for responding to licensed patient care facilities, and to amend mutual aid and licensing requirements for ambulance providers." Utah State Bulletin, Vol. 2018, No. 4 at 50. Also, the State Defendants conceded that the proposed amendment to R426-3 "will create a fiscal impact for local governments who are

required to develop agreements with other licensed ambulance providers in service areas where there is an overlap." *Id.* The State Defendants stated that "[f]iscal impacts are estimated up to $1,200,000 annual billable inter-facility ambulance patient transports." *Id.*

38. The State Defendants offered no legal support for their claimed authority to require ambulance providers to enter into contracts and offered no effective mechanism for resolving disputes between ambulance providers who are unable to reach an agreement. Rather, the amended rule simply provides that the Department might act as a "mediator" if necessary. However, it fails to provide a mechanism if, notwithstanding the Department's mediation, the parties remain unable to reach an agreement.

West Valley Provides Comments on the Amended Rules.

39. As set forth in the Utah State Bulletin and pursuant to Utah Code § 63G-3-301(11)(a), interested persons had until March 19, 2018 at 5:00 p.m. to submit written comments regarding the proposed rules, including the Amended Rules.

40. On March 15, 2018, West Valley submitted written comments to the State Defendants regarding the Amended Rules. Specifically, West Valley explained that the Amended Rules:

a. Improperly expanded the definition of "Inter-facility Transfer" by eliminating the requirement that the patients treating physician arrange for the ambulance transfer through a seven or ten-digit telephone number;

b. Would put patients at risk by requiring a more complex dispatch protocol;

c. Would threaten patient safety by requiring dispatch operators, without medical training, to second-guess the patient's treating physician and other medically-

trained personnel, who determined that 911 emergency transport services were required; and

d. Would create new liabilities for emergency dispatch centers for failing to properly categorize 911 calls seeking ground ambulance services.

41. Additionally, the Amended Rules could have the effect of converting 911 Ambulance Services that West Valley is licensed to conduct into Non-911 Ambulance Services/Inter-facility transports that West Valley is not currently licensed to conduct. As a result, the Amended Rules would take a portion of West Valley's statutory and license rights without compensation.

42. Based on these and other concerns, West Valley requested that the State Defendants reject the Amended Rules or, at a minimum, conduct a more thorough analysis of the unintended consequences.

The State Defendants Enact the Amended Rules without Further Public Meetings to Discuss West Valley's Comments.

43. The State Defendants did not respond to West Valley's specific concerns with the Amended Rules. Instead, on April 10, 2018, the Bureau's Director of Emergency Medical Services, sent an email to counsel for West Valley stating that the purpose of the Proposed Amendments is to "clarify the intent of the licensing for inter-facility providers, identify which calls fit the definition of inter-facility, and give the responsibility to the 911 medical dispatch centers to uniformly and consistently categorize each call to determine which licensed ambulance provider should be sent, thereby managing the ambulance resources in the State of Utah."

44. The State Defendants did not provide notice of a public meeting to consider the public comments or vote on the Amended Rules.

45. Despite that, the State Defendants now claim that the Amended Rules became effective on April 19, 2018.

46. Prior to May 15, 2018, the State Defendants did not provide formal notice that it had enacted the Amended Rules.

47. As a municipality operating its own emergency medical services system, West Valley qualifies as a person aggrieved by the Amended Rules pursuant to Utah Code § 63G-3-602(1).

FIRST CLAIM FOR RELIEF
(The Amended Rules Are Not Supported by Substantial Evidence -- Against the State Defendants)

48. West Valley incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

49. Utah Code § 63G-3-602(4)(a)(ii) provides that a district court may declare administrative rules invalid if they are "not supported by substantial evidence when viewed in light of the whole administrative record."

50. Here, according to the State Defendants, the Amended Rules were enacted to clarify the definition of inter-facility transfers, to amend medical dispatch designation requirements and to require ambulance providers in "over-lapped service areas to have an agreement for responding to licensed patient care facilities."

51. On information and belief, there is not substantial evidence in the administrative record to support the Amended Rules.

52. To the contrary, the Amended Rules are arbitrary and capricious and will put patients throughout the state in greater risk of serious injury and harm.

53. Under the Administrative Code as it existed before the Amended Rules, the decision of whether to request 911 Ambulance Service or Non-911 Ambulance Service was determined by a patient's treating physician. However, under the Amended Rules, dispatch operators would be required to reevaluate and second-guess those treating physicians. This could create situations where dispatch operators, without medical training and who are unable to witness the patient's condition, would second guess the medical professionals who determined that 911 emergency transport services were required. As a result, the Proposed Rule would increase the risk that a request for ambulance service would be incorrectly categorized, causing injury or death to the patient.

54. Additionally, the Amended Rules would create new liabilities for emergency dispatch centers for failing to properly categorize a telephone call requesting ground ambulance services. For example, a dispatch center could be held liable if it re-categorized a 911 call as a request for Non-911 Ambulance Service and the patient suffered injury or death prior to or during transport.

55. The Amended Rules would also require medical dispatch operators to create and develop a new, more complex dispatch protocol, which could result in longer response times and put patients at greater risk of serious injury and death.

56. Additionally, the Amended Rules could have the effect of converting 911 Ambulance Services that West Valley is licensed to conduct into Non-911 Ambulance Services/Inter-facility transports that West Valley is not currently licensed to conduct. As a

result, the Amended Rules would be taking a portion of West Valley's statutory and license rights without compensation.

57. For these and other reasons, including those reasons identified in Paragraph 66, the Amended Rules are not supported by substantial evidence in the administrative record. To the contrary, the Amended Rules are arbitrary and capricious.

58. Thus, West Valley is entitled to an order from this Court declaring the Amended Rules invalid.

SECOND CLAIM FOR RELIEF
(Violation of Utah Statutory Law -- Against the State Defendants)

59. West Valley incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

60. Utah Code § 63G-3-602(4)(a)(ii) provides that a district court may declare administrative rules invalid if the rule violates statutory law.

61. Here, as set forth above, the Utah Code contains a definition of 911 Ambulance Services and Non-911 Ambulance Services. The distinction between the two is the telephone number used to obtain the ground ambulance service. Indeed, under the Utah Code, if an individual dials 911 to obtain ground ambulance services, the call is by definition a request for 911 Ambulance Services.

62. Contrary to the explicit definitions in the Utah Code, the Amended Rules seek to change the definition and designation of ground ambulance services. Specifically, the Amended Rules could require a 911 emergency medical dispatch center to re-designate a 911 call for ground ambulance services as a request for Non-911 Ambulance Services and/or a request for an Inter-facility Transfer.

63. By changing the statutory definition of 911 Ambulance Service and Non-911 Ambulance Service, the Amended Rules are contrary to and violate Utah statutory law.

64. Thus, West Valley is entitled to an order from this Court declaring the Amended Rules invalid.

THIRD CLAIM FOR RELIEF
(Substantive Due Process -- Against the State Defendants)

65. West Valley incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

66. Under both the United States and the Utah Constitutions, due process prevents state agencies, like the State Defendants, from depriving a person of certain rights without proper due process of law. Due process claims can take two forms: substantive and procedural. Substantive due process protects certain rights regardless of the procedures followed by the state agency.

67. Under Utah law, West Valley has a license to and the statutory right to provide 911 Ambulance Services within its geographic boundaries. West Valley also has the right and responsibility to protect the safety and well-being of its residents.

68. Thus, West Valley has a fundamental constitutional right, under the United States and Utah Constitutions, to provide 911 Ambulance Services and emergency medical services throughout West Valley.

69. The State Defendants violated West Valley's substantive due process rights by acting arbitrarily in the following ways:

a. Enacting rules that are not supported by substantial evidence in the administrative record;

b. Enacting rules that are contrary to and violate Utah statutory law;

c. Enacting rules that materially hinder and prevent West Valley from acting to protect its residents and visitors;

d. Enacting rules that require ambulance providers to enter into a contract;

e. Enacting rules that will put patients in West Valley in unnecessary risk of injury or death;

f. Enacting rules that will require West Valley to create and develop a new dispatch protocol that will threaten the safety and welfare of West Valley and its citizens;

g. Enacting rules that will require West Valley to enter into an agreement for responding to ambulance calls from medical facilities within its service area; and

h. Enacting rules that are designed to benefit private ambulance providers at the expense of and while burdening local municipalities.

70. The State Defendants further violated West Valley's substantive due process rights by enacting rules that will convert 911 Ambulance Services that West Valley is licensed to conduct into Non-911 Ambulance Services/Inter-facility transports that West Valley is not currently licensed to conduct. As a result, the Amended Rules would be taking a portion of West Valley's statutory and license rights without compensation.

71. For the reasons set forth above, the State Defendants have employed its administrative rulemaking authority to hinder, delay, and burden West Valley's ability to provide emergency medical services to its residents for reasons wholly unrelated to legitimate or rational government objectives.

72. The actions of the State Defendants, as alleged herein, were prompted by arbitrary motives and further no legitimate government end or purpose.

73. Accordingly, the State Defendants have violated West Valley's right to substantive due process pursuant to Article I, Sections 7 and 22 of the Utah Constitution and the Fourteenth Amendment to the United States Constitution.

74. Thus, West Valley is entitled to an order from this Court declaring the Amended Rules invalid.

FOURTH CLAIM FOR RELIEF
(Violation of the Utah Open and Public Meetings Act -- Against the Committee)

75. West Valley incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

76. The State Defendants are public bodies for the purposes of the Open and Public Meetings Act, Utah Code §§ 52-4-10, *et seq*.

77. Under Utah law, the Committee was required to provide 24 hours' public notice of its January 10, 2018 meeting.

78. The public notice should have included the meeting agenda, date, time and place.

79. The public notice should have also provided reasonable specificity to notify the public as to the topics to be considered at the meeting. *See* Utah Code § 52-4-202.

80. The Committee posted the Notice on the Utah Public Notice Website on January 8, 2018 at 10:02 a.m.

81. The Committee included in the Notice the following agenda item: "Rule Amendments (R426-1, R426-2)."

82. The Committee did not include in the Notice an agenda item relating to the proposed amendment of Administrative Rule R426-3.

83. Despite that, during the January 10, 2018 meeting, the State Defendants, acting through the Committee, discussed and purported to pass for public comment an amendment to Administrative Rule R426-3-500.

84. Under these circumstances, the Committee's approval of the amendment to Administrative Rule R426-3-500 violates the notice requirements under Utah law. *See* Utah Code § 52-4-202(6)(c).

85. The Committee has further violated the Open and Public Meetings Act by failing to post recordings of its January 10, 2018 meeting as it is required to do.

86. Thus, West Valley is entitled to an order from this Court declaring the amendment to Administrative Rule R426-3-500 invalid and requiring the Committee to hold a public meeting during which it will discuss the proposed amendment to Administrative Rule R426-3-500 after giving proper notice of the meeting.

PRAYER FOR RELIEF SOUGHT

WHEREFORE, pursuant to Utah Code § 63G-3-602(4), West Valley respectfully prays that this Court enter judgment against the State Defendants as follows:

On the First Cause of Action:

1. For an Order declaring that the Amended Rules are invalid because they are not supported by substantial evidence in the administrative record; and
2. For such other relief as the Court deems just and proper.

On the Second Cause of Action:

1. For an Order declaring that the Amended Rules are invalid because they violate Utah statutory law; and
2. For such other relief as the Court deems just and proper.

On the Third Cause of Action:

1. For an order declaring that the Amended Rules are invalid because they violate West Valley's substantive due process rights and are arbitrary and capricious and because there is no rational basis for the Amended Rules as they further no legitimate government end or purpose; and
2. For such other relief as the Court deems just and proper.

On the Fourth Cause of Action:

1. For an order declaring that the amendments to Administrative Rule R426-3-500 are invalid because the Committee violated the Utah Open and Public Meetings Act and requiring the Committee to hold a public meeting to discuss the proposed amendment before enacting any amendment to Administrative Rule R426-3;
2. For an award of West Valley's attorney fees and court costs pursuant to Utah Code § 52-4-303(4); and
3. For such other relief as the Court deems just and proper.

DATED: May 18, 2018.

STOEL RIVES LLP

/s/ *David L. Mortensen*
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David L. Mortensen
Jose A. Abarca

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WEST VALLEY CITY

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EXHIBIT A

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VIA EMAIL AND HAND DELIVERY

March 15, 2018

Mr. Guy Dansie
EMS Systems Program Manager
BUREAU OF EMERGENCY MEDICAL
SERVICES AND PREPAREDNESS
3760 South Highland Drive
Salt Lake City, UT 84106
Email: gdansie@utah.gov

Re: DAR File No.: 42554: Comments on Proposed Amendments to R426-1 Through R426-3. *See* Utah State Bulletin, Vol. 2018, No. 4 at 43-55 (02/15/18).

Dear Mr. Dansie:

This office represents West Valley City and the West Valley City Fire Department (collectively, "West Valley") and I write on their behalf to provide comments on the proposed amendments to R426-1 through R426-3. West Valley City has carefully reviewed the proposed rule changes and strongly opposes certain amendments as set forth below. Indeed, these amendments appear designed to benefit a single private ambulance provider while creating unnecessary risks for patients in healthcare facilities and imposing new and severe burdens on local governments that provide emergency medical services. Thus, the following proposed rules should be rejected. At a minimum, the Bureau of Emergency Medical Services (the "Bureau") should conduct a more thorough evaluation of the unintended consequences of the proposed rules.

1. Proposed Amendment to R426-1-200(29):

([~~30~~]29) "Inter-facility Transfer" means an ambulance transfer of a patient, who does not have an emergency medical condition as defined in UCA 26-8a-102(6)(a), and the ambulance transfer of the patient originates at [~~is arranged by a transferring physician for the particular patient, from~~] a hospital, nursing facility, patient receiving facility, mental health facility, or other licensed medical facility.

This proposed amendment appears intended to expand the definition of "Inter-facility Transfer." As currently defined, an Inter-facility Transfer must meet two conditions. First, it must be arranged by the patient's physician. Second, the patient must not have an emergency medical condition as defined in UCA 26-8a-102(6)(a).

According to its language, the current Rule excludes a medical condition under UCA 26-8a-102(6)(b) from a condition that would require 911 emergency medical transport. While odd, that exclusion can be explained by the requirement that the transfer be arranged by the patient's physician. Under the current Rule, the patient's physician makes the determination of whether 911 or Inter-facility transportation services are required. And, given the physician's unique knowledge of the patient, the treating physician should be the person making that determination.

As amended, however, the Proposed Rule would include within the definition of "Inter-facility Transfer" a transport originating at healthcare facilities, without the benefit of the patient's treating physician **and even where the patient's treating physician believed that the patient might require "direct medical observation" or "the intervention of an individual certified under Section 26-8a-302 during transport."** *See* Utah Code Ann. § 26-8a-102(6)(b). Thus, under the Proposed Rule, "Inter-facility Transfers" would include situations where the treating physician believed that the patient might require the intervention of a paramedic during transport.

Consequently, the Proposed Rule would require paramedics to staff all ambulances or put patients in unnecessary risk of injury or death. Thus, the Proposed Rule should be rejected. Alternatively, the Proposed Rule should be further amended to eliminate subsection (a) as set forth in bold below:

> ([~~30~~]29) "Inter-facility Transfer" means an ambulance transfer of a patient, who does not have an emergency medical condition as defined in UCA 26-8a-102(6)~~(a)~~, and the ambulance transfer of the patient originates at [~~is arranged by a transferring physician for the particular patient, from~~] a hospital, nursing facility, patient receiving facility, mental health facility, or other licensed medical facility.

2. Proposed Amendment to R426-2-400:

R-426-2-400 Emergency Medical Service Dispatch Center Minimum Designation Requirements

An emergency medical service dispatch center shall meet the following minimum designation requirements:

(1) Have in effect a selective medical dispatch system approved by the [~~off-line medical director~~]Department which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions;[~~and~~]

(c) a systemized method which produces consistent results to assist a dispatcher in categorizing incoming calls so that dispatcher can notify the proper licensed provider for the level of care, whether an emergency response or an inter-facility patient transfer is needed, as defined in R426-1-200(29); and

([e]d) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration[;]

The Proposed Rule makes a dangerous change to the provision of ambulance services. Under current rule, the decision of whether to request 911 or Inter-facility ambulance services is made by medically-trained professionals at the healthcare facilities. The Proposed Rule, however, would shift final authority for making that decision to dispatch operators. That would be a mistake.

As amended, the Proposed Rule would require emergency medical service dispatch centers to create a new and likely longer dispatch protocol and to second guess physicians and other medically-trained personnel at healthcare facilities who call 911. This could create situations where dispatch operators, without medical training and who are unable to witness the patient's condition, would second guess the medical professionals at the medical care facility who determined that 911 emergency transport services were required. As a result, the Proposed Rule would increase the risk that a request for ambulance service would be incorrectly categorized, causing injury or death to the patient.

Additionally, the Proposed Rule would create new liabilities for emergency dispatch centers for failing to properly categorize the call. For example, the dispatch center could be held liable if it re-categorized a 911 call as an inter-facility transport and the patient suffered injuries or death prior to or during transport.

The determination of proper ambulance service should be made by medically-trained personnel, familiar with the patients' condition, at the healthcare facilities. And that decision should not be second-guessed by dispatch operators, who lack the necessary medical training and who are simply asking a series of questions in a manner of a few seconds. Thus, the Proposed Rule should be rejected.[1]

3. Proposed Amendment to R426-2-500:

(15) In areas that are served by more than one transport provider, both providers shall have an agreement addressing first response and transport

[1] Ironically, the Proposed Rule does not require inter-facility ambulance providers to re-categorize inter-facility transports as 911 ambulance calls, even when the patient is clearly suffering from an Emergency Medical Condition requiring 911 ambulance services.

responsibilities for all types of facilities listed in R426-1-200(29) in effect by June 30, 2018 and shall provide copies to the Department and all impacted PSAP's and dispatch centers. The Department may act as mediator if needed to reach agreement.

This Proposed Rule would require emergency ambulance and inter-facility transport providers to negotiate an agreement for responding to ambulance calls from medical facilities. It appears to assume that the Proposed Amendment to Rule 426-2-400 is adopted. Thus, it suffers from the same defects as that Proposed Rule. Specifically, it would require dispatch operators to second-guess medical decisions made by trained medical professionals.

Beyond that, the Proposed Rule is unnecessary. Utah law already includes definitions of and distinguishes between 911 and inter-facility ambulance services. Utah Code Annotated § 26-8(a)-102(1) already provides that phone calls to 911 operators seeking ambulance services are designated as 911 ambulance transports, even when the calls originate at hospitals or other healthcare facilities. Conversely, as set forth above, R426-1-200(30) defines "Inter-facility Transfer," as requests for ambulance service that are arranged by a transferring physician and where the patient "does not have an emergency medical condition." *See* R426-1-200(30).

Given these clear definitions, an agreement between emergency and inter-facility ambulance providers is unnecessary. Indeed, the agreement could only require the parties to comply with applicable law. Any term of an agreement that conflicted with this law would be unenforceable.

Ultimately, the Bureau is tasked with overseeing the administration of emergency medical services in the State of Utah. In doing so, the Bureau should err on the side of having medical professionals determine the proper level of care. Here, however, the proposed amendments delegate decision-making authority to untrained individuals and, in so doing, would unnecessarily cause greater risk to patients in healthcare facilities. Accordingly, the proposed rules should be rejected.

I invite you to contact me or representatives of West Valley City if you would like to discuss the foregoing comments or any of the proposed rules.

Best Regards,

David L. Mortensen (sk)
David L. Mortensen

c. West Valley City (via email)

EXHIBIT B

Entity: Department of Health

Body: State EMS Committee

Subject:	Health
Notice Title:	EMS Committee Meeting
Meeting Location:	3760 S. Highland Dr Salt Lake City 84106
Event Date & Time:	January 10, 2018 January 10, 2018 01:00 PM - January 10, 2018 03:00 PM
Description/Agenda:	State EMS Committee Meeting Agenda January 10, 2018 at 1:00pm Highland Office Auditorium - 2nd Floor 3760 S. Highland Drive, Salt Lake City, UT 84114 Executive Session 11:30 - 12:30 Review Agenda and Materials Kris Kemp Questions Welcome 1:00 pm _ Introduction of Committee Members and Guests Kris Kemp Action Items Approval of Minutes Kris Kemp Rule Amendments (R426-1, R426-2) Guy Dansie EMS Proposed Rates Amendments (R426-8) John Houskeeper Trauma Rule Amendments (R426-9) Bob Jex Subcommittee Reports and Action Items Professional Development Update Chris Stratford Operations Update Andy Smith Informational Items Air Ambulance Committee Update Peter Taillac Rules for Unafiliated Licensed Individuals at Events Guy Dansie EMS Training (CPM Capstone Project) Gay Brogdon EMS Training Staff Assignments Dennis Bang REPLICA Update Guy Dansie Data System Update Felicia Alvarez Roundtable Discussion Kris Kemp Adjourn Next Meeting: April 11, 2018 at 1:00 pm Highland Office - Auditorium
Notice of Special Accommodations:	In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Janine Whaley at 801-273-6623.
Notice of Electronic or telephone participation:	Not available
Other information:	
Contact Information:	Jill Speth (801)273-6623 jspeth@utah.gov
Posted on:	January 08, 2018 10:02 AM
Last edited on:	January 08, 2018 10:02 AM

EXHIBIT C

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed January 17, 2018, 12:00 a.m. through February 01, 2018, 11:59 p.m.

Number 2018-4
February 15, 2018

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at https://rules.utah.gov/. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at https://rules.utah.gov/.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit https://rules.utah.gov/ for additional information.

~~(d) The Department identifies the next randomly numbered application available within that geographical region;~~
~~(e) The Department matches the randomly numbered application to the applicant name, and based on the applicant's age, evaluates whether the applicant continues to be eligible for the waiver.~~
~~(i) To be eligible for waiver enrollment on the date of identification, the applicant may not exceed six years and six months of age;~~
~~(ii) If the applicant is not eligible for waiver enrollment based on Subsection R414-509-6(1)(e)(i), the Department identifies the next randomly numbered application available within the geographical region until the Department can identify an eligible applicant.~~
~~(2) If there are not enough applications to fill all openings within a geographical region, the Department distributes the remaining waiver openings to other geographical regions.~~
~~(3) When the Department determines an open enrollment period is going to occur, it may suspend filling openings that arise through attrition.~~

~~KEY: Medicaid~~
~~Date of Enactment or Last Substantive Amendment: June 28, 2013~~
~~Notice of Continuation: October 2, 2017~~
~~Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3~~]

Health, Family Health and Preparedness, Emergency Medical Services
R426-1
General Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42554
FILED: 01/31/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update language to be consistent with Title 26, Chapter 8a, and to clarify definition for inter-facility transfers.

SUMMARY OF THE RULE OR CHANGE: The definition changes are needed to reflect changes in Title 26, Chapter 8a, as well as amended changes occurring in the language of Title R426.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This proposed rule change is not expected to have any fiscal impact on state government revenues or expenditures, because it is for the change of terminology in the administrative rules for Title R426. This update also makes changes to make terminology consistent terminology with those found in Title 26, Chapter 8a.
♦ LOCAL GOVERNMENTS: This proposed rule change is not expected to have any fiscal impact on local government revenues or expenditures, because it is for the change of terminology in the administrative rules for Title R426. This update also makes changes to make terminology consistent terminology with those found in Title 26, Chapter 8a.
♦ SMALL BUSINESSES: This proposed rule change is not expected to have any fiscal impact on small businesses revenues or expenditures, because it is for the change of terminology in the administrative rules for Title R426. This update also makes changes to make terminology consistent terminology with those found in Title 26, Chapter 8a.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This proposed rule change is not expected to have any fiscal impact on businesses not defined as small businesses, individuals, or other entities because it is for the change of terminology in the administrative rules for Title R426. This update also makes changes to make terminology consistent terminology with those found in Title 26, Chapter 8a.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposed rule amendment is not expected to have any fiscal impacts on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses with this proposed amendment language.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
FAMILY HEALTH AND PREPAREDNESS,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov or PO Box 142004, Salt Lake City, UT 84114-2004

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/19/2018

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

	FY 2018	FY 2019	FY 2020
Fiscal Costs			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.**

Appendix 2: Regulatory Impact to Non-Small Businesses

The amendments are to change terms used in definitions to reflect recent language amendments in Title 26, Chapter 8a.

The amendment to the definition of "inter-facility transport" was a clarification to reflect intent of licensing as contained in Rule R426-3.

No fiscal impacts due to language changes proposed for this rule amendment.

R426. Health, Family Health and Preparedness, Emergency Medical Services.

R426-1. General Definitions.

R426-1-100. Authority and Purpose.

This rule establishes uniform definitions for all R426 rules. It also provides administration standards applicable to all R426 rules.

R426-1-200. General Definitions.

The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule, in addition:

(1) "Advanced Emergency Medical Technician" or "AEMT" means an individual who has completed an AEMT training program, approved by the Department, who is [~~certified~~]licensed by the Department as qualified to render services enumerated in this rule.

(2) "Affiliated Provider" means a [~~certified~~]licensed EMS individual's secondary employer or employers.

(3) "Air Ambulance" means a specially equipped and permitted aircraft, especially a helicopter or fixed wing airplane, for transporting patients.

(4) "Air Ambulance Personnel" mean the pilot and patient care personnel who are involved in an air medical transport.

(5) "Air Ambulance Service" means any publicly or privately owned organization that is licensed or applies for licensure under R426-3 and provides transportation and care of patients by air ambulance.

(6) "Air Ambulance Service Medical Director" means a physician knowledgeable of potential medical complications which may arise because of air medical transport, and is responsible for overseeing and assuring that the appropriate air ambulance, medical personnel, and equipment are provided for patients transported by the air ambulance service.

(7) "Categorization" means the process of identifying and developing a stratified profile of Utah hospital trauma critical care capabilities in relation to the standards defined under R426-5-7.

(8) "Certify," "Certification," and "Certified" mean the official Department recognition that an individual has completed a specific level of training and has the minimum skills required to provide emergency medical care at the level for which he is certified.

[~~(9) "Certified EMS Individual" means a person certified by the Bureau of Emergency Medical Services and Preparedness to perform an EMS function.~~

~~————~~]([~~10~~]9) "Competitive Grant" means a grant awarded through the Emergency Medical Services Grants Program on a competitive basis for a share of available funds.

([~~11~~]10) "Complaint, Compliance, and Enforcement Unit or CCEU" means the investigative unit of the Department.

([~~12~~]11) "Continuing Medical Education" means a Department-approved training relating specifically to the appropriate level of certification designed to maintain or enhance an individual's emergency medical skills.

([~~13~~]12) "County or Multi-County EMS Council or Committee" means a group of persons recognized as the legitimate entity within the county to formulate policy regarding the provision of EMS.

([~~14~~]13) "Course Coordinator" means an individual who has completed a Department course coordinator course and is certified by the Department as capable to conduct Department-authorized EMS courses.

([~~15~~]14) "Department" means the Utah Department of Health.

([~~16~~]15) "Emergency Medical Dispatcher" or "EMD" means an individual who has completed a Department approved EMD training program, and is [~~certified~~]licensed by the Department as qualified to render services enumerated in this rule.

([~~17~~]16) "Emergency Medical Service Dispatch Center" means a call center designated by the Department for the routine acceptance of calls for emergency assistance, staffed by trained operators who utilize a selective medical dispatch system to dispatch licensed ambulance and paramedic services.

([~~18~~]17) "Emergency Medical Responder" or "EMR" means an individual who has completed a Department approved EMR training program, and is [~~certified~~]licensed by the Department as qualified to render services enumerated in this rule.

([~~19~~]18) "Emergency Medical Technician" or "EMT" means an individual who has completed a Department approved EMT training program and is [~~certified~~]licensed by the Department as qualified to render services enumerated in this rule.

([~~20~~]19) "Emergency Medical Technician Intermediate Advanced" means an individual who has completed a Department approved EMT- IA training program and is [~~certified~~]licensed by the Department as qualified to render services enumerated in this rule.

([~~21~~]20) "Emergency vehicle operator" means an individual on the roster of an EMS provider who may, in the normal course of the individual's duties, drive an ambulance or an emergency medical response vehicle.

([~~22~~]21) "EMS" means Emergency Medical Services.

([~~23~~]22) "Emergency Medical Incident" means any instance in which an Emergency Medical Services Provider is requested to provide or potentially provide emergency medical services.

([~~24~~]23) "EMS Instructor" means an individual who has completed a Department EMS instructor course and is certified by the Department as capable to teach EMS personnel.

([~~25~~]24) "EMS stand-by event" means the on-site licensed ambulance, paramedic service, or designated quick response unit at a scheduled event or activity provided by the local 911 exclusive license provider or their designee[~~, as referred to in R426-3-400(6)~~].

([~~26~~]25) "Exclusive License" means the sole right to perform the licensed act in a defined geographic service area, and that prohibits the Department of Health from performing the licensed act, and from granting the right to anyone else.

([~~27~~]26) "Grants Review Subcommittee" means a subcommittee appointed by the EMS Committee to review, evaluate, prioritize and make grant funding recommendations to the EMS Committee.

([~~28~~]27) "Ground Ambulance" means a vehicle which is properly equipped, maintained, permitted and used to transport a patient to a patient destination such as a patient receiving facility or resource hospital.

([~~29~~]28) "Inclusive Trauma System" means the coordinated component of the State emergency medical services (EMS) system composed of all general acute hospitals licensed under Title 26, Chapter 21, trauma centers, and pre-hospital providers which have established communication linkages and triage protocols to provide for the effective management, transport and care of all injured patients from initial injury to complete rehabilitation.

([~~30~~]29) "Inter-facility Transfer" means an ambulance transfer of a patient, who does not have an emergency medical condition as defined in UCA 26-8a-102(6)(a), and the ambulance transfer of the patient originates at[~~is arranged by a transferring physician for the particular patient, from~~] a hospital, nursing facility, patient receiving facility, mental health facility, or other licensed medical facility.

([~~31~~]30) "Individual" means a human being.

([~~32~~]31) "Level of Care" means the capabilities and commitment to the care of the trauma patient available within a specified facility.

([~~33~~]32) "Level of [~~Certification~~]License" means the official Department recognized step in the [~~certification~~]licensure process in which an individual has attained as an EMS provider.

(33) "Licensed EMS Individual" means a person licensed by the Bureau of Emergency Medical Services and Preparedness to perform an EMS function.

(34) "Meritorious Complaint" means a complaint against [~~an~~]a licensed ambulance provider, designated agency, or [~~certified~~]licensed provider(s) that is made by a patient, a member of the immediate family of a patient, or health care provider, that the Department determines is substantially supported by the facts or [~~an~~]a licensed ambulance provider, designated agency, or [~~certified~~]licensed provider(s):

(a) has repeatedly failed to provide service at the level or in the exclusive geographic service area required licensee;

(b) has repeatedly failed to follow operational standards established by the EMS Committee;

(c) has committed an act in the performance of a professional duty that endangered the public or constituted gross negligence; or

(d) has otherwise repeatedly engaged in conduct that is adverse to the public health, safety, morals or welfare, or would adversely affect the public trust in the emergency medical service system.

(35) "Matching Funds" means that portion of funds, in cash, contributed by the grantee to total project expenditures.

(36) "On-line Medical Control" which refers to physician medical direction of pre-hospital personnel during a medical emergency; and

(37) "Off-line Medical Control" which refers to physician oversight of local EMS services and personnel to assure their medical accountability.

([~~36~~]38) "Medical Director" means a physician certified by the Department to provide off-line medical control.

([~~37~~]39) "Mid-level Provider" means a licensed nurse practitioner or a licensed physician assistant.

([~~38~~]40) "Net Income" means the sum of net service revenue, plus other regulated operating revenue and subsidies of any type, less operating expenses, interest expense, and income.

([~~39~~]41)"Paramedic" means an individual who has completed a Department approved Paramedic training program and is [~~certified~~] licensed by the Department as qualified to render services enumerated in this rule.

([~~40~~]42) "Paramedic Ground Ambulance" means the provision of advanced life support patient care and transport by licensed paramedic personnel in a licensed ambulance.

([~~41~~]43) "Paramedic Rescue Service" means the provision of advanced life support patient care by licensed paramedic personnel without the ability to transport patients.

([~~42~~]44) "Paramedic Unit" means a vehicle which is properly equipped, maintained and used to transport licensed paramedics to the scene of emergencies to perform paramedic services without the ability to transport patients to a designated hospital or designated patient receiving facility.

([~~43~~]45) "Paramedic Tactical Service" means the retrieval and field treatment of injured peace officers or victims of traumatic confrontations by licensed paramedics who are trained in combat medical response.

([~~44~~]46) "Paramedic Tactical Unit" means a vehicle which is properly equipped, maintained, and used to transport licensed paramedics to the scene of traumatic confrontations to provide paramedic tactical services.

([~~45~~]47) "Patient Care Report" means a record of the response by each responding Emergency Medical Services Provider unit to each patient during an EMS Incident.

([~~46~~]48) "Patient Receiving Facility" means a Department designated medical clinic or designated resource hospital that is approved to receive patients transported by [~~an~~]a licensed ambulance provider.

([~~47~~]49) "Per Capita grants" mean block grants determined by prorating available funds on a per capita basis as delineated in 26-8a-207, as part of the Emergency Medical Services Grants Program.

([~~48~~]50) "Permit" means the document issued by the Department that authorizes a vehicle to be used in providing emergency medical services.

([~~49~~]51) "Person" means an individual, firm, partnership, association, corporation, company, or group of individuals acting together for a common purpose, agency, or organization of any kind public or private.

([~~50~~]52) "Physician" means a medical doctor licensed to practice medicine in Utah.

([~~51~~]53) "Pilot" means any individual licensed under Federal Aviation Regulations, Part 135.

([~~52~~]54) "Pre-hospital Care" means medical care given to an ill or injured patient by a designated or licensed EMS provider outside of a hospital setting.

([~~53~~]55) "Primary Affiliated Provider" or "PAP" means a [~~certified~~]licensed EMS individual's primary or main employer or provider.

([~~54~~]56) "Primary emergency medical services" means an organization that is the only licensed or designated service in a geographical area.

([~~55~~]57) "Provider" means a Department licensed or designated entity that provides emergency medical services.

([~~56~~]58) "Provisional [~~Certification~~]License" means temporary terms and conditions placed on a [~~certified~~]licensed EMS individual's [~~certification~~]license until completion of an investigation or a final adjudication or conclusion of the pending matter.

([~~57~~]59) "Quick Response Unit" or "QRU" means an entity that provides emergency medical services to supplement local licensed ambulance [~~services~~]providers or provide unique services.

([~~58~~]60) "Quick Response Vehicle" or "QRV" means a vehicle which is properly equipped, maintained, permitted and used to perform assistive services at a scene. A QRV may transport or deliver a patient to [~~an~~]a licensed ambulance provider access point. The QRV may include an automobile, an all-terrain vehicle or a watercraft.

([~~59~~]61) "Resource Hospital" means a facility designated by the EMS Committee to provide on-line medical control for the provision of pre-hospital emergency care.

([~~60~~]62) "Restricted [~~Certification~~]License" means a [~~certified~~]licensed EMS individual may not function in their EMS capacity for an interim period of time.

([~~61~~]63) "Scene" means the location of initial contact with the patient.

([~~62~~]64) "Selective Medical Dispatch System" means a [~~d~~]Department-approved reference system used by a designated local dispatch agency to dispatch aid to medical emergencies which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

([~~63~~]65) "Specialized Life Support Air Ambulance Service" means a level of care which requires equipment or specialty patient care by one or more medical personnel in addition to the regularly scheduled air medical team.

([~~64~~]66) "Training Officer" means an individual who has completed a department Training Officer Course and is certified by the Department to be responsible for an EMS provider organization's continuing medical education, [~~recertification~~]license renewal records, and testing.[

~~(65) "Transition Period" means prescribed range of dates that includes a begin and end date in which EMS providers will change their level of certificate from existing levels of certification to the Department adopted National Traffic and Highway Safety Administration's (NTHSA) National EMS Scope of Practice Model. This model names levels of certification as EMR, EMT, AEMT and Paramedic.~~]

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~September 24,~~]2018
Authorizing, and Implemented or Interpreted Law: 26-8a

Health, Family Health and Preparedness, Emergency Medical Services
R426-2
Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42555
FILED: 01/31/2018

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update language to be consistent with Title 26, Chapter 8a, and to amend medical dispatch designation requirements.

SUMMARY OF THE RULE OR CHANGE: Terms and requirements to the emergency medical dispatch center

designations are changed to reflect changes in Title 26, Chapter 8.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This proposed rule change is not expected to have any fiscal impact on state government revenues or expenditures because it is for the changing of terminology, training requirements for medical dispatch centers, and requiring medical dispatch to send ambulances based on license type. State expenditures and staff time are not affected.
♦ LOCAL GOVERNMENTS: This proposed rule change does not appear to create costs for local governments who fund designated medical dispatch centers, since all designated medical dispatch centers currently use vendor-based systems and associated training. A cost savings will be realized by designated medical dispatch centers due to removing the requirement for a certified training officer. A possible fiscal impact will be to local governments who have performed inter-facility transports via the 911 call system when their license does not allow inter-facility services. This only affects some local governments and a private ambulance provider who were approved with and existing over-lap service area as described in Subsection 26-8a-416(6). Fiscal impacts are estimated up to $1,200,000 annual billable inter-facility ambulance patient transports.
♦ SMALL BUSINESSES: This proposed rule change is not expected to have any fiscal impact on small businesses revenues or expenditures, because no small businesses are included in the entities affected by this amendment.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment clarifies proper dispatch of ambulance providers based on license type. It may create fiscal impacts for local governments who have performed inter-facility transports via the 911 call system when their license does not allow inter-facility services. This only affects some local governments and a private ambulance provider who were approved with and existing over-lap service area as described in Subsection 26-8a-416(6). Fiscal impacts are estimated up to $1,200,000 annual billable inter-facility ambulance patient transports.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposed rule amendment is not expected to have any fiscal impact on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Fiscal impacts are estimated up to $1,200,000 annual billable inter-facility ambulance patient transports.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
FAMILY HEALTH AND PREPAREDNESS,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov or PO Box 142004, Salt Lake City, UT 84114-2004

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/19/2018

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

	FY 2018	FY 2019	FY 2020
Fiscal Costs			
State Government	$0	$0	$0
Local Government	$1,200,000	$1,200,000	$1,200,000
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Costs:	**$1,200,000**	**$1,200,000**	**$1,200,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$4,625	$4,625	$4,625
Small Businesses	$0	$0	$0
Non-Small Businesses	$1,200,000	$1,200,000	$1,200,000
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$1,204,625**	**$1,204,625**	**$1,204,625**
Net Fiscal Benefits:	$4,625	$4,625	$4,625

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.**

Appendix 2: Regulatory Impact to Non-Small Businesses
The costs and benefits are based on the assumption that affected local governments are currently transporting

inter-facility types of patients in three service areas, and will no longer be allowed to do so. Fiscal data is based on revenues differences from the past calendar year compared to the previous calendar year by the non-small business ambulance provider.

A cost to local governments for vendor provided medical dispatch training was not included since all current designated medical dispatch centers currently use vendor-based dispatch systems with associated training for licensed emergency medical dispatchers.

Benefits to local governments include a potential savings of $4,625 ($125 per designated medical dispatch centers) by removing the training officer requirement.

R426. Health, Family Health and Preparedness, Emergency Medical Services.

R426-2. Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews.

R426-2-100. Authority and Purpose.

(1) This rule establishes types of providers that require a designation, the application process for a obtaining a designation and minimum designation requirements. The rule also establishes criteria for critical incident stress management and the process for quality assurance reviews.

R426-2-200. Pre-hospital Provider Designation Types.

The following type of provider shall obtain a designation from the Department:

(1) Quick Response Unit.

(2) Emergency Medical Service Dispatch Center.

R426-2-300. Quick Response Unit Minimum Designation Requirements.

A quick response unit shall meet the following minimum designation requirements:

(1) Have vehicle(s), equipment, and supplies that meet the current requirements of the Department for licensed and designated providers as found on the Bureau of EMS and Preparedness' web-site to carry out its responsibilities under its designation;

(2) Have location(s) for stationing its vehicle(s), equipment and supplies;

(3) Have a current dispatch agreement with a designated Emergency Medical Service Dispatch Center;

(4) Have a Department-certified training officer;

(5) Have a current plan of operations, which shall include:

(a) the names, EMS ID Number, and [~~certification~~]license level of all personnel;

(b) operational procedures; and

(c) a description of how the designee proposes to interface with other EMS agencies;

(6) Have a current agreement with a Department-certified off-line medical director who will perform the following:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, pre-hospital protocols, and/or pre-arrival instructions to be given by designated emergency medical dispatch centers;

(b) ensure the qualification of field EMS personnel involved in patient care and dispatch through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel or dispatcher who does not comply with local medical triage, treatment and transport protocols, pre-arrival instruction protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director [~~must~~]shall notify the Department within one business day of the suspension; and

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers.

(7) Have current treatment protocols approved by the agencies off-line medical director for the designated service level;

(8) Provide the Department with a copy of its certificate of insurance;

(9) Provide the Department with a letter of support from the licensed provider(s) in the geographical service area; and

(10) Not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) a history of disciplinary action relating to an EMS license, permit, designation or certification in this or any other state.

R426-2-400. Emergency Medical Service Dispatch Center Minimum Designation Requirements.

An emergency medical service dispatch center shall meet the following minimum designation requirements:

(1) Have in effect a selective medical dispatch system approved by the [~~off-line medical director~~]Department which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions;[~~and~~]

(c) a systemized method which produces consistent results to assist a dispatcher in categorizing incoming calls so that dispatcher can notify the proper licensed provider for the level of care, whether an emergency response or an inter-facility patient transfer is needed, as defined in R426-1-200(29); and

([e]d) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration[~~;~~].

(2) Provide pre-hospital arrival instructions by a [~~certified~~] licensed Emergency Medical Dispatcher.

(3) Have a current updated plan of operations, which shall include:

(a) plan of operations to be used in a disaster or emergency;

(b) communication systems, and

(c) aid agreements with other designated medical service dispatch centers.

(4) Have a current agreement with a Department-certified off-line medical director.

(5) Have an ongoing medical call review quality assurance program; and

(6) Have a [~~certified~~]licensed emergency medical dispatcher roster, which shall include:

(a) [~~certified~~]licensed staff names, Department [~~certification~~]license numbers and expiration dates; and

(b) [~~national~~]dispatch system training certification number and expiration dates.

R426-2-500. Designation Applications.

Any provider applying for designation shall submit to the Department: applications fees, complete application on Department approved forms, and documentation verifying that the provider meets the minimum requirements for the designation, as listed in this rule. The Department may determine other information is necessary for processing, and will provide a list of those requirements to the applicant. Additional items specific to the designation type are required as outlined below. A provider applying for re-designation shall submit an application as described above 90 days prior to the expiration of its designation.

R426-2-600. Quick Response Unit Designation Applications.

A Quick Response Unit shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service and documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

R462-2-700. Emergency Medical Service Dispatch Center Designation Applications.

An Emergency Medical Service Dispatch Center shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service provided by the designee and documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

R426-2-800. Criteria for Denial or Revocation of Designation.

(1) The Department may deny an application for a designation for any of the following reasons:

(a) failure to meet requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, or staffing requirements;

(c) failure to meet requirements for renewal or upgrade;

(d) conduct during the performance of duties relating to its responsibilities as an EMS provider that is contrary to accepted standards of conduct for EMS personnel described in Sections 26-8a-502 and 26-8a-504;

(e) failure to meet agreements covering training standards or testing standards;

(f) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(g) a history of criminal activity by the [~~licensee~~]licensed or designated provider or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsifying or misrepresenting any information required for licensure or designation or by the application for either;

(i) failure to pay the required designation or permitting fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required by statute or rule;

(k) misuse of grant funds received under Section 26-8a-207; and

(l) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant who has been denied a designation may request a Department review by filing a written request for reconsideration within thirty calendar days of the issuance of the Department's denial.

R426-2-900. Application Review and Award.

(1) If the Department finds that an application for designation is complete and that the applicant meets all requirements, it may approve the designation.

(2) Issuance of a designation by the Department is contingent upon the applicant's demonstration of compliance with all applicable rules and a successful Department quality assurance review.

(3) A designation may be issued for up to a four-year period. The Department may alter the length of the designation to standardize renewal cycles.

R426-2-1000. Change in Designated Service Level.

(1) A quick response unit may apply to provide a higher designated level of service by:

(a) submitting the applicable fees; and

(b) submitting an application on Department-approved forms to the Department.

(2) As part of the application, the applicant shall provide:

(a) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director;

(b) an updated plan of operations demonstrating the applicant's ability to provide the higher level of service;

(c) a written assessment of the performance of the applicant's field performance by the applicant's off-line medical director; and

(d) provide the Department with a letter of support from the licensed provider(s) in the geographical service area.

(3) If the Department finds that the applicant has demonstrated the ability to provide the upgraded service, it shall issue a new designation reflecting the higher level of service.

R426-2-1100. Critical Incident Stress Management.

(1) The Department may establish a critical incident stress management (CISM) team to meet its public health responsibilities under Utah Code Section 26-8a-206.

(2) The CISM team may conduct stress debriefings, defusings, demobilizations, education, and other critical incident stress interventions upon request for persons who have been exposed to one or more stressful incidents in the course of providing emergency services.

(3) Individuals who serve on the CISM team [~~must~~]shall complete initial and ongoing training.

(4) While serving as a CISM team member, the individual is acting on behalf of the Department. All records collected by the CISM team are Department records. CISM team members shall maintain all information in strict confidence as provided in Utah Code Title 26, Chapter 3.

(5) The Department may reimburse a CISM team member for travel expenses incurred in performing his or her duties in accordance with state finance mileage reimbursement policy.

R426-2-1200. Quality Assurance Reviews.

(1) The Department may conduct quality assurance reviews of licensed and designated organizations and training programs on an annual basis or more frequently as necessary to enforce this rule;

(2) The Department shall conduct a quality assurance review prior to issuing a new license or designation.

(3) The Department may conduct quality assurance reviews on all personnel, vehicles, facilities, communications, equipment, documents, records, methods, procedures, materials and all other attributes or characteristics of the organization, which may include audits, surveys, and other activities as necessary for the enforcement of the Emergency Medical Services System Act and the rules promulgated pursuant to it.

(a) The Department shall record its findings and provide the organization with a copy.

(b) The organization [~~must~~]shall correct all deficiencies within 30 days of receipt of the Department's findings.

(c) The organization shall immediately notify the Department on a Department-approved form when the deficiencies have been corrected.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~August 21, 2015~~]2018
Authorizing, and Implemented or Interpreted Law: 26-8a

Health, Family Health and Preparedness, Emergency Medical Services
R426-3
Licensure

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 42556
FILED: 01/31/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update language to be consistent with Title 26, Chapter 8a, require ambulance providers in recognized over-lapped service areas to have an agreement for responding to licensed patient care facilities, and to amend mutual aid and licensing requirements for ambulance providers.

SUMMARY OF THE RULE OR CHANGE: This amendment updates language to be consistent with Title 26, Chapter 8a, by changing the term "licensed" to include individuals. It requires licensed ambulance providers in service areas that have an overlap with another licensed ambulance provider to make an agreement for responding to licensed patient facilities. It also amends mutual aid and licensing requirements for licensed ambulance providers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These proposed rule changes are not expected to have any fiscal impact on state government revenues or expenditures because it is for the changing of terminology, and documentation for licensed ambulance providers. State expenditures and staff time are not affected.
♦ LOCAL GOVERNMENTS: These proposed rule changes will create a fiscal impact for local governments who are required to develop agreements with other licensed ambulance providers in service areas where there is an overlap. The impacts include a decline or increase in billable patient transports based on the terms of the agreement. This amendment only affects local governments and a private ambulance providers where service areas have an overlap with other licensed ambulance providers, as described in Subsection 26-8a-416(6). Fiscal impacts are estimated at $1,200,000 annual billable inter-facility ambulance patient transports. A fiscal benefit will result to all licensed ambulance service providers by removing the requirement for a written mutual aid agreement with adjoining geographical service areas as a condition of licensing or license renewal.
♦ SMALL BUSINESSES: These proposed rule changes are not expected to have any fiscal impact on small businesses revenues or expenditures, because no small businesses are included in the entities affected by this amendment.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment will create a fiscal impact for local governments who have performed inter-facility transports via the 911 call system when their license does not allow inter-facility services. This only affects local governments and private ambulance providers that have an existing overlap service area as described in Subsection 26-8a-416(6). Fiscal impacts are estimated up to $1,200,000 annual billable inter-facility ambulance patient transports. A fiscal benefit will result to all licensed ambulance service providers by removing the requirement for a written mutual aid agreement with adjoining geographical service areas as a condition of licensing or license renewal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendments will create fiscal impact for local governments who have performed inter-facility transports via the 911 call system when their license does not allow inter-facility services. This only affects local governments and private ambulance providers that have an existing overlap service area as described in Subsection 26-8a-416(6). Fiscal

impacts are estimated up to $1,200,000 annual billable inter-facility ambulance patient transports. A fiscal benefit will result to all licensed ambulance service providers by removing the requirement for a written mutual aid agreement with adjoining geographical service areas as a condition of licensing or license renewal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Fiscal impacts are estimated up to $1,200,000 annual billable inter-facility ambulance patient transports. A fiscal benefit will result to all licensed ambulance service providers by removing the requirement for a written mutual aid agreement with adjoining geographical service areas as a condition of licensing or license renewal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov or PO Box 142004, Salt Lake City, UT 84114-2004

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/19/2018

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

	FY 2018	FY 2019	FY 2020
Fiscal Costs			
State Government	$0	$0	$0
Local Government	$1,226,000	$1,200,000	$1,200,000
Small Businesses	$0	$0	$0
Non-Small Businesses	$2,000	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Costs:	**$1,228,000**	**$1,200,000**	**$1,200,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$44,000	$44,000	$44,000
Small Businesses	$0	$0	$0
Non-Small Businesses	$1,202,000	$1,200,000	$1,20,000
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$1,246,000**	**$1,244,000**	**$1,244,000**
Net Fiscal Benefits:	$18,000	$44,000	$44,000

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.**

Appendix 2: Regulatory Impact to Non-Small Businesses
The costs and benefits are based on the assumption that local governments are currently transporting inter-facility types of patients in affected service areas, and will no longer be allowed to do so. Fiscal data is based on revenues differences from the past calendar year compared to the previous calendar year by the non-small business ambulance provider.

A cost to local governments and a non-small business exists for developing new agreements where licensed geographical services have over-lapping service areas. It is based on affected providers' staff time estimate of $2,000 per agreement X 14 licensed providers with overlapped areas for a total of $28,000. Agreements are assumed to be in effect for at least the licensure period of 4 years, therefore it was only added in the first year.

A benefit to local governments and non-small business is based on a reduction of all ambulance providers' staff time estimated at $2,000 per mutual aid agreement that will no longer be required for adjoining service areas. There are 92 licensed providers with approximately 25% of them renewing license agreements each year, for a total estimated benefit of $46,000 per year.

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-3. Licensure.
R426-3-100. Authority and Purpose.

(1) This Rule is established under Chapter 8, Title 26a, Chapter 8a. It establishes standards for the licensure of an air ambulance, ground ambulance, and paramedic services.

(2) The purpose of this rule is to set forth air and ground ambulance policies, rules, and standards adopted by the Utah Emergency Medical Services Committee, which promotes and protects the health and safety of the people of this state.

(3) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-3-200. Requirement for Licensure.

(1) A person who provides or represents that it provides air ambulance, ground ambulance, paramedic ground ambulance, or paramedic services shall first be licensed by the Department.

R426-3-300. Licensure Types.

(1) The Department may issue exclusive ground ambulance transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(2) Current emergency medical technician intermediate advanced (EMT-IA) licenses will remain in effect, no new EMT-IA ground ambulance licenses will be issued.

(3) The Department may issue exclusive ground ambulance inter-facility transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(4) The Department may issue exclusive paramedic, non-transport licenses.

(5) The Department may issue a paramedic tactical license that is a designation of function not geographical location.

R426-3-310. Air Ambulance Licensure Types.

(1) The Department may issue an Air Ambulance provider a license in accordance with services accredited by a Department approved accreditation vendor.

R426-3-400. Scope of Operations.

(1) A ground ambulance or paramedic licensed provider as described in R426-3-300 may only provide service to its specific licensed geographic service area and is responsible to provide all services to its entire specific geographic service area except as provided by R426-3-900 Aid Agreements. It will provide emergency medical services for its category of licensure that corresponds to the [~~certification~~]licensed levels in R426-5 Emergency Medical Services Training, Licensure and Certification Standards.

(2) A ground ambulance provider or paramedic service provider as described in R426-3-300 shall provide services 24 hours a day, every day of the year.

(3) Air ambulance services shall provide services 24 hours a day, every day of the year as allowed by weather conditions.

(4) A ground ambulance provider or paramedic service provider as described in R426-3-300 shall provide all standby services for any special event that requires ground ambulance or paramedic services within its geographic service area. The licensed provider may arrange for those services through R426-3-900 aid agreements. Designated quick response units may also support licensed ground ambulance or paramedic services at special events. If a licensed provider refuses to provide service, or is non-responsive in a timely manner to a request for a special event, the event organizer may use a licensed or designated provider of their choice.

R426-3-500. Minimum Licensure Requirements Air Ambulance, Ground Ambulance, and Paramedic Services.

A licensed provider conforming to R426-3-200 shall meet the following minimum requirements:

(1) sufficient air or ground ambulances, emergency response vehicle(s), equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license or proposed license without relying upon aid agreements with other licensed provider;

(2) locations or staging areas for stationing its vehicles;

(3) a current written dispatch agreement with a designated emergency medical dispatch center;

(4) ground ambulances [~~shall~~]may have current written aid agreements with other ground ambulance licensed providers to give assistance in times of unusual demand;

(5) a Department certified EMS training officer that is responsible for continuing education;

(6) a current plan of operations.

(7) a description of how the licensed provider or applicant proposes to interface with other licensed and designated EMS [~~agencies~~]providers.

(8) demonstrate fiscal viability;

(9) medical personnel roster which includes level of [~~certification~~]licensure to ensure there is sufficient trained and [~~certified~~]licensed staff who meet the requirements of R426-4-200 Staffing, and operational procedures.

(10) all permitted vehicles shall be equipped to allow field EMS personnel to be able to:

(a) communicate with hospital emergency departments, dispatch centers, EMS providers, and law enforcement services; and

(b) communicate on radio frequencies assigned to the Department for EMS use by the Federal Communications Commission.

(11) a current written agreement with a Department-certified off-line medical director or a medical director certified in the state where the service is based pursuant to R426-3-700.

(12) provide the Department with a copy of its certificate of insurance or if seeking application, provide proof of the ability to obtain insurance to respond to damages due to operation of a vehicle or air ambulance in the manner and following minimum amounts:

(a) liability insurance in the amount of $1,000,000 for each individual claim; and

(b) liability insurance in the amount of $1,000,000 for property damage from any one occurrence;

(c) the licensed provider as described in R426-3-300 shall obtain the insurance from an insurance company authorized to write liability coverage in Utah or through a self-insurance program and shall:

(i) provide the Department with a copy of its certificate of insurance demonstrating compliance with this section; and

(ii) direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage within 60 days.

(13) not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) disciplinary action relating to an EMS license, permit, designation, or certification in this or any other state that adversely affect its service under its license; and

(14) A paramedic tactical service as described in R426-3-300 shall be a public safety agency or have a letter of recommendation from a county or city law enforcement agency within the paramedic tactical service's geographic service area.

(15) In areas that are served by more than one transport provider, both providers shall have an agreement addressing first response and transport responsibilities for all types of facilities listed in R426-1-200(29) in effect by June 30, 2018 and shall provide copies to the Department and all impacted PSAP's and dispatch centers. The Department may act as mediator if needed to reach agreement.

R426-3-600. Cost, Quality, and Access Goals for Ground Ambulance Providers.

(1) A local government shall establish emergency medical service goals pursuant to Title 26-8a-408(7).

(2) Goals shall be renewed every four years in concurrence with the licensure process for the EMS licensed ground ambulance provider. All local governments in a licensed service area are required to participate.

(3) Goals may be amended, if necessary, due to:

(a) unforeseen changes in service delivery,

(b) community impacts, or

(c) significant unforeseen impact in the geographical service area.

(4) Goals shall be written, approved by local governments, and submitted to the Department with licensure and re-licensure application by the EMS licensed ground ambulance provider for the geographical service area.

(5) Local governments may choose to recognize EMS providers who have achieved accreditation by a Department approved accreditation organization as meeting the cost, quality, and access goals.

(6) Cost goals shall indicate the expected financial cost to the local government(s) and patients for the level of service provided.

(7) Quality goals shall indicate the expected level of service plus any additional foreseen improvements or advancements in service expectations.

(8) Access goals shall indicate the local government's expectation for access to the EMS system by any individual within the local government's geographic area.

R426-3-700. Ground Ambulance or Paramedic Service Application.

(1) An applicant desiring to obtain a new license for ground ambulance, or paramedic services shall submit the applicable fees and application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-3-500 along with the following:

(a) a detailed description and detailed map of the exclusive geographical areas that will be served;

(b) if the requested geographical service area is for less than all ground ambulance or paramedic services, the applicant shall include a written description and detailed map showing how the areas not included will receive ground ambulance or paramedic services;

(c) if an applicant is responding to a public bid as described in 26-8a-405.2 the applicant shall include detailed maps and descriptions for all geographical areas served in accordance with 26-8a-405.2(2);

(d) documentation showing that the applicant meets all local zoning and business licensing standards within the exclusive geographical service area that it will serve;

(e) a written description of how the applicant will communicate with dispatch centers, law enforcement agencies, on-line medical control, and patient transport destinations;

(f) patient care protocols, medications, and equipment approved by the provider's medical director based on licensure level according to Department policies; and

(g) applicant's plans for operations during times of unusual demand.

(2) An applicant desiring to renew an existing license shall submit documentation that it meets the requirements listed in R426-3-500, along with the following:

(a) a written assessment of field performance from the applicant's off-line medical director; and

(b) other information that the Department determines necessary for the processing of the application and the oversight of the licensed entity.

(3) An applicant desiring to obtain a new license or renew an existing license shall submit written cost, quality, and access goals as described in R426-3-600, if available.

(4) A ground ambulance or paramedic service holding a license under 26-8a-404, including any political subdivision that is part of a special district may respond to a request for proposal if it complies with 26-8a-405(2).

(5) Upon receipt of an appropriately completed application, ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.

(6) If, upon Department review, the application for a new license is complete and meets all the requirements, the Department shall issue a notice of approved application as required by 26-8a-405 and 406.

(7) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review.

(8) After review and before issuing a license to a new service, the Department shall directly inspect the ground vehicle(s), equipment, and required documentation.

(9) A license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.

R426-3-710. Air Ambulance Application.

An applicant desiring to obtain a new license or to renew its license for air ambulance services shall submit the applicable fees and application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-3-500 and the following:

(1) certified articles of incorporation, if incorporated;

(2) a statement summarizing the training and experience of the applicant in the air transportation and care of patients;

(3) a copy of current Federal Aviation Administration (FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations;

(4) a copy of the current certificates of insurance demonstrating coverage for medical malpractice;

(5) a description and location of each dedicated and back-up air ambulance(s) procured for use in the air ambulance service, including the make, model, and year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics;

(6) successful completion of a Department approved accreditation process and such accreditation decision shall exclude Federal Aviation Agency or Aviation Deregulation Act regulated activities;

(7) for new air ambulance services licensed under R426-3-200, the applicant shall submit an application for accreditation by a

Department approved accreditation process within one year of receiving a license under this rule; and

(8) licensed air ambulance services shall achieve accreditation and maintain accreditation.

(9) Any new air ambulance providers applying for a license who have been licensed and operating in any other state for at least one year shall provide the Department with a copy of a successful accreditation decision, or an application sent to a Department approved accreditation vendors prior to receiving an air ambulance license.

(10) Upon receipt of an appropriately completed application for air ambulance provider license and submission of license fees, the Department shall collect supporting documentation and review each application.

(11) After review and before issuing a license to a new service, the Department shall directly inspect the air vehicle(s), equipment, and required documentation.

(12) Department approved accreditation vendors shall allow a Department representative to accompany accreditation surveyors on site surveys or during any accreditation inspections at the request of the Department.

(13) If, upon Department review, the application for a new license is complete and meets all the requirements, the Department shall issue a notice of approved application as required by 26-8a-405 and 406.

(14) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review.

(15) Any events impacting patient safety including death, permanent harm, or severe temporary harm, or requiring intervention to sustain life shall be reported to the Department and the associated Department approved accreditation vendor(s) by the licensed air ambulance provider within 30 days or the event.

(16) A license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.

R426-3-800. Medical Control.

(1) All licensed providers shall enter into a written agreement with a physician to serve as its off-line medical director to supervise the medical care or instructions provided by the field EMS personnel and dispatchers. The physician shall be familiar with:

(a) the design and operation of the local pre-hospital EMS system; and

(b) local dispatch and communication systems and procedures.

(2) The off-line medical director shall:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, and transport protocols;

(b) ensure the qualification of field EMS personnel involved in patient care through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel who does not comply with local medical triage, treatment and transport protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director shall notify the Department within one business day of the suspension;

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers; and

(g) licensed providers shall notify the Department if an off-line medical director is replaced, within thirty days.

(3) It is the responsibility of the air ambulance medical director to:

(a) authorize written protocols for the use by air medical attendants and review policies and procedures of the Air ambulance service; and

(b) develop and review treatment protocols, assess field performance, and critique at least 10% of the Air ambulance service runs.

R426-3-900. Ground Ambulance or Paramedic Service Provider Aid Agreements.

[~~(1) All licensed ground ambulance providers shall maintain aid agreement(s) with other ground ambulance provider(s) to call upon them for assistance during times of unusual demand, inter-facility transports, or stand-by events.~~](1) All licensed ground ambulance providers are expected to render mutual aid support for adjoined geographical service areas. Mutual aid support means that they may be called upon to provide assistance during times of unusual demand. Exceptions for this expectation should be submitted as part of a license application.

(2) Other types of [~~A~~]aid agreements shall be in writing, signed by both parties, and detail the:

(a) purpose of the agreement;

(b) type of assistance required;

(c) circumstances under which the assistance would be given; and

(d) duration of the agreement.

(3) The parties shall provide a copy of [~~the~~]any aid agreement(s) except for mutual aid support as described in R426-3-900(1) to the Department and to the designated emergency medical dispatch center(s) that dispatch the licensed ground ambulance providers.

(4) When mutual aid support is given as described in R426-3-900(1), the licensed ground ambulance provider rendering support will be responsible for the following, unless otherwise stated in writing, and approved by the Department prior to the event:

(a) billing or other financial reimbursements;

(b) liability for EMS operations related to staff and patient care, and;

(c) patient care protocols for licensure level.

R426-3-1100. Application Review and Award for Ground Ambulance Providers Selected by Public Bid.

(1) Upon receipt of an appropriately completed application, for ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.

(2) If, upon Department review, the application is complete and meets all the requirements, the Department shall:

(a) for a new license application, issue a notice of approved application as required by 26-8a-405 and 406;

(b) issue a renewal license to an applicant in accordance with 26-8a-413(1) and (2) or 26-8a-405.1(3), whichever is applicable.

(c) issue a four-year renewal license to a license selected by a political subdivision if the political subdivision certified to the Department that the licensed provider has met all of the specifications of the original bid and requirements of 26-8a-413(1) through 26-8a-313(3); or

(d) issue a second four-year renewal license to a licensed provider selected by a political subdivision if:

(i) the political subdivision certified to the Department that the licensed provider has met all of the specifications of the original bid and requirements of 26-8a(1) through (3); and

(ii) if the Department or the political subdivision has not received, prior to the expiration date, written notice from an approved applicant desiring to submit a bid for ambulance or paramedic services.

(3) Upon the request of the political subdivision and the agreement of all interested parties and the Department that the public interest would be served, the renewal license may be issued for a period of less than four years or a new request for the proposal process may be commenced at any time.

R426-3-1200. Criteria for Denial or Revocation of Licensure.

(1) The Department may deny an application for a license, a renewal of a license, or revoke, suspend or restrict a license without reviewing whether a license shall be granted or renewed to meet public convenience and necessity for any of the following reasons:

(a) failure to meet substantial requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, staffing, or insurance requirements;

(c) failure to meet agreements covering training standards or testing standards;

(d) substantial violation of Subsection 26-8a-504(1);

(e) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(f) a history of serious or substantial public complaints;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsification or misrepresentation of any information in the application or related documents;

(i) failure to pay the required licensing or permitting fees or other fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required by R426-7;

(k) a history of inappropriate billing practices, such as:

(i) charging a rate that exceeds the maximum rate allowed by rule;

(ii) charging for items or services for which a charge is not allowed by statute or rule; or

(iii) Medicare or Medicaid fraud.

(l) misuse of grant funds received under Section 26-8a-207; or

(m) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant or licensed provider that has been denied, revoked, suspended or issued a restricted license may appeal by filing a written appeal within thirty calendar days of the receipt of the issuance of the Department's denial.

R426-3-1300. Change of Owner.

(1) A license and the vehicle permits cannot be transferred to another party.

(2) As outlined in 26-8a-415, a new owner shall submit within 10 (ten) calendar days prior to acquisition of property, applications and fees for a new license and vehicle permits.

KEY: emergency medical services, licensure
Date of Enactment or Last Substantive Amendment: [~~July 15, 2016~~]2018
Authorizing, and Implemented or Interpreted Law: 26-8a

Natural Resources, Wildlife Resources
R657-33
Taking Bear

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42492
FILED: 01/23/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to taking bear.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to this rule: 1) lower the minimum bow pull from 40 pounds at the draw to 30 pounds; 2) remove the 300 grains weight requirement for arrows; 3) remove "prima facie evidence" and replaces it with "probable cause"; and 4) makes technical corrections as needed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: This amendment lowers requirements on archery tackle and makes technical corrections to language and rule citations. DWR has determined that these amendments do not create a cost or savings impact to the state budget, since the changes will not increase workload and can be carried out with the existing budget.