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Date: 12-19-06

IMMEDIATE RECONSIDERATION
FAILED 12-19-06

ANCHORAGE, ALASKA
AO NO. 2006-173(S)

Submitted by: VICE CHAIR OSSIANDER and
ASSEMBLY MEMBER FAIRCLOUGH

Prepared by: Assembly Counsel
For reading: December 19, 2006

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING
2 ANCHORAGE MUNICIPAL CODE SECTION 16.95.070 TO REDUCE THE COSTS OF
3 MUNICIPAL AMBULANCE TRANSPORT ASSESSED TO PATIENTS RECEIVING
4 AMBULANCE TRANSPORT SERVICES FROM THE CHUGIAK VOLUNTEER FIRE
5 DEPARTMENT.
6

7
8 THE ANCHORAGE ASSEMBLY ORDAINS:
9

10 **Section 1.** Anchorage Municipal Code section 16.95.070 is hereby amended by adding a new
11 subsection B to read as follows:
12

13 **16.95.070 Fees.**
14

15 A. In addition to a fee of \$12.00 per mile, the following costs of municipal ambulance transport
16 shall be assessed to the patient:
17

- 18 1. Transport providing advanced life support services \$550.00
19
20 2. Transport providing basic life support services 400.00
21

22 B. For patients receiving volunteer ambulance transport services from the Chugiak Volunteer
23 Fire Department, the mileage fee and costs assessed to the patient for transport providing life
24 support services under A.1 or A.2 of this section shall be reduced to an amount equal to their
25 Medicare or Medicaid or other health insurance coverage.
26

27 (AO No. 2001-145(S-1), § 14, 12-11-01)
28

29 **Section 2.** This ordinance shall become effective upon the first day of the first full month 30 days
30 after receipt by the Municipality of Anchorage of a letter from Medicaid that Medicaid will follow
31 Medicare on all four items described in outside counsel's opinion.
32

33 PASSED AND APPROVED by the Anchorage Assembly this 19th day of December, 2006.
34

35 Dan Sullivan
36 Chair
37

38 ATTEST:
39

40 [Signature]
41 Municipal Clerk

MUNICIPALITY OF ANCHORAGE

Summary of Economic Effects -- General Government

An ordinance of the Anchorage Municipal Assembly amending AMC section 16.95.070 to reduce the costs of Municipal ambulance transport assessed to patients receiving ambulance transport services from the Chugiak Volunteer Fire Department and the Girdwood Volunteer Fire Department.

AO Number: 2006-173 Title:

Sponsor: Assemblymember Osslander
 Preparing Agency: Assembly
 Others Impacted: AFD

CHANGES IN EXPENDITURES AND REVENUES:		(In Thousands of Dollars)				
	<u>FY06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY09</u>	<u>FY10</u>	
Operating Expenditures						
1000 Personal Services						
2000 Non-Labor						
3900 Contributions						
4000 Debt Service						
TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	\$ -	
Add: 6000 Charges from Others						
Less: 7000 Charges to Others						
FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	\$ -	
REVENUES:	N/A	\$ 156	\$ 156	\$ 156	\$ 156	
CAPITAL:						
POSITIONS: FT/PT and Temp						

PUBLIC SECTOR ECONOMIC EFFECTS:

From the information provided from both the Chugiak Volunteer Fire Department and the Anchorage Fire Department it is estimated that there is an average of 267 advance life support services and 125 basic life support services provided by the Chugiak Volunteer Fire Department each year. If each of these services represented a reduction of \$400 paid to the Municipality of Anchorage through the Anchorage Fire Department the reduction of revenues would equal \$156,000 per year (267+125)400.

PRIVATE SECTOR ECONOMIC EFFECTS:

There are no significant private sector economic effects associated with this ordinance.

Prepared by: Steven B. King, Utility Budget Analyst
 Reviewed by: Guadalupe Marroquin

Telephone: 343-4714
 Telephone: 343-4376



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
NO. AM 931-2006

Meeting Date: December 19, 2006

From: Assemblymember Ossiander
Subject: AO 2006-173(S)-- AN ORDINANCE OF THE ANCHORAGE MUNICIPAL
ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE SECTION
16.95.070 TO REDUCE THE COSTS OF MUNICIPAL AMBULANCE
TRANSPORT ASSESSED TO PATIENTS RECEIVING AMBULANCE
TRANSPORT SERVICES FROM THE CHUGIAK VOLUNTEER FIRE
DEPARTMENT.

At the Assembly work session on this ordinance the administration agreed that labor costs were considered a major factor in ambulance transport fees, and that the dollar figure presented for the volunteer firefighter/paramedic's contribution was reasonable. The rationale behind the ordinance was also discussed and seemed to present no serious problem. However, the administration did present three concerns:

First, the administration is concerned that this ordinance could present the City with significant budgetary problems because revenue has already been anticipated and ambulance billings mailed. City budgets have already been approved. This concern can be addressed through the enabling date of the ordinance. The change in billings would not be retroactive.

Second, the administration is concerned that this ordinance potentially would jeopardize Medicare and Medicaid reimbursement received by all ambulance transport services offered in the Municipality. This concern was addressed in Ms. Tucker's memorandum which was previously distributed and discussed at the December 1, 2006 Work Session. It is additionally addressed by the attached opinion from Stephen D. Rose, who specializes in this aspect of law with Preston Gates Ellis, outside counsel to the City.

Thirdly, that the revenue received by MOA from Medicare and Medicaid for Chugiak Volunteer transport services would be lost by the City. Questions arose on the amount of revenue the City could lose, with some additional comment that this loss of revenue would not necessarily benefit the citizens receiving the volunteer services. The S-version presented tonight is directly responsive to this last concern. The ordinance is restructured in consultation with outside counsel, Stephen Rose, so that the City would continue to bill Medicare, Medicaid and private insurance. The reduction would be in the co-pay and will also benefit the uninsured. Medicare reimbursement to the City would remain the same. As such the attached SEE prepared for AO 2006-173 is by far a worst- case scenario; actual economic impact of this ordinance would be far less.

Respectfully submitted:

Debbie Ossiander
Assemblymember, Section 2

MEMORANDUM

TO: James N. Reeves, Esq.

FROM: Stephen D. Rose

DATE: December 18, 2006

SUBJECT: Medicare and Medicaid issues concerning allowing EMS charges to be discounted

INTRODUCTION

Concern was raised regarding whether Medicare (federal health care reimbursement) and/or Medicaid (state health care reimbursement) payments might be impacted if the Municipality of Anchorage (MOA) were to set up a billing criteria where the charges for services were not uniform throughout the district. Specifically, the issue concerned whether the MOA, by ordinance, could provide that the amount billed to a patient transported by Chugiak Volunteer Fire Department (CVFD) would be less than the amount billed to a patient transported by the Anchorage Fire Department (AFD). The discount that would be applied to services performed by CVFD would be set by ordinance and would be either a fixed discount amount or a specified percentage discount.

ISSUE

If the Municipality of Anchorage were to allow charges to be waived or discounted for services provided by CVFD, would that allowance for charges to be waived or discounted negatively impact Medicare or Medicaid reimbursement?

You have asked us to review this issue and provide you with our answer. As we view this issue, we believe that four sub-issues need to be addressed:

1) If the MOA were to pass such an ordinance, the first question to be addressed would be whether Medicare or Medicaid regulations would require that the same discount be passed along to all Medicare and Medicaid patients who are transported by either the CVFD or the AFD? In other words, would the discounted charges applied to patients who are transported by CVFD then set the ceiling for the amount Medicare or Medicaid would pay?

- 2) If the MOA decided to give selected discounts, would Medicare or Medicaid require some justification for the discount? If yes, what level of justification would be required? For example, would it be sufficient just to state that the CVFD services are performed by volunteers or would the MOA have to quantify the amount of money saved due to the volunteers efforts prior to providing a discounted rate for their services? Would a comparison of total cost of services comparing AFD to CVFD be required?
- 3) Would Medicare and/or Medicaid allow a discount to be applied to all patients transported by CVFD who are not covered by Medicare, Medicaid, or some other third party payor and still allow the Medicare and Medicaid programs to be billed for services provided to Medicare and Medicaid patients transported by CVFD?
- 4) What if the proposed Assembly measure merely provided that in the case of a CVFD transport, but not any other EMS transport in the service area, the co-pay, if any, could be waived? Is this allowable under the Medicare and Medicaid programs? Would the Medicare or Medicaid programs adjust what would be allowable to bill those programs if the co-pay is routinely waived?

ANALYSIS

Issue 1: If the CVFD charges are waived or discounted, would that waiver or discount have to be passed on to all EMS clients?

Under Medicare it appears that the Municipality of Anchorage has the ability to waive all or part of the charges for services supplied by CVFD. Usually, Medicare is highly skeptical of any arrangement where the Medicare Provider routinely waives the Medicare deductible or co-pay or, in this instance, might waive all charges. Further, Medicare does not allow any provider to be paid for services that are furnished "free of charge," i.e., without expectation for payment from any source and without regard to the individuals' ability to pay. However, there is a specific exception applicable to State or local governments such as a municipality fire department that grants the municipality great leeway in setting or collecting charges. The **Medicare Benefit Policy Manual, Chapter 16—General Exclusions from Coverage**, section 50.3.1, allows the municipality to reduce or waive its charges, in part or in full, and only charge the patient to the extent that they have Medicare or other health insurance coverage:

A facility which reduces or waives its charges for patients unable to pay, or **charges patients only to the extent of their Medicare and other health insurance coverage**, is not viewed as furnishing free services and **may therefore receive program payment**.
(Emphasis mine).

In prior correspondence from the Office of the Inspector General ("OIG") for the Department of Health & Human Services to the Municipality of Anchorage dated June 6, 2005, the OIG stated

that even though the above passage is specific to a "facility," OIG believed it would be equally applicable to a municipal ambulance service.

Therefore, it would appear that the MOA can reduce or waive its charges for services provided by the CVFD *provided that* the MOA continues to charge and collect payment from individuals who have Medicare or other health insurance coverage.

With respect to Medicaid, the answer is not as definitive. We have reviewed current Medicaid regulations for the State of Alaska and have not discovered a similar exception. As far as we can tell, the Alaska Medicaid Program is silent on this specific issue. In the past, when we have represented other Alaska health care providers, and have faced a similar situation where Medicare is definitive and the Alaska Medicaid Program is silent, the Alaska Medicaid Program almost always follows Medicare and handles the reimbursement situation in the same manner as Medicare. We would therefore **strongly recommend** that Alaska Medicaid be contacted and be provided with the facts describing how the MOA intends to waive or reduce charges and request an opinion stating that Alaska Medicaid would treat the situation in the same manner as Medicare.

Issue 2: Would Medicare or Medicaid require some justification for the waiver or discount?

The Medicare exception described in the response to Issue 1, above, does not state anything about requiring justification for any waiver or discount given. Therefore, it does not appear that any justification need be provided to Medicare.

For Medicaid our response is the same as our response to Issue 1. Our experience has been that Medicaid will follow Medicare. However, this should be confirmed with the State Medicaid Program.

Issue 3: Would Medicare and/or Medicaid allow a discount to be applied to all patients transported by CVFD who are not covered by Medicare, Medicaid, or some other third party payor and still allow the Medicare and Medicaid programs to be billed for services provided to Medicare and Medicaid patients transported by CVFD?

For Medicare it appears that the MOA could waive all or part of the charges provided by CVFD *provided that* the MOA still charges those individuals who have coverage under the Medicare or Medicaid Programs and those who have health insurance. In other words, MOA would have to charge individuals covered by the Medicare or Medicaid Programs and those covered by health insurance the standard amount, waive co-pays and deductibles, collecting payment up to the amount those programs or insurance are required to pay. In this way, MOA is not considered by Medicare to be providing services "free of charge." Those without coverage, (i.e. uninsured individuals; individuals with insurance but where the insurance does not cover EMS; those ineligible for Medicare/Medicaid) would not have to pay for the services rendered to them. Those with coverage would be billed and have to pay up to the extent of their coverage,

the discount applying to their applicable deductibles and/or co-pays. Were MOA to give an across the board waiver and discount to all individuals receiving services by the CVFD regardless of whether they have any coverage or not, Medicare would view the EMS services as services rendered "free of charge," and not meeting the exception. Medicare would then refuse to pay for services provided to Medicare beneficiaries because the exception would no longer apply.

For Medicaid our response is the same as our response to Issue 1. Our experience has been that Medicaid will follow Medicare. However, this should be confirmed with the State Medicaid Program.

Issue 4: What if the proposed Assembly measure merely provided that in the case of a CVFD transport, but not any other EMS transport in the service area, the co-pay, if any, could be waived? Is this allowable under the Medicare and Medicaid programs? Would the Medicare or Medicaid programs adjust what would be allowable to bill those programs if the co-pay is routinely waived?

We believe that the co-pay could be waived for all transport services provided by CVFD *provided that* the individual being transported still is charged and required to pay to the extent that they have Medicare or Medicaid coverage or health insurance coverage. We do not believe that the Medicare Program would adjust what it considered to be an allowable payment for the services rendered because of the waiver of the co-pay.

For Medicaid our response is the same as our response to Issue 1. Our experience has been that Medicaid will follow Medicare. However, this should be confirmed with the State Medicaid Program.

PROPOSED LANGUAGE FOR ORDINANCE

You provided us with a copy of Proposed Ordinance AO No. 2006-173. Given the above analysis we would propose that section B, be rewritten as follows, assuming you receive confirmation from the State Medicaid Program that they will follow Medicare:

B. For patients receiving volunteer ambulance transport services from the Chugiak Volunteer Fire Department, the costs assessed to the patient for transport providing life support services under A.1 or A.2 of this section shall be reduced to an amount equal to their Medicare or Medicaid or other health insurance coverage.

CONCLUSION

Please let us know whether you need any clarification of our responses. As noted above, we believe that contacting the State Medicaid Program is critical. While the State Medicaid Program has followed Medicare in many areas in the past when the State Medicaid regulations are silent, there is no guarantee that they will do so in this case.

SDR:sdr

cc: Julia Tucker, Esq.

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