

## **AB 389 Provides California Counties And Fire Agencies New Contracting Options And Opportunities For Emergency Ambulance Services**

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On October 4, 2021, Governor Newsom signed into law [Assembly Bill 389](#) (“AB 389”), the first amendment to California’s Prehospital Emergency Medical Care Personnel Act (“EMS Act”) specifically addressing emergency ambulance service contracting. The new law, which becomes effective on January 1, 2022, represents a significant departure from existing practice and creates new contracting options and opportunities for California counties and fire agencies.

### **In a Nutshell**

In brief, AB 389:

- **Codifies the “Alliance” model of emergency ambulance services delivery.** The Alliance model refers to a public-private partnership between a fire agency and a private ambulance service to provide emergency ambulance services. AB 389 expressly authorizes: (1) counties to contract with fire agencies that will provide emergency ambulance services, in whole or in part, through written subcontracts with private providers; and (2) fire agencies to subcontract with private providers for such purposes.
- **Obligates county boards of supervisors to adopt new policies for all county emergency ambulance contracts.** AB 389 prohibits counties from entering or renewing a contract for emergency ambulance services on or after January 1, 2022, unless the county board of supervisors has adopted, by ordinance or resolution, a written policy setting forth issues to be considered for inclusion in the county contract.
- **Mandates certain requirements for county contracts.** AB 389 requires the new or renewed county contract demonstrate that ambulance service employees will receive wages and benefits generally consistent with those provided to ambulance service employees in the same geographic region and that staffing levels for will be comparable to the staffing levels under the county’s previous contract.
- **Obligates fire agency governing bodies to adopt new policies if they want to contract with counties to provide emergency ambulance services through an Alliance model.** Under AB 389, a county may not enter or renew a contract for emergency ambulance services with a fire agency providing services pursuant to an Alliance-style subcontracting arrangement unless the fire agency’s governing body adopts a written policy requiring competitive bidding of the subcontract consistent with Public Contract Code section 20812 and setting forth issues to be considered during the procurement process.
- **Mandates certain requirements for fire agencies and potential subcontractors in an Alliance model.** The new law requires fire agencies to provide reasonable advance

notice to their subcontractor private ambulance service of any operational changes and to use best efforts to address the concerns of ambulance service employees regarding such operational changes. AB 389 also requires a private ambulance service to demonstrate in its proposal or bid to subcontract with a fire agency that the service will provide to its employees comparable wages and benefits, mechanisms to communicate operational changes, and access to the fire agency to provide input on such operational changes.

- **Does not limit fire agencies' contracting authority.** AB 389 expressly provides that nothing in the new law limits fire agencies' authority to enter agreements with other public entities, including agreements for ambulance services.
- **Specifies the counties' and fire agencies' jurisdiction.** AB 389 provides that its requirements are within the exclusive jurisdiction of the county's board of supervisors and fire agency's governing body. In other words, unlike other aspects of the EMS Act, the counties' and fire agencies' implementation of AB 389 is not subject to review or approval by the Emergency Medical Services Authority ("EMSA") or county-level local EMS agencies.
- **Does not impact Section 1797.201 fire agencies.** Many cities and fire districts provide emergency ambulance services pursuant to Section 1797.201, a grandfathering statute in the EMS Act. Because it provides that it "shall not supersede Section 1797.201," AB 389 does not impact those cities and fire districts.
- **Does not change the process for creating exclusive operating areas under Section 1797.224.** AB 389 expressly states that it shall not "alter, modify, abridge, diminish, or enlarge the requirements for creating, establishing, or maintaining exclusive operating areas under Section 1797.224."

### **New Options and Opportunities**

AB 389's centerpiece are its provisions codifying the Alliance model. Since its implementation in Contra Costa County, the Alliance model has improved overall level and efficiency in EMS and ambulance operations, clinical quality, and response times. An analysis by the California Fire Chiefs Association shows that Contra Costa County's Alliance model performed better during the Covid-19 pandemic, and is more resilient, than private ambulance services operating in other counties.

Despite its successes, the Alliance model has been controversial within California's EMS community. EMSA—the state's EMS regulator—unsuccessfully attempted to invalidate Contra Costa County's Alliance model and to preclude other counties from adopting the Alliance model. AB 389 resolves these controversies by making clear that Alliance-style subcontracting arrangements are valid and lawful and have been approved by the Legislature.

In addition, AB 389 returns authority to the counties and fire agencies over their emergency ambulance services contracts. Previously, EMSA and county-level local EMS agencies interpreted the EMS Act to grant them broad and unaccountable authority over county

emergency ambulance services contracts, including procurement, negotiations, and terms, sometimes to the exclusion of the counties' boards of supervisors themselves. The new statute makes clear that elected officials are responsible for setting policy regarding county contracts, and that such policy cannot be second-guessed or countermanded by unelected state or county regulators. Similarly, AB 389 precludes EMSA and county-level local EMS agencies from interfering with fire agency procurements for Alliance model subcontractors.

Next, AB 389 obligates the governing bodies of counties and fire agencies to adopt policies governing their contracts and Alliance model procurements, respectively. AB 389 identifies various issues for consideration in the development of such policies. For example, it states that counties may consider including, in their written policies, contract requirements for retention of the incumbent provider's employees, provider experience, diversity and equity efforts, and financial and public information requirements. Similarly, AB 389 states that fire agencies undertaking an Alliance model procurement should consider adopting safeguards to ensure fair bidding as well as criteria for evaluating potential subcontractors' proposals.

Nevertheless, AB 389 does not require counties or fire agencies to adopt these issues in their written policies or prohibit them from adopting other policies. And since county boards of supervisors must adopt their written policies for emergency ambulance services contracts by ordinance or resolution, fire agencies and the public can participate in the development of such policies

Notably, AB 389 requires fire agencies to award Alliance model subcontracts to private ambulance services through competitive bidding but does not have similar requirements for county or intergovernmental contracts. This is consistent with existing state statutes in the Government and Public Contract Code. By not requiring competitive bidding on county or intergovernmental contracts, AB 389 preserves existing law and affords counties and fire agencies the flexibility to decide which process they want to follow to obtain services.

### **The Impact on Sections 1797.201 and 1797.224**

AB 389's treatment of Sections 1797.201 and 1797.224 are also significant. Section 1797.201 is a grandfathering statute that preserves cities' and fire districts' control over emergency medical services that they contracted for or provided on June 1, 1980 until such time as they voluntarily agree to transfer control of such services to their respective counties. Because it does not supersede Section 1797.201, AB 389 has no impact on fire agencies who operate under that statute and such agencies may contract with counties in Alliance-style subcontracting arrangements without jeopardizing their grandfathering status.

Section 1797.224 authorizes local EMS agencies, upon the recommendation of their counties, to create exclusive operating areas for emergency ambulance services through a competitive process or by grandfathering existing providers. All such areas must be approved by EMSA to be effective. While AB 389 does not change the requirements for creating, establishing, or maintaining exclusive operating areas under Section 1797.224, any contract for the provision of services within such areas will be subject to the county's policies adopted under AB 389. Such policies would also supersede EMSA and local EMS agencies interpretations of Section

1797.224 to the extent that they expand the statute to apply to matters outside of its narrow scope.

## **Conclusion**

The Legislature adopted, and the Governor signed, AB 389 at an opportune time. In an August 27, 2021 letter to EMSA, the California Ambulance Association admits that the state's private ambulance industry "is in a crisis" and private ambulance services throughout the state are struggling to satisfy their contractual response time requirements. It attributes the private ambulance industry crisis to supply chain shocks caused by the Covid-19 pandemic. The California Fire Chiefs Association responded to the California Ambulance Association in a September 20, 2021 letter to EMSA, arguing that pandemic-related supply chain shocks merely exacerbated existing service problems and deficiencies caused by large ambulance providers' business models and years of lax local EMS agency oversight. In its letter, the California Fire Chiefs Association urged EMSA and other state agencies to begin planning for fire agencies' takeover of failing private ambulance services.

AB 389 clarifies and expands the range of emergency ambulance service models and system designs available to California counties and fire agencies, while ensuring that they have the flexibility to decide for themselves how best to provide emergency ambulance services to meet the needs of their residents efficiently and effectively.

Fire service agencies and other public sector entities seeking advice regarding AB 389, the EMS Act, or other emergency ambulance and EMS-related matters, should contact [Andrew Schouten](#) in Wright, L'Estrange & Ergastolo's Administrative Law & Regulatory Disputes practice group.

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