

January 11, 2021

The Honorable Melissa A. Schiffel
Delaware County Prosecuting Attorney
145 North Union Street, 3rd Floor
P.O. Box 8006
Delaware, Ohio 43015

SYLLABUS: 2021-003

1. A county emergency medical service organization, operated by a board of county commissioners pursuant to R.C. 307.05, may provide scheduled transportation to patients that require medical services that are described in sections 4765.37, 4765.38, and 4765.39 of the Revised Code or the related Administrative Code provisions. These services currently include ventilation, oxygenation, cardiac monitoring, and the administration of medications. But these medical services may only be performed by: (1) emergency medical technicians-basic; (2) emergency medical technicians-intermediate, or (3) paramedics.

2. A county emergency medical service organization, operated by a board of county commissioners pursuant to R.C. 307.05, and operated in a county with a population of greater than 40,000, may not provide scheduled patient-transport services that do not require (1) services described in sections 4765.35, 4765.37, 4765.38, and 4765.39 of the Revised Code or the related Administrative Code provisions; (2) that are performed by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, or paramedics.



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OPINION NO. 2021-003

The Honorable Melissa A. Schiffel
Delaware County Prosecuting Attorney
145 North Union Street, 3rd Floor
P.O. Box 8006
Delaware, Ohio 43015

Dear Prosecutor Schiffel:

You requested an opinion from my office regarding what services a county emergency medical service organization may provide. I have framed your questions in the following manner:

1. May a county emergency medical service organization, operated by a board of county commissioners pursuant to R.C. 307.05, provide scheduled transport services of patients who require ventilation, oxygenation, cardiac monitoring, or the administration of medications?
2. May a county emergency medical service organization, operated by a board of county commissioners pursuant to R.C. 307.05, provide non-emergency patient-transport services?

I

Revised Code 307.05 authorizes counties to operate an emergency medical service organization (“EMS organization”). It states:

A board of county commissioners may operate an ambulance service organization or emergency medical service organization, or, in counties with a population of forty thousand or less, may operate a nonemergency patient transport service organization, or may enter into a contract with [various public and private entities to provide these services.]

Delaware County, which has a population greater than 40,000, operates an EMS organization. Your request asks questions about what services the EMS organization may provide, including whether it can provide scheduled transport services of critical-care patients and whether it can provide non-emergency patient-transport services.

II

You first ask whether Delaware’s EMS organization can provide scheduled transport services for patients who require ventilation, oxygenation, cardiac monitoring, the administration of medications, or other stabilization measures necessary for safe transport. The answer is “yes.”

R.C. 307.05 states that “emergency medical service organization’ has the same meaning as in section 4765.01 of the Revised Code.” In turn, R.C. 4765.01(H) defines “emergency medical service organization” as “a public or private organization using first responders, EMTs-basic, EMTs-I, or paramedics, or a combination of first responders, EMTs-basic, EMTs-I, and paramedics, to provide emergency medical services.”

Thus, as defined, an EMS organization uses certain professionals to provide “emergency medical services.” The answer to your question depends on whether scheduled transport of patients requiring critical care is included in “emergency medical services.”

“Emergency medical service” is defined as “any of the services described in sections 4765.35, 4765.37, 4765.38, and 4765.39 of the Revised Code that are performed by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics. ‘Emergency medical service’ includes such services performed before or during any transport of a patient, including transports between hospitals and transports to and from helicopters.” R.C 4765.01(G).

R.C. 4765.35 (covering first responders), 4765.37 (EMT-basics), 4765.38 (EMT-intermediates), and 4765.39 (EMT-paramedics) set forth what services various medical professionals may provide. (This opinion refers to EMTs-basic, EMTs-intermediate, and EMT-paramedics collectively as “EMTs” unless it is necessary to distinguish between them. But the “EMT” title does not apply to first responders.) Each section contains a list of services that the professional may provide. Each section also contains a provision that allows the state board of emergency medical, fire, and transportation services to adopt by rule additional services that the professional may provide. R.C. 4765.35(C); 4765.37(C); 4765.38(B)(6); 4765.39(B)(7).

Based on my conversations with you, it is my understanding that Delaware County does not intend to use first responders to provide the services discussed in your request. Therefore, I will limit my analysis to services provided by EMTs and do not opine on services provided by first responders.

My predecessor previously analyzed the definition of emergency medical services and concluded that, although the colloquial meaning of “emergency” may

imply that an emergency medical service can only be performed in *unscheduled* emergencies, the statute in fact encompasses services provided in a broader array of situations. 2016 Op. Att’y Gen. No. 2016-023, Slip Op. at 4-6, 2-251 to 2-254. The operative factor in the definition of emergency medical service is not “the nature of the service performed or the situation in which the service performed,” but “the identity of the actor performing the service[.]” *Id.* at 6. This conclusion relies heavily on R.C. 4765.361, which states that EMTs may perform services “that the technician is authorized by law to perform in nonemergency situations if the services are performed under the direction of the technician’s medical director or cooperating physician advisory board.” R.C. 4765.361. The opinion concluded that “medical services that are within the scope of practice of the EMT, whether performed in an emergency or not, constitute ‘emergency medical services’ for the purpose of R.C. Chapter 4765.” 2016 Op. Att’y Gen. No. 2016-023, Slip. Op. at 6, 2-253.

Following the language of the Revised Code, and the holding of 2016 Op. Att’y Gen. No. 2016-023, I conclude that “emergency medical service organization” as used in R.C. 307.05 and defined in 4765.01 includes an organization that uses EMTs to provide services that the EMTs are authorized by law to perform, even if the services are performed in previously scheduled situations.

The only remaining issue related to your first question is whether the services you mention in your request are services that EMTs, but not the general public, may perform. Your first question specifically asks about transport of “critical care patients.” “Critical care” is not a defined term in the Revised Code, nor do you define critical care, so to avoid any ambiguity I believe it is safer to analyze the medical services you include in the body of your request as types of critical care. In your request you mention four types of specific types of care: ventilation, oxygenation, cardiac monitoring, and

the administration of medications. EMTs are authorized to provide all four of these services. *See* R.C. 4765.37(B) (ventilation); R.C. 4765.38(B)(2) (cardiac monitoring); R.C. 4765.39(B)(5) (administration of medication); Ohio Adm.Code 4765-15-04(A)(3) (oxygenation). Therefore, an EMS organization could provide scheduled transport services to patients that require ventilation, oxygenation, cardiac monitoring, or administration of medicines during transport.

III

Your second question asks whether an EMS organization, operated by a board of county commissioners pursuant to R.C. 307.05, may provide nonemergency patient transport services. You clarify in the body of your request that the question asks whether the EMS organization may provide transport to patients regardless of the condition of the patient. At least in counties, like Delaware, that have a population of greater than 40,000, the answer is “no.”

R.C. 307.05 authorizes counties with a population of greater than 40,000 to operate EMS organizations, and prohibits them from operating nonemergency patient-transport services. R.C. 307.05. It follows that EMS organizations in counties with populations greater than 40,000 are not permitted to provide nonemergency patient-transport services.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A county emergency medical service organization, operated by a board of county commissioners pursuant to R.C. 307.05, may provide scheduled transportation to patients that require medical services that are described in sections 4765.37, 4765.38, and 4765.39 of the

Revised Code or the related Administrative Code provisions. These services currently include ventilation, oxygenation, cardiac monitoring, and the administration of medications. But these medical services may only be performed by: (1) emergency medical technicians-basic; (2) emergency medical technicians-intermediate, or (3) paramedics.

2. A county emergency medical service organization, operated by a board of county commissioners pursuant to R.C. 307.05, and operated in county with a population of greater than 40,000, may not provide scheduled patient-transport services that do not require (1) services described in sections 4765.35, 4765.37, 4765.38, and 4765.39 of the Revised Code or the related Administrative Code provisions; (2) that are performed by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, or paramedics.

Respectfully,



DAVE YOST
Ohio Attorney General