MED CENTER HEALTH | The Medical Center

Connie D. Smith
CHIEF EXECUTIVE OFFICER

April 4, 2019

The Honorable Steve West, Co-Chair
The Honorable David Hale, Co-Chair
Administrative Regulatory Review Subcommittee
700 Capital Avenue
Frankfort, Ky 40601

Dear Co-Chairs West and Hale and Members of the Subcommittee:

I would like to thank each of you who have taken the time to meet and discuss our concerns regarding the pending regulatory action for Non-Substantive Review for Ground Ambulance Service (900 KAR 006:075 & E). We disagree with the premise that initiated this action by the Cabinet last year, and we are most concerned with the lack of communication between community leadership in Warren County and members of the Administration. We fear that the long-term impact of this action will be costly to the citizens of Warren County who will likely see the cost of ambulance service shifted to the county and ultimately to taxpayers.

Before considering your final action on this regulatory change that truly only affects one community in the Commonwealth, please take time to review again the information included in this communication. Attached you will find the following: a summary of Med Center Health's arguments against taking this action; a resolution passed unanimously by the Warren County Fiscal Court; an op-ed from the Bowling Green Daily News; a letter from a nationally renowned consultant for emergency management; and our arguments as to why this regulation should be found deficient.

We respectfully request that you find this regulation deficient or that you amend it to the original version.

Thank you for your consideration.

Sincerely,

Wade R. Stone
Executive Vice President
Med Center Health

Resolution #18-18

WHEREAS, The Warren County Fiscal Court wishes to express it's support for our county's incumbent ground Ambulance Provider and to express our concern with the introduction of a new Ambulance Service in Warren County.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. **Every Warren Countian who needs an Ambulance is being provided with one in a timely manner. The incumbent provider has excellent response times and we are aware of no Warren Countian who has complained of an inability to access timely Ambulance Service.**

2. **The incumbent provider is providing high quality, award-wining service to the residents of Warren County. This service is provided with absolutely no taxpayers subsidy.**

3. **We are concerned that the introduction of a new provider in Warren County will potentially; a) Impair the quality of the services provided by the incumbent, b) result in financial harm to the incumbent provider, and c) create confusion with the current dispatch arrangement, and d) create the need for financial burdens on Warren County taxpayers.**

4. **Based on the forgoing, there is no need for an additional Ambulance Service in Warren County.**

Dated this 30th **if November, 2018.**

MICHAEL O., BUCHANON

WARREN COUNTY JUDGE EXECUTIVE

Attest:

Brenda Hale

Brenda Hale

Fiscal Court Clerk

Talk about quick response times.

Based on information presented by Pegasus and the CHFS, Greenview's lightning-fast action could be seen as simply intended to solve an urgent problem in the county's ambulance service.

Problem is, Pegasus and the CHFS seem to have come up with a solution that is in search of a problem.

Had Pegasus researchers gone to the trouble of talking to the county government officials who are responsible for seeing that ambulance service is provided, they may have reached a different conclusion.

Warren County Judge-Executive Mike Buchanon has said that he didn't hear from Greenview or CHFS and wasn't aware of the emergency regulation until after it had been issued.

As for the Pegasus Institute's conclusion that Warren County is facing a crisis in its ambulance service, Buchanon said: "I know of no public health crisis or pressing need that warrants another ambulance provider."

Buchanon and other members of the county fiscal court questioned the wisdom of the CHFS emergency regulation during the latest fiscal court meeting and were quick to point out that the arrangement with Med Center EMS that has been in place for nearly 40 years has served the county well.

Before Med Center EMS stepped up in 1980 to assume all costs of providing ambulance service, county taxpayers were on the hook for a service that can cost hundreds of thousands of dollars per year.

Buchanon said Warren County's arrangement with Med Center EMS is "what other Kentucky counties wish they had," and he claims to have "never received a single complaint" about the ambulance service.

Med Center Health Executive Vice President Wade Stone has called the lawsuit a "last resort." We regret that this disagreement between two hospitals that have served our county well for decades has led to litigation, and we hope that a quick resolution can be found.

Failure to send the closest available ambulance. A system that dispatches multiple emergency ambulance providers on a rotating basis without regard to location of the call, or that splits the service area geographically, is both expensive to operate and dangerous for patients. When zones are utilized, the closest unit may be from the zone not designated to provide service, resulting in a delayed response to an emergency request. With Greenview's proposal, emergency medical dispatch becomes fragmented and the community loses the benefit of having an independently accredited emergency medical dispatch center processing the calls in accordance with an internationally recognized clinical protocol. Duel dispatch adds unnecessary costs and is fraught with peril.

Multiple medical directors and protocols. Separate emergency service providers employing medical directors that may disagree about treatment and transport protocols, encourage ongoing turmoil and confusion for street level providers. Appropriate system medical control is more difficult and expensive to achieve with multiple emergency 911 providers.

Redundant resources are required. Having adequate resources for coverage and to respond to 911 calls means that more resources are required in multiple provider systems than in single provider systems. The repositioning of units and their ability to efficiently respond throughout the service area is more limited if a multiple provider system is utilized. Since the addition of another ambulance service does not increase the number of calls (units of revenue) available to support multiple services, the cost to users' increases.

I am aware of no studies that demonstrate that multiple emergency ambulance providers improve clinical outcomes for patients. In fact, we have often been called into communities to redesign the EMS system when a multiple provider approach has clinically, operationally or financially failed.

Perhaps a simpler way to look at this issue is that no community would allow multiple water companies to lay pipe along the same street and compete for customers. It does not make sense.

Sole provider emergency systems are common—
Contrary to the information presented in the Pegasus report, a number of states give counties or municipalities the authority to implement and regulate sole provider emergency response systems. We have worked with communities in at least 11 states with statutes or regulations that facilitate such systems.

One does not have to look far to find such a model. Lexington/Fayette County recognized the value of making sure that emergency 911 callers receive optimal (sole provider) service. As outlined in its Code of Ordinances Chapter 18C, the division of fire and emergency services is the only authorized provider of 911 emergency services.

DEFICIENCIES OF THE PROPOSED
CON NONSUBSTANTIVE REVIEW REGULATION, 900 KAR 6:075

The Cabinet for Health and Family Services ("Cabinet") has proposed a new version of the CON Nonsubstantive Review Regulation, 900 KAR 6:075, which includes a Special Exception to the longstanding rule that CON applications to establish Class I ground ambulance services (911 scene/first responder) are subject to formal review. The Special Exception allows CON applicants in only three of Kentucky's 120 counties, McCracken, Laurel, and Warren, to have their CON applications reviewed under the deferential nonsubstantive review standard rather than formal review. This Special Exception makes the proposed 900 KAR 6:075 deficient under KRS 13A.030(2)(a) for the following reasons:

(1) The Regulation is wrongfully promulgated because it is special legislation.

- Sections 59 and 60 of the Kentucky Constitution prohibits favoritism by the legislature or state agencies towards an individual or small group.
- The Statement of Consideration shows that the Special Exception was the result of clear favoritism by the Cabinet towards TriStar Greenview Regional Hospital, which is seeking a CON for a Class I ground ambulance service in Warren County.
- At page 37 of the Statement of Consideration, the Cabinet states that it amended the proposed 900 KAR 6:075 as requested in comments submitted by TriStar Greenview Regional Hospital because an independent administrative hearing officer ruled that Greenview's CON application was not entitled to nonsubstantive review.
- The Cabinet further explains at page 22 of the Statement of Consideration that "[w]hile the amendment to 900 KAR 6:075 does not guarantee that TriStar Greenview Regional Hospital will obtain a certificate of need to serve Warren County, it does remove one of the barriers . . . ."
- The Constitution does not permit this favoritism, which the Statement of Consideration shows to be the express purpose of the Special Exception.

(2) The Regulation exceeds the Cabinet's authority.

- Under the Doctrine of Separation of Powers in the Kentucky Constitution, regulations must reflect administrative rather than policy decisions because policy considerations are exclusively the prerogative of the legislature.
- The purpose of the Special Exception is to impermissibly further the policy objective of the Cabinet to increase the number of ambulance providers, specifically in Warren County.
- It is the prerogative of the legislature rather than the Cabinet to determine policy related to ambulance providers.

(3) The Regulation impermissibly conflicts with KRS 216B.010.

- A regulation is invalid if it conflicts with the purpose of a statute.
- KRS 216B.010 gives three purposes for the CON program: (1) to prevent proliferation of unnecessary healthcare facilities and services; (2) to prevent costly duplication of healthcare services; and (3) to create a cost-efficient healthcare delivery system.
- The Special Exception's explicit purpose to promote the duplication of ambulance providers in Warren County is directly contrary to the General Assembly's stated purposes for the CON program.