



Washington County Auditor's Office

Ambulance Franchise Management Final Follow-up Report

December 13, 2022



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County Auditor

I. Background and Summary

State law authorizes counties to regulate ambulance services. Washington County's Emergency Medical Services (EMS) Ordinance provides for the appointment of an EMS Program Supervisor to provide oversight and direction to EMS activities within the county.

The County has granted an exclusive franchise for emergency ambulance services to Metro West Ambulance (MWA) since 1997. The franchise agreement (FA) has a term of six years which extends every 18 months for an additional 18-month period, as long as franchisee performance meets or exceeds standards established in the Oregon Administrative Rules, the EMS Administrative Rules and the franchise agreement.

The EMS Supervisor, as the contract administrator (CA) of the franchise agreement, is responsible for monitoring and enforcing franchisee performance. The Administrative Rule and the FA establish performance expectations for dispatch and response times. The FA and Administrative Rule require the county to report monthly on those and other performance measures.

II. Overview of the 2019 Audit

The Auditor's Office initiated the Audit of Ambulance Franchise Management to determine whether the County effectively administered the ambulance franchise agreement and whether it accurately reported franchisee performance.

In our July 2019 report, we found:

- The terms of the franchise agreement (FA) establish a reporting, monitoring, and penalty system that represents a risk-based contract management process.
- The contract administrator (CA) effectively monitored many of the performance requirements of the FA.
- The CA monitored, but did not enforce, several of the performance requirements established in the franchise agreement.
- Instead, the CA changed the response performance requirements of the ambulance provider, established in the FA and in administrative rule, without amending either the rule or the agreement.

- The CA exceeded his authority by, in effect, amending the franchise agreement without action by the Board and amending the EMS Administrative Rule without a public hearing.
- The CA did not accurately report that the franchisee had failed to meet performance requirements for dispatch and response established in the administrative rule and the franchise agreement.

We recommended:

1. The CA should continue to manage the ambulance franchise agreement through a risk-based approach.
2. The CA should continue to monitor and report on less closely monitored contract requirements at least every 18 months.
3. The CA should utilize the penalty and liquidated damage provisions of the agreement to ensure the franchisee satisfies contract requirements.
4. The CA should change the performance requirements of the EMS Administrative Rule and the franchise agreement only through established processes for amending a rule and amending a contract.
5. The CA should accurately report whether the franchisee satisfies contract requirements.

The County Administrator agreed with all but one of our recommendations. In regard to recommendation 4, the County Administrator planned to modify the EMS Administrative Rule to allow for pilot projects or waivers of performance requirements prior to formal amendment.

III. Status of Audit Recommendations

We reported on our first follow-up on these recommendations in April 2021. We found that management had fully implemented recommends 1 and 2 and had not implemented recommendations 3 and 5. Recommendation 4 remained in process. We conducted this second follow-up review to determine whether the County had implemented recommendation 4. We find that it has not.

Recommendation 4: The Contract Administrator (CA) should change the performance requirements of the Administrative Rule (AR) and the Franchise Agreement (FA) only through established processes for amending a rule and amending a contract.

One of the findings in the original report was that the CA had exceeded his authority by changing the compliance standard for dispatch time. The Administrative Rule and the franchise agreement required that Metro West dispatch an ambulance within 60 seconds of receiving a call. The agreement assessed a penalty for dispatches that did not meet that standard.

Instead of enforcing the 60-second dispatch provision, the contract administrator accepted a lower dispatch standard. Since amending the Administrative Rule to reduce the dispatch standard would have required a public hearing, the contract administrator had effectively denied the public the right to be heard on a matter of importance to their health and safety.

Rather than providing that opportunity to the public by following the established processes for amending the rule and the agreement, as the Auditor had recommended, EMS first changed the agreement to eliminate the penalty for failure to meet the 60-second dispatch requirement, while leaving standard in place. Then, the Board amended the Administrative Rule, not to change the standard, but rather to permit further amendment without a public hearing. Most recently, on November 29, 2022, the Board amended the Rule to provide that the dispatch standard is that established in the franchise agreement, thereby retaining the 60-second dispatch standard still established in the agreement.

All indications are that the 60-second standard will remain in the franchise agreement until it expires sometime in FY 2023-24 without ever being enforced. The recently released RFP for a new Emergency Ambulance Franchise includes a draft franchise agreement with no time standard for dispatch of an ambulance. Rather than simply amending the Rule and the agreement to adopt what it considers a more appropriate performance standard, the behavior of EMS and the BCC suggests that their first concern was to avoid a public hearing on the issue of timely ambulance dispatch.

By refusing to either change or enforce the performance standard they have exposed the County to liability for injuries or death suffered by anyone for whom an ambulance was not dispatched within 60 seconds. Less than seven months before we released our report on Ambulance Franchise Management, the County had incurred a \$10-million judgment because its failure to enforce its contract for jail healthcare led to the death of a young women in the Washington County Jail nearly five years earlier. The cost of the County's failure to implement this audit's recommendations may not be known for years. **Final Status - Not Implemented**

IV. About this Review

In September 2022 we initiated a second follow-up review to determine whether management had implemented the final recommendation from our July 2019 Audit Ambulance Franchise Management. We asked the EMS Program Supervisor to describe any actions taken to implement the Auditor's recommendations, and to provide documentation that would support the actions taken. We reviewed the response to our request, reviewed the documentation submitted, and collected additional information as necessary to provide sufficient, appropriate evidence to conclude whether each recommendation was fully implemented.

We concluded that a recommendation was Fully Implemented when we found management had completed the recommended actions. We concluded that a recommendation was Not Implemented if we found that management had taken no action to implement the recommendation and had no specific plan to implement the recommendation.



Memorandum

To: John Hutzler, County Auditor
From: Tanya Ange, County Administrator *Tanya Ange*
cc: Board of County Commissioners
Date: December 12, 2022
Subject: Response to follow-up and new audits submitted for Dec. 13

In your elected role as County Auditor, you have provided seven follow-up audits as part of your presentation to the Washington County Board of Commissioners meeting packet for December 13, 2022. I commend staff for their work especially over the last two weeks to prioritize responding to your requests for the community that we both serve. This demonstrates a respect for your elected role and the shared value that employees place on effective and efficient local government employees.

It is my understanding that follow-up audits do not require a management response as they are based on the scope of the original audit. After an initial review of your audits, it appears that there are three audits that I need to respond to as management does not agree with your position and/or the follow-up has gone beyond the scope of the original audit. I am sending this memo to you and will be adding this memo to the Board's agenda packet for public transparency. I should note that you have not requested a management response for any of the seven follow-up audits included in the packet for December 13, 2022.

Auditor's Response: Thank you for your response to the Emergency Ambulance Franchise follow-up report. You are correct that a management response is not required. However, since you have submitted your response, I will include it, along with my response when I publish my report. Had you chosen to respond during last night's Board meeting, I would have addressed your concerns at that time. My responses to the points you raise follow.

2. Emergency Medical Services

I have reviewed the Emergency Medical Services (EMS) Ambulance Contract audit and am providing a response developed with the Department of Health and Human Services (HHS).

HHS leadership and I appreciate the opportunity to engage with the County Auditor in an assessment of important services provided to Washington County residents and visitors through our ambulance service contract with Metro West Ambulance (MWA). HHS values continuous quality improvement and has been actively working with our ambulance provider and broader EMS partners on development of an integrated EMS system with a

focus on quality improvement to provide exceptional patient care.

Over the last three years, with the development of the EMS Alliance, and ongoing significant changes to our governance documents, the EMS program has greatly improved transparency and communication with partners and the Board. The EMS Alliance is an advisory group that is convened as part of an ORS Chapter 190 intergovernmental agreement (IGA) that is made up of leaders from each of following EMS stakeholders: Fire, Washington County Consolidated Communications Agency, 911 Transport Agency, Medical Directors, and the County. The following changes have been or are currently being made:

- a. Updated County Code Chapter 8.32 to match current operations and legal requirements. The Board approved Ordinance 887 to revise this part of the code on February 14, 2022.
- b. Updated the Ambulance Service Area (ASA) plan to match current operations and set the stage for new operations as we bring on a new Franchise Agreement. The Board endorsed the updated ASA plan on November 29th, 2022.
- c. Updated the EMS Administrative Rules to match current operations and move toward a redesigned EMS system. The Board approved the updated rules on November 29, 2022. Developed a request for proposals (RFP) for ambulance services in Washington County. The RFP released publicly on December 2nd, 2022
- d. Currently developing a new Franchise Agreement that will move us into the newly designed EMS system.

Background

Regarding the performance measurement change for dispatch standards, we agree that the previous supervisor should have assessed penalties when the franchise holder first reported that they had not met the metric, and then should have started a process to determine the need for updating this metric to meet the changing environment of the community. It is important to note however, that while essential for quality improvement and accountability, there are no state or nationally accepted standards for the specific metrics that should be a part of an emergency ambulance contract, nor how to measure these metrics or to apply penalties should they not be met.

While over the many years of this contract the county population has expanded significantly, and call volume has increased, the franchisee performance standard of no more than 11 instances of dispatches taking longer than 60 seconds remained a dispatch standard. Staff recognized that the dispatch standard did not remain appropriate given rapidly expanding call volume, the past supervisor worked with public health epidemiology and the franchisee to create a dispatch standard that looked at both monthly response times and response times over a longer period.

Auditor's Response: The failure to enforce the dispatch standard is not limited to the previous supervisor. It continues to this day. The audit finding was based not on any nationally accepted standard, but on the standard agreed to by the County and the franchisee in the contract and established in administrative policy. I do not suggest that the

60-second dispatch requirement is an appropriate standard, only that it is the standard established by the County in administrative rule and agreed to by the parties in the franchise agreement.

As the County should have learned from the Pitkin case, failure to hold a contractor to performance standards can result in county liability for the consequences of the contractor's negligence. The County had the opportunity here both to identify and address a problem and to protect the county from future claims. It failed to do the latter.

Auditor Final Follow-up Report Recommendation 4 – Not Implemented

This audit assumes a static system, but the EMS program through collaboration with the EMS Alliance has been actively reforming all parts of this system over the last two years. Our change to the Franchise Agreement, specifying how we fine MWA, was a reasonable response to the audit finding because staff were in the process of amending all governance documents with a plan to finish with the Franchise Agreement. The scheduled time to update the current Franchise Agreement, after the latest 18-month assessment, coincided with the time the Board decided to not extend the current Franchise Agreement, but rather to pursue an RFP for a new Franchise Agreement. Therefore, staff rebooted its plans.

Several of the points made in the EMS follow-up audit imply an avoidance of public involvement in EMS processes. We disagree. We believe the EMS program to be transparent and encouraging of both public and partner agency input. Staff publicly posts all related governance documents and compliance reports. We seek comment on documents before they go before the Board for revision. We involve stakeholders and the general public in EMS system meetings and broadcast these meetings online to enhance accountability. With the 2022 update to County Code Chapter 8.32, all governance documents are discussed during Board Work Sessions and approved by the Board during their meetings, including opportunities for public comment. The key public meetings included:

- Work Session on January 11, 2022
- Board meeting and first reading of Ordinance 887 on January 25, 2022
- Board meeting and second reading and first public hearing of Ordinance 887 on February 15, 2022 (including a presentation calling out how Administrative Rules are processed).

The EMS Program chooses to include presentations with most of their items before the Board so key points can be publicly addressed. In addition, all changes being made since late 2021 are being made in collaboration with all EMS system partners.

The statement “Rather than simply amending the Rule and the agreement to adopt what it apparently considers a more appropriate performance standard, the behavior of EMS and the BCC suggests that their first concern was to avoid a public hearing on the matter” is inaccurate. The EMS program has been actively engaged with our EMS partners and the Board for the last several years to bring our EMS system into the 21st century, with truly modernized operations, metrics and governing documents. The program is working to align

the four governance documents, ready them for the new system that starts with the upcoming Franchise Agreement, all while ensuring it is not in conflict with the current Franchise Agreement. Furthermore, when the new Franchise Agreement commences, the vendor's role in dispatching emergency calls will likely end, rendering this performance standard irrelevant.

Auditor's Response: My report addresses specifically the County's failure to either enforce the dispatch requirement or change that standard through a process that requires a public hearing. The public hearings that have been held did not involve changes to the dispatch requirement. The 60-second standard remains in place without being enforced. All indications are that this will continue until the County enters into a new franchise agreement that does not include a dispatch requirement, a process that does not require a public hearing. The County's actions appear designed to avoid a public hearing on eliminating the requirement for 60-second dispatch.

Thank you again for your response. I recognize that most of the issues described in this report, as well as most County action to address them, occurred before you were hired as County Administrator, and I appreciate your commitment to addressing them.