

TESTIMONY OF GARY B. O'CONNOR

**BEFORE THE HUMAN SERVICES COMMITTEE
OF THE GENERAL ASSEMBLY**

FEBRUARY 23, 2010

Good Morning, my name is Gary O'Connor. I am a partner at the law firm of Pepe & Hazard LLP. I have had more than 15 years of experience representing ambulance providers in the State of Connecticut. I am here on behalf of the Association of Connecticut Ambulance Providers (ACAP). I would like to thank the Human Services Committee for the opportunity to speak today against Sections 38, 39 and 40 of Governor's Bill No. 32.

Bill No. 32 would remove the transportation of certain stretcher patients from the oversight of the Commissioner of Public Health and it would allow for the creation of a new form of patient transportation known as stretcher van transportation.

It is the opinion of the members of ACAP that the transportation of patients confined to stretchers in stretcher vans is unsafe, creates additional liability exposure to medical providers and perhaps the State, and it does not result in a significant cost savings as reported by OPM.

It is not in the best interest of patient safety to transport patients confined to stretchers in so-called stretcher vans. A stretcher-bound patient, by definition, has advanced medical needs. Generally, this type of patient requires medical observation and handling by an EMT in a vehicle which is equipped with patient monitoring equipment and management equipment. Based on OPM's budget analysis, stretcher vans would be staffed by only one person who would not have any medical training. Essentially, if you have a driver's license, you would qualify. Ambulances, on the other hand, are staffed by two medically trained individuals so that the stretcher-bound patient can be attended to while the ambulance is being driven.

Currently, the medical transportation of stretcher-bound patients is being operated safely and efficiently under the oversight of the Department of Public Health in vehicles that are inspected by the Department on a regular basis and staffed with emergency medical technicians who are required to complete rigorous training and recertification programs. It would be a folly, indeed, to permit an inferior form of transportation which is not regulated by the Department of Public Health.

It is interesting to note that LogistiCare, the State's broker for wheelchair transportation, distributed flyers to the State's livery providers regarding the purchase of livery vans. I have attached a copy of the flyer for your reference. As you can see, the vehicles look like minivans. It is very interesting indeed that LogistiCare would be

distributing these flyers before the Legislature has even had an opportunity to consider the proposal.

The use of stretcher vans creates additional liability issues for providers and perhaps the State. If a patient is transported by a "stretcher van" and something happens to the patient in transit, who is responsible? Is it the State or its agent, the transportation broker, who assigned a sick patient to a stretcher van instead of an ambulance in order to save money? Is it the transport provider who took a patient that it should have known it could not provide for; or is it the hospital or skilled nursing facility or doctor's office that allowed the patient to be transported from the facility by a medically inappropriate means of transportation? Based on the Federal Emergency Medical Treatment and Active Labor Act (EMTALA), hospitals would have additional exposure to penalties and civil lawsuits to insure that the patient is transported by "qualified personnel and transportation equipment." Most likely, a good lawyer would sue everyone and let the jury sort it out.

It should be noted that the experts in the medical transportation field, the commercial ambulance providers, were never consulted regarding the Governor's proposal. As such, we question the accuracy of the cost savings touted by the State. We have been told that the State's budget estimate of \$5.9 million in savings is predicated on a rate that is 20% of the Medicaid ambulance rate of \$218, which translates to a stretcher van rate of \$43. This rate is completely unrealistic, considering the fact that a dedicated car is required and considerable time is necessary to transport a stretcher patient. The savings figure at a reasonable stretcher van rate would not garner \$5.9 million in savings even if all the current ambulance calls could be converted to stretcher van transports, which is certainly not the case.

Before ever considering this legislation, OPM and DSS should provide legitimate answers based on empirical data with respect to the following questions:

1. What is the correct percentage of current Medicaid non-emergency patients who would fall into the stretcher van category?
2. What is the minimum cost to operate a stretcher van and what is the rate which the State has proposed to pay?
3. What is the minimum number of employees required to safely operate a stretcher van?
4. Who will make the determination that a stretcher patient does not need medical observation while being transported?
5. What is the State's liability exposure?
6. Will "stretcher vans" be regulated by DPH?

In sum, patient safety dictates that Sections 38, 39 and 40 of Governor's Bill No. 32 be rejected. The purported savings from using "stretcher vans" has not been adequately demonstrated and the additional liability risks to providers and the State have not been sufficiently explored. The poor and disadvantaged patients of this State should not be subjected to inferior medical transportation based on specious claims of significant cost savings.

2010 - Transportation Service Providers Stimulus Package II

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