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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:)	Docket No. 2017-EMS-0104-DHS
)	(EMS No. 0283)
RBR Management LLC dba Community)	
Ambulance,)	MARICOPA AMBULANCE
)	RESPONSE TO APPLICANT'S
Applicant.)	OBJECTIONS TO MARICOPA
)	AMBULANCE'S SUBPOENA DUCES
)	TECUM
)	
)	(Hon. Tammy L. Eigenheer)
)	
)	(oral argument requested)

Applicant and Maricopa Ambulance have participated in at least three meet and confers regarding the subpoenas duces tecum (“SDT”) they have each served on one another. I think it is safe to say that the parties have negotiated in good faith and that have made a fair amount of progress in terms of narrowing the requests for production, withdrawing certain requests, and acknowledging to one another in good faith that additional documents are likely to be made available on a rolling basis as the parties approach the September 13, 2018, date for filing and producing a final list of witnesses and exhibits. That delay in the production of documents will almost certainly have an impact of Maricopa Ambulance’s ability to refine its list of witnesses and exhibits.

Additionally, “In deciding whether to issue a certificate of necessity *to more than one ground ambulance service for convalescent or interfacility transport* for the same service area or overlapping service areas, *the Director shall consider [inter alia] the following*” (R9-25-903(A) and (B))(emphasis added):

- population demographics in the proposed service area (R9-25-903(A)(2));
- the distribution of health care institutions in and around the proposed service area (R9-25-903(A)(3));
- the existence of ground ambulance service to all or part of the same service area (R9-25-903(A)(4)(a));
- the existence of certificate holders in all or part of the service area (R9-25-903(A)(4)(c));
- the availability of emergency medical services in all or part of the service area (R9-25-903(A)(4)(d));
- the financial impact on certificate holders whose service area includes all or part of the service area in the requested certificate of necessity (R9-25-903(B)(2));
- the need for additional convalescent or interfacility transport (R9-25-903(B)(3)); and

These are the factors to be assessed at a hearing. Documents related to these factors are relevant and, at this stage, should be in the possession of Applicant and in a producible format.

With the foregoing in mind, Maricopa Ambulance requests the ALJ to not sustain Applicant's objections (and not to quash Maricopa Ambulance's SDT), but rather to keep the SDT in full force and effect through and including September 13, 2018.

Applicant is aware that it bears the burden of proof in this CON hearing and that many documents are required by Applicant to be produced in order to meet that burden.

The following are Maricopa Ambulance's requests for production of documents and Maricopa Ambulance's responses to Applicants objections. We incorporate the foregoing into our responses as applicable:

Documents to be Produced:

1. **All documents produced by Applicant in response to any subpoenas duces tecum issued by any Intervenor or by ADHS/BEMSTS in this administrative proceeding (2017--EMS-0104-DHS).**

Response: Because of the nature of this request, Maricopa Ambulance adopts the response by any other Intervenor to Applicant's objections to that Intervenor's SDT.

2. **All documents used, considered, or relied on by Applicant to determine that public necessity requires the ground ambulance service to be provided by Applicant if it is awarded a CON.**

Response: This would seem to be a fundamental factor to be proven by Applicant at the CON Hearing. Applicant has produced a limited number of publicly available documents – i.e., the Intervenor's ARCRs, has maintained that it needs documents in response to SDTs it has issued, and that all documents and exhibits will continue to be produced on a rolling basis on or before September 13, 2018.

Per GD-099-PHS-EMS: Certificates of Necessity for Ambulance Service (the "Guidance Document") "Public necessity" means an identified population needs or requires all or part of the services of a ground ambulance service [and] "Needs assessment" means a study or statistical analysis that examines the need for ground ambulance service within a service area or proposed service area that takes into account the current or proposed service area's medical, fire, and police services." At this point of this proceeding, given Applicant's burden of proof, we would expect that at least a significant portion of that analysis would have been done and available in a producible format.

- 3. All documents used, considered, or relied on by Applicant to determine that existing CON holders, including but not limited to Maricopa Ambulance, are not fully meeting public need for ground ambulance services in Applicant's proposed service area.**

See the response to Request No. 2 above.

- 4. All documents used, considered, or relied on by Applicant to assess the potential financial impact on existing CON holders, including but not limited to Maricopa Ambulance, if Applicant receives a CON.**

Response: Applicant has essentially said it is awaiting responses to its SDTs and that it intends to produce documents on a rolling basis through September 13, 2018. We take Applicant at its word and we have also represented to Applicant that Maricopa Ambulance is also in the process of preparing and producing documents and will do so on a rolling basis.

That having been said, Applicant is required to prove that its "service model will be cost effective and not result in higher ambulance rates." Based on publicly available information, and the requirement of a needs assessment, at least some of this type of documents should be in existence and should be produced.

- 5. All documents used, considered, or relied on by Jeffrey O'Malley to support his proposed testimony regarding (1) Dignity Health's approximate needs for non-emergency interfacility transports within Applicant's proposed service area, (2) Dignity Health's efforts to develop relationships with CON holders in Maricopa County to provide interfacility transports for the Dignity Health population, specifically including but not limited to Maricopa Ambulance (3) his claim regarding substandard interfacility transport performance Dignity Health facilities have experienced by other CON holders in the proposed service area, and (4) meetings with representatives of Dignity Health hospitals, urgent care centers, and other associated facilities to discuss optimization of Dignity Health patient transports.**

Response: This request was fashioned in light of Applicant's list of witnesses and exhibits. Based on Applicant's application, and its representations that it intends to essentially be the primary provider to Dignity for in excess of 11,000 scheduled interfacility and convalescent transports per year, and presumably more in years two and three (if Applicant is awarded a CON), and the proposed testimony of this witness, these requests are relevant and necessary. Applicant states that its 51% joint venture has custody and control of these documents and that, therefore, they are beyond the Applicant's perview. And we acknowledge that Dignity has produced several documents in this matter. See also the responses to 2 and 4 above. This objection, as with all of the objections to Maricopa Ambulance's

SDT, should not be sustained.

6. **All documents used, considered, or relied on by Rob Richardson to support his proposed testimony regarding the reasons Community Ambulance is fit and proper to provide the proposed interfacility services contemplated by its application, Community Ambulance's fiscal competence, resources, financial viability, and ability to expand its resources to address population growth in the Dignity Health system in Maricopa County, as well as Community Ambulance's plan to ensure interfacility transport service will be maintained and improved for remote or rural Maricopa County communities.**

Response: Per the Guidance Document, Applicant must prove that it is fit and proper. "Fit and proper" means that the Director determines that an applicant for a certificate of necessity or a certificate holder has the expertise, integrity, fiscal competence and resources to provide ambulance service in the service area." This request is clearly relevant and likely cannot be "unduly burdensome." That having been said, Applicant has produced a limited number of publicly available documents and has said it will produce supplemental documents on or before September 13, 2018. See also the response to 2, 4 and 5 above.

7. **All documents used, considered, or relied on by Linda Hunt to support her proposed testimony regarding (1) Dignity Health's experiences with interfacility ambulance transportation, and the providers of ambulance services in the proposed service area (Maricopa County) and surrounding areas, (2) throughput issues in the Dignity Health systems, and the effects interfacility transport delays can have on efficient hospital operations, as well as patient care, outcomes, and satisfaction, (3) Dignity Health's desire and need for an integrated interfacility ambulance service to better serve Dignity Health's patient population.**

Response: Dignity is not the Applicant, although they own 51% of Applicant. Applicant listed Ms. Hunt and others as witnesses. It bears the burden of providing relevant documents. See also the Response to 2, 4 and 5.

8. **All documents used, considered, or relied on by W. Michael Evans to support his proposed testimony regarding the potential financial impact on other CON holders in the proposed service area, specifically including but not limited to Maricopa Ambulance.**

Response: See the responses to 2, 4 and 5 above.

9. **All documents used, considered, or relied on by Brandon Hestand to support his proposed testimony regarding (1) his developing and maintaining relationships with private ambulance providers, including representatives of Intervenors, specifically including but not limited to Maricopa Ambulance,**

(2) throughput issues and negative patient experiences at CRMC and MGMC caused by interfacility ambulance transport delays, and (3) inconsistencies in compatibility of equipment between Dignity Health facilities and current private ambulance providers, specifically including but not limited to Maricopa Ambulance.

Response: See the response to 2, 4 and 5 above.

- 10. All documents used, considered, or relied on by Delores Kells to support her proposed testimony regarding delays the Urgent Care Centers experience in scheduling transports and in arrivals times of ambulances, the necessity of an additional provider of interfacility transports to efficiently move patients from the Urgent Care Centers to facilities with higher levels of care, throughput issues at the Urgent Care Centers, and instances of Dignity Health patients leaving Urgent Care Centers against medical advice to drive themselves to facilities with higher levels of care due to delayed interfacility transports.**

Response: See the responses to 2, 4 and 5 above.

- 11. All documents used, considered, or relied on by Dr. Paul McHale to support his proposed testimony regarding throughput bottlenecking issues that cause patient holds on a regular basis in the CRMC and MGMC Emergency Departments.**

Response: Withdrawn.

- 12. All documents used, considered, or relied on by Mark Burdick to support his proposed testimony regarding throughput bottlenecking issues at hospital facilities and the need for an additional interfacility transport provider to supplement the existing EMS system.**

Response: See the responses to 2, 4 and 5 above.

- 13. All documents used, considered, or relied on by Dr. David Argue to support his proposed testimony and expert opinions concerning (1) the benefits of competition in the provision of ambulance services to the patient population of Maricopa County, and more specifically in terms of improvements in the quality of care for that population, (2) that where customers have a choice of ambulance providers, private providers tend to provide higher quality of care and service, (3) the benefits granting a CON to Community Ambulance could provide to Maricopa County and its residents including increased quality of service and a reduction in risk in having just a few available private ambulance providers.**

Response: See the responses to 2, 4 and 5 above.

14. **All documents for the period January 1, 2015, to the present, reflecting all interfacility transports requested by Dignity Health from all of their facilities in Maricopa County (including the facility requesting the transport; the ambulance company the request was made to; the time the transport was requested by Dignity Health; the time that the transport was scheduled to occur; the negotiated pick up time, if any; the time the ambulance actually arrived; the time the ambulance departed the facility with the patient; and the destination of the patient transport.)**

Response: See the responses to 2, 4 and 5 above.

15. **All documents reflecting the hours of operation of each of Applicant's proposed staffed ambulances and the sub-operation or posting location of each of these ambulances.**

Response: See the responses to 2, 4 and 5 above.

16. **All documents for the period January 1, 2015, to the present, reflecting interfacility transports that Dignity Health requested, the payment for which was guaranteed by Dignity Health, as opposed to those the patient was required to pay, including the dollar amount Dignity Health paid for those transports.**

Response: See the responses to 2, 4 and 5 above.:

17. **All workpapers and other documents used or relied upon by Applicant in preparation of its original pro forma ARCR and any amendments thereto, including, without limitation, all documents pertaining to the computations and/or methodologies used by Applicant in deriving each of the figures set forth original pro forma ARCR and any amendments thereto.**

Response: See the responses to 2, 4 and 5 above.

18. **A copy (or a list) of all written complaints or lawsuits lodged or filed against Applicant or Dignity Health in Nevada or Arizona from January 1, 2015, to the present.**

Produced, at least in part.

RESPECTFULLY SUBMITTED August 14, 2018.

JBELANGER LAW PLLC

By /s/ James J. Belanger

James J. Belanger

Attorneys for Maricopa Ambulance LLC

CERTIFICATE OF SERVICE

ORIGINAL filed on August 14, 2018, using the OAH electronic document filing system with copies provided to all parties on the approved mailing list by posting through the designated OAH website at <https://portal.azoah.com/oedf/documents/2016A-EMS-0381-DHS/2016A-EMS-0381-DHS-0018.pdf>.

/s/ James J. Belanger

