

**Deschutes County ASA Advisory Committee
Investigation of Allegations from St. Charles Health
System and La Pine Community Health Center
Against Deschutes County Franchisee La Pine
Rural Fire Protection District
Investigation Summary and Findings**

Prepared by: ASA Advisory Committee

Authority of the ASA Advisory Committee

The Deschutes County ASA Advisory Committee (“Committee”) and the Deschutes County Board of Commissioners (“Board”) are authorized to investigate alleged violations of the Ambulance Service Area Plan for Deschutes County (“ASA Plan”) and/or Chapter 8.30 (Deschutes County Ambulance Service Areas) of the Deschutes County Code (“DCC Chapter 8.30”) by County ambulance service franchisees. See ASA Plan, §8.2 and DCC 8.30.070.¹ If, as here, the Committee is assigned by the Board to investigate such allegations, the Committee’s task is to determine whether sufficient evidence exists to demonstrate a franchisee has violated applicable local laws or regulations, such as the ASA Plan or DCC Chapter 8.30, state or federal law or regulations, or whether the franchisee materially misrepresented facts or information given in either the application for assignment of its franchise or as part of a review of the performance of services furnished by the franchisee. Id. Upon completion of its investigation the Committee will provide its findings to the Board for its review and determination as to further action or sanctions against the franchisee. Id.

If the Board determines that a franchisee has *willfully* violated applicable local laws or regulations, such as the ASA Plan or DCC Chapter 8.30, state or federal law or regulations, or that a franchisee has materially misrepresented facts or information given in the application for assignment of its franchise or as part of a review of the performance of services furnished by the franchisee, the Board may revoke or suspend the assignment of a franchise to a franchisee. ASA Plan, §8.4. In lieu of suspension or revocation, the Board may take other remedial measures to ensure any violations are corrected. ASA Plan, §8.4; DCC 8.30.070.

Overview of Allegations

The Board assigned the Committee the task of investigating two complaints received by the Board against the La Pine Rural Fire Protection District (“District”), including one from St. Charles Health System (“St. Charles”), and one that was submitted jointly by St. Charles and La

¹ The ASA Plan and Chapter 8.30 of the Deschutes County Code were amended subsequent to the Committee’s receipt of the complaints from St. Charles and LCHC. All citations to the ASA Plan and Chapter 8.30 of the Deschutes County Code are to the May 2018 versions of each, which were effective at the time of receipt of the complaints by the Committee.

Pine Community Health Center (“LCHC”). (Where appropriate, St. Charles and LCHC will be referred to collectively as “Complainants.”) The first complaint was submitted by St. Charles on or about November 16, 2020. (A copy of the November 6, 2020 Complaint is attached as Attachment 1.) The second complaint was submitted by St. Charles and LCHC on or about February 3, 2021. (A copy of the February 3, 2021 Complaint is attached as Attachment 2.) Taken together, the complaints include several allegations against the District, which are summarized below:

1. The District discouraged patients from utilizing the District for emergency transports.
2. The District provided inaccurate determinations about whether emergency transportation was necessary for patients in order to support the fees it charged to St. Charles and LCHC.
3. The fees charged to St. Charles and LCHC pursuant to District Ordinance #2019-03 and District Policy #02-03 were invalid.
4. The District is currently unable to meet ASA Franchise requirements.
5. There are documentation discrepancies between St. Charles and LCHC provider chart notes and the chart notes of the District concerning the patients who were transported by the District.

Summary of Investigation

After being assigned the task of investigating the complaints from St. Charles and LCHC, the Committee formed a subcommittee to review the allegations contained therein and obtain information relevant to such allegations. Substantial documentation was received from Complainants in response to requests for information relevant to the complaints from the Committee. (Copies of the Committee’s requests for information to Complainants are attached as Attachment 3.) The Committee also obtained information relevant to its investigation from the record of documents that are publicly available from the Deschutes County Circuit Court pertaining to pending litigation in *St. Charles, Inc., and La Pine Community Health Center v. La Pine Rural Fire Protection District*, Case No. 20CV39845.

Requests for information were also sent to the District. The Committee sent its first request to the District on March 4, 2021. After receiving no response from the District, on April 21, 2021, the Committee sent a follow-up letter to the District renewing its requests for information. (Copies of the original requests for information from the Committee and its follow-up letter to the District are attached as Attachment 4.) Citing a pending lawsuit with St. Charles and LCHC, in a letter dated April 27, 2021, the District notified the Committee that it would not provide information responsive to the Committee’s requests.² (A copy of the District’s response is

² *St. Charles Health System, Inc., and La Pine Community Health Center v. La Pine Rural Fire Protection District*, Deschutes County Case No. 20CV39845.

attached as Attachment 5.) On June 17, 2021, the Committee again requested information from the District as part of its investigation, although it significantly narrowed the scope of its requests for information. (A copy of the Committee’s renewed requests for information is attached hereto as Attachment 6) To date, the Committee has received no further response from the District, nor has it received any material information in response to its requests.³

On behalf of the Board, the subcommittee hired private investigator Lori Miller to assist in the investigation by interviewing witnesses from St. Charles and LCHC, as well as relevant witnesses identified by the Committee during its investigation. The witnesses interviewed by Ms. Miller include Oliver Tatum, clinic manager at St. Charles Family Care in La Pine (hereinafter referred to as “St. Charles La Pine”), Charla DeHate, chief executive officer at LCHC, and La Pine community members Laura Beebe, Gloria Fleming, and Dennis Robinson.

The subcommittee members have reviewed the information obtained during the investigation over the course of several months. Based on their review, the subcommittee submitted proposed findings, along with relevant information supporting the proposed findings, to the full Committee on September 28, 2022. After reviewing the proposed findings and relevant information from the subcommittee’s investigation, the Committee adopted the proposed findings. The Committee’s findings were determined using the substantial evidence standard.⁴

Exhibits

1. Copy of District Ordinance #2019-03
2. Copy of District Policy #02-03
3. Copy of District Ordinance #2021-01
4. Copy of Report of Interview of Oliver Tatom from Investigator Lori Miller, dated November 16, 2021
5. Copy of email from Kacie Talcott to Oliver Tatom, dated December 27, 2020
6. Copy of Report of Interview of Charla DeHate from Investigator Lori Miller, dated November 15, 2021
7. Copy of Declaration of Charla DeHate, dated September 12, 2022
8. Copy of Declaration of Oliver Tatom, dated September 9, 2022
9. Copy of Report of Interview of Dennis Robinson from Investigator Lori Miller, dated August 23, 2021
10. Copy of Report of Interview of Laura Beebe from Investigator Lori Miller, dated August 31, 2021
11. Copy of Report of Interview of Gloria Fleming from Investigator Lori Miller, dated August 23, 2021

³ The District did provide copies of District Ordinances #2021-01 and #2021-02 with its April 27, 2021 letter to the Committee, but has otherwise failed or refused to provide information requested by the Committee.

⁴ “Substantial evidence” means more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

12. Copy of Emergency Medical Services Page from the District's website, [https://lapinefire.org/emergency-medical-services/n taken February 23](https://lapinefire.org/emergency-medical-services/n%20taken%20February%2023), 2021
13. Summary of Payor Information Obtained from Complainants on June 10, 2022

Copies of Materials Related to invoicing to St. Charles for "intrafacility transfer fee" pursuant to District Ordinance #2019-03

14. Call #1695 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
15. Call #1762 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
16. Call #1779 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
17. Call #1790 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
18. Call #1950 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
19. Call #1955 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
20. Call #2058 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
21. Call #2066 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
22. Call #2221 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
23. Call #2300 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
24. Call #2303 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
25. Call #2357 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
26. Call #2418 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
27. Call #2441 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
28. Call #2445 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
29. Call #2496 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
30. Call #2503 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee

31. Call #2518 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
32. Call #2566 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
33. Call #2582 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
34. Call #8 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
35. Call #32 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
36. Call #40 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee
37. Call #116 – 911 Call for Service Report, District invoice to St. Charles, materials related to appeal of fee

Copies of Materials Related to invoicing to LCHC for “intrafacility transfer fee” pursuant to District Ordinance #2019-03

38. Call #1988 – 911 Call for Service Report, District invoice to LCHC, materials related to appeal of fee
39. Call #2039 – 911 Call for Service Report, District invoice to LCHC, materials related to appeal of fee
40. Call #2062 – 911 Call for Service Report, District invoice to LCHC, materials related to appeal of fee
41. Call #1113 – 911 Call for Service Report, District invoice to LCHC, materials related to appeal of fee
42. Call #2233 – 911 Call for Service Report, District invoice to LCHC, materials related to appeal of fee
43. Call #2239 – 911 Call for Service Report, District invoice to LCHC, materials related to appeal of fee
44. Call #2285 – 911 Call for Service Report, District invoice to LCHC, materials related to appeal of fee

45. Letter Opinion of Circuit Court Judge Beth Bagley on Partial Motion for Summary Judgment, dated August 17, 2021
46. Order on Partial Motion for Summary Judgment, Circuit Court Judge Beth Bagley, dated August 31, 2021
47. Limited Judgment on Writs of Review and Claim for Declaratory Relief, Circuit Court Judge Beth Bagley, dated September 21, 2021
48. Copy of Declaration of Charla DeHate in Support of Plaintiffs’/Petitioner’s motion for Partial Summary Judgment, dated March 17, 2021

49. Copy of Letter from Department of Health & Human Services, Centers for Medicare & Medicaid Services, to Rep. Cliff Bentz, dated June 21, 2021
50. Medicare Benefit Policy Manual, Chapter 10 – Ambulance Services (rev. 243, 04-16-2018)
51. Memorandum from Mike Supkis to Board of Directors re: District Ordinance Process, prepared on November 19, 2020
52. La Pine Rural Fire Protection District Board Policy # 600.2, dated September 13, 2018
53. La Pine Rural Fire Protection District Board Meeting Minutes, dated November 12, 2020
54. La Pine Rural Fire Protection District Board Meeting Minutes, dated April 8, 2021
55. La Pine Rural Fire Protection District Board Meeting Minutes, dated January 14, 2021
56. Bend Bulletin article, “La Pine fire district now charging St. Charles for ambulance trips to Bend” dated February 3, 2020
57. Public comment received by The District in response to The District’s request for such comment concerning Ordinance #2019-03

Discussion of Findings

1. The District discouraged patients from utilizing the District for emergency transports.

SUBSTANTIATED.

The District, like other ambulance service franchisees of the County, has an affirmative duty to respond to “emergency calls for service” when an ambulance is available for service. (See DCC 8.30.085(B)). Emergency calls for service typically arise after a patient or someone on the patient’s behalf calls using 911 to request emergency medical services and County franchisees such as the District respond. Generally, Oregon law provides that when a call for emergency medical services is made and an ambulance staffed with emergency medical technicians (“EMTs”) responds, competent patients – those who are not incapacitated and are otherwise able to interact with their providers and make decisions for their care – have the right to refuse ambulance transport even when such care is recommended by their medical providers, and may also choose their own means of transportation to a medical facility. See OAR 333-250-0330.⁵ Therefore, if a competent patient makes an informed choice to refuse an emergency transport after interacting with EMTs, the patient is well within their rights to do so. However, if responding EMTs actively discourage patients who desire to be transported via ambulance in an emergent situation after calling 911, or if responding EMTs simply refuse to provide such transport to patients who have requested it, the EMTs violate their duty to respond to such calls under DCC Chapter 8.30 and undermine the primary purpose of their employer’s franchise.

The information considered by the Committee in its analysis of the above allegation includes statements from the interviews of Oliver Tatom, the clinic manager at St. Charles La Pine, Charla DeHate, the chief executive officer at LCHC, and La Pine residents Dennis Robinson and

⁵ See also the discussion of OAR 333-250-0330 and the rights it provides to patients with regard to ambulance transports found in the Committee’s findings pertaining to Allegation #3.

Laura Beebe. The Committee also considered an email, dated December 27, 2020, from Kacie Talcott to Mr. Tatom, which was referenced in his interview, as well as emails from Mr. Robinson and Ms. Beebe to the District that were each sent in response to the District's request for public comment in January of 2021 concerning District Ordinance #2019-03, and the interview of La Pine resident Gloria Fleming. (Exhibits 4 – 6, 9 – 12, and 57)

During his interview, Mr. Tatom stated that while on duty as an RN at St. Charles La Pine, he had personally heard from patients that they had been told by the District's EMTs that they were not suffering from an emergency and did not need to go to the emergency department or be transported by ambulance. Mr. Tatom said that his understanding from these conversation is that in such instances the District's EMTs had made a "recommendation" to patients in their home and subsequently had them sign a document indicating they had refused or denied transportation by ambulance.

Mr. Tatom referenced a specific encounter he had been informed about by Kelcie Talcott, a nurse he worked with at St. Charles La Pine. Ms. Talcott informed him in a December 27, 2020 email that she had a negative experience with a District EMT. She stated that this EMT had told her he would refuse to transport a patient to the emergency department at St. Charles Hospital in Bend if providers administered medications that were "outside of his practice." According to Ms. Talcott, the EMT's statement was in response to the medications the providers at St. Charles La Pine planned to administer to the patient as part of the patient's care. Because of this, after consulting with a doctor at the clinic, she and the doctor deferred treatment to the emergency department in order to expedite emergency transport for the patient. Essentially, they did not provide the treatment they believed was appropriate for the patient in order to ensure the patient was transported to the emergency room in Bend. Ms. Talcott described the EMT as brusque, dismissive, and unprofessional, and refused to provide an adequate explanation for his refusal to transport for the patient if they administered medications as planned.

Just prior to being transported, the patient expressed concern over the cost of transport. After the EMT told the patient the District's services could cost between \$1,000 and \$4,000, the patient refused to be transported via ambulance due to the potential financial burden. Ultimately, the patient chose to have his father drive him to Bend rather than utilize a District ambulance.

While the EMT's conduct toward staff in this instance are in many ways concerning, the Committee does not believe such statements support allegations that the EMT or other District staff actively tried to discourage the patient in this instance from using District resources to be transported to the emergency room in Bend. As discussed above, competent patients have the right under Oregon law to refuse ambulance transport, even when their providers recommend it, and choose their own means of transportation to a medical facility. By answering the patient's questions about the potential expense of accepting District services to transport him to Bend, the EMT's statement to the patient can reasonably be interpreted as his efforts to respond to the patient's concerns. The EMT's response, by itself, does not appear to

demonstrate that he was actively trying to discourage the patient from utilizing the District's services. For these reasons, Mr. Tatom's reference to the above-described incident does not tend to support the above-stated allegation.

For the reasons below, however, statements from Ms. DeHate, Mr. Robinson, and Ms. Beebe provide strong support for the allegation that the District discouraged patients from utilizing their services. According to Ms. DeHate, prior to 2019 the District would often decline 911 calls originating from LCHC. She stated her observations that after such calls District EMT staff would evaluate the patient after arriving at LCHC, tell the medical provider the patient did not qualify as an emergent transport, and convince the patient not to be transported using District resources. At times, District EMTs would wait to have such conversations with patients until after the doctor had left the room. As a result of this behavior, LCHC began requiring its providers to remain in the room when District EMTs evaluated their patients. Ms. DeHate further observed that after District Ordinance #2019-03 went into effect, District staff transported patients every time LCHC called to request an emergency transport, and then the District would bill LCHC, rather than the patient, for the expense of the transport.

Ms. DeHate also stated the District had, at times, refused emergency transports to patients who had requested it by calling 911 from their homes. She was aware of such behavior happening during the summer of 2020, and referenced a patient who was refused treatment in that timeframe, and that she received confirmation from the doctor who spoke with the patient that this had occurred. Ms. DeHate provided a specific example as evidence of the District's behavior concerning patients who call 911 from home to request emergency medical services, referencing a patient named Dennis Robinson. According to Ms. DeHate, Mr. Robinson had suffered a stroke and had bleeding on his brain, and was refused transport by District EMTs.

The investigator also interviewed Mr. Robinson. During his interview, Mr. Robinson recalled that on June 26, 2021, his wife called 911 to request an ambulance because he was slurring his words, having trouble speaking, and the side of his face was drooping. When the District's ambulance arrived he stated he was "doing a little better," but told the District's responding staff that his symptoms had lasted almost the entire 30 minutes since his wife had called. He recalled being told that he likely suffered a mini stroke and "those happen all the time." They told him that he could see his doctor the next day and that he didn't need to go to the emergency room at that time. He claimed the EMTs "very strongly suggested that everything was okay with him and that there was no reason to go to the hospital."

Mr. Robinson said he followed up with his doctor at LCHC less than a week later because his symptoms got worse. Upon examining him, he recalled that his doctor immediately sent him to the emergency room at St. Charles Hospital in Bend. His daughter drove him. Medical staff at the hospital determined that he had bleeding in his brain. He was on a prescription blood thinner which may have contributed to the bleeding. According to Mr. Robinson, his emergency room doctor told him that if he had been transported to the hospital the day

District EMTs had responded to his 911 call, he may have suffered less damage to his brain. Mr. Robinson stated that he was not released until the first week of August.

Mr. Robinson claimed that he has since spoken to other locals in La Pine and some people at the LCHC about the ambulance service provided by the District. According to him, the consensus was that the District often "strongly suggests not taking the ambulance" because they are worried about collecting payment from insurance companies and making enough profit. Mr. Robinson speculated that the District may lose money when they agree to transport patients to Bend.

The investigator also interviewed Laura Beebe. Ms. Beebe submitted a public comment via email on January 11, 2021 opposing Ordinance #2019-03. Her email was submitted in response to a request for public comment from the District regarding Ordinance #2019-03. In her email, Ms. Beebe claimed that District EMTs had refused to transport her after responding to her call to 911 requesting an ambulance, despite the fact that she was suffering from appendicitis. According to Ms. Beebe, District EMTs told her she was suffering only from "a stomach bug." She also claimed the EMTs forced her to sign a document stating that she refused to be transported via ambulance. Because of these allegations, the Committee requested the investigator to interview Ms. Beebe.

During her interview Ms. Beebe confirmed the details of the incident she reported in her January 11, 2021 email. She added that District EMTs told her she "just had a cold like everyone else had or possibly the flu," told her she would be fine, and told her she could transport herself to the hospital. She reiterated that the EMTs forced her to sign a form stating that she refused transport via ambulance, even though she had called 911 because she believed she needed to be transported via ambulance. Ms. Beebe added that her husband was home at the time, and he also requested that she be transported, but the District's EMTs refused his request as well. Ultimately, Ms. Beebe's husband transported her to St. Charles Hospital in Bend, where she was admitted and diagnosed with appendicitis. Her appendix was removed the next morning.

Ms. Beebe also told the investigator that she had been told by District staff to sign the "refused transport" form on more than one occasion. She stated that she is diabetic, and has called 911 in the past for low blood sugar levels.

While Ms. DeHate's statements summarized above are somewhat general and based to a large extent on hearsay from patients, what she described is consistent with the statements from Mr. Robinson and Ms. Beebe concerning the conduct of District EMTs. The Committee also finds the consistencies between what Ms. Beebe and Mr. Robinson each described as to their separate interactions with District EMTs to be compelling. Their descriptions demonstrate that, at least in the interactions described, District EMTs did much more than simply advise them of their rights to refuse ambulance transportation or the cost of providing it. Instead they actively discouraged Mr. Robinson from accepting transport via ambulance, to the point of convincing

him he did not need it. They went further with Ms. Beebe, and refused to transport her despite her desire to be transported. More disturbing to the Committee is Ms. Beebe's recollection that she was forced to sign a form indicating that she refused transport from the District, when in fact she had actually requested to be transported in an ambulance. The stories of Mr. Robinson and Ms. Beebe therefore support the broader statements from Ms. DeHate, and make them far more credible.

For these reasons, the Committee finds that District staff actively discouraged Mr. Robinson from utilizing its resources to transport him to St. Charles Hospital. The Committee also finds that that District staff actively discouraged Ms. Beebe from utilizing its resources to transport her to St. Charles Hospital, and ultimately refused to provide such resources to her. Finally, the Committee finds that, at least prior to the enactment of Ordinance #2019-03, District EMTs engaged in similar conduct with the patients of LCHC.

2. The District provided inaccurate determinations about whether emergency transportation was necessary for patients in order to support the fees it charged to St. Charles and LCHC.

NOT SUBSTANTIATED.

While this allegation is concerning, there is no provision in the ASA Plan, DCC Chapter 8.30, or federal or state law providing the Board or the Committee with oversight authority to review the accuracy of medical determinations by District EMS staff concerning whether an emergency existed for patients at the time they were encountered by District EMS staff or the medical providers at St. Charles La Pine or LCHC. While there is a definition for "emergency care" in the ASA Plan (See ASA Plan, Section III (15)), and the District has an affirmative duty to respond to "emergency calls for service" when an ambulance is available (See DCC 8.30.085(B)), there is no indication in the information provided to the Committee demonstrating or even suggesting that providers from the District failed to respond to any emergency calls for service from St. Charles or LCHC.

To the extent Complainants ask the Committee to discern whether medical emergencies actually existed and justified emergency transportation in the situations involved in each of the 31 calls referenced in the exhibits forming the basis for this investigation, such determinations are outside of the purview and expertise of the Committee. Rather, they appear to be governed by applicable professional standards outside the scope of the ASA Plan or DCC Chapter 8.30. Therefore, allegations requesting such determinations by the District are not appropriate for review by the Committee or the Board.

Finally, to the extent Complainants ask the Committee to weigh-in on the ability of the District's chief to impose fees against them based on an after-the-fact determination that no emergency existed during particular calls, the Committee again believes that such allegations are beyond its purview. As discussed elsewhere in this report, the District certainly has the authority under Oregon law to impose fees for the services it provides. See ORS 478.410. However, other than

the basic constraints on fees placed on rural fire protection districts in ORS 478.410, neither the ASA Plan nor DCC Chapter 8.30 appear to regulate or even touch upon the types of fees charged by rural fire protection districts or the basis for such fees.

3. The fees charged to St. Charles La Pine and LCHC pursuant to District Ordinance #2019-03 and District Policy #02-03 were invalid.

SUBSTANTIATED.

As an ambulance service franchisee of Deschutes County, the District has a duty to conduct its operations in compliance with all applicable state and federal laws, rules and regulations, and the terms of DCC Chapter 8.30 and the ASA Plan. See DCC 8.30.070(B), 8.30.085(A); and ASA Plan, §8.4. For the following reasons, the Committee finds the fees charged to St. Charles and LCHC under District Ordinance #2019-03 and District Policy #02-03 fail to comply with applicable state law and are therefore invalid.

- The fees charged to St. Charles and LCHC by the District pursuant to Ordinance #2019-03 and District Policy #02-03 are fail to comply with ORS 478.410(4).

ORS Chapter 478 governs the formation, duties and general operations of rural fire protection districts such as the District, including the authority of such districts to raise revenue through levying taxes and imposing fees. The District has the express authority to create fees for the services it provides pursuant to ORS 478.410(4), which states in relevant part:

Unless expressly prohibited by the documents creating the district, a district board may adopt an ordinance as provided under ORS 198.510 to 198.600 to create a fee for any service provided by the district. A fee created under authority of this section may not exceed the cost to the district of providing the service.

The Oregon Supreme Court has weighed-in on the nature of a fee charged by a government entity for a service the entity provides. As opposed to a tax, which is “any contribution imposed by government upon individuals for the use and service of the state,” a fee is “imposed on persons who apply for or *receive a government service that directly benefits them.*” *McCann v. Rosenblum*, 355 Or 256 (2014) (citing *Qwest Corp. v. City of Surprise*, 434 F.3d 1176, 1182 (9th Cir. 2006) (explaining the distinction between a tax and a fee is whether the “charge is expended for general public purposes, or used for the regulation or benefit of the parties upon whom the assessment is imposed.”) (Emphasis added.) Therefore, ORS 478.410(4) empowers the District to impose a fee for a service it provides only upon parties who actually receive the service. The corollary to this, of course, is that the District cannot impose a fee against a party that did not directly receive that service from the District.

In each of the 31 calls presented to the Committee by Complainants, the patients were transported to the emergency department at St. Charles Hospital in Bend by District EMS personnel. During each of these transports, patients received pre-hospital care from District

EMS staff. Therefore, during each transport it was the patients who received services from District staff.

After each of these transports, however, rather than charge the patients for these services, the District charged St. Charles and LCHC a “facility transfer fee” of \$2013 and mileage of \$642, for a total charge of \$2655. (Exhibits 14-44) These fees were charged pursuant to District Ordinance #2019-03⁶ and District Policy #02-03, which ostensibly authorized the District to charge “the requesting medical and/or care facility for transporting a patient from one professional care facility to another using 911 emergency resources,” as well as mileage fee for “all transports.” (Exhibits 1 and 2)

For this reason, the District failed to comply with ORS 478.410, because by their terms Ordinance #2019-03 and District Policy #02-03 authorized the District to charge fees to Complainants rather than to the patients who actually received services from the District. Indeed, it is clear from the express terms of Ordinance #2019-03 and District Policy #02-03, as well as the history behind each that the District’s intent in passing each was to shift the costs of providing ambulance transport services from the patients who received such services to LCHC and St. Charles. However, in each of the situations referenced in the 31 calls at issue, it was clearly the patients who were transported to St. Charles Hospital in Bend, and it was the patients who received pre-hospital care from the District’s EMS staff during these transports. This is true regardless of whether the District’s services were provided as a result of an emergency or non-emergency transport. ORS 478.410(4) does not authorize the District to provide services to a patient and then charge a third-party other than the patient for such services, but that is precisely what the District attempted in charging such fees to Complainants. (Exhibits 1, 2, and 51-56)

For several reasons, the Committee’s findings in this regard are supported by the information it obtained in pursuing its investigation. Oliver Tatom and Charla DeHate were each interviewed regarding their understanding of relationship between the clinics and the patients concerning the provision of ambulance services, the relationship between ambulance providers and the clinics, and who benefits from ambulance transports in situations such as those presented in the 31 calls at issue. (Exhibits 4 and 6) Mr. Tatom and Ms. DeHate also provided declarations to the Committee to clarify statements made during their interviews. (Exhibits 7 and 8) Ms. DeHate also provided a declaration in support of a motion for summary judgment filed by Complainants in pending litigation with the District.

With respect to transports that originate from calls to 911 requesting transports for medical emergencies, Mr. Tatom and Ms. DeHate provided the following:

⁶ District Ordinance #2019-03 was repealed by the District on April 8, 2021.

- Local clinics such as St. Charles La Pine and LCHC are not transporting agencies, and therefore may not bill insurance or government programs such as Medicare or Medicaid for patient transports they do not provide
- Because St. Charles La Pine and LCHC are not ambulance franchisees authorized to perform such services pursuant to the Deschutes County Ambulance Service Area Plan, neither can provide emergency transport services
- Neither LCHC nor St. Charles can bill patients, their insurance, Medicare, or Medicaid for such transports because neither of the clinics provided the transports
- When an ambulance service provider provides ambulance transportation services in this context, the ambulance service provider serves the patient, not the clinic who called to request the transport
- The “contract” for the ambulance transportation service is between the patient and the ambulance service provider
- Clinics such as LCHC and St. Charles La Pine cannot be charged for ambulance transports originating from 911 calls involving Medicare or Medicaid patients

With respect to transports provided by the District as referenced in the 31 calls at issue in this investigation, each of which originated from calls to 911 by medical providers at LCHC or St. Charles La Pine to request transports for potential medical emergencies, Mr. Tatom and Ms. DeHate provided the following:

- For the same reasons as stated above, neither LCHC nor St. Charles can bill patients, their insurance, Medicare, or Medicaid for transport services provided by the District
- For the same reasons as stated above, neither LCHC nor St. Charles billed the patients for the transports provided by the District
- Until recently, the District has always billed patients or their insurance, Medicare or Medicaid for emergency transport services it has provided

Such evidence clearly supports a conclusion that when, as in the 31 calls at issue in this investigation, ambulance transportation services are requested through a 911 call and such transportation is provided, ambulance service providers such as the District provide services to the patients involved, *not* the medical providers or facilities that may have requested the transport. Such evidence makes equally clear that neither St. Charles La Pine nor LCHC benefitted directly from the services provided by the District in any of the calls reviewed by the Committee. It was the patients, not St. Charles, LCHC, or their medical providers, who were transported to the emergency department at St. Charles Hospital in Bend and received care from District EMS staff while being transported.

The Committee also finds it significant that this conception of the relationship between the patient and the ambulance provider matches the understanding and experience of each member of the Committee who works in the EMS/ambulance services field.

There is additional support for the Committee's conclusions found in Oregon law. In Oregon competent patients have the right to choose to accept or refuse ambulance transportation even when recommended by their medical provider. Such patients also have the ability choose their own means of transportation when it is necessary to visit a medical facility, and can choose to be treated at a medical facility of their own choice, rather than what is recommended to them by their medical provider. See OAR 333-250-0330(3)(c),(e), and (d).⁷

The Committee believes several conclusions can be drawn from the rights given to patients pursuant to OAR 333-250-0330. First, medical providers such as St. Charles and LCHC cannot control the decision of their patients to accept ambulance transportation; patients are not forced to accept transportation from ambulance service providers such as the District even when their providers recommended it. Rather, patients who are able to make a choice, i.e. patients who are not unconscious or otherwise incapacitated, have the ability to choose to accept or refuse ambulance transportation, to choose their own method of transportation, and to choose to be transported to a different facility than recommended by their provider. Given that that the law expressly reserves such choices for patients, it follows that the patients, not their medical providers, can choose whether to receive services provided by their ambulance service provider. This in turn supports a conclusion that patients, not their medical providers, are the beneficiaries of such services from ambulance services providers such as the District.

It is also clear that under Oregon law ambulance service providers such as the District must maintain written policies and procedures regarding patient rights, and must distribute "to each employee or volunteer" and make "available in the business office and in each satellite location" a written statement of patient rights which includes the rights described above. OAR 333-250-0330(1) and (2). The Committee presumes the District complies with the above requirements, and that District staff was familiar with the patient rights described above at the time of each of the interactions referenced in the 31 calls presented to the Committee. Therefore, at the time District staff encountered each of the patients referenced in the 31 calls at issue they were aware of the patient's rights to refuse their medical provider's transportation, to choose their own mode of transportation, and to choose the facility where they were to be transported.

The District's own documentation indicates the patients involved in each call were conscious and aware enough to answer questions and interact with EMS staff. (Exhibits 14-44) Yet in in each interaction, despite the observations of District staff indicating that the patients involved were aware, able to answer questions, and were not in acute distress, District staff transported these patients to the emergency department at St. Charles Hospital in Bend. Thus, in each circumstance the patient involved indisputably had the right to refuse transport from the District EMS staff and still chose to be transported. There is no indication that providers at St. Charles or LCHC somehow forced or coerced any of these patients into being transported to the

⁷ The Committee would note that on at least one occasion the District had acknowledged the right of patients to refuse treatment. (See Exhibit 14, Call #1695, District Response to Appeal of Fees, dated September 29, 2020)

Hospital in Bend, nor is there any indication they were forced or coerced into being transported by District staff. These facts and the inferences reasonably drawn therefrom also support a finding that the patients involved, not St. Charles La Pine or LCHC, received ambulance transportation services by the District.

Finally, at least with respect to those patients who were on Medicare at the time they were transported by the District, federal Medicare reimbursement rules prohibit the District from billing St. Charles and LCHC for the services provided to their patients. The Center for Medicare and Medicaid Services (“CMS”), a division of the Department of Health & Human Services, publishes the Medicare Benefit Policy Manual, which governs billing and reimbursement for providers that provide services for patients covered by Medicare. Chapter 10 of the Manual governs billing and reimbursement for ambulance services. (Exhibit 50)

On June 21, 2021, CMS sent a letter to the Office of Congressman Cliff Bentz in response to an inquiry from his Office about the District’s conduct. (Exhibit 49) The Office had been informed of the District’s conduct in billing St. Charles and LCHC for ambulance transports for patients to St. Charles Hospital in Bend. The premise for the inquiry from the Office of Congressman Bentz is stated in the letter:

The inquiry from Congressman Bentz office states that LaPine Fire and Ambulance service is billing LaPine Community Health Center and St. Charles LaPine clinic for emergency ambulance transports of Medicare patients to St. Charles Hospital. It goes on to state that directors of medical facilities and for-profit ambulance services believe this is against Medicare rules, and they are seeking clarification.

In response to this inquiry, CMS responded as follows:

If the patient is seen at the clinic and then transported to the hospital, they should not bill the facilities. Either Medicare or the patient (if the patient does not meet Medicare coverage criteria) should be billed. ... The only time a facility could be billed is if it was by contract with the provider supplier and it was part of the consolidated billing (usually a non-emergent situation).

(Emphasis added.) The response later continues, citing Chapter 10 of the CMS Medicare Policy Manual:

IOM 100-02, Chapter 10, Section 20.1 states the following:

“When an ambulance provider/supplier ... furnishes a Medicare-covered ambulance service to a Medicare beneficiary and the service is not statutorily excluded under the particular circumstances, the provider/supplier must submit a claim to Medicare and accept assignment of the beneficiary’s right to payment from Medicare.”

This regulation explains that when a medically necessary transport from an eligible location such as a physician’s office ... the ambulance supplier/provider must submit a claim to Medicare for adjudication. When they accept the terms of the regulations to participate within the program.

(Emphasis added.)

The letter from CMS clarifies that, at least with respect to Medicare patients who are transported by the District, in order to receive reimbursement for such services the District should not bill St. Charles or LCHC, but rather “Medicare or the patient should be billed.” It states further that when an ambulance provider such as the District furnishes Medicare-covered ambulance services to Medicare-covered patients, the provider must submit a claim to Medicare in order to be reimbursed. This provides a strong inference that CMS considers Medicare patients to be the beneficiaries of ambulance transportation services; that such services are provided to the patients themselves, not to medical providers. Otherwise Medicare policy would not prohibit ambulance service providers such as the District from billing clinics such as St. Charles La Pine and LCHC for their services.⁸

Finally, the Committee has found no evidence in the information it obtained during its investigation that contradicts or calls into question the conclusions drawn above, nor has the Committee found any relevant information that would tend to support a conclusion that the services provided by the District during the 31 calls at issue were provided to anyone other than the patients referenced in each call.

For the above reasons, it is clear that the patients, not St. Charles La Pine or LCHC, received the services provided by the District, yet the District imposed fees for these services on LCHC and St. Charles. This practice clearly violates ORS 478.410(4). Therefore, the fees charged to St. Charles and LCHC by the District are invalid under Oregon law, and the District violated both the ASA Plan and DCC. Chapter 8.30.

- **The fees charged to St. Charles and LCHC by the District pursuant to District Ordinance #2019-03 are invalid in that the District failed to comply with ORS 198.540 prior to adopting District Ordinance #2019-03.**

On September 8, 2021, Deschutes County Circuit Judge Beth Bagley entered an order granting partial summary judgment in favor of St. Charles and LCHC in *St. Charles Health System, Inc., and La Pine Community Health Center v, La Pine Rural Fire Protection District*, Deschutes County Case No. 20CV39845. (Exhibits 45 and 46) Judge Bagley’s order invalidated Ordinance #2019-03 itself and any fees charged thereunder to St. Charles and LCHC. Judge Bagley’s order was based on her ruling that the District failed to comply with the notice provisions of ORS 198.540

⁸ The Committee would note that of the 31 calls at issue in its investigation, 21 involved patients who had Medicare coverage. This means that for these 21 patients, the District chose not to be reimbursed for its services through Medicare as required in Chapter 10 of the Medicare Policy Manual, and instead chose to impose charges directly against St. Charles and LCHC. (Exhibit 13)

in adopting Ordinance 2019-03. An enforceable judgment to this effect was entered on September 21, 2021. (See Exhibit 47)

Based on the above-referenced order and opinion from Judge Bagley, and the enforceable judgment entered against the District, it is clear the fees charged by the District pursuant to Ordinance #2019-03 are invalid as a matter of Oregon law. Therefore, it is again clear the District violated both the ASA Plan and DCC. Chapter 8.30.

4. The District is currently unable to meet ASA Franchise requirements.

NOT SUBSTANTIATED

The Committee has obtained no relevant information demonstrating that the District does not currently have the financial resources to meet its obligations as a franchisee.

5. There are documentation discrepancies between St. Charles and LCHC provider chart notes and the chart notes of the District concerning the patients referenced in the 31 calls at issue in this investigation.

NOT SUBSTANTIATED.

While this allegation is concerning, there does not appear to be any provision in the ASA Plan, DCC Chapter 8.30, or federal or state law providing the BOCC or the Committee with oversight authority to review or question the accuracy of medical documentation produced or submitted by the District. Findings on this allegations would also require the Committee to make after-the-fact determinations regarding whether the observations of patients by providers at St. Charles or LCHC were accurate or not, and similar determinations regarding whether the observations of the same patients by the District's EMS providers were accurate or not. The Committee believes such determinations are outside of its purview or expertise, and therefore it would not be appropriate for the Committee to pursue findings on this allegation.