

MARIETTE GELDENHUYS

ATTORNEY AT LAW

GATEWAY CENTER

401 EAST STATE STREET, SUITE 306

ITHACA, NEW YORK 14850

TELEPHONE (607) 273-2272

www.geldenhuysslaw.com

FACSIMILE (607) 273-4726

E-MAIL: mariette@geldenhuysslaw.com

ALLISON M. MYERS, PARALEGAL

MEMORANDUM

TO: Town Board, Town of Ulysses

FROM: Mariette Geldenhuys, Esq.
Attorney for the Town of Ulysses

RE: Options for EMS contracts and billing

DATE: October 11, 2010

I. QUESTIONS PRESENTED

- A. Can the Town contract with another entity (a municipality, non-profit organization or private entity) to provide ambulance service in the Town? *Short answer: Yes*
- B. Can an ambulance district enter into such a contract? *Short answer: Yes*
- C. Can a Town or ambulance district charge a per-call fee to users of ambulance service? *Short answer: Yes*
- D. *Can a Town do insurance only billing and pay or absorb co-pays and deductibles? This question is still under consideration and requires further research.*

II. ANALYSIS

- A. The Town can contract with another entity to provide ambulance service in the Town.

Pursuant to General Municipal Law (GML) § 122-b, a town may contract with one or more individuals, municipal corporations, associations, or other organizations to supply pre-hospital emergency treatment (ambulance service). A town can contract with a private EMS service provider (*Opinion of the State Comptroller 82-26*). If the town enters into a contract pursuant to GML § 122-b, the services must be provided on a town-wide basis. (*Opinion of the State Comptroller 91-20*). If the area contracting with the service provider extends beyond the town, an ambulance district can be formed for this purpose.

- B. An ambulance district can contract with another entity to provide ambulance service within the district.

The town and other municipalities (or portions of other municipalities, e.g. the portions of the towns of Hector and Covert that currently form a fire protection district with the Town of Ulysses) can form an ambulance district pursuant to Town Law Article 12 or 12-A.

An ambulance district can enter into a contract for ambulance services with an individual, municipal corporation, association or other organizations (including for-profit organizations or businesses). Town Law §184 and §198(10-f (a)(2)). The one exception is that the contract cannot be entered into with a first aid squad, fire department or fire company which is subject to the provisions of GML §209-b.¹

Town Law §198(11) provides that all contracts authorized by the provisions of §198 must be executed by the signatures of a majority of the members of the town board. Every contract on behalf of an improvement district has to specify the particular district on behalf of which the town board is acting. No contract can be awarded for the performance or supplying of services in a district if the total annual expense of providing such services exceeds the maximum amount, if any, stated in the petition for the establishment or extension of the district, or in the final order, if the town board is proceeding under article 12-A of this Town Law, unless the maximum amount has been increased pursuant to §202-d.²

C. A town or ambulance district can charge a per call fee for users of the ambulance service.

If a town contracts for town-wide ambulance service pursuant to GML 122-b, it may fix a schedule of fees or charges to be paid by people requesting the use of the service. The Town may provide for the collection of the fees and charges or may formulate rules and regulations for the collection thereof by the individuals, municipal corporations, associations or other organizations furnishing the services under contract.

Similarly, an ambulance district which contracts for ambulance services may fix a schedule of fees for the services or formulate rules and regulations for the collection thereof. Town Law §198(10)(b).

The provisions of GML §122-b and Town Law §198(10)(b) are broad enough to authorize a municipality, or if so provided in the rules and regulations, the ambulance service, to send a copy of the bill to the user's insurance carrier at the request of the user, where the insurance contract provides for direct payment to the carrier. The underlying liability for the fee or charge remains with the user and the user remains responsible for the charge if it is not paid by the carrier. A copy of the bill should also be sent to the user. *Opinion of the State Comptroller 91-20.*

Since these fees are imposed as municipal charges, the regulations should require proper record keeping and accounting by the ambulance service of the fees collected. *Opinion of the State Comptroller 91-20.*

¹This section provides that a town may include a contract for EMS services in its contract on behalf of a fire protection district (par. 2c). However, emergency and general ambulance service provided pursuant to this section has to be furnished without cost to the person served.

²This section provides for an increase of the amount upon petition to the Town Board and after a public hearing.

The amount of the fee must be set by the municipality (*Opinion of the State Comptroller, 82-26*). The town can either collect the fees itself or provide for collection by the service provider by establishing rules and regulations. However, the fees collected belong to the town and may not be retained by the service provider for its own use. (*Opinion of the State Comptroller 2005-1*).

The town may not pay additional monies to the service provider above the amount stated in the contract, unless the contract provides that, in exchange for paying the provider an additional amount, the town would receive additional value, such as enhanced services beyond those already required under the current contract and with a value commensurate with the additional payment. (*Opinion of the State Comptroller 2005-1*). Any other payment of additional monies would violate the prohibition against gifts and loans of monies by towns to or in aid of any individual, private corporation, association or undertaking. New York State Constitution, Article VIII, §1.

A failure to pursue collection of unpaid fees may constitute a gift in contravention of the prohibition against gifts in the Constitution. *Oneida County v. Estate of John A. Kennedy* 189 Misc 2d 689, 734 NYS2d 402; *Opinion of the State Comptroller 2005-1*.

Therefore, the town would have an obligation to pursue the collection of unpaid user fees and take all reasonable steps to do so.

Please let me know if you have any questions or need further information.