

Fees for Emergency Services to Non-Residents

Guest article by Dino A. Ross, Esq., Ireland Stapleton Pryor & Pascoe, P.C.



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As tax revenues continue to drop during this recession, Fire Protection Districts are looking for ways to charge fees for the fire and emergency services they provide. A topic of discussion for some Fire Protection District Boards is charging non-residents for fire and emergency services provided within the Fire Protection District's jurisdictional boundaries.

There are numerous political and social policy issues related to the topic, with strong opinions held by both sides. For example, proponents of non-resident fees argue it is unfair that the Fire Protection District's taxpayers should pay for emergency services provided to non-residents who do not pay taxes to the Fire Protection District. Opponents counter that the Fire Protection District's taxpayers enjoy the same benefit when they travel outside the Fire Protection District. For those Fire Protection District Boards and their Chief Staff considering non-resident fees, a clear understanding of the applicable law is essential. For most Colorado special districts, assessing fees for services within their jurisdictions is not a problem because the Colorado Special District Act authorizes them "to fix and from time to time to increase or decrease fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the special district..."¹ But, unlike other types of Colorado special districts, Fire Protection Districts are significantly restricted in the types of fees they can charge for fire and emergency services.²

With respect to emergency services, Fire Protection Districts can assess fees and charges only for "ambulance or emergency medical services and extrication, rescue, or safety services provided in furtherance of ambulance or emergency medical services."³ "Extrication, rescue, or safety services" includes but is not limited to any:

- Services provided prior to the arrival of an ambulance;
- Rescue or extrication of trapped or injured parties at the scene of a motor vehicle accident;
- Lane safety or blocking provided by district equipment.⁴

The foregoing language makes one issue very clear: Fire Protection Districts are not authorized to charge for fire suppression services within their jurisdictional boundaries.⁵ Thus, for example, a Fire Protection District cannot charge for putting out a vehicle fire where no emergency medical services were rendered, regardless whether the owner of the vehicle is a resident or non-resident.

The above-quoted language authorizes a Fire Protection District to charge for ambulance and emergency medical services. Before 2009, it was unclear whether a Fire Protection District could charge for support services (such as lane safety or blocking, extrication, etc.) provided in connection with emergency medical services. A few Fire Protection Districts charged for such services on the belief that those support services were essential to the provision of the emergency medical services. The debate as to whether this practice was permitted by the statute was laid to rest when the Colorado Legislature amended the Special District Act in 2009 to expressly authorize Fire Protection Districts to charge for such support services.⁶ Unfortunately, the next year the Colorado Legislature amended the new language to permit fees for rescue or extrication of trapped or injured parties only when the services were performed "...at the scene of a motor vehicle accident."⁷ So, taking our prior example of a vehicle fire, a Fire Protection District could not charge for rescue or extrication services provided to the occupants of the vehicle because there was no "motor vehicle accident"; however, it could charge for lane safety and blocking, and other support services.

Knowing that a Fire Protection District may, with certain limitations, charge for ambulance and emergency medical services, including associated support services, does not answer the question of whether a Fire Protection District can charge only non-residents for such services. To date, 10 states have prohibited charging only non-residents emergency response fees: Alabama, Arkansas, Florida, Georgia, Indiana, Louisiana, Missouri, Oklahoma, Pennsylvania and Tennessee. To date, Colorado

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has not prohibited imposing emergency response fees only on non-residents.

To date, no Colorado Court has addressed whether only non-residents can be charged emergency response fees. In a somewhat analogous context, Courts in other jurisdictions have upheld the imposition of higher fees for non-resident use of municipal facilities. See for example, *Hyland v. Allenhurst*, 372 A.2d 1133 (N.J. Sup. Ct. 1977) and *People ex rel. Lawrence v. Kraishaar*, 89 N.Y.S.2d 685 (N.Y. Dist. Ct. 1949). In these cases, Courts look at whether there is a reasonable basis for imposing a higher fee on non-residents, such as limited resources, facility limitations, etc.

The rationale used in the municipal facilities cases would appear to support a Fire Protection District charging non-residents for emergency services. The Fire Protection District's residents already pay for the emergency services though the ad valorem taxes assessed by the Fire Protection District. As long as the Fire Protection District can demonstrate that providing the emergency services to non-residents places a substantial burden on its ability to provide the emergency services, imposing fees for such services on non-residents would probably be legal. The Fire Protection District must, however, be careful to ensure that the fee imposed on non-residents bears a reasonable relationship to the cost of the emergency services provided. Exorbitant fees that bear no reasonable relationship to the cost of the emergency services provided would be subject to legal challenge.

As long as the fees charged by the Fire Protection District were for support services that would not be billed to Medicare/Medicaid, the federal fraud Anti-Kickback Statute⁸ would not be implicated; however, to the extent that a Fire Protection District is considering charging non-residents for emergency medical services that would be billed through Medicare/Medicaid, but which would not be charged to

residents, the District must work closely with qualified legal counsel to ensure that every aspect of the non-resident fee program is structured in a manner that does not violate the Anti-Kickback Statute. For example, the Office of Inspector General ("OIG"), which enforces the Anti-Kickback Statute, has issued a number of advisory opinions over the years determining that a local government can implement an "insurance only" program for its residents—meaning that the local government can waive the co-pay for emergency medical services provided to residents.⁹ The OIG has approved such programs under the view that the residents pay the co-pay through the taxes they pay.¹⁰

For further information, please contact Dino Ross at Ireland Stapleton Pryor & Pascoe, P.C.; (dross@irelandstapleton.com; 303.628.3686). A special thank you to Associate Attorney Ben Larson for his invaluable legal research for this article. 🍌

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1 C.R.S. 32-1-1001(1)(j)(l).

2 *Id.* ("...fire protection districts may only fix fees and charges as provided in section 32-1-1002(1)(e).").

3 C.R.S. 32-1-1002(1)(e).

4 *Id.*

5 Fire Protection Districts can charge for requested or mandated inspections. C.R.S. 32-1-1002(1)(e); however, such services are not typically provided to non-residents, so they are not addressed in this article.

6 See, House Bill 09-1041.

7 See, House Bill 10-1095.

8 42 U.S.C. § 1320a - 7b(b).

9 OIG Advisory Opinion No. 02-8.

10 *Id.*

