

Ombudsperson Report



Multnomah County
Ombudsperson

County has longstanding contractual authority to hold AMR accountable, and needs to comply with code

Case Initiation

This report is prepared at the request of the Multnomah County Auditor. It focuses on the issue of Multnomah County's role and responsibility for ambulance response times and how its contract with American Medical Response Northwest, Inc. (AMR) provided opportunities for early intervention.

Summary

This Ombudsperson report addresses the issue of ambulance response times in Multnomah County. The county contracts with American Medical Response Northwest, Inc. to provide ambulance service within the county. The contract commenced on September 1, 2018, for a period of five years. In March 2022, the Board of County Commissioners renewed AMR's contract, extending its end date to August 31, 2028.

Ambulance response time requirements are clear in the contract between AMR and Multnomah County. The standard for all calls is 90% compliance with the response time requirement for the particular code and location. For example, ambulance response to a Code 3 (life threatening) call in an urban location is to be no more than 8 minutes. The chart below, which is based on the contract between the county and AMR, shows the requirement for the various codes and locations.

Response time compliance requirements

For ambulances within the county for each priority level

	Compliance	*Urban	*Rural	Frontier
Code 3 (Life threatening)	90%	≤ 8:00	≤ 20:00	Best efforts
Code 2 (Non-life threatening)	90%	≤ 12:00	≤ 30:00	Best efforts
Code 1 (Non-immediate)	90%	≤ 20:00	≤ 30:00	Best efforts
Code 0 (Non-response)	N/A	N/A	N/A	N/A

*Urban and Rural response time requirements in minutes

Source: County contract with AMR

In 2023, a man using a wheelchair died after waiting over 30 minutes for an ambulance to arrive at the scene of a hit-and-run accident. News reporting revealed that AMR was operating at a Code 0 (Non-response), meaning there were no ambulances available, at the time of the accident.

The county did not immediately publicly respond to the man's death, prompting the County Auditor to inquire whether the county was aware of the death, the news reporting around it, and ambulance response times generally. At the request of the County Auditor, the Ombudsperson began an investigation into the ambulance response times issue.

The Ombudsperson reviewed:

- AMR's response time compliance in Contract Years 1-4;
- The remedies available to the county in the event of a material breach of contract, such as failure to meet response time requirements; and
- the existence of an advisory body, established in County Code in 2016, which has not been used.

Scope & Objectives

This report focuses on the ongoing non-compliance of American Medical Response in its Emergency Medical Services contract with Multnomah County and what remedies were available to the county at crucial moments during the contract periods in question. Additionally, it explores the establishment of the Emergency Medical Services Advisory Council and its intended purpose.

Methodology and Data Collection

The Ombudsperson used readily available sources of information, including the Multnomah County Code, the contract between AMR and the county and its amendments, data provided by Emergency Medical Services, communications with county leaders, and relevant news coverage to investigate ambulance response times, evaluate the county's role and responsibilities, and make recommendations for improvement.

Sources included:

- Section 21.406 of the Multnomah County Code, which discusses ambulance staffing
- Section 21.419 of the Multnomah County Code regarding the creation of the Emergency Medical Services Advisory Council, an oversight body whose stated function is to "make recommendations and advise the Emergency Services Medical Director and EMS Program Administrator on EMS System Innovations and improvements."
- Section 6(A)(h) of contract number 5600002522, which defines failure to meet response time requirements as a material breach of contract
- AMR's annual reports to Multnomah County for Contract Years 1-4, encompassing 2018-2022
- Multnomah County's extension of AMR's contract – county contract number HD-NOSPEC-14365-2023, Amendment Number 2, approved by the Board of County Commissioners via consent calendar on March 17, 2022 and signed on January 17, 2023 by County Chair Jessica Vega Pederson

- Multnomah County/City of Portland September 19, 2023 joint Emergency Medical Services briefing before the Multnomah County Board of Commissioners

Findings

Per the contract with AMR, the county receives monthly performance reporting on ambulance service in the urban area. AMR’s first clear instance of non-compliance with the response time requirements of its contract with the county occurred in Contract Year 1. Multnomah County Emergency Medical Services reports for Urban Code 3 calls in Contract Year 1 show that AMR did not comply with response time requirements for Urban Code 3 calls in June or July 2019. We also identified instances of noncompliance where rounding could bring the rate of compliance to 90%. The contract does not include language on whether rounding as allowed. However, per the contract, the threshold between compliance and material breach of contract is 90%; anything less than 90% compliance for each code type and location is a breach.

We found months of clear noncompliance with response requirements for Urban Code 3 calls, as well as other times of noncompliance.

Year	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug
2018-19	90.25%	89.84%	91.55%	91.44%	91.67%	90.37%	90.04%	90.93%	89.82%	88.57%	88.41%	90.19%
2019-20	89.43%	90.54%	90.43%	90.09%	91.07%	90.95%	91.02%	92.35%	91.25%	90.57%	89.55%	87.78%
2020-21	88.97%	89.28%	90.62%	90.09%	90.59%	89.01%	91.77%	93.64%	93.24%	93.91%	96.70%	93.45%
2021-22	91.10%	90.48%	93.86%	93.83%	96.16%	90.69%	87.08%	87.61%	81.62%	81.48%	79.76%	74.73%

Source: Auditor’s Office based on Emergency Medical Services reports.

The county also receives an evaluation of rural response times every six months to determine compliance. Beginning in March 2022, AMR began to be chronically out of compliance with the ambulance response time requirements for Urban Code 3 calls, based on the monthly reporting. The situation was similar for Rural Urban Code 3 calls, according to the six-month reporting. This means that from March 2022 through at least the end of that contract year, which was August 31, 2022, AMR was noncompliant for response requirements for Urban and Rural Code 3 calls.

We also conducted a summary review of ambulance response time statistics from August 1, 2023 through February 29, 2024 that indicated that AMR's non-compliance with contractual response time requirements continues to be an issue.

Contract number 5600002522 between AMR and Multnomah County contained provisions specifically related to ambulance response time requirements as a material term and the county's options should a material breach of contract occur. These options include the ability to issue penalties to AMR for response times below 90% for all codes and locations, and for instances of code 3 outlier response times of greater than 12 minutes and 59 seconds in urban areas and greater than 24 minutes and 59 seconds in rural areas. The penalty section of the contract also states that the county is to notify AMR of repetitive noncompliance and that AMR needs to provide a corrective action plan to the county within 30 days of such a notification. Additionally, according to section 6 of the contract, for the county to find AMR in material breach of contract, it needs to notify AMR and provide 15 days to cure the violation. The contract also includes emergency takeover provisions wherein if the county "determines that an actual or threatened material breach has or is reasonably likely to occur" and "the nature of the breach is in the county's opinion such that public health and safety are endangered," then the county can take over providing ambulance service.

We also examined the county's relationship with AMR through the lens of the County Code. In 2016, the county established the Emergency Medical Services Advisory Council in County Code. The Council was to consist of a minimum of 12 members with one-third of the members to come from the community. The Board of County Commissioners is to appoint members upon recommendation of the Emergency Medical Services Administrator. The Council was never formed and no members were ever appointed. The Tri-County Protocol Development Committee is currently the advisory body for Multnomah County Emergency Medical Services.

Conclusions

The county had opportunities to hold American Medical Response accountable for ambulance response times before March 2022

The contract between Multnomah County and American Medical Response includes remedies for the county in the case of a material breach of contract by AMR. It also defines “material breach.”

Material Breach and Takeover Provisions

“Material Breach shall be defined as, but not necessarily limited to, an occurrence of any one or combination of the following factors and after notice by County and failure of PROVIDER to cure within 15 days.”

Section 6 of Multnomah County contract with American Medical Response

Source: County contract with AMR

“Failure to meet the response time requirements” is one in a list of factors the contract deems a material breach. In the event of a breach, the county notifies AMR of the violation. AMR would then be given 15 days to correct the contract violation that triggered the breach. The county’s role in this section of the contract seems clear. Whenever AMR is out of compliance on any material term of the contract, it is the county’s responsibility to notify AMR and provide them 15 days to cure.

It is not clear when the County Chair or the full Board of County Commissioners became aware of AMR's non-compliance. We also do not know the frequency with which the full Board is provided ambulance response time statistics. County Emergency Medical Services staff did not answer the Ombudsperson's questions about these topics.

According to Emergency Medical Services staff and documents we reviewed, the county did receive a corrective action plan from AMR in June 2022 that ran through December 2022. In August 2023, the county referenced this prior corrective action plan in a memo to AMR and noted that it would start to invoice and collect the monthly financial penalties per the contract terms.

The county has raised that it may fine AMR \$2 million for non-compliance, but has yet to do so, and is currently in mediation with AMR. In the future, ensuring that county leadership is regularly informed of AMR's compliance or non-compliance could reduce the need for significant fines because it would enable the county to proactively manage the contract with AMR and resolve non-compliance timelier.

The county established an Emergency Medical Services Advisory Council in the County Code, but did not form the committee or appoint members

Section 21.419 of the Multnomah County Code established the Emergency Medical Services Advisory Council to, "make recommendations and advise the EMSMD and EMS Program Administrator on EMS System innovations and improvements." The code says: "The members of the Council shall be appointed by the Board upon the recommendation of the EMS Administrator. The Council will be composed of a minimum of 12 members, with one third being Multnomah County community members who may access ambulance services."

When asked about the status of the Advisory Council, county Emergency Medical Services leadership explained that the Advisory Council was intended to replace a defunct advisory body, the Medical Advisory Board. The Emergency Medical Services Administrator clarified that the Medical Advisory Board was dissolved in 1997, but was included as part of the county Ambulance Service Plan until the 2016 revision. The 2016

revision proposed the creation of the Emergency Medical Services Advisory Council. The proposal was adopted by the Board and established in County Code.

According to the Emergency Medical Services Administrator, the Tri-County Protocol Development Committee is currently the only functioning emergency medical services advisory body for Multnomah County. Emergency Medical Services Medical Directors select the members of the Protocol Development Committee. Membership is open to those that will participate from the following categories:

- All parties, both public and private, providing out of hospital emergency care within the region are invited to participate.
- EMS Directors within the region are strongly encouraged to participate.
- Other physicians with a particular expertise related to emergency medical care are encouraged to participate.
- Nurses who either practice out of hospital care or are familiar with EMS systems are encouraged to participate.
- Active participation by field EMT-basics, intermediates, and paramedics is essential.

The makeup of the Tri-County Protocol Development Committee does not satisfy the language of section 21.419(C) of the County Code, which says that one third of the membership of the Emergency Medical Services Advisory Council will be "Multnomah County community members who may access ambulance services." The process for appointing members to the Protocol Development Committee also does not satisfy the language of the code. County Code says, "The members of the Council shall be appointed by the Board, upon the recommendation of the EMS Administrator." For these reasons, the Tri-County Protocol Development Committee is not equivalent to the Emergency Medical Services Advisory Council as it was established in County Code.

Recommendations

1. The Board of County Commissioners should regularly receive ambulance response time data from the Emergency Medical Services staff that is compiled at least monthly for urban areas and every six months for rural areas.
2. The Emergency Medical Services Advisory Council should be formed and the Emergency Medical Services Administrator should recommend members to the Board of County Commissioners for appointment to the Council.

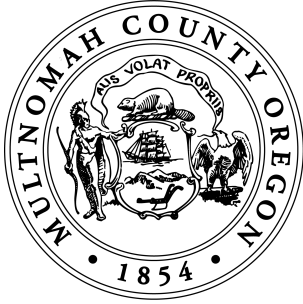
About Ombudsperson Investigations

The County Ombudsperson carries out investigations based on complaints from the public, at their own discretion, or the County Auditor's direction. We follow detailed procedures in our investigations. Our procedures are based on the U.S. Ombudsman Association's governmental ombudsman standards. These standards include that ombudspersons can resolve complaints informally; they also say that ombudspersons should have the authority to publish reports. Making the public aware of investigation results can promote accountability.

Land Acknowledgment

Multnomah County is located on the ancestral homelands of the Multnomah, Kathlamet, Clackamas, Tumwater, Watlala bands of the Chinook, the Tualatin Kalapuya, & other Indigenous nations of the Columbia River.

Response letter



Jessica Vega Pederson Multnomah County Chair

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May 16, 2024

Jennifer McGuirk, MPA, CIA, Multnomah County Auditor
Cheryl Taylor, JD, Multnomah County Ombudsperson
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Dear Auditor McGuirk and Ombudsperson Taylor,

Thank you for the opportunity to provide additional information in response to the May 3, 2024 Ombudsperson EMS report. I consulted with the Health Department when drafting this response and we appreciate your concern for the challenging situation the County faces as its contractor, American Medical Response (AMR), has continued to fail its contractual obligations to provide our community with prompt ambulance response for 911 medical requests for at least 2 years.

The County procures and regulates emergency ambulance services but does not directly provide 911 call answering, fire first response or ambulance transport from scene to hospital. Our current roles as a regulator, coordinator, and provider of medical supervision of this critical public service encompass complex responsibilities that we must approach thoughtfully.

Contract non-compliance with response time requirements could be interpreted as starting prior to 2022. However, the Health Department considers the continuous failure to have begun in 2022. The Health Department works collaboratively with all parts of the EMS system, including the ambulance provider. In that spirit, when non-compliance is identified the situation is analyzed and interpreted in the context of our contract. Prior to the COVID-19 pandemic, the formula used to calculate compliance was interpreted differently by AMR and the County, leading to a contract amendment (#1) that was approved by the Board of Commissioners on July 25, 2019. Further, during the declaration of the COVID-19

emergency between March 2020 and April 2022, ORS 403.156 prohibited the imposition of penalties for the duration of the emergency.

We agree with your assessment that the contract with AMR allows for the imposition of penalties. The delay in imposing fines was an intentional policy decision based on our commitment to collaborative problem-solving, and assurances from AMR that they would cooperate in rectifying consistent problems with delayed response times. Instead, however, AMR launched an intensive and ongoing political and public relations effort to change the long-standing Multnomah County EMS standard of care requiring two paramedics per Advanced Life Support ambulance, to a lower level of medical care with one paramedic per ambulance. AMR had previously agreed to this two-paramedic model in their contract signed in 2018 and renewed in January 2023. After less-punitive approaches were repeatedly unsuccessful, the County imposed fines for the month of August 2023, which led AMR to request mediation. This mediation is currently ongoing and expected to conclude by June. The County re-asserted the right to assess additional fines in February 2024, and collections are on hold pending the conclusion of mediation.

This report's second finding about the Emergency Medical Services Advisory Council (EMSAC) is also accurate, and similarly reflects a policy decision. For historical context, the EMSAC was added to county code as an amendment on the day the Board of Commissioners approved the Ambulance Service Plan (ASP) in 2016. This late addition to county code was unanticipated and was not vetted and developed throughout the ASP engagement process.

The full Ambulance Service Plan, in contrast, is a detailed document developed with substantial stakeholder engagement. The ASP does not include such a Board-appointed consumer advisory Council because stakeholders involved in developing the ASP at the time understood that the EMS program is extensively involved in planning and advisory meetings on a weekly basis (see appendix). The Health Department plans to seek guidance from the County Attorney's Office on modifying county code to reflect the current practice of engagement through these bodies, particularly through the Protocol Development Committee, rather than an additional advisory Council which could be duplicative and would likely not provide additional benefit to the EMS system as a whole.

Recommendation 1

The Board of County Commissioners should regularly receive from the Emergency Medical Services staff ambulance response time data that is compiled at least monthly for urban areas and every six months for rural areas.

All of this data is protected and will require a plan to ensure the appropriate contractual obligations or code is followed or changes are made.

After consultation with the County Attorney's Office, the Health Department could develop access to a confidential internal dashboard with response time performance for elected officials that meets the requirements for protection of the AMR-owned quality assurance response time data.

Recommendation 2

The Emergency Medical Services Advisory Council should be formed and the Emergency Medical Services Administrator should recommend members to the Board of County Commissioners for appointment to the Council.

The Health Department will seek guidance from the County Attorney's Office on modifying county code to reflect current practice, which includes extensive input to the EMS program from subject matter experts as well as residents.

In addition, the forthcoming reassessment of our Ambulance Service Plan will provide an opportunity to consider the necessary and appropriate roles for advisory bodies to inform our EMS system.

Thank you for accepting this response to your report.

Sincerely,



Jessica Vega Pederson

Appendix - Standing EMS meetings with advisory and/or coordination purpose

Multnomah County:

- Protocol Development Committee
- Operation Committee
- Dispatch Committee
- Training Subcommittee
- Equipment Subcommittee

County Quality Improvement Committee
ED/EMS Nurse Managers Committee
ED Medical Directors
Chief Medical Officers
Contract Compliance and Rate Review Committee
EMS/Behavioral Health/Law meeting
Unity Transportation Committee
Civil Sobering Hold Transportation Workgroup
EMS Significant Event Coordination
BOEC User Group
BOEC Technologies Committee

Divisional/Departmental:

EMS Staff Meeting
MCEMS Project/Data/Compliance Check in
Overdose Emergency Response Meeting
Public Health CBAC

State/Regional/Tri-County Partners:

RDPO Fire/EMS Workgroup
RDPO Citizen Corp Workgroup
RDPO Public Health Workgroup
RDPO Regional Emergency Manager Technical Workgroup
Hospital Preparedness Organization Steering Committee
Region Resource Hospital - 1 & 6
ATAB 1 (Area Trauma Advisory Board Region 1)
Ambulance Contingency Planning (Clackamas, Washington, Multnomah Counties)
EMS Scientific Review Committee
EMS Journal Club
OFCA EMS Section of (Oregon Fire Chiefs Association as appropriate)
Stakeholder Notice: EMS Alliance Governing Board Meeting
(Washington County as appropriate)
Clackamas County EMS Council Meeting (Clackamas County as appropriate)
Oregon Medical Board (EMS)
State EMS Advisory
