

**Legislation and Planning Committee
Embassy Suites Hotel
Richmond, VA
November 17, 2023
8:30 a.m.**

Members Present:	Members Absent:	OEMS Staff:	Others:
Gary Samuels (Chair, VPFf)		Scott Winston	Matt Lawler (EMS Advisory Board, CSEMS)
Beth Adams (Vice Chair, NVEMS Council)		Michael Berg	David Long (TEMS, Leg. & Planning, VEMA)
Jeff Meyer (VAGEMSA)		Debbie Akers	John Craig (SARS/VAVRS)
Steve Higgins (VAA)		Ron Passmore	Kim Craig (VAVRS)
Ed Rhodes (At-Large)			Eddie Ferguson (EMS Adv. Board/Goochland Fire & Rescue)
Gary Dalton (VAVRS)			
Bryan Rush (VML)			
Michael Player (VFCA)			
Byron Andrews (VSFA)			

Topic/Subject	Discussion	Recommendations, Action/Follow-up; Responsible Person
I. Welcome and Introductions	Chair Gary Samuels called the meeting to order at 8:30 AM.	Michael Player motioned to accept proposed agenda for today's meeting. Ed Rhodes seconded. Committee unanimously approved proposed agenda.
II. Review and Approval of August 4, 2023 meeting minutes	OEMS received from County Court Reporters, Inc. and distributed the transcript of the August 4, 2023 meeting of the Legislative and Planning Committee. The minutes from the August 4, 2023 meeting were reviewed by the Legislative and Planning Committee members. Chairman Samuels noted that the date in the Topic/Subject column for item II should be changed from February 3 to May 5, 2023.	Ed Rhodes motioned to accept draft minutes from August 4, 2023 meeting of the L&P Committee with proposed amendment. Seconded by Beth Adams. Committee unanimously approved August 4, 2023 meeting minutes.
III. OEMS Update – (OEMS Staff)	Mr. Scott Winston announced some personnel changes at OEMS. Mr. Gary Brown has announced his retirement effective December 1, 2023. Mr. Adam Harrell, Associate Director, OEMS resigned	

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	<p>his position in August to accept a teaching position with the Chesterfield County Public School system. Ms. Cam Crittenden has been named the Acting Director until a full-time replacement is identified. VDH met with representatives from Fitch and Associates to identify a neutral third-party interim leader to come in and provide some direction and guidance until a full-time director is identified.</p> <p>Mr. Winston acknowledged there has been a lot of conversation about the need to improve communication with the EMS system about what is happening relative to programs and services due to the budget shortfall. OEMS is currently undergoing an internal audit by VDH and an external criminal investigation conducted by the Virginia State Police, Office of the State Inspector General, FBI, and others due to potential financial irregularities. Because there is an external investigation, it has delayed the release of information related to the budget deficit facing OEMS entering FY24 (July 1, 2023).</p> <p>Mr. Winston reported that Dr. Karen Shelton, State Health Commissioner and Christopher Lindsay, COO would be attending today’s state EMS Advisory Board meeting. They will provide an update on the current financial situation of OEMS, provide an explanation of the funding sources for OEMS, and discuss the beginning stages of a plan to move forward in the Office of EMS.</p> <p>The Office of EMS is funded solely from special fund revenues received from the Department of Motor Vehicles (DMV). When Virginians register their vehicle a portion of the fee goes to OEMS.</p> <p>“4 for Life” refers to the original \$4 that is transferred to OEMS from the Virginia DMV as Special Revenue to fund most functions. The “4 for Life” is now \$6.25 of every annual vehicle registration in the Commonwealth. It is mandated in Code that 30% of it goes to fund EMS System Operations, 10% goes to fund OEMS Administration, 26% goes to Return to Locality payments, 2% goes to the Virginia Association of Volunteer Rescue Squads (VAVRS), and 32% goes toward the Rescue Squad Assistance Fund (RSAF) grants administered by the Financial Assistance Review Committee (FARC).</p> <p>An additional \$2 from every vehicle registration goes to OEMS to be a pass through back to the State General Fund, as well as to the Virginia State Police to fund the Medflight program. Another \$0.25 goes to fund the National Registry of EMT’s (NREMT) program for testing fees. Finally, the State Trauma Fund is funded from reinstatement fees from expired drivers’ licenses and is used strictly to provide funds to Virginia’s designated Trauma Centers.</p>	

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	<p>Mr. Winston reminded everyone that we all have a responsibility to help shape the future of the Office of EMS and the EMS system in Virginia moving forward in response to this current budget shortfall.</p> <p>Mr. Winston reported that the quarterly report to the state EMS Advisory Board was completed several weeks ago. However, due to changes in practice implemented by the VDH leadership team, the report must go through another review step. That review is on-going and has not been completed. Once the document is finalized, it will be posted on the OEMS web site. Mr. Winston acknowledged the OEMS staff works hard to document what has been accomplished and completed since the last Board meeting.</p>	
IV. State EMS Plan	<p>The current version (2020-2022) of the State EMS Plan is available for download via the OEMS website at the link below: http://www.vdh.virginia.gov/emergency-medical-services/state-strategic-and-operational-ems-plan/</p> <p>The final edited draft (2023-2025) of the state EMS Plan was approved by the state EMS Advisory Board meeting on November 18, 2022. The state EMS Plan was scheduled to be placed on the agenda for the September 14, 2023 Board of Health meeting but was withdrawn due to scheduling conflicts and more pressing business of the Board.</p> <p>February 14, 2024 is the next deadline in order to get the state EMS Plan on the agenda for the April 10, 2024 meeting of the Board of Health.</p>	
V. EMS Regulations	<p>Final proposed draft of Chapter 32 (12VAC5-32) of the EMS Regulations was approved by the Rules and Regulations Committee at their January 4, 2023, meeting. The draft document can be shared but not edited by the EMS community and the public. Chapter 32 was approved by the state EMS Advisory Board at their May 5, 2023 meeting. The EMS Regulations will likely be presented to the Board of Health at their June 2024 meeting.</p> <p>Once the draft EMS Regulations are approved by the BoH, the regulations will officially enter Stage Two of the regulatory process and begin the Executive Branch review. Upon review by the Executive Branch agencies (Office of Attorney General, Department of Planning and Budget, Secretary of Health and Human Resources, Governor, and Office of Regulatory Management), the draft regulations will be published in the Virginia Register of Regulations and the Virginia Regulatory Town Hall, and a public comment period will be open for 30 days. Fifteen days after the close of the public comment period, the regulations will become effective.</p>	

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	<p>Periodic review of Chapter 66 (12VAC5-66) of the DDNR Regulations have been delayed. Chapter 66 was on the agenda for the June 2023 Board of Health meeting. The DDNR regulations were pulled the day before the Board meeting because it did not have an official or informal approval from the Office of the Attorney General (OAG). Further delaying the progress of adopting Chapter 66 is OEMS has only recently been assigned a representative from OAG to handle our legal matters. It is our hope to get these regulations before the BoH at their April 2024 meeting. Additionally, Clay Aschilman, Senior Policy Analyst has resigned from OEMS to take another job in state government.</p> <p>OEMS holds monthly meetings with our OAG representative (Adam Hade) on the third Wednesday of every month.</p> <p>Mr. Bryan Rush asked if there have been any updates on the drug box exchange process with the hospitals. Mr. Passmore reported the DEA Regulations (Protecting Patient Access to Emergency Medications Act) of 2017. Proposed rules were published, and public comment was received in 2020. Since that time, there has been nothing from the DEA. Recently there has been discussion about a “track and trace” rule from the FDA (Drug Supply Chain Security Act) that has some hospitals concerned about exchanging medications with EMS agencies. There seems to be momentum from the healthcare systems to get out of the drug box exchange program. Some hospitals have announced sundown dates when they will discontinue exchanging medication kits with EMS agencies.</p> <p>OEMS continues to work with BoP to develop a toolbox to help EMS agencies through the transition. OEMS regularly presents information to Regional EMS Council BoD meetings and at every Medical Director workshop.</p> <p>Mr. Winston reported that the Virginia Society of Health System Pharmacists and VHHA are actively discussing this topic along with the Board of Pharmacy (BoP). Mr. Michael Player has presented information at the Regional EMS Council Executive Directors Group earlier this week about forming a work group and joining others to work on this issue. There is a concern that this change may place undue financial pressure on some EMS agencies. The regional system of care and patient care protocols, scope of practice, may vary because not every EMS agency will have the same capabilities or carry the same medications.</p>	
<p>VI. Potential 2024 Legislative Actions</p>	<p>Mr. Michael Player reported the Virginia Fire Service Council (VFSC) met in September 2023 and are working to finalize their legislative agenda for the 2024 session of the Virginia General Assembly. The delay in the release of the Fire and EMS Assessment and Funding Report (HB2175) has slowed the completion of the VFSC legislative agenda.</p>	

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	<p>In general, Mr. Player reported the following topics were discussed for inclusion in the 2024 VFSC legislative agenda: compensation packages for different groups of first responders, Line of Duty Act, Cancer presumption, health and wellness benefits, changes to the building codes to protect fire and EMS personnel, and retiree benefits.</p> <p>Mr. Player stated that regardless of whether it is Fire or EMS, the funding sources have been outstripped by the increases in costs for providing services and something must be done if these services are not going to continue to take hits. How do we correct the funding of Fire and EMS within the Commonwealth?</p>	
VII. Unfinished Business	<p>There is no unfinished business. Chairman Samuels mentioned the formation of a work group of subject matter expertise at the last L&P Committee meeting to help the Medical Direction Committee and their nomenclature workgroups. Jeff Meyer, David Long, James Reynolds, Ed Rhodes, and Beth Adams offered to assist the Medical Direction Committee with the work of their groups looking to clarify the role of EMS Physicians, Physician Assistants, Nurse Practitioners and their involvement with EMS agencies and its impact on the EMS Regulations.</p> <p>Debbie Akers, Accreditation, Certification and Education Division Manager at OEMS will be reaching out to these folks to set up some meeting times to meet before the next Medical Direction Committee meeting in January 2024.</p>	
IX. New Business	<p>There are three items of new business.</p> <ol style="list-style-type: none"> 1) Impaired Provider Pathway for EMS Personnel. Dr. Joanne Lapetina, Emergency Physician, longtime VAVRS member, and former Chair of the state EMS Advisory Board spoke about her concerns related to impaired provider regulations. Dr. Lapetina stated she has seen providers taken out of our system because they had a substance abuse issue or a felony. Dr. Lapetina asked why we were removing personnel for a medical issue. Substance abuse is a medical problem. Licenses are not taken away or certifications away from doctors for their first offense for drinking. Why are we taking certifications away from EMS providers on their own time who get caught with a DUI? Focus should be more on how we treat the medical problem to get these folks back on track. If we remove an EMS providers certification, we take their job, we take their health insurance, we take their family's health insurance, and they cannot get the treatment that they need for their medical problem. <p>Dr. Lapetina indicated she has already spoken to the Attorney Generals Office to ask the question, why we do this?</p>	

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	<p>Beth Adams asked Dr. Lapetina where did the OAG direct her to speak? Was that direction to point her to the L&P Committee of the state EMS Advisory Board? Dr. Lapetina replied “no,” if she was going out to pound the street, she was going to at least tell others what she is doing. Dr. Lapetina indicated she understands who the stakeholders are, and things have changed, mental health is recognized as a medical problem. EMS providers commit suicide at a rate as high as military veterans. Higher than physicians, dentists, etc. It is because these folks do not get treatment. EMS providers are 1.4 times more likely than the average person to kill themselves. And the CDC indicated that his rate is probably under reported.</p> <p>Mr. Ronald Passmore, Regulation and Compliance Enforcement Director indicated during his tenure at OEMS, no EMS provider has ever been suspended for DUI. The DUI is not what causes a provider to lose their certification. It is what sentence the individual receives from the court system that causes the problem. EMS providers cannot hold certification if they are on probation or while incarcerated for any crime. Laws are referenced in the EMS Regulations. It is how we write the regulations is what causes the hurdle.</p> <p>The impaired provider pathway and EMS Regulations state you cannot be under the influence of any substance while providing care or responding. Mr. Passmore indicated in his over five years at OEMS, he has only seen three EMS providers who were suspended for being impaired at the time they were providing care or while responding.</p> <p>OEMS modeled the Impaired Provider return to work pathway after the Health Practitioner Monitoring Program (HPMP) developed by the Department of Health Professions. Because EMS providers do not fall under the definition of healthcare provider, they are not eligible to participate.</p> <p>Because there was no pathway back, OEMS created one of their own. It is less intensive than the HPMP program which takes on average five years to get completely returned to unrestricted practice. It takes about two years to complete the impaired EMS provider pathway. The Commission of Health approved the policy that created a pathway back several years ago.</p> <p>Several members of the committee indicated that it is often an employment decision that results in an individual losing their job and benefits. Often, the requirement to hold a valid, unrestricted drivers license is a condition of employment. Once someone loses their drivers license, you are unable to drive an ambulance or firetruck.</p>	

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	<p>Dr. Lapetina acknowledged there are a lot of employment issues involving return to work policies.</p> <p>Mr. Passmore reminded the committee that the EMS Regulations are designed to protect the health, safety, and welfare of the public. When you have a provider stealing medications or taking medications while providing care to critically ill patients, that family deserves to have appropriate care for their family member.</p> <p>Dr. Lapetina again mentioned why are we not treating these people?</p> <p>2) EMS Provider Safe Haven and Mental Health Concerns.</p> <p>Dr. Lapetina referenced Safe Haven legislation that was introduced and passed in the 2020 session of the Virginia General Assembly (HB 115) that established civil immunity for members of or consultants to certain boards or committees, privileged communication of certain committees and entities, and reporting requirements for disciplinary actions involving physicians, and subsequently extended to Physician Assistants, Nurses, Pharmacists, and students in 2022. The Legislation was supported by the Medical Society of Virginia (MSV).</p> <p>The legislation was designed to encourage certain healthcare providers to seek help for mental health and substance abuse issues without fear of hindering their future practice or employment. Problems were not being reported because of the fear of an adverse consequence on their ability to practice. Therefore, doctor's suicide rates are high as well as substance abuse problems.</p> <p>Safe Haven laws allow for the confidential treatment of healthcare providers. Other benefits include peer counseling, substance abuse counseling, mental health, in a confidential environment where you do not have to declare it when seeking privileges to practice.</p> <p>Dr. Lapetina asked what about adding EMS providers to the list of eligible participants in a Safe Haven program. Dr. Lapetina mentioned including EMS providers to Safe Haven and MSV expressed interest. Dr. Lapetina wanted to raise awareness and to see if there is interest on behalf of EMS in moving this action forward. It was also mentioned that the confidential treatment programs are not free, and work has begun on how to pay for these services.</p> <p>Jeff Meyer indicated from a locality perspective, it is not about getting people treatment, but when they return to work, they must complete additional hoops because they have been out of</p>	

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	<p>work for long periods of time. So, they must explain why they've been out of work making it hard to keep it confidential.</p> <p>Dr. Lapetina stated Safe Haven works with people to be able to go back to work confidentially. But it is a challenge. If treatment is being paid for through an EAP program, it is not confidential. They are also working on getting the right people to counsel EMS providers that are familiar with what they see and do.</p> <p>Mr. Rhodes asked if the Safe Haven law is going to come under EMS, or does it come under healthcare providers. If it comes under healthcare providers, EMS providers would not be included. Mr. Rhodes stated he would be willing to speak with general counsel to MSV, Mr. Scott Johnson. Mr. Rhodes also stated it would be important to get support from the Virginia Association of Volunteer Rescue Squads (VAVRS) to alleviate any fears or concerns.</p> <p>Mr. Gary Dalton mentioned VAVRS ran into similar obstacles about 9 years ago related to licensure vs. certification and the fact that EMS providers are not considered healthcare providers in the Code.</p> <p>It was noted that certification and licensure are used interchangeably in the model language for the EMS Interstate Compact.</p> <p>3) Contracts or Commitment Letters prior to application and/or RSAF award. This item came from a meeting in the Peninsulas EMS (PEMS) Council region because of some EMS agencies are having a difficult time purchasing ambulances.</p> <p>Mike Player reported one of the EMS agencies within the PEMS region stated they could not get into the que to build and purchase an ambulance unless they sign a commitment letter. Under the current EMS Regulations governing RSAF, a commitment letter or contract cannot be signed with a vendor before an RSAF grant is awarded.</p> <p>Mr. Berg stated under 12VAC5-31-2920, paragraph F, "Funds shall not be used for expenditures or commitments made before the date of the grant award or after the conclusion of a grant."</p> <p>Mr. Berg indicated that FARC did discuss this topic at their August meeting, letters of intent. The OAG was contacted and OEMS was told it depends on how the language in the letter is phrased as to whether it would conflict with EMS Regulations and statutes.</p>	<p>Mr. Ed Rhodes indicated he would speak with Mr. Scott Johnson, General Counsel for MSV about the possibility of including EMS providers in existing Safe Haven legislation.</p>

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	<p>FARC decided not to accept any letters of intent. Due to supply chain issues, vendors of ambulances, stretchers, monitor-defibrillators are saying it will take 3 to 3 ½ years for delivery. Because of this OEMS is granting extension to RSAF grants which typically must be completed within 1 year of award.</p> <p>Mr. Berg also stated that once a grant expires, a letter of commitment cannot be signed. Essentially, the Regulations governing RSAF must be changed to recognize letters of commitment for items funded by RSAF. Mr. Berg stated he empathized with the EMS agencies, but there is no easy resolution to this situation.</p> <p>Mr. Steve Higgins, VAA, asked if there was a limit to the length of time or number of times that grants can be extended. Mr. Berg stated that regulations state they can be extended for up to one year. However, due to COVID, an administrative decision was made by OEMS leadership to allow extensions for up to three (3) years.</p> <p>Mr. Samuels indicated that changes that were made administratively due to unprecedented circumstances have now become everyday occurrences.</p> <p>Mr. Gary Dalton stated if extensions have been granted administratively, why can't other changes be handled the same way. Mr. Berg stated it is being reviewed by OEMS leadership and FARC.</p> <p>The Committee discussed how grant extensions are viewed by OEMS. These grant awards are seen as an obligation and are encumbered funds. As encumbered funds, these amounts continue to grow with each extension and can be viewed as a hinderance for awarding any new grants until this obligation is settled. The money is seen as committed and is off the table for other EMS agencies that have an immediate need and cannot afford to wait. Grant extensions solve one problem but create other problems.</p>	<p>Chairmen Samuels commented further discussion by FARC and OEMS is necessary concerning extensions and commitment letters until conditions change, supply chains open back up, and vehicles and items are manufactured and delivered within a reasonable time frame.</p>
X. Public Comment	There was no public comment.	
XI. Next Meeting	The next meeting will be on Friday, February 2, 2024, at 8:30 AM a location to be determined.	
XII. Adjourn	A motion was made by Mr. Michael Player and seconded by Mr. Ed Rhodes to adjourn the meeting. The committee approved. Chair Gary Samuels adjourned the meeting at 9:40 am.	Chair Gary Samuels adjourned the meeting at 9:40 am.