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Brad Schimel
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P.O. Box 7857
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RE: Request for Attorney General's Opinion of Law on the Applicability of Do-Not-Resuscitate Orders to County Jail Staff post-2017 WI Act 12

Attorney General Schimel,

I, Debra V. O'Rourke, Interim Corporation Counsel of Sauk County, hereby respectfully request the opinion of the Attorney General, pursuant to Wis. Stat. § 59.42(1)(c), on the below-outlined matter.

Issue Presented:

Whether staff at a county jail, who are trained to provide some basic emergency medical care prior to the arrival of medical professionals, but who are not certified by the Department of Health Services as emergency medical responders, must comply with a do-not-resuscitate order issued to a jail inmate?

Facts:

On September 18, 2017, an inmate arrived at the Sauk County Jail wearing a do-not-resuscitate bracelet. Conversations with this inmate indicated that it was apparently a properly obtained bracelet. The question was thus posed to the Sauk County Corporation Counsel's Office as to the effect of said bracelet.

Summary Tentative Conclusion:

While jailers do not qualify as "emergency medical responders" as they are not certified by statute, they do qualify as "first responders" under Department of Health Services (DHS) rules and therefore need to comply with do-not-resuscitate orders (DNRs). Clarification is needed as to whether the Attorney General's opinion on the matter (I-05-08, issued Sept. 4, 2008) is still as it was in 2008 or if it has changed given the changes in the statute this year.

Analysis:

In 2008, a Corporation Counsel from Ozaukee County asked the Attorney General's Office for an opinion on this question, and it was given. In the informal opinion, former AG Van Hollen came to the conclusion that the jail staff were not required to honor the DNRs of inmates. This is based on his interpretation of the DNR statute (Wis. Stat. §§ 154.17 and 154.19) in conjunction with the then-definition of "first responder." In 2008, the Legislature changed the definition of first responder to include only those who were "certified by the department [of Health Services] as a first responder under Wis. Stat. § 256.15(8)(a) (2007-08)." *Citing* Wis. Stat. § 256.01(9) (2007-08). The statute, however, is now different than it was when AG Van Hollen issued the aforementioned opinion.

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The words “first responder” in the statute were changed this June (by 2017 WI Act 12) to “Emergency Medical Responder” which is defined as “a person who is certified by the department as an emergency medical responder under s. 256.15(8)(a) or is exempt under s. 256.15(2)(b) or (c) and who, as a condition of employment or as a member of an organization that provides emergency medical care before hospitalization, provides emergency medical care to a sick, disabled, or injured individual.” Wis. Stat. § 256.01(4p) (2015-16). Most of the Sauk County Jail staff – like those in Ozaukee County in 2008 – are not “certified” by DHS as “emergency medical responders.” However, while most (if not all) of the jail staff may not be “emergency medical responders” by statute, they are still likely “first responders” by administrative code, and thus must comply with the terms of a DNR.

Wis. Stat. § 154.19(3)(a) states, “[e]xcept as provided in par. (b), emergency medical services practitioners, as defined in s. 256.01(5), emergency medical responders, as defined in s. 256.01(4p), and emergency health care facilities personnel shall follow do-not-resuscitate orders. *The procedures used in following a do-not-resuscitate order shall be in accordance with any procedures established by the department [of health services] by rule.*” In looking at the DHS rules, Wis. ADMIN § DHS 125.05(1) states, “[e]mergency health care personnel shall follow a no-not-resuscitate order, as evidence by a patient wearing a do-not-resuscitate bracelet, unless the order is invalidated by condition under (3). If there is any doubt about honoring a do-not-resuscitate bracelet, emergency medical technicians and **first responders** shall contact the medical control hospital and emergency health care facility staff shall contact the director of emergency services.” DHS 125.03(5m) defines “**emergency health care personnel**” as “emergency medical technicians, **first responders** and emergency health care staff.” Finally, DHS 125.03(7) defines a “**first responder**” as “a person who provides emergency medical care to a sick, disabled or injured individual prior to the arrival of an ambulance as a condition of employment or as a member of a first responder service, and who may or may not be certified by the department under DHS 110 to perform defibrillation.”

In reading the definition of first responder as outlined in Wis. ADMIN § DHS 125.03(7), there does not appear to be any certification requirement (unlike when Van Hollen interpreted the definition in 2008). As such, I would conclude that jail staff who have received any training to render first aid and who have to provide care as a duty of being a jail staff member would meet that definition. Further, as the statute appears to give DHS rather wide latitude in determining procedure for dealing with DNRs, and as DHS has defined first responders in such a way to make it so that jailers would apparently apply, it would seem that jailers would have to abide by the DNR bracelet. That said, there is a possible alternate potential interpretation of Wis. Stat. § 154.19(3)(a) wherein the Legislature only made the law applicable to EMS practitioners, EMRs, and EHCF personnel and gives DHS power to control only *their* actions (and no one else’s) concerning DNRs. If that is the case, the rule wouldn’t apply to jailers; however, then the rules promulgated by the DHS are in severe contradiction with the statute and need to be changed.

Thank you, in advance, for your attention to this matter.

Best Regards,



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