



DOH
New York State
Department of Health
Bureau of Emergency Medical Services

POLICY STATEMENT

Supersedes/Updates: 93-09, 93-10

No. 06-06

Date: May 26, 2006

**Re: EMS Operating
Certificate Application
Process (CON)**

Page 1 of 30

INTRODUCTION

This Policy Statement describes the application and consideration process, in accordance with Article 30 of the New York State Public Health Law (PHL), when applying for the following:

- **A new ambulance or advanced life support first response service operating certificate,**
- **A transfer of EMS service ownership,**
- **An expansion of operating territory, and/or**
- **A transition from a municipal declaration to permanent operating certificate at the end of the two year initial operating period.**

This policy was written in consultation with the State EMS Council's Systems Subcommittee and supported by the State EMS Council (SEMSCO). This document, along with its appendices, will assist the applicant in insuring that the application conforms to and contains the information required in the rules and regulations promulgated pursuant to PHL.

This document, along with its appendices, defines a systematic and logical approach and establishes a framework for Regional Emergency Medical Service Councils (REMSCO) to use when processing EMS Service applications in accordance with PHL.

Article 30 Section 3003 of Public Health Law states:

§ 5. The REMSCO shall have the responsibility to make determinations of public need for the establishment of additional emergency medical services and ambulance services and to make the determinations of public need as provided in section three thousand eight.

Article 30 Section 3005 of Public Health Law states:

§ 5. No initial certificate (except initial certificates issued pursuant to subdivision two of this section) shall be issued unless the commissioner finds that the proposed operator or operators are competent and fit to operate the service and that the ambulance service or advanced life support first response service is staffed and equipped in accordance with rules and regulations promulgated pursuant to this article.

§ 6. No ambulance service or advanced life support first response service shall begin operation without prior approval of the appropriate REMSCO, or if there is no appropriate REMSCO established such ambulance service or advanced life support first response service shall apply for approval from the state council as to the public need for the establishment of additional ambulance service or advanced life support first response service, pursuant to section three thousand eight of this article.

Article 30 Section 3008 of Public Health Law states:

§ 1. Every application for a determination of public need shall be made in writing to the appropriate REMSCO, shall specify the primary territory within which the applicant requests to operate, be verified under oath, and shall be in such form and contain such information as required by the rules and regulations promulgated pursuant to this article.

§ 2. Notice of the application shall be forwarded by registered or certified mail by the appropriate REMSCO to the chief executive officers of all general hospitals, ambulance services, and municipalities operating within the same county or counties where the service seeks to operate. The notice shall provide opportunity for comment.

§ 3. Notice pursuant to this section shall be deemed filed with the ambulance service and municipality upon being mailed by the appropriate regional or state council by registered or certified mail.

§ 4. The appropriate REMSCO or the state council shall make its determination of public need within sixty days after receipt of the application.

§ 5. The applicant or any concerned party may appeal the determination of the appropriate REMSCO to the state council within thirty days after the REMSCO makes its determination.

TABLE OF CONTENTS	PAGE
A. Public Need	4
B. The Application	5
C. Regional EMS Council Responsibilities	9
1. Fitness and Competency	9
2. Public Notice	10
3. The Public Hearing	11
4. Determination of Need	12
D. Issuance of Operating Authority for New EMS Service or Expansion of Operating Territory	13
E. The Appeal Process	14
F. Transfer of Ownership	16
1. Allowable Transfer Circumstances	16
2. The Application Procedure	16
3. Fitness and Competency	17
4. The Review and Approval Process	18
5. Transferring Operating Authority to Publicly Held Entities	19
G. Appendices	21
1. Guidelines for Establishing EMS Services	21
2. Application Work Sheet	23
3. Voting Memorandum to the SEMSCO (September 11, 2001)	24
4. Process Timeline	27
5. Definitions of Terms/Glossary	29

A. PUBLIC NEED

The State EMS Council and the Department of Health defined public need as:

THE DEMONSTRATED ABSENCE, REDUCED AVAILABILITY OR AN INADEQUATE LEVEL OF CARE IN AMBULANCE OR EMERGENCY MEDICAL SERVICE AVAILABLE TO A GEOGRAPHICAL AREA WHICH IS NOT READILY CORRECTABLE THROUGH THE REALLOCATION OR IMPROVEMENT OF EXISTING RESOURCES.

Variables in considering “Public Need”

- ❖ Geography
- ❖ Population (size, density, projections)
- ❖ Level of care (existing, available)
- ❖ Quality, reliability, and response patterns of existing services
- ❖ Type of service (emergency, non-emergency)
- ❖ Special need (i.e. Air, Industrial or Facility)
- ❖ Service effectiveness, cost, and operation
- ❖ Other local factors

Each REMSCO shall prepare a statement, which is reviewed annually and is made available to each applicant that provides regional definitions and or minimum standards, alone or in combination, for these variables and any other local criteria that are appropriate to the development and review of an application.

The REMSCO has an obligation to determine if the issues identified are truly ones of public need/necessity or, as an alternative, if any improvement in existing resource allocation or coordination within a specific time frame can resolve the problem. Inherent in this review is a determination as to why appropriate measures were not taken by existing providers prior to the submission of a new application.

Every new EMS service or any service seeking to expand its primary territory must, by statute, receive the approval of the appropriate REMSCO prior to the issuance of an operating certificate.

Six distinctive steps are identified in the Article 30 process for determining public need for a proposed ambulance or ALS-FR service. These steps are:

1. Application
2. Public Notice
3. The Public Hearing
4. REMSCO Determination
5. A 30 day appeal period for new, municipal and expansion applications
6. Certificate of Issuance or Appeal

Each step must be successfully completed in order to move to the next step.

B. THE APPLICATION

A completed application for new EMS Service, including a transition from municipal declaration after two years in operation, Expansion of Primary Operating Territory or Transfer of Ownership (DOH 3777) must be submitted to the appropriate REMSCO.

- ❖ At least two (2) original¹ applications shall be provided to the REMSCO. All applications shall be considered complete when submitted on the prescribed form, be notarized and affirmed, be accompanied by all required attachments, endorsements, evidence and other supporting and explanatory material the applicant wishes the REMSCO to consider and any necessary fees.
- ❖ It is the applicant's responsibility to verify that, prior to submission, the application is properly completed and that all necessary attachments and fees, if applicable, are submitted in accordance with all policies, rules and/or regulations.
- ❖ The application and narrative shall describe the following:
 - proposed area of service;
 - vehicles, equipment and supplies;
 - level of service;
 - hours of operation;
 - service location;
 - dispatch;
 - Other pertinent operational aspects of the proposed service to allow for a reasonable and comprehensive review.
- ❖ The application shall describe the initial source of funds, the adequacy of sources of future revenue and shall provide a first year budget for the proposed service in enough detail to allow a reasonable assessment of the financial stability of the applicant to provide the proposed service and the financial feasibility of the proposal.
- ❖ All applications shall focus on how the proposed service will meet the definition of public need. The narrative and endorsements shall respond to and document issues related to this definition. **Statements of want, desire, feeling or other unsubstantiated sentiments are not acceptable.**
- ❖ The *complete* application is the basis for the demonstration of need. In the public hearing the applicant **may be** restricted to corroborating and/or explaining the data therein.
- ❖ The applicant bears the burden of proof for the demonstration of public need.

¹ An original may be a first generation copy in original format with original signatures.

REQUIRED ATTACHMENTS:

The attachments to the application should include, but not be limited to, the following items:

1. Detailed narrative to support the demonstration of need, or statement of purpose and intent for transfer, or expansion.

- ❖ The applicant, including municipalities, shall demonstrate sufficient knowledge of the EMS system in the area to be able to describe the **positive and negative** impact the proposed agency shall have on the area and providers. The applicant shall submit a narrative to be appended to the application detailing this impact on the following:

1. All existing ambulance and or emergency medical services within the proposed area in terms of but not limited to:

- ❖ response time (time the call was received to time on the scene);
- ❖ staffing;
- ❖ level of service;
- ❖ call volume for the past 12 months and the anticipated call volume for first 12 months of operation;
- ❖ mutual aid;
- ❖ quality assurance;
- ❖ medical direction;
- ❖ protocols;
- ❖ ability and quality of existing services, and;
- ❖ Financial impact, and any adverse impact the proposed service will have on existing services.

2. The EMS system in the area – Provide a description of the EMS system, all existing EMS agencies, hospitals and other institutions that generate an EMS response. Additionally, include participation agreements, mutual aid, and actual and projected response times for the proposed agency and the existing agencies for the past and next 12 months. The description must also include communications system interface, medical direction and control, proposed services impact, positive & negative on the community, including on patient care and recruitment & retention of EMS personnel and any possible economies and improvements in service to be anticipated from the applicants operation.

3. Additionally, municipal EMS services, at the time of transition, may be required to provide documentation regarding the impact their declaration has had on the existing EMS community for the first two (2) years of operation.

- ❖ The applicant shall demonstrate the ability to meet the definition of public need within the variables and any other standards defined by the REMSCO. In addition, the fourteen items of evaluation, found in Appendix 1, shall be addressed in the application, and or any attachments.
- ❖ It is the intent of the public application and hearing process to obtain input from all whom may use, provide, pay for or participate in the EMS system. Therefore, applicants, including municipal services shall solicit letters of endorsement from, but not limited to, the following agencies or

organizations within the proposed service area and those with service areas or influence areas (i.e. adjacent ambulance primary service areas or hospitals with bordering patient catchment areas, etc.):

- All EMS and ALSFR agencies licensed to provide service in the area, county and contiguous counties in the region;
 - EMS Medical Director(s) in the region;
 - The chairperson of any County EMS organization and county EMS Coordinator;
 - All hospital CEO's and emergency department directors, and;
 - The CEOs of all municipalities.
- ❖ All letters of solicitation shall include a general description of the new service, the type and level of service to be provided, the definition of public need, how the proposed service plans to impact public need and a request for response by a specified date.
- ❖ All letters in response to the applicant's solicitation shall be signed by the CEO of the organization or authorized designee, can be no more than six (6) months old and shall include an acknowledgement of receipt of the definition of public need.
- ❖ The application shall include a copy or sample of the letter of solicitation, a list of the agencies/individuals to which it was sent and all responses received.
- ❖ Applicants shall provide copies of the application accepted by the REMSCO for each member, unless otherwise defined by local REMSCO policy.

3. Affirmation of Fitness and Competence (DOH 3778)

- ❖ The application shall attest to the competency and fitness of the applicant(s) and/or officers of the corporation. An affirmation of Competency and Fitness (DOH 3778) shall be provided.
- ❖ For the purposes of fitness and competency review, the applicant must include personal information to include, but not be limited to current resume/curriculum vitae, home address, and date of birth and social security number. **This information will not be maintained in any files or be discoverable and will be destroyed once the determination has been made.**

4. Certificate of Incorporation

- ❖ The applicant shall include the Certificates of Incorporation, d.b.a's and ownership from the issuing government.
- ❖ The application must include a complete listing of all shareholders, principal owners and operators of the EMS service.

5. Financial Information

- ❖ The application shall describe the initial source of funds, the adequacy of sources of future revenue and shall provide a first year budget for the proposed service in enough detail to allow a reasonable assessment of the financial stability of the applicant to provide the proposed service and the financial feasibility of the proposal.
- ❖ The applicant shall provide taxpayer federal identification number issued to the organization.

6. Primary Operating Territory Map

- ❖ The applicant shall include a written description of the desired territory described within geo-political boundaries.
- ❖ A detailed map of the primary operating area.

7. Fees

- ❖ The REMSCO may establish a ***uniform and non-waivable*** fee to be received with each application that reflects the **direct and real costs** of the application review, the process of public notice and the hearing. The fee shall be reviewed and re-approved annually by the REMSCO and be made available at the official place of business. The fee must accompany the completed application when submitted to the REMSCO. Within sixty (60) days of the determination, the REMSCO shall provide the applicant with a detailed expenditure report.

8. Application Worksheet

- ❖ Attached as Appendix 2, is an **Application for Public Need Work Sheet**. This Work Sheet is intended to assist the applicant and the REMSCO in completing the application process.

9. Submission of the Application

- ❖ Once the application and required attachments have been completed, the completed package must be delivered to the REMSCO at their official business address, by certified mail or personal service.

C. REMSCO RESPONSIBILITY

Upon receipt, the application shall be reviewed for completeness by the designated REMSCO sub-committee or program staff.

- ❖ The application shall be accepted if it is deemed to be complete in accordance with these policies. The acceptance date must be documented in the shaded section on the second page of the application form (DOH-3777).
- ❖ When determined to be complete by the REMSCO, the time frame for processing established by Article 30, 3008 begins.
- ❖ If found to be incomplete, it shall be returned by certified mail or personal service to the applicant within ten (10) business days with a written explanation of the grounds for the rejection.
- ❖ If requested, the applicant shall provide copies of the accepted application and attachments for each REMSCO member.
- ❖ The designated REMSCO shall begin action immediately upon receipt and acceptance of a complete application. This action shall include the following:
 1. scheduling a hearing date;
 2. send public notice, and;
 3. establish a REMSCO meeting date at which a determination will be made so as to comply with the 60-day time limit established in PHL. Appendix 4 delineates the time line that is to be followed in order to comply with Public Health Law, Section 3008.

1. Fitness and Competency

One responsibility of the application process is to insure a high quality of ownership and management of an ambulance or ALS-FR service to the degree of attempting to identify any issues of character that would be detrimental to this highly personal service. With this as a purpose, the REMSCO shall address issues relative to the competency and fitness of the applicant and/or officers of the corporation as prescribed in PHL 3005(5).

The REMSCO may request the Department to conduct the detailed review. The review shall include multiple factors such as the individual or group of individuals standing in the community, an evaluation of the applicants prior record as an ambulance service operator or health care provider, and if applicable, a statement of experience in the industry, or related industries. The REMSCO may augment the fitness and competency review, however it must have a documented process.

The review will also include an evaluation of past history, including computer searches of legal filings and judgements, business ownership as well as any convictions for a crime or crimes involving moral turpitude including, but not

limited to, murder, manslaughter, assault, sexual abuse, theft, robbery, drug abuse, the sale of drugs or fraud. The fitness and competency review will also include an applicant's history with both Medicaid and Medicare programs.

In addition to original applications and municipal applications, a fitness and competency (F&C) determination must be made by the REMSCO for all transfers of ownership.

The applicant shall submit a completed Affirmation of Fitness and Competency (DOH 3778) for each principal owner and/or operator. The REMSCO or upon request, the Department shall conduct a review of the applicant's fitness and competency in accordance with the provisions of PHL Section 3005. A current resume for each principal owner and/or operator must be attached for each affirmation submitted.

2. Public Notice

- ❖ The REMSCO shall establish a date, time and location for a public hearing(s) to review the application and receive all comments.
- ❖ The hearing(s) shall be held within 30 calendar days of accepting a complete application and the notice shall be postmarked at least 14 calendar days prior to the hearing date.
- ❖ The hearing(s) shall be established at a time and place(s) logical to the application, preferably in the county or central to the proposed service area. Considerations for public access must be included.
- ❖ More than one public hearing may be held if it is in the best interest of the application and so long as *the same application and information is presented by the applicant at each hearing* and they are held within the appropriate time frames.
- ❖ One public hearing can be held to serve the needs of several REMSCOs, if it is in the best interest of each REMSCO and applicant.
- ❖ Letters of notice shall be sent in accordance with PHL 3008, by certified mail to:

"The chief executive officers of all general hospitals, ambulance services, and municipalities operating within the same county or counties where the service seeks to operate..."
- ❖ Hospitals adjoining the proposed service area and ambulance agencies with adjoining primary service areas and the local health systems agency shall also be included in the notice.

- ❖ The letter of notice shall include the date, time and location of the hearing session, the definition of public need, a solicitation of response to the application by a specific date and provide a mechanism for any interested party to obtain and/or review the application.
- ❖ The REMSCO shall maintain a copy of the letter of notice, a list of recipients, and all postal receipts until final disposition of the application is made.
- ❖ The information contained in the letter of notice shall be published in the newspaper designated by the REMSCO to receive legal notices. As necessary this shall include newspapers designated by the REMSCO.

3. The Public Hearing

- ❖ The REMSCO shall establish a committee to hear each application. The Committee will **usually** consist of five members. Normally one member shall be from the county or area the applicant proposes to serve, and one member shall represent the majority of the ambulance constituency in the proposed service area.
- ❖ The REMSCO must use a hearing officer designated by the REMSCO and charged with finding fact and preparing a report for the REMSCO. REMSCOs can utilize individuals who are authorized by various state agencies (DEC, State, etc.) to act as hearing officers or other individuals with similar training and experience. Ideally, a hearing officer should be familiar with Public Health Law and the administrative hearing process. The hearing officer will moderate and insure the hearing process follows generally accepted procedures.
- ❖ The purpose of the hearing is to provide a technical review and objective evaluation of the applicant's statement of need as well as any other testimony presented.
- ❖ The committee may hear witnesses, receive written statements, ask questions and accept testimony in any form that will lend credibility to the hearing and the ultimate determination.
- ❖ The REMSCO shall complete and maintain a record of the proceedings of any and all hearings. This shall be in stenographic or tape form. The record must be transcribed and considered along with all other evidence in making the determination, especially pertinent are all discussions relating to public need.
- ❖ A written summary of the hearing shall be prepared that includes a finding of fact and a recommendation to support or deny the motion to approve the application and detailed justification for the recommendation made. Any other pertinent findings for presentation to the REMSCO must also be included. If a hearing officer's report is the principle process, the

committee should review the report and prepare the recommendation for the REMSCO following a similar outline. It is recommended that the committee meet at a time other than immediately prior to the REMSCO meeting for its deliberations.

4. Determination of Need

- ❖ At the designated REMSCO meeting, the chairperson of the hearing committee shall present the application, committee report, including the summary, any technical review, finding of fact and a specific recommendation.
- ❖ The recommendation of the hearing committee comes to the floor of the REMSCO as a seconded motion for debate.
- ❖ Opportunity shall be provided for REMSCO members present to make inquiry and ask questions prior to making a determination. **As the application and the public hearing (s) constitute the appropriate forum to introduce/provide new information, this is not an opportunity for REMSCO members or non-REMSCO members to introduce/provide new information.**
- ❖ The REMSCO may place binding contingencies on the approval of an application as long as the conditions are in the best interest of the EMS system and are not in conflict with any State law or regulation. The applicant may amend the application so long as it occurs prior to the public hearing.
- ❖ Each REMSCO may establish a policy within the framework mandated by NYS Ethics Rules and established by the State EMS Council regarding members abstaining from voting in cases of conflict of interest.

This policy shall address members who have a pecuniary (financial) interest in a competing service and those who serve as an officer in an organization deemed to be in direct competition with the applicant.

- ❖ Each REMSCO has the obligation to discuss and record in the record, all pertinent points and issues of the application relating to need, the definition of public need, and specific reasons and rationale for and against the application based on the application, evidence presented and testimony from the public hearing.
- ❖ It is proper format for a motion to **approve** the application. The motion is supported by a recommendation from the committee for or against the application and shall contain rationale and justification, positive and negative, for the recommendation presented.
- ❖ The REMSCO shall make its determination by a roll call ballot of the members present to accept or reject the recommendation of the

committee. The motion must be made in the form of an **approval** of the application. Based on the Department's Bureau of House Counsel opinion (Appendix 3), in order to make a determination, it must be passed by not less than a majority of the entire members authorized to vote, not those members present for the meeting.

- ❖ A statement shall be entered into the stenographic record that clearly defines the authority of alternates to vote in the procedure and a statement of the needed majority to pass the motion. A written record of the roll call vote shall list all voting members of the REMSCO and include at least the following information:
 - Member name, affiliation and status as member or alternate;
 - Present or absent for ballot;
 - Voting for, against or abstaining;
 - Declarations and/or decisions of conflict of interest;

D. ISSUANCE OF OPERATING AUTHORITY

- ❖ The REMSCO shall provide written notice of its determination to the applicant within seven (7) business days by receipted mail or delivery method.
- ❖ The REMSCO shall provide to the Department with written notice of the determination within seven (7) business days by receipted mail or delivery method. Notice shall include:
 - An original copy of the complete, accepted application and attachments;
 - A written copy of the seconded motion to approve the application on which the REMSCO vote is based;
 - Documentation of the roll call vote;
 - A copy of the document or checklist the REMSCO used to determine the application to be complete.
- ❖ If the REMSCO(s) determination is to grant operating authority, and no notice of appeal is filed within the 30 business days, the Department's Regional EMS representative shall obtain additional required paperwork, and conduct any necessary inspections.
- ❖ The Department will issue the EMS Operating Certificate.
- ❖ The REMSCO must retain all documentation and stenographic minutes in the event of an appeal to the determination.

E. THE APPEAL PROCESS

The applicant or any other party directly involved has the right to appeal by filing notice with the Executive Secretary of the State EMS Council at the Department. This notice must be received by the Department, **using receipted delivery, within thirty (30) calendar days** of the date of the REMSCO's determination.

- ❖ After the REMSCO's determination a notice of appeal may be filed within the 30 days. The Department shall not issue the EMS operating certificate. This shall stand until the conclusion of all appeal processes.
- ❖ In the event of an appeal the Department shall request the assignment of an Administrative Law Judge (ALJ) to hear the appeal and make a finding of fact and recommendation to the State EMS Council.
- ❖ SEMSCO meetings and considerations of service application appeals are not de novo (consideration of new material or information) hearings of the application, therefore discussion will be limited to State EMS Council members and the record.
- ❖ The State EMS Council's Systems Committee shall review any appeal and the recommendation of the ALJ and shall make a recommendation to the State EMS Council. The complete application and pertinent record and the ALJs report shall be provided to the Council prior to their consideration of the appeal and a decision in accordance with PHL 3002(3).
- ❖ The SEMSCO meeting notice will serve to provide a date by which any opposition to the application from certificate holders in the territory to be served or any receiving hospital or municipality for the proposed service must be declared.
- ❖ If no opposition is heard/received, the SEMSCO may make a determination following an open discussion period at the next scheduled meeting.
- ❖ If significant opposition is received, as determined by council reviewers/staff, a public hearing should be scheduled at least two (2) weeks prior to the scheduled SEMSCO meeting.

F. TRANSFER OF EMS SERVICE OPERATING AUTHORITY

Article 30, Section 3010 permits EMS services to transfer operating authority to a new owner(s) or operator(s) following a review of the competency and fitness of the new operator and with the approval of the appropriate REMSCO(s) and the Department.

This approval process assumes that the original holder of certificate has been in continuous operation and will surrender all rights to operate an EMS service under this certificate without application and approval of the appropriate REMSCO.

1. Allowable Transfer Circumstances

Transfers of operating authority are allowable in the following circumstances with approval of the appropriate REMSCO and the Department:

- a) Any change in the individual who is the sole proprietor (3010.2(a));
- b) Any change that results in adding new partners (3010.2(b));
- c) Any transfer, assignment or other disposition of ten percent (10%) or more of a corporation's stock (3010.2(c));
- d) Any transfer of all or substantially all of the assets of a corporation to a new corporation or owner (3010.2(d));
- e) A municipality that has transitioned to a permanent operating authority.

Examples: the change in an operator without changing the territory of a sole proprietor, a sole proprietor incorporating for the first time or a fire department service and assets being assumed by a volunteer ambulance corp.

2. The Application Procedure

The applicant shall submit to the appropriate REMSCO at least two (2) original versions of the application, including fees as appropriate and the number of copies as requested by the REMSCO of the following documents:

- ❖ A completed Application for New EMS Service, Expansion of Primary Territory or Transfer of Ownership (DOH 3777).
- ❖ Completed, notarized and sworn Affirmation of Competency and Fitness (DOH 3778) and a current resume for each proposed owner and/or operator (example: CEO, managing partner, executive board member, operations manager). A statement of purpose and intent, signed by both parties that explains in common terms what is being proposed and including the end effect on both individuals, partnerships or corporations.
- ❖ A complete resume for the new owner(s)/operator(s) that includes all health related licenses, social security number (which will be kept confidential) and a history of all employment and/or activities in any regulated health care facility or activity for the past 10 years.

- ❖ A list and/or copy of orders or deficiency notices issued within the past 10 years from any NYS Department or equivalent out of state agency listed that have deficiencies identified (singular or repetitive) that did or could have caused patient harm or were repetitive and uncorrected.
- ❖ A list of any malpractice actions within the past 10 years that relate to patient care or harm and the outcome of each.
- ❖ A copy of any stock sale and/or transfer agreement or other contract or legal agreement.
- ❖ A listing of all capital, property, plant, equipment, receivables and stock owned by the certificate holder or involved in the transfer. *Note: Disclosure of the financial values of each is not required.*
- ❖ A complete listing of the final owner(s).

3. Fitness and Competency

One responsibility of the application process is to insure a high quality of ownership and management of an ambulance service to the degree of attempting to identify any issues of character that would be detrimental to this highly personal service. With this as a purpose, the REMSCO shall address issues relative to the competency and fitness of the applicant and/or officers of the corporation as prescribed in PHL 3005(5).

The REMSCO may request the Department to conduct the detailed review. The review will include an evaluation of past history, including computer searches of public documents including legal filings and judgements and business ownership. Additionally any charges or convictions for a crime or crimes involving moral turpitude including, but not limited to, murder, manslaughter, assault, sexual abuse, theft, robbery, drug abuse, the sale of drugs or fraud are considered. The fitness and competency review will also include an applicant's history with both Medicaid and Medicare programs.

In addition to original applications and municipal transition, a fitness and competency (F&C) determination must be made by the REMSCO for all transfers of ownership.

The applicant shall submit a completed Affirmation of Fitness and Competency (DOH 3778). The REMSCO shall conduct a review of the applicant's fitness and competency in accordance with the provisions of PHL Section 3005. A current resume for each applicant/owner/operator must be attached for each affirmation submitted.

4. Review and Approval Process

- ❖ REMSCO receives the application and insures that all requirements are met and that all documents are complete. REMSCO contacts the applicant to acknowledge receipt, obtain any missing items, clarify any information and inform the applicant when the application is complete and the date the application will be considered.
- ❖ If the new owner meets any of the criteria stated in 3005(8), REMSCO contacts the DOH Central Office for review of any history of patient harm or uncorrected deficiencies in any regulated facility specified in the statute. If the new owner(s) has no involvement in a specified area, such will be noted to the REMSCO.
- ❖ REMSCO staff will forward a copy of the application and affirmations to the DOH Central Office within five (5) working days of the application being deemed complete. The DOH and REMSCO staff may jointly develop the information required to determine if a new operator has provided a consistently high level of care and therefore is competent to operate the service. Since approval of both the REMSCO and Department are required, joint development of all required information is essential to expedite the process.
- ❖ A new operator may not be found to be competent if there have been multiple, repeated or uncorrected violations of the State EMS Code or other applicable rules and regulations that have directly threatened the health, safety or welfare of a patient.
- ❖ Definitions for substantially consistent high level of care will be developed and codified by the State EMS Council. In the absence of these regulations, an operator cannot be found to have provided this level of care if the/any Department has/had instituted license revocation proceedings for a service the operator was a principle in within the last 10 years.
- ❖ The REMSCO and the Department have an obligation to act expediently to review and act on an application to prevent unnecessary hardship to individuals or corporations. The REMSCO shall render a decision at its next scheduled meeting or no later than sixty (60) days following receipt of a complete application and all fitness and competency review information. The Department will make every effort to have their information available to the REMSCO at least two (2) weeks prior to the scheduled REMSCO meeting.
- ❖ There are **NO** mailing, notice, hearing or time requirements imposed by the statute. If a REMSCO sub-committee review is conducted, the committee shall focus on reviewing fitness and competency only. There is no intent for a hearing and a committee review to delay the process.

- ❖ The REMSCO meeting is an open meeting and the vote for the review of fitness and competency shall be conducted by roll call vote, using the definition of majority from the REMSCO's by-laws.
- ❖ The REMSCO shall forward to the Department within seven (7) business days, one complete original application and competency affirmation and the written REMSCO decision. A complete record of the proceedings will be maintained including the meeting's minutes and a record of the roll call vote and any committee recommendations and vote record. The REMSCO needs to include a detailed rationale and explanation for any negative decision.
- ❖ The Department will review the application and REMSCO decision and within ten (10) business days of receiving the decision, confirm or deny the REMSCO decision and notify the applicant and REMSCO accordingly.
- ❖ Approval of the application, receipt of final transaction closures and the transfer of operating authority will be granted **only** upon approval of both the REMSCO and the Department.
- ❖ Following approval of both the REMSCO and the Department an application for EMS Operating Certificate will be completed and a site inspection scheduled with the appropriate DOH Area Office.

5. Transferring Operating Authority to Publicly Held Entities

This section defines additional requirements needed to transfer the operating authority of an EMS service where the new owner/operator will be a publicly traded corporation, typically with ownership widely distributed among numerous and constantly changing stockholders.

- I. The requirements for fitness and competency reviews will apply to:
 - ❖ The Corporate entity and any parent or health related subsidiaries;
 - ❖ Any/All Directors of the Corporation;
 - ❖ Any/All Officers of the Corporation, and/or;
 - ❖ Any/All stockholder(s) holding ten (10) or more percent of the stock of the corporate applicant as of the filing date of the application to transfer.

The review will include any operations in other states where the service is licensed to conduct EMS or health care related business

- II. The Application to transfer EMS Service Operating Authority shall include, but not be limited to:
 - ❖ A photocopy of the executed existing or proposed applicable corporate certificate which shall, in all respects conform to the applicable provisions of the New York Business law.'
 - ❖ If the applicant is a foreign corporation, it shall include a photocopy of the executed existing or proposed Application for Authority to do business in NY as a Foreign Corporation, which in all respects conforms to the requirements for filing with the NY Secretary of State.

III. The proposed new owner/operator agrees to:

- ❖ Identify and maintain current a principal location of the business within the state;
- ❖ Provide the name of the individual empowered to conduct business;
- ❖ Implement NYS DOH statutes, rules & regulations and policies relating to the conduct of its EMS business in the state;
- ❖ Empower the individual to make routine decisions on behalf of the owner/operator with regard to the conduct of its EMS business.

Appendix 1 ¹

GUIDELINES FOR ESTABLISHING AMBULANCE SERVICES

Excerpt from *EMS Management: Beyond the Street, 2ed*
Joseph J. Fitch, © 1993

Many states have specific guidelines that they use to evaluate ambulance-service license applications. Although some states license the service to operate in any part of the state, others require separate authorization for each specific service area. The following information was adapted from regulations, which guide Missouri's Department of Health in granting ambulance licenses. EMS managers throughout the nation should find this information helpful in considering the viability of any new service area.

When considering a request for licensure of an ambulance service, the Missouri Bureau of Emergency Medical Services employs the following 14-factor analysis in making the difficult decision on whether or not a new service should be licensed. Typically, a convenience and necessity hearing is held to evaluate the 14 criteria. Following the hearing, and upon further review, a formal determination is made on the need for the service.

1. What is the population of the jurisdiction requesting the ambulance service, including tourism and traffic flow through the area? Does the area have a large enough population base to support a new ambulance service?
2. How many calls for service and how many emergency calls are made in the proposed area? What is the average daily rate of calls for this area? Would the area have a large enough demand to maintain a full-time service?
3. What is the average response time for all calls and emergency calls during a recent time period? Is the average response time reasonably prompt or under response-time specifications?
4. What is the quality of existing services and how do the present conditions affect public convenience? Do the nearby ambulance services adequately cover the emergency medical needs of the area? Would a newly licensed ambulance service be an improvement to public convenience?
5. Do mutual-aid ambulance agreements exist among the area under consideration and the nearby ambulance, police, and fire units? Are these agreements necessary for adequate coverage of this particular area?
6. Would the employees of the proposed ambulance service have a sufficient level of clinical experience for maintaining emergency care?

7. Would opportunities exist for personnel to maintain their level of skill? If an additional ambulance service were added, would the dilution of service calls between the ambulance services cause decay in skills due to inactivity?
8. Are the existing communications capabilities adequate for maintaining medical control and directing paramedics? Would the proposed facilities be an improvement?
9. How will the ambulance service be financed? Are the financial resources available to the proposed ambulance service sufficient for maintaining a full-time service?
10. How will the ambulance service be organized and administered? Does management seem willing to support an ambulance service and is management capable of performing its duties?
11. What will be the total cost of the new ambulance service? Are the benefits that the proposed area would receive worth the expense?
12. Does public opinion in the proposed area favor the establishment of a new ambulance service?
13. Do the local government planning agencies favor establishment of a new ambulance service?
14. Are there any viable alternatives other than licensing a new ambulance service? For example, in some cases volunteer EMTs or fire fighters can respond in a non-licensed vehicle and call in an existing service for transport.

Before embarking on a program of licensure, an EMS leader should review the above questions and then objectively decide if there's a legitimate need for an ambulance service in the area.

¹ Excerpt taken from *EMS Management: Beyond The Street, 2ed*; written by Joseph J. Fitch, © 1993 by JEMS Publishing Co., Inc.

APPENDIX 2

APPLICATION FOR PUBLIC NEED WORK SHEET

To be completed and a made part of the record.

1. Required DOH Applications

YES	NO	
		DOH Form 3777, <i>Application for New EMS Service, Expansion of Primary Operating Territory or Transfer of Ownership</i> , completed and notarized.
		DOH Form 3778, <i>Affirmation of Fitness and Competency</i> , competed and notarized for each person identified as an officer, director holder of greater than 10% of companies stock.

2. Narrative which includes the following operational aspects of the proposed service:

YES	NO	
		Proposed Area of Service
		Proposed level of care of the service
		Proposed hours of operation
		Proposed physical location(s) of the service
		Proposed number of employees/members.
		Number of ambulances/ALS FR vehicles.

3. The applicant has included financial information including:

YES	NO	
		Source of initial funds
		First/next year's proposed operating budget.
		Proof of adequacy of funding sources/future revenue.
		Documentation to support that the applicant has financial resources capable of support proposed service/expansion.

4. The narrative shall include documentation of the positive and negative impact of the proposed new/expanded service to include (but not be limited to):

Impact on all existing ambulance/EMS relating to:

YES	NO	
		Response times
		Staffing
		Level of service
		Call volume of last 12 month/proposed first 12 months of operation
		Mutual Aid
		Medical direction
		Quality assurance
		Financial impact on any existing service(s)
		Any adverse impact the proposed service will have on any existing service(s).
		Prehospital care protocols

5. Narrative addendum of the application lists all segments of the EMS system in the proposed new/expanded operating territory including:

YES	NO	
		All existing EMS agencies
		All hospitals and other institutions generating calls (nursing homes, adult homes, centers for independent living, community residences for the disabled. etc)
		Any/ all mutual aid agreements
		Actual & projected response times for past and next 12 months
		Communications system and the impact additional/expanded service will have on the existing communications system.
		Medical direction/control of system and impact additional/expanded service will have on existing system.
		Any anticipated improvements the new/expanded service intends to make in the communications system if approved.

6. The applicant shall include copies of letters showing they have advised various entities of their proposal and solicit letters of support.

The letters sent by the applicant must:

YES	NO	
		Include a definition of public need
		Include a general description of the new/expanded service.
		Include the type and level of service proposed.
		Request a response by a specific date and that the request be signed by the CEO of the entity.
		Letters received back in support or opposition are not more than six months old.

7. Applicant documents letters have been sent to:

YES	NO	
		All Ambulance and Advanced Life First Response services within proposed operating territory.
		All EMS Medical Directors in Region
		The Chairperson(s) of any county(ies) EMS organization(s) County EMS coordinator(s)
		All Hospital CEOs
		All Hospital Emergency Department Directors
		The CEOs of all municipalities
		All ambulance services in areas adjacent to the proposed operating territory
		All hospitals in areas adjacent to the proposed operating territory
		The applicant submitted proof of receipt by entity letter was sent to (copies of registered mail receipts signed by agency letter was sent to)

8. Required Fees

YES	NO	
		Applicant has submitted required REMSCO application fee.

9. Application Deemed Complete:

YES	NO		DATE
		Regional Council/Program Agency Staff	
		Transportation/Ambulance Committee	
		Full Regional EMS Council	
		Provide Written Notification to Applicant indicating Complete Submission	

10. Dates of Action:

YES	NO		DATE
		Request for F&C review from DOH	
		Received results of F&C review from DOH	
		Public Hearing Officer Assigned	
		Public Hearing Scheduled	
		Transportation/Ambulance Committee/ REMSCO Meeting	
		Copy of Complete Application and Determination sent to DOH	


11. Regional Council Decisions:

Agree	Deny		DATE
		Transportation/Ambulance Committee	
		Public Hearing Officer	
		REMSCO Determination	

NEW YORK STATE DEPARTMENT OF HEALTH

INTEROFFICE MEMORANDUM

TO: New York State EMS Council
State Emergency Medical Advisory Committee
All Regional EMS Councils

FROM: Edward G. Wronski, Director 
Bureau of Emergency Medical Services

DATE: September 11, 2001

SUBJECT: Voting Requirements for Regional EMS Council

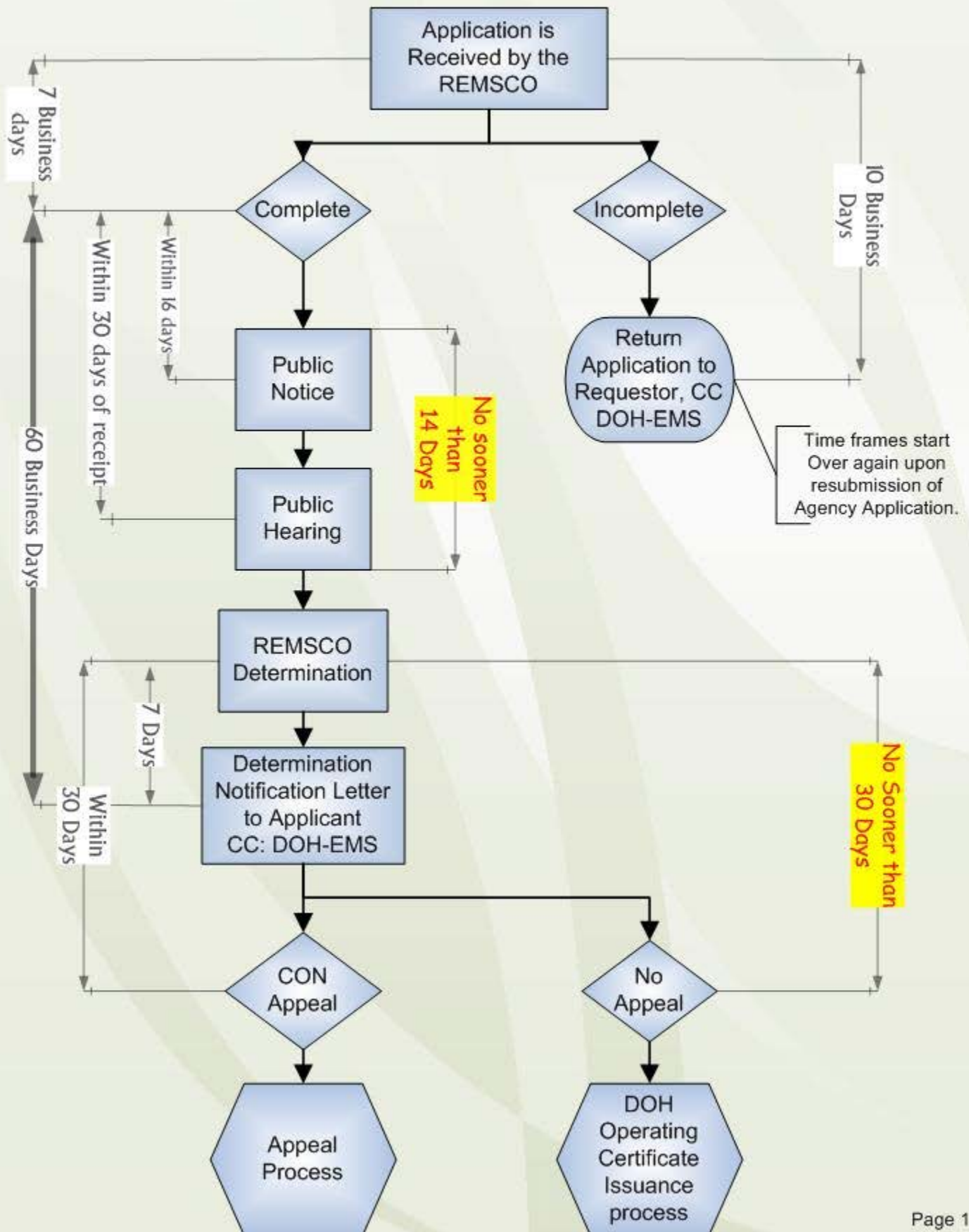
The State EMS Council has requested a clarification of the voting requirements of Section 3003 (5) which outlines the Certificate of Need process for Regional EMS Councils. The following opinion was provided and/or approved by the Bureau of House Counsel:

1. A quorum is defined as a majority of the whole number of voting members of the council who must be present at a meeting in order to conduct business in which a vote is required for statutorily authorized business, such as a CON. If the council has 30 voting members, than 16 would need to be present at the meeting in order to have a quorum.
2. Any voting member who "abstains" from casting a vote is still counted as a voting member in attendance at the meeting to determine if a quorum is present. Therefore, if 16 voting members were present at a meeting for a council of 30, and one member indicated they would abstain from voting, you would still have a quorum.
3. In order for a motion or resolution to be passed it must be approved by "not less than a majority" of whole number of members authorized to vote, not just those members present at the meeting. GCL Section 41. Thus, if a board is authorized to contain thirty (30) members and sixteen (16) are actually present, there is sufficient attendance to constitute a quorum and business may be conducted at that meeting. However, any issue which did not receive the vote of every one of those 16 members would fail, because the minimum vote needed to pass a resolution or motion is sixteen, the majority of the body's total authorized membership. Members who abstain from voting, or who are disqualified from voting, still count as making up part of a quorum. But for an official action of

a board or council, actual affirmative votes constituting a majority of the body's authorized membership must be cast. Also note, that in determining a majority, the whole number of members includes all those positions authorized to vote, including vacant positions and those who may be disqualified, absent or abstaining.

I hope this helps to clarify the issue of quorum and majority for voting in a CON or other statutorily mandated function of a regional EMS council that requires a vote.

EMS Operating Certificate Application Timeline



DEFINITION OF TERMS/GLOSSARY

Advanced life support first response service: "Advanced life support first responder (ALSFR) service" means any person or organization that provides advanced life support care, but does not transport patients.

Ambulance Service: "Ambulance service" means an individual, partnership, association, corporation, municipality or any legal or public entity or subdivision thereof engaged in providing emergency medical care and the transportation of sick or injured persons by motor vehicle, aircraft or other forms of transportation to, from, or between general hospitals or other health care facilities.

Article 30: Is the New York State Public Health Law that specifically addresses the Emergency Medical Services (EMS) and pre-hospital care. It is the purpose of this article to promote the public health, safety and welfare by providing for certification of all advanced life support first response services and ambulance services; the creation of regional emergency medical services REMSCOs; and a New York state emergency medical services REMSCO to develop minimum training standards for certified first responders, emergency medical technicians and advanced emergency medical technicians and minimum equipment and communication standards for advanced life support first response services and ambulance services.

De Novo: Anew, afresh. Considering the matter anew, the same as if it had not been heard before and as if no decision previously had been rendered

The Department: Department means the New York State Department of Health, Bureau of Emergency Medical Services (BEMS).

Primary Operating Territory: "Primary operating territory" means the geographic area or subdivisions listed on an EMS certificate or within which the EMS service may receive patients for transport.

Part 800: Part 800 is the section of Title 10 of the New York State Codes, Rules and Regulations (10NYCRR) that pertain to EMS systems, services, providers, course sponsors and vehicle requirements. This Chapter is known and may be cited as the State Emergency Medical Services Code.

Public Need: Public Need means the demonstrated absence, reduced availability or an inadequate level of care in ambulance or emergency medical service available to a geographical area which is not readily correctable through the reallocation or improvement of existing resources.

Regional Emergency Medical Services Council: Regional Emergency Medical Services Council (REMSCO) means a regional emergency medical services council established pursuant to section 3003 of article 30 of the Public Health Law.

Fitness and Competence: fit means that the operator or proposed operator (a) has not been convicted of a crime or pleaded nolo contendere to a felony charge involving murder, manslaughter, assault, sexual abuse, theft, robbery, fraud, embezzlement, drug abuse, or sale of drugs and (b) is not or was not subject to a state or federal administrative order relating to fraud or embezzlement, unless the commissioner finds that such conviction or such order does not demonstrate a present risk or danger to patients or the public... competent means that any proposed operator of any ambulance service or advanced life support first response service who is already or had been within the last ten years an incorporator, director, sponsor, principal stockholder, or operator of any ambulance service...

Municipal Operating Authority: ...any municipality... or fire district acting on behalf of any such municipality, and acting through its local legislative body, ... authorized and empowered to adopt

and amend local laws, ordinances or resolutions to establish and operate advanced life support first responder services or municipal ambulance services within the municipality, upon meeting or exceeding all standards set by the department for appropriate training, staffing and equipment, and upon filing with the New York State Emergency Medical Services Council, a written request for such authorization.