

I – BACKGROUND

Subsequent to a recent decision issued by the NY State Supreme Court, the NY State Department of Health (DOH) is no longer authorized to recognize the ‘grandfathering’ clause contained in Article 30 of NY State Public Health Law. Therefore, all requests to amend or expand primary operating territory must be approved by the appropriate Regional EMS Council.

II – PURPOSE

This policy describes the procedures required for Westchester Regional EMS Council (WREMSCO) approval of an expansion of primary operating territory to an existing ambulance or Advanced Life Support-First response (ALSFR) service when the expansion is requested to correct an identified and verifiable administrative omission that has resulted in an absence of territory on said service’s ambulance operating certificate as issued by the NY State DOH. **This policy will remain in effect for 365 days from the date of regional council approval.**

III – DEFINITIONS

Administrative Omission is an omission of geography or accurate geo-political description of the territory listed on the applicant’s existing ambulance operating certificate with a verifiable provision of continuous service by the applicant in the omitted territory prior to the issuance of said ambulance operating certificate.

Competent¹ means any proposed operator of any ambulance service or advanced life support first response service who is already or has been within the last ten (10) years an incorporator, officer, director, sponsor, principal stockholder, or operator of any service / agency who is rendering or did render a substantially consistent high level of care, and has been issued an operating certificate/license by any or all of the following:

The NYS Department of Health or equivalent in any other State,
The NYS Department of Social Services or equivalent in any other State,
The NYS Department of Mental Hygiene or equivalent in any other State,
The NYS Department of Transportation or equivalent in any other State

A consistently high level of care will not be considered to have been rendered where there have been violations of the State EMS code, or other applicable rules and regulations, that:

threatened to directly affect the health, safety, or welfare of any patient, or were recurrent or were not promptly corrected

¹ For complete definition of Fitness and Competency, refer to Article 30 of the Public Health Law of the State of New York, Section 3005(8).

Fit² means that the operator or proposed operator:

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 abuser, or sale of drugs; and, is not or was not subject to a state or federal administrative order relating to fraud or embezzlement, unless the New York State Commissioner of Health finds that such conviction or such order does not demonstrate a present risk or danger to patients or the public.

Substantive Objection means an expressed protestation to the application, either in writing or verbally to the WREMSCO, by a party with a legitimate interest which is based upon one or more grounds of: false application; territorial infringement that cannot be refuted by the application; or proven incompetence. The WREMSCO Transportation Committee in consultation with the WREMSCO Chairman, or the full Council may make a determination of substantive objection.

Uncontested means that no substantive objection to the application is received by the WREMSCO after statutorily required public notice has been sent and subsequent to comments being called for at an appropriately scheduled and publicized meeting where the matter is to be addressed.

IV – APPLICATION DETAILS AND REQUIRED CONTENT

All applications shall include a detailed narrative supporting the intent for expansion and demonstrating the administrative omission. Statements of want, desire, feeling or other unsubstantiated sentiment are not acceptable. The applicant bears the burden of proof for the demonstration of the administrative omission. The complete application is the basis for the determination of a correction. The Applicant may be restricted to corroborating and/or explaining the data therein.

The application and narrative must:

1. Include two completed and notarized *Applications for New EMS Service, Expansion of Primary Operating Territory or Transfer of Ownership (DOH-3777)*;
2. Include two completed and notarized *Affirmations of Fitness and Competency (DOH-3778)* along with all required attachments for all agency directors, sponsors, principles, and operations managers;
3. Describe the exact proposed area of service using recognized geo-political boundaries (such as fire districts, municipalities, etc.);
4. Include a map outlining the current primary operating territory and the exact proposed geographical area of expansion to be covered;
5. Include a copy of the service's current ambulance operating certificate;
6. Include documentation verifying that the service existed within or responded within the proposed territory omission continuously prior to the issuance of said ambulance operating certificate. Documentation may be in the form of political subdivision contracts, run records, dispatch records, etc. *Mutual aid responses alone shall not be considered verification of primary territory;*

² For complete definition of Fitness and Competency, refer to Article 30 of the Public Health Law of the State of New York, Section 3005(8).

WESTCHESTER REMSCO TRANSPORTATION COMMITTEE POLICY STATEMENT
EXPANSION OF PRIMARY OPERATING TERRITORY – ADMINISTRATIVE OMISSION / UNCONTESTED
(Expires 6/25/2010)

7. Contain a detailed narrative that explains the rationale for requesting the expansion. This statement shall include a description of the following:
 - a. What levels and types of services are currently provided in the proposed territory by existing services?
 - b. What mutual-aid agreements exist among service providers in the proposed area?
 - c. Describe the area to be served and the population of the jurisdiction requesting the ambulance service, including but not limited to residential and special needs populations, industry, tourism and traffic flow through the area? What are the main sources of calls?
 - d. How many calls for service are made in the proposed area each year?
 - e. What is the average response time for calls in the area in question during the previous 12 months?
 - f. Do local government planning agencies support the application?

Two (2) original and complete applications shall be provided to the Westchester Regional EMS Council. Each copy shall include completed and notarized (DOH 3777 and DOH 3778).

All applications shall be submitted via U.S. Mail- certified return receipt requested, or such other commercial courier (ex. FedEx, UPS, etc.) that provides an independently verifiable receipt of delivery that demonstrates delivery date, time, and name of recipient.

It is the applicant's responsibility to verify that, prior to submission, the application is properly completed and that all necessary attachments endorsements, evidence and other supporting and explanatory material the applicant wishes the Council to consider are submitted in accordance with this policy.

The Westchester Regional EMS Council has established a ***uniform and non-waivable*** fee to be paid by the applicant(s) to defray the **direct and real costs** of the application review and the process of public notice. The Applicant(s) must include a certified or bank check or money order for **five hundred dollars** made payable to the Westchester Regional EMS Council. In the event of more than one application being submitted during the same timeframe, applicants will equally share all associated costs. If the review process costs less than the fee charged, the balance will be returned to the applicant(s). If the review process exceeds the payment of **five hundred dollars**, the applicant(s) will be billed equally for the balance, and the applicant(s) must pay all invoiced expenses in full within thirty (30) days of receipt of invoice. All expenses are determined at the sole discretion of the Westchester Regional EMS Council, and the applicant(s) is/are financially responsible for all costs incurred.

Note: *Applications deemed to have a substantive objection will require resubmission in accordance with the policies and procedures for a full Expansion of Operating Authority and the applicant will be responsible for any associated fees.*

The application shall be delivered to:

Westchester Regional EMS Council
4 Dana Rd.
Valhalla, NY 10595
Attn: Transportation Committee – TIME SENSITIVE

Review of Application

Upon receipt of the application it shall be reviewed for completeness by WREMSCO staff. The application shall be accepted if it is deemed to be complete in accordance with this policy.

The WREMSCO shall begin action immediately upon receipt and acceptance of a complete application, including sending public notice of said application and scheduling the matter at a Council meeting which shall be greater than twenty-one days hence and not more than sixty days hence.

Upon determination by Council staff that the application is complete:

- a) The applicant will be notified via certified mail within five (5) business days of the date the application is deemed complete;
- b) All Council members will receive a copy of the application and prior notice that the matter will be discussed and voted on at the appropriate Council meeting;
- c) Letters of the public notice shall be sent by the WREMSCO in accordance with PHL 3008;
- d) A copy of the application will be forwarded to (1) the New York State Department of Health Bureau of EMS Regional Office (New York City), and (2) The Central Office in Troy, NY.

If found to be incomplete, the application shall be returned via U.S. Mail- certified return receipt requested, or such other commercial courier (ex. FedEx, UPS, etc.) that provides an independently verifiable receipt of delivery that demonstrates delivery date, time, and name of recipient. In this case the materials shall be returned to the applicant within one week, along with an explanation of the grounds for the rejection. Upon receipt of the returned Application, the Applicant may request in writing a return of the balance of the application fee, which shall be paid upon final disbursement of all costs incurred. The applicant may re-submit to the WREMSCO two complete original copies without prejudice to the merit of the application; *however the clock for review begins anew at the time of re-submission.*

V – REQUIREMENTS FOR PUBLIC NOTICE

It is the intent of the public notice process to obtain input from all who use, provide, pay for or compete in the EMS arena. Therefore, upon receipt of a complete application, letters of the application shall be sent by the WREMSCO in accordance with PHL 3008; certified return receipt 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, 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:

1. A solicitation of response to the application by a specific date;
2. Notification of the availability for review of the application at the Offices of the WREMSCO by appointment;
3. Date, time and location of the Council meeting.

The Council meeting shall be established at a time and place logical to the application, generally at the headquarters of the WREMSCO.

The Council 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 Journal News, which is the newspaper designated by the Westchester Regional EMS Council to receive legal notices.

VI - TRANSPORTATION COMMITTEE

The WREMSCO shall establish a committee (the Transportation Committee) which shall review each application and manage the public notice process. A Chairman of this committee shall preside over the committee, shall manage the application process, and shall ensure compliance with these procedures. The Committee shall consist of not less than five members of the WREMSCO, ensuring (by definition) that the committee members shall be from the County or area the applicant proposes to serve, and at least one committee member shall represent the majority of the ambulance constituency in the area proposed to be served.

If it is determined by the Transportation Committee in consultation with the WREMSCO Chairman that a solicited letter has been received indicating a substantive objection to the proposed expansion, the current process will be halted. The applicant will be notified by certified mail that an objection exists and they will be directed to follow the WREMSCO Transportation Committee Policies and Procedures for a full Determination of Need for Expansion.

If a response has been received that cites an objection that is not deemed substantive by the Transportation Committee in consultation with the WREMSCO Chairman, the process shall continue and the applicant shall be notified that an objection has been received. Objections of this type must be reviewed at a meeting of the full Regional Council where, prior to a vote on the expansion, a determination vote must be taken on the objection. *If it is determined by vote by the full Regional Council that the objection is substantive, the process will be halted. The applicant will be notified by certified mail that an objection exists and they will be directed to follow the WREMSCO Transportation Committee Policies and Procedures for a full Determination of Need for Expansion.*

If no substantive objections are received, the matter may be brought before the full Regional Council as a seconded motion.

VII - REGIONAL COUNCIL MEETING

The purpose of the public Regional Council meeting is to review any public comment regarding the application, provide a technical review, and objective evaluation of the applicant's proposal.

It is the applicant's burden to document and demonstrate the identified omission and continuous service to the proposed territory.

The format of the discussion at the Council meeting shall be as follows:

- a) A statement by meeting Chair setting forth the rules and procedures to be followed as enumerated below;
- b) A roll call shall be taken or 'sign in' sheet employed to document who is present at the meeting including:
 - i. Name
 - ii. Purpose for Attendance
 - iii. Affiliation to or interest in EMS;
- c) Details of the application will be read into the record. Any letter received regarding the application shall be reviewed. The applicant may be called upon to address any questions related to the application;

- d) At the discretion of the meeting Chair, anyone present wishing to speak on the matter shall be afforded 5 minutes to present testimony relevant to the facts in issue;
- e) The Chair shall invite discussion among the members, and absent any substantive objections to the application, the Chair shall call for an affirmative motion on the matter (or the seconded motion from the Transportation Committee shall be read, if one exists);
- l) A roll call vote shall be taken with a majority of the voting members of the Council required to approve the expansion application. The motion must contain a statement that the regional Council finds that the application meets the administrative omission definition.

The WREMSCO shall complete and maintain a record of the proceeding of any and all hearings. This may be in stenographic or tape form. It is recommended that a record be transcribed and considered along with all other evidence in making the determination.

As mandated by NYS Ethics Rules and as further established by the State EMS Council, Regional EMS Council Members shall abstain from voting in cases of conflict of interest. A Council Member is considered to have a clear conflict of interest if that Member holds any financial interest in the application that is being voted on. A financial interest for this purpose is defined as any ownership interest, employee or consulting relationship with the entity (or any related entity thereto) submitting the application. When an Officer or Member of the Council is uncertain as to whether a conflict of interest exists, he or she should disclose the matter to the full Council, which shall decide whether a conflict of interest exists.

The Regional Council shall make its determination by a roll call ballot of the members present to accept or reject the recommendation of the committee. A majority of the voting members of the Council is required to make a determination. A statement shall be entered into the record that clearly defines the authority of alternates to vote in the procedure and a statement of the needed majority to pass the motion. The record of the roll call ballot shall list all voting members of the Council to include at least:

- 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

VIII – ISSUING DETERMINATION

The Regional Council shall provide written notice of its determination to the applicant within seven (7) working days and shall forward to the Department of Health a copy of this notice along with an original copy (a first generation copy in original format with original signatures) of the complete and accepted application.

The applicant, any party whose objection was not deemed substantive, 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 Regional Council's determination.