Dear Regional Council Chair:

It has come to the Bureau’s attention that a number of regional EMS councils (REMSCOs) may be in the process of developing their own policy for approving applications and making determinations of public need. A REMSCO is not empowered to create its own policy in regards to Certificate of Need (CON) applications.

As you all may know, modernizing DOH Policy Statement 06-06 – EMS Operating Certificate Application Process (06-06) has been an on-going project of the State EMS Council’s Systems Committee. Until it is either updated or rescinded by the Department, Policy Statement 06-06 is very much in effect, and will remain so. While it is true that policies do not have the full force and effect of statute or regulation, under a United States Supreme Court decision commonly referred to as the “Accardi Doctrine” (1), administrative agencies, of which we are one, are obligated to follow their own policies and regulations.

Additionally, Article 30 of Public Health Law, §3008(1) states: “Every application for a determination of public need shall be made in writing to the appropriate regional council, 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” (underline added). Absent codified rules and regulations, the Department’s policy is a REMSCO’s only guidance document.

REMSCOs are also contractors to the Department. Regarding Certificate of Need (CON) actions, the contract between the Department and the REMSCOs requires; “The REMSCO shall administer all CON related information, findings, and actions consistent with Article 30 PHL and Department policy” (underline added – copy of the deliverable objective attached). Again 06-06 continues to be in effect. I hope this helps to alleviate any confusion or misunderstandings that may have arisen. Please help by spreading the word, and feel free to contact us, if you have any questions.

Sincerely,

Lee Burns
Director
Bureau of Emergency Medical Services

(518) 402-0996
(518) 402-0985 FAX
E-mail – lee.burns@health.ny.gov

Cc: DOH Regional Offices
EMS Program Agencies

Enclosure: As stated