



MONROE-LIVINGSTON REGIONAL EMS COUNCIL OPERATING CERTIFICATE APPLICATION REQUEST AND PROCESS

This policy defines the procedures that are to be followed when the Monroe-Livingston Regional EMS (MLREMS) Council receives applications requesting Certificate of Need (also referred to as Certificate of Operating Authority) (CON) determinations.

Applicants shall refer to the **New York State Department of Health, Bureau of Emergency Medical Services and Trauma Systems (hereinafter BEMSAT or the Bureau) Policy 06-06 and DOH Forms 3777 Application for New Service and 3778 Affirmation of Fitness and Competency** for guidance and direction. The MLREMS System Operations Committee will utilize Appendix 2 (Application for Public Need Work Sheet) found in BEMSAT Policy 06-06 before determining an application is complete.

Agencies shall follow this policy when requesting:

- A new ambulance or advanced life support first response service operating certificate
- A transfer of EMS service ownership (also referred to as transfer of CON)
- An expansion of operating territory, and/or
- A transition from municipal declaration to permanent operating certificate at the end of the two-year initial operating period, as provided in Article 30 Section 3008 of the Public Health Law.

Agencies shall submit a transfer of EMS Service Operating Authority when there is:

- Any change in the individual who is the sole proprietor
- Any change that results in adding new partners
- Any transfer, assignment or other disposition of ten percent (10%) or more of a corporation's stock
- Any transfer of all or substantially all the assets of the corporation to a new corporation or owner.



DEFINITIONS

Certificate of Need / Certificate of Operating Authority: As used in this document, the terms shall be interchangeable, and refer to the granting of authority to operate as an ambulance or ALS first response agency/service within a specific geographic or service area within the Region. All grants of Certificates of Need (CON) and Certificates of Operating Authority (COA) will be subject to issuance of a formal certificate by the Bureau of EMS and Trauma Systems on behalf of the New York State Department of Health.

BEMSAT: The Bureau of Emergency Medical Services and Trauma Systems, a subdivision of the New York State Department of Health (also previously known as the Bureau of EMS as referenced in Policy Statements issued by that authority).

Council: Monroe-Livingston Regional Emergency Medical Services (MLREMS) Council established pursuant to Article 30 of the Public Health Law (PHL) (*also referred to as "REMSCO" in Policy 06-06*).

System Operations Committee: A standing committee of the Council.

For the purposes of this Policy, the System Operations Committee shall serve, in whole or part, as the reviewing authority for the Council as outlined below. Such review shall be conducted by the committee as a whole, or as a subcommittee made up of no less than five Council members appointed by the MLREMS Council Chairperson. The Committee is responsible for:

1. Establishment and oversight of public hearings as may be required to review new, expanded, and conversion of municipal CON, EMS Service Operating Authority applications in accordance with DOH BEMSAT Policy 06-06;
2. Providing the Council with a summary of the public hearing, the Hearing Officer's finding, and a recommendation regarding approval or denial of the application. The Committee shall prepare the summary as well as final recommendation, to be delivered by the Committee Chair or his/her designee.

Fitness and Competency: As defined in Article 30 of the Public Health Law (PHL) of the State of New York, Section 3005(8).



MLREMS REVIEW PROCESS

1. The Council remains responsible for ensuring that CON applications and determinations follow both Public Health Law and established processes provided in policy issued by the Department of Health.
2. The principal guidance document issued by the Department of Health, bureau of EMS (now BEMSAT) and endorsed by the New York State Emergency Medical Services Council, is Policy 06-06¹. Policy 06-06 shall be used by the Council until such time as that Policy is superseded or revised. Application completeness shall be determined through compliance with Policy 06-06 Section B.
3. The MLREMS Council requires that the applicant submit two (2) original copies of the completed application in paper form, and an electronic copy in Portable Digital Format (.pdf), along with an application fee commensurate with the type of application, based on prevailing costs.
 - a. Any funds not utilized to directly pay for costs associated with the application will be refunded.
 - b. Any costs exceeding the initial application fee will be billed to the applicant.
 - c. A Fee Schedule will be established by the Council and provided to applicant by the Program Agency prior to submission of any application.
4. Applications will be submitted to the Council's published address utilizing "Appendix 2" of the Bureau of EMS and Trauma Systems Policy 06-06.
5. Upon receipt of the application, the Council Chair will assess for potential conflict of interest per Council Policy. The Council Chair will appoint a subcommittee of the System Operations Committee if a conflict exists. He will also arrange for retention of a Hearing Officer, as necessary and required by Policy 06-06.
6. Review of CON/COA Applications will be conducted in three stages:
 - a. Administrative Review by the Program Agency
 - b. Content Review by the System Operations Committee
 - c. Legal Review by the Council Attorney

¹ "Although a policy statement lacks the full force and effect of statute, an administrative agency is bound to abide by its own internal rules, procedures, and precedents. The *Accardi Doctrine* provides that when an agency fails to follow its own procedures that agency's actions are generally invalid, and may result in the nullification or invalidation of the ultimate administrative determination [*United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (U.S. 1954)]." from letter to the Regional EMS Council of New York City dated June 24, 2016 by Deputy Director Daniel J. Clayton, NYS DOH BEMSAT.



7. At each stage the reviewing authority has the right to return the application to the applicant for revision or to request additional documentation.
 - a. When such a request is made at any stage, upon return of the application or provision of the requested documentation, a seven-business-day review period will commence.
 - b. The application must either be returned for revision or additional documentation, or deemed complete by the System Operations Committee, with this seven-business-day time frame.
 - c. The review of revised applications will resume at the stage from which the revision or request for documents was made.

8. An administrative review shall be conducted by the Program Agency on behalf of the Council to determine that all requisite documentation as defined in Policy 06-06 is present.
 - a. The Program Agency will contact the BEMSAT and identify any other CON holders for the same or any part of the operating territory under review.
 - b. The Program Agency will return any applications requiring revision or additional information to the applicant within ten (10) business days of receipt by the Council.

9. Applications determined to possess the requisite documentation by the Program Agency will then be forwarded to the System Operations Committee, where the application will be reviewed for content.
 - a. Following any determination by the Program Agency, no less than three (3) members of the System Operations Committee will review the application for content using BEMSAT Policy 06-06 and Appendices as a guide.
 - b. If the System Operations Committee deems the application **incomplete**, the application shall be returned via certified mail or personally delivered to the applicant within then (10) business days from the date of receipt by the Council, along with a written explanation for such rejection.
 - c. Once the application is deemed complete, the application will be forwarded for completion of a fitness and competency review.
 - i. This review may be completed by the Council, in whole or in part, or upon request of the Council by or with the assistance of the Department of Health, in accordance with the provisions of PHL Section 3005.
 - ii. The Council shall adopt a procedure for completion of fitness and competency review.
 - iii. No action on any CON/COA application will be taken by the Council until the fitness and competency review is completed.



10. The application will be sent by the Program Agency to the Council's current legal counsel for legal review.
 - a. The Program Agency shall establish a time by which the attorney must return the application to the Council so as to allow the System Operations Committee sufficient time to deem the application complete within the ten-business-day stipulation made above.
 - b. The attorney may request additional information or recommend revision of the application. Any such request shall be forwarded through the Program Agency to the applicant as outlined above.
 - c. Any changes requested by the attorney or recommendations made will be considered by the System Operations Committee in making a determination of completeness.

11. The System Operations Committee shall have the authority to make a final determination of application completeness at the conclusion of the attorney review.

12. After the System Operations Committee deems the application complete the Committee shall, in conjunction with the Program Agency:
 - a. Schedule a hearing date;
 - b. Send public notice as required by BEMSAT Policy 06-06, and Article 30;
 - c. Establish, through the Council Chair, a Council meeting date at which a determination will be made so as to comply with the 60-day time limit established in Public Health Law Article 30, Section 3008.
 - d. **NOTE:** If the matter before the Council is a transfer of operating authority, a public hearing is not required.

13. Upon receipt of a determination of fitness and competency and upon determination of completeness by the System Operations Committee, the application will be forwarded to the full Council for consideration of the application, **following the Public Hearing as required** (*Transfers of Operating Authority do not require a public hearing*).
 - a. The System Operations Committee *must* meet prior to the Council meeting at which the pending matter will be discussed to determine its recommendation to the Council.
 - b. Such meeting *must not occur* on the same day as the Council meeting at which the matter will be discussed.

14. The MLREMS Council shall approve or reject the application within 60 days after the receipt of a completed application and results of the fitness and competency review.



REGIONAL COUNCIL DETERMINATION

1. The Chair of the System Operations Committee, or their designee if conflict exists, shall present the findings of the Committee at the designated Council meeting.
2. Opportunity shall be provided for the Council members present to make inquiry and ask questions of the applicant or other interested parties prior to making any decisions. No opportunity is to be given to non-members of the Council to speak, unless responding to a direct question of the Council, as the public hearing constituted the appropriate forum.
3. The Council may place binding contingencies, restrictions or limitations on the approval of an application if those conditions, restrictions and limitations are in the best interest of the MLREMS Council and are not in conflict with any State or federal law, regulation or policy.
4. A written, roll-call ballot of the Council will be required to approve the application. Council members' names shall be identified along with their decision so the outcome can be forwarded to the Department of Health Bureau of EMS and Trauma Systems in the form of a roll call vote. Approval shall require an affirmative vote by a majority of the Council's total membership.
5. Council members shall abide by the current by-laws and policies regarding conflict of interest.

Adopted upon approval of the Council, January 26, 2019.

This Policy shall supersede all previous MLREMS Council policies or documents regarding Certificates of Need or Operating Authority created or in use prior to the effective date of this Policy.