



New York State
Department of Health
Bureau of Emergency Medical Services

POLICY STATEMENT

Supercedes/Updates: NEW

No. 11 - 06

Date: July 28, 2011

Re: Clarification of Operating Territory (COT)

Page 1 of 3

Purpose:

To create a method for certified EMS agencies to have their operating certificate territory description changed to reflect the actual area served, without adding new territory. Rewording may be desirable when an existing description is either vague, imprecise, or uses descriptors that may no longer be an accurate representation of the geography served. This policy may also serve as a guideline for the Regional EMS Council to use when reviewing and considering a Clarification of Operating Territory request.

Incorrect territory descriptors may exist for a number of reasons, for example:

- The original description used vague language - vicinity of, surrounding area, adjacent to, etc.
- The description is no longer a valid municipal entity – city, town or village restructured or geography legally changed.
- The description was never a valid naming convention – for example, municipal subdivisions described by north, south, east or west when there is no such legal name.
- Service to a district, such as a fire district, where no valid geographical boundaries were ever documented to define its borders. This descriptor variance may apply to entities that provided services under contracts that changed over time. The most frequent instance of such variations has been observed due to changes in fire protection districts.
- Entities serving an area that has an “excluded” portion of geography, the exclusion descriptors being imprecise, or using descriptors based on vague local terminology.

While the most common reason for an agency to request a COT may be financially motivated, there is merit to evaluating the areas served in each county to insure that no geography is left without authorized ambulance service coverage. Also, it is difficult for agencies to create effective mutual aid agreements if a given EMS agency’s territory is not accurately described.

County EMS Coordinators and Public Safety Answering Points (PSAPs) are encouraged to evaluate the territory of each EMS agency operating within their jurisdiction to insure that ambulance service coverage legally exists throughout the entirety of each county.

Clarification of Operating Territory Process:

Each REMSCO should develop a consistent methodology and written policies to process COT requests. Copies of the adopted process and policy should be made available to EMS agencies upon request.

It is important to note that Article 30 of Public Health Law (A30 PHL) specifically describes the statutory authority of the Regional EMS Councils (REMSCO) regarding the creation of new emergency medical services or the expansion of territory of existing services. The processes to fulfill such actions may be found in DOH Policy Statement #06-06 EMS Operating Certificate Application Process (CON). Because the COT process does not create new authority, or expand existing certified EMS agency operating territory, the traditional CON process is not

required. REMSCOs may adopt a simplified version of the CON process with several specific exceptions.

- No public hearing is required because proof of “public need” is not in question.
- Once the policy is established, it is recommended that the REMSCO place a deadline for receiving COT requests. This will allow the REMSCO to entertain COTs for a limited period of time, after which, EMS agencies must make application as described in the current EMS Operating Certificate Application Process (CON) Policy Statement.

The following items need to be included in any COT process:

- A written request for a Clarification of Operating Territory submitted to the REMSCO(s) having jurisdiction. If more than one REMSCO has jurisdiction then simultaneous and identical requests must be made to all REMSCOs having jurisdiction.
- A historical account, including supporting documents, explaining why the applicant’s territory qualifies for the COT.
- A copy of the applicant’s current, and if relevant prior, Department issued service operating certificates (DOH-4005 for ALSFR Services or DOH-3414 for Ambulance Services)
- A statement from the applicant indicating if the service has ever been instructed by NYS DOH to apply to a REMSCO for a traditional CON to correct the service’s operating territory.
- Statements of concurrence or support, from impacted municipalities, adjoining certified services, services holding overlapping EMS operating authority and all PSAPs or dispatch systems having jurisdiction. The statements must be no more than 6 months old and be signed by the executive officers or elected officials of the represented concerned parties.

Supporting documents should include, but are not limited to:

- DOH issued service Operating Certificates or service records;
- Contracts;
- Maps;
- Copies of Patient Care Reports (with patient identification removed but geographical information included to substantiate location);
- Dispatch records or call logs;
- Correspondence and/or communications with municipalities, other EMS agencies, REMSCO or Program Agency, or the Department relating to the territory needing clarification;
- Media documentation and historical records.

The following steps need to be included in any COT process:

- Submission of a formal request for COT, with all supporting documents to the REMSCO.
- Written acknowledgment by the REMSCO to the applicant and the Department of receipt of the COT application. *The Department will verify if the applicant’s territory concerns are eligible for the COT process.*
- Review of the application and supporting documents by the REMSCO’s committee / COT workgroup.
- Opportunity for follow up to complete or clarify any information under consideration by the reviewing committee.
- Presentation of the COT by the reviewing committee to the REMSCO at any regular or special meeting that has a quorum to conduct REMSCO business.
- Motion, second and vote by the REMSCO to accept, modify or deny the rewording of the applicant’s operating territory.
- Written notification to the Department of the REMSCO’s motion and vote, including a copy of the application and supporting documents. Note that the format of the notice to the Department to change the applicant’s territory descriptor is an *“Endorsement of the need for clarification and a recommendation of the terminology and wording that will most accurately describe the applicant’s existing operating territory without expansion.”*

After receipt by the Department of the REMSCO's notification, a concurrence review will be conducted. Upon establishing concurrence with the REMSCO's recommendation the Department will issue an "amended" DOH-4005 or DOH-3414 certificate to the applicant with copies to all REMSCOs having jurisdiction.

Additional Considerations:

- An applicant that has previously been directed by the Department or the REMSCO to apply for an expansion of operating territory for the geography at issue will not be considered for the COT process.
- If upon review by a REMSCO an application is deemed to constitute an expansion of operating territory and not a clarification of operating territory, the application must be returned to the applicant, with a copy to the Department, directing the applicant to make application for an expansion of operating territory.
- A COT is not a CON process and is therefore not subject to the statutory time frames specified in A30 PHL or DOH Policy #06-06. However the council must process and come to a determination as expeditiously as is feasible to best serve the public interest. The Department is also not bound to statutory time frames, but will make reasonable efforts to conclude concurrence reviews in a timely manner.
- *The Department reserves the right to approve or deny final concurrence and issuance of an amended territory on any applicant's service operating certificate. In the event of denial the Department will provide an explanation for the denial and any alternative course of action available to the applicant.*
- **A COT is not subject to appeal within the statutory definitions established by A30 PHL. Should a COT recommendation that is concurred by the Department be appealed within 120 days, by any party having standing to appeal, the amended wording will be vacated and the applicant referred to appeal for a traditional CON.**

Frequently Asked Questions:

Q: Can a COT be used as a means to "grandfather" geography that has been traditionally served by a certified EMS agency, but where such geography has never been identified by the territory descriptor currently on the agency's DOH operating certificate?

A: *No. The COT process is not a substitute for "grandfathering" territory. If a certified EMS agency is providing service outside the boundaries listed on its current DOH certificate, the agency must apply for an Expansion of Operating Territory (EOT) to the Regional EMS Council(s) having jurisdiction. It is important to note that Article 30, section 3009 - Continuation of Existing Services is no longer applicable.*

Q: May a service that is currently applying for an expansion of operating territory, request a COT for another portion of its territory that is not subject to "demonstration of need"?

A: *Because a COT is not subject to A30 PHL statutory processes, a council is not barred from considering an application at any time convenient to its review committee and general membership. However, the Department does not recommend conducting a CON and COT for the same applicant concurrently if the workload or territory issues under consideration could confuse or complicate fair evaluation of the statutorily mandated CON action.*

Q: May a REMSCO charge fees to conduct a COT?

A: *Yes. However, because there is no public hearing and all documentation requirements may be assigned to the applicant, in practice there should be minimal if any additional expenses beyond the normal course of business for a REMSCO. Therefore, the Department recommends REMSCOs keep any fees minimal and refund any unused funds to the applicant. Nominal expenses for a COT would be anticipated to apply primarily to document copying and postage and/or information exchange expenses.*