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10-22-08

October 16, 2008

Warren Darby, Chair  
CNY REMSCO  
Jefferson Tower, Suite LL1  
50 Presidential Plaza  
Syracuse, N Y 13202

Re: NAVAC CON Expansion

Dear Warren,

I am writing in response to NAVAC's notice that it is seeking an expansion of its operating certificate. As I understand it from reading NAVAC's letter, there are two issues in question – whether there is currently an unmet need and whether a correction is in order based on NAVAC's history of serving this territory.

I am aware that NAVAC provided service to this area for many years although I do not know exactly when they began doing so. Recently, NAVAC's authority to serve this area was questioned. This resulted in NAVAC applying to the NYS DOH for an expansion under section 3009 and this request was granted. A court challenge of the NYS DOH's ability to provide expansions under section 3009 resulted in the NYS DOH rescinding this expansion after a judge ruled that such expansions were no longer appropriate. The court ruled that NAVAC would have to apply through the REMSCO for an expansion under section 3008.

Rural/Metro is duly licensed for the area in question as is NOVA. In our capacity as a licensed provider, we served as a mutual aid resource to NAVAC and now serve as a mutual aid resource to NOVA. This is something we have done for at least twenty years. While we have the capacity to post a vehicle within this area we do not do so unless requested by the home agency. We are certainly capable of meeting any issues of need that may arise within this territory and have the ability to change our posting patterns any time to do so.

I reviewed Rural/Metro's call volume to both NOVA's district and NAVAC's district for a ten week period before the July 21, 2008 transition date against a ten week period after the transition date. While our mutual aid call volume to both areas is relatively low, I found that there was a 30% reduction in mutual aid to NOVA's district and a 63% reduction in mutual aid to NAVAC's district after the July 21, 2008 transition. This information is based on our call volume data and does not take into consideration the data of other agencies that may have responded to these two districts. There is no identifiable need today that cannot be filled by the existing CON holders.

While there is no formal mechanism for making corrections to a CON, this is similar to other CON issues this REMSCO reviewed in the past. The most recent situation that comes to mind was with Dryden Ambulance. According to the transcript from the November 2002 REMSCO meeting, Dryden applied to the state for an expansion under section 3009 because they were not properly licensed to serve the area they had been serving.



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The NYS DOH directed Dryden to the local REMSCO because Dryden lacked sufficient records to justify an expansion under section 3009. A public meeting was held and during this meeting other services stated they were capable of meeting the need. A REMSCO discussion and vote took place and the REMSCO, many current members of which were members during that vote, approved Dryden's CON expansion.

Again, operationally there is no unmet need as it is defined under Article 30. But, given the similarities between this situation and other situations such as Dryden, I am certainly willing, as a licensed provider for the area in question, to hear NAVAC's position.

I would also like to here an opinion from the REMSCO's legal counsel regarding the use of "corrections" based on the similarity of these and other situations with which this REMSCO has dealt in the past (Dryden, and Throop as two examples) in order to gain a better understanding of the REMSCO's past decision making and its position relative to "corrections" versus expansions.

It would be very easy to for me to take the position that there is no need for additional CONs based on the system as it stands today (I believe the data speaks for itself), however, I also don't want to discount the years of continuous service NAVAC has served this particular community. I feel it appropriate for them to be able to present their case and for the REMSCO to perhaps come to resolution regarding these types of situations. This was not the first such situation and may not be the last.

Sincerely,



Michael Addario  
Division General Manager



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