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June 27, 2012

Mylan Denerstein
Counsel to the Governor
Executive Chamber
New York State Capitol
Albany, NY 12224

RE: *A. 9943-C (Brindisi) / S. 7013-C (Little)*
An act to amend the public health law, in relation to applications for determinations of public need for the establishment and operation of advanced life support services or municipal ambulance services in certain cites.

LETTER IN SUPPORT

Dear Ms. Denerstein:

The New York State Professional Firefighters Association (NYSPPFA), I.A.F.F. AFL-CIO, a not-for-profit association representing approximately 18,000 firefighters in 102 Locals in various cities, villages and towns across New York State, strongly supports this legislation being signed into law which would amend the requirement to prove public need for the continued operation of advanced life support services or municipal ambulance services for certain municipalities, cites and fire districts.

Overview

Since the inception of Article 30, the Legislature has amended its provisions related to a municipality or fire district's demonstration of public need to ensure the establishment and continued operation of municipal advanced life support and ambulance services.

This legislation addresses the immediate need of two such municipalities, the City of Utica and the City of Glens Falls, whose continued operation of their **existing** ambulance services are in jeopardy of being terminated.

Moreover, since these cities began operating their ambulance services, their dedicated emergency first responders have provided unparalleled quality of care and have offset the cost to taxpayers for emergency first responder services.

Notably, regardless of whether an ambulance service is operated by cities like Utica and Glens Falls, uniformed first responders are required to answer the call to all emergencies. As such, in municipalities, cities, and fire districts where such entities do not operate an ambulance service, uniformed personnel provide services and the taxpayers are not reimbursed as a private company is reimbursed for the ambulance transport.

Utica and Glens Falls are examples of cities that offset the cost of required emergency services provided to their communities including, police, fire, and other first responder services through the operation of an ambulance service which directly benefits the taxpayers.

Article 30 Background

As you are aware, pursuant to Article 30 of the Public Health Law, before an operating certificate for advanced life support services can be issued, the applicant must show "public need." Such need is determined by Regional Emergency Medical Services Councils (REMSCO's).

Since 1997, municipalities and fire districts seeking to establish advanced life support services, or a municipal ambulance service to provide lifesaving care to their citizens, have been granted an automatic two-year presumption of public need.

However, at the expiration of the automatic two-year period, municipalities and/or fire districts must apply to their respective REMSCO, statutorily comprised of at least one-third private industry representatives, and prove public need in order to continue operation even after they have spent great time and expense in training municipal employees and to acquire the appropriate equipment.

This requirement is both problematic and counterintuitive.

Since its inception, neither Article 30 nor the regulations contain a definition of "public need." Instead, the New York State Department of Health, Bureau of Emergency Medical Services ("Bureau") defined "public need" in a "policy statement" in or about 1993 and subsequently in the Bureau's Policy Statement 06 06. The policy statement defines "public need" as:

The demonstrated absence, reduced availability, or an inadequate level of care in ambulance or emergency medical services available to a geographical area which is not correctable through the reallocation or improvement of the existing resource.

Legislative History of Article 30

The demonstration of public need required by Article 30 proved to be a significant hurdle for municipalities and fire districts that sought to establish an ambulance service for their respective citizens. As a result, in 1992 the Legislature amended §3008 of the Public Health Law to add a new subdivision (6). L 1992, ch 850. The new subdivision promulgated a presumption in favor of granting a municipality or fire district's application for a certificate of public need.

Moreover, after the inception of the Bureau's definition of public need outlined above, municipalities and fire districts were experiencing increased difficulty demonstrating public need through the REMSCO process.

Citing these continued difficulties for municipalities in obtaining ambulance service operating certificates through the REMSCO process, the Legislature responded in a stronger fashion in 1997, adding subdivision (7) to §3008 of the Public Health Law to aid municipalities in the establishment of an ambulance service granting an automatic two-year certificate of need and a strong presumption in favor of a subsequent application. L 1997, ch 510.

The purpose for this new provision was set forth in the Sponsor's August 14, 1997 letter to then Governor George E. Pataki's counsel, which stated:

Municipalities currently find themselves at a distinct disadvantage when applying for a certificate of need to provide advanced life support first response service. Since they are applying to a regional council, which by statute is made up of not less than one-third industry representatives, it is difficult to prove that the current service is inadequate.

Letter of Senator Guy J. Velella.

In addition, justification for this bill contained in the Sponsor's Memorandum expanded the Legislative intent beyond REMSCO issues to include municipal expense and cost effectiveness, stating:

Municipalities currently find themselves at a distinct disadvantage when applying for a certificate of need to provide advanced life support first responder service. Since they are applying to a regional council, which by statute is made up of not less than one-third industry representatives, it is difficult to prove that the current service is inadequate. In most cases the service may be adequate yet not be cost effective. Cost effectiveness is not a criteria for the regional council in their decision to grant or deny a certificate.

Given that many municipalities around the state have spent great time and expense in training municipal employees in advanced life support and because they may also possess the appropriate equipment and staffing they should not be subject to the additional scrutiny of the regional council.

When a municipality wishes to provide a service to its citizens we should not promote the policy of deterring them. This legislation simply gives a municipality that option to provide a service as opposed to contracting that service out.

A further examination of the Legislative Bill Jacket for L 1997, ch 510 clearly affirms the Legislative intent of the 1997 amendments in the form of memoranda to then Counsel to the Governor, Michael C. Finnegan, provided by myriad stakeholders including, but not limited to, the NYSPFFA, the New York State Department of State, and even the then Commissioner of DOH.

See Legislative Bill Jacket L 1997 ch 510.

The following are excerpts of such memoranda:

First, the NYSPFFA stated:

Local government will now be allowed to determine how it wants to deliver EMS service to its citizens.

The prior procedure for obtaining a certificate of need was both unfair and unrealistic for local government. You have corrected this situation by allowing local government the ability to determine how it wants to function.

Letter dated September 9, 1997 from NYSPFFA to Hon. George Pataki.

Second, in its recommendation the New York State Department of State, Office of Fire Prevention Control provided the following:

The Office of Fire Prevention and Control at the Department of State is concerned with legislation affecting emergency medical services, because these services are frequently an adjunct function of fire services. Currently, it is necessary for municipalities and fire districts to apply to a regional council for a determination of public need prior to operating a first response advanced life support service or municipal ambulance service.

Because this bill removes this requirement, which has been burdensome and time consuming, delivery of crucial services to the public will be facilitated and expedited.

Memorandum of the State of New York Department of State, dated August 18, 1997.

Most importantly, then Commissioner Barbara A. DeBuono, MD, M.P.H. of the DOH stated:

Many municipalities around the state have spent time and expense in training municipal employees in advanced life support and have the appropriate equipment and staffing necessary to provide this service. This bill empowers local municipal officials to make fundamental decisions regarding how to meet the health and safety needs of their citizens.

Memorandum of State of New York Department of Health, dated August 18, 1997.

In light of the foregoing, it is clear that the Legislative intent of the amendments made to Article 30 in 1992 and 1997 produced at least four core principles. First, municipalities may establish an ambulance service through a statutory presumption of public need.

Second, certain municipalities must be shielded from the REMSCO process with regard to the demonstration of public need due in part to the composition of the regional councils.

Third, given that certain municipalities across the state have spent great time and expense in training municipal employees, to acquire the appropriate equipment and hire necessary personnel, they should not be subject to the additional scrutiny of a REMSCO and challenges from the private sector when seeking permanent certification.

Fourth, as stated by the then Commissioner of the DOH, §3008(7) sought to empower local municipal officials to make fundamental decisions regarding how to meet the health and safety needs of their citizens.

Justification for A.9943-C / S. 7013

As discussed above, municipalities now find themselves at a distinct disadvantage when applying for a certificate of need to continue the provision of advanced life support first response service and operate their municipal ambulance service.

This disadvantage is no more evident than in the City of Utica and the City of Glens Falls. Specifically, the City of Utica's application for a permanent certificate was denied by its REMSCO and SEMSCO based on a purported lack of public need and its ambulance service is only operating pending the outcome of an appeal to the Court of Appeals.

Notably, last year the operation of the City of Utica's municipal ambulance service resulted in \$959,000, after all expenses were paid, being placed in the City's general fund to offset emergency first responder services. This revenue saved the City's taxpayers a 5% tax increase. With the enactment of the Tax-Cap, the City of Utica's ambulance service represents an innovative mechanism to offset the cost of necessary lifesaving services while reducing taxes.

Moreover, the City of Glens Falls has operated its ambulance service since 2009. In 2011, it applied to its REMSCO for permanent operating authority. While it received approval of its

application at the REMSCO, the decision was challenged by a private ambulance service and is currently on administrative appeal. Pursuant to the REMSCO process and the definition of public need contained in the Bureau's Policy 06 06, any entity, private or otherwise, can challenge the application for continued operation of the municipality or fire district based on public need through a simple statement that such challenging entity is ready, willing and able to take over the municipality or fire district's current territory. This administrative appeal will result in significant costs to the City of Glens Falls.

In addition, similar to the City of Utica, in 2011, \$370,323 was generated, after all expenses were paid, to offset emergency first responder services and prevent additional tax increases. This bill would render such appeal moot and save the City of Glens Falls and its tax-payers significant costs.

Finally, this legislation would still require that the City of Utica and the City of Glens Falls live up to the same rigorous quality control and oversight required by DOH, however the frivolous, needless and expensive process of two year review, unique to municipal service, would be vested in the Commissioner of Health instead of the REMSCO for these two cities.

Conclusion

Given that the City of Utica and the City of Glens Falls have spent great time and expense in training employees in advanced life support and have the appropriate equipment and staffing necessary to provide services in compliance with DOH safety requirements, they should not be denied continued operation due to the additional scrutiny of their requisite REMSCO and challenges from the private sector resulting in significant appeal costs.

The operation of advanced life support and municipal ambulance services provide an invaluable benefit to certain municipalities.

Therefore, the New York State Professional Firefighters Association strongly supports this legislation being signed into law.

Respectfully submitted,



Michael McManus
President
New York State Professional Firefighters Association

cc: Lisa Ullman, Esq.