

1
2 NEW YORK STATE
3 DEPARTMENT OF HEALTH
4
5 EMS SYSTEMS
6
7 Wednesday, September 2, 2009 12:41 p.m.
8 Crown Plaza, Ballroom C
9 Albany, New York
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1 EMS Systems - 9-2-2009
2 ATTEENDEES
3 Martha Gohke
4 Andrew LaMarca
5 Vincent Faraone
6 Lee Burns
7 Dana Jonas
8 John Hassett
9 Robert Delagi
10 Tim Czapranski
11 Paul Cousins
12 Richard Brandt
13 Alan Lewis, Sr.
14 Warren Darby
15 Michael Quinn
16 Donald Faeth
17 Michael Mastrianni
18 Ray Serowik
19 John Malinchock
20 Karen Taddeo
21 Mike Addario
22 Michael Reid
23 Mike Murphy
24

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2 MR. LAMARCA: May I have your
3 attention please. We want to start the meeting.
4 Just to let you know a couple of
5 housekeeping items here today. We do have a
6 stenographic record being taken today because we
7 have some C.O.N. issues in front of us.
8 We also are trying right now to
9 verify the correct attendance and vetting of our
10 voting members here. We've had some appointments.
11 We've had some vetting go on.
12 Technically, although our
13 replacements in some cases are finished their
14 vetting process, they have not formally received
15 their letters. And in not receiving their letters,
16 they cannot yet officially assume their role to
17 vote.
18 So, when you look at the sign-in
19 sheet if you are a -- supposed to be a voting
20 member here of this committee and you do not see an
21 asterisk next to your name, we need to know it.
22 Donna is trying her best right
23 now to confirm where we are in that process. Since
24 we do have some statutory issues and

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2 the list you can find it on our website, especially
3 if you look under E.M.S. for children.
4 MR. LAMARCA: Thank you. Okay.
5 We're going to dispense with the
6 rest then and just move to the operations report.
7 MS. BURNS: Hi. I'm going to
8 pass out this. This is, if you are a county
9 coordinator you would have gotten this
10 electronically yesterday, it's an update on
11 preparedness for influenza and other pending
12 disasters.
13 Jim sent it out. There's some
14 very, very good education information on it from
15 FEMA, so I asked him if I could copy it and provide
16 it to you all. I'd toss it at John, but then.
17 Dana is hiking around with the -- with the system's
18 report.
19 As we have discussed in a couple
20 of other meetings, the Department has ordered us to
21 make paper-saving measures. So, I would say to you
22 that in December you might want to beef up your
23 bifocals cause we're going to have to put more
24 pages on a page. But just a quick rundown.

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2 As I had talked to the -- to the
3 conference-call group at the end -- in mid August,
4 we inquired with our Bureau of Adjudication where
5 the two remaining appeals are, the City of Ulta
6 North Area Volunteer Ambulance Corp. And they
7 advised us that they would not be ready for
8 September's meeting. They did not tell me when
9 they'd be ready but we make the spirited guess that
10 you'll probably see them in December. So, please
11 be prepared.
12 We're working with Donna and Val
13 to try and look at how the meetings are scheduled
14 for December because if you have to hear them, you
15 will have to hear both of them. And, so, the
16 question really is how best to manage that and it
17 may be scheduling -- sorry, the day before the
18 committee meetings to have open conversations with
19 the committee and then a short meeting on committee
20 day. So we're -- we're working on those logistics
21 and you'll know well in advance.
22 We received three more
23 declarations from Municipal Ambulance Operating
24 Authority, well E.M.S. authority. Albany County

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2 say that and all of you are shaking your head
3 saying that will never happen. Validate your level
4 of care with the appropriate authority. And the
5 level of care is -- is determined by the REMAC
6 if the -- if your local REMAC has not told us that
7 you are a paramedic service, then we don't have you
8 as a paramedic service. So that's huge. So we
9 have ambulance services who are billing for A.L.S.
10 one and two that our database says they're B.L.S.
11 or E.M.T.D. Well, I got to tell you what, the
12 Medicaid people don't see that as funny. And they
13 don't pay the A.L.S. one or two rates.
14 So, the ambulance services really
15 need to understand that their level of care is
16 really important in this. Do not -- this is a
17 controversial one and this is our ongoing
18 conversations with our friends in Medicaid and the
19 Attorney General's Office and the Office of the
20 Inspector General -- Medicaid Inspector General.
21 Do not respond slash or bill outside your operating
22 authority. We're working with them on -- really
23 clarifying issues of mutual aid. And when -- when
24 and when not it is appropriate to respond outside

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2 the operating territory.
3 With that said, we also have vast
4 areas of the state where they're new to billing for
5 ambulance service. And they're trying -- they
6 realize that they need a little more income. So
7 they're kind of working up buddy deals with their
8 ambulance services next door and they'll take care
9 of it when they can't roll a rate. That's not
10 mutual aid. Medicaid doesn't see it as mutual aid.
11 And oh, by the way neither does Medicare C.M.S. So
12 they're trying to get some of those issues clarified
13 both locally and with those folks cause they're
14 just learning how to spell E.M.S. quite frankly.
15 Have valid mutual aid plan in
16 place. That is -- dovetails with the one before.
17 Use and understand your -- the services Medicaid
18 provider number. That's big -- we ask our
19 services, what is your Medicaid provider number?
20 Most of them don't know. And if they're -- if
21 they're involved in this, shame on them. But
22 further, if you're using a billing company you have
23 to have -- the service -- the client has to know
24 that the billing company needs to have a valid and

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2 message home.
3 The Bureau has just brought our
4 course funding voucher system online in our main
5 database. Why -- why do you want to know that?
6 Because in the process of putting in vouchers and
7 testing it, we found a significant amount of money
8 has gone out for students who were not eligible for
9 course reimbursement. Now, we see that as a plus
10 because if we stop paying our course sponsors the
11 money that they are not due, we would have more
12 money and therefore, we could pay for more things
13 that we could pay for, so that's encouraging.
14 However, it's so, it's an incredible amount of
15 money just in the small numbers that Andy and --
16 and Frankie have discovered so far. So we're quite
17 concerned about that. And we think actually once
18 the course sponsors get a little bit more vigilant,
19 they understand the process better. The
20 applications are -- are scrutinized a little
21 better. The numbers will -- will even out a little
22 bit better. But it is the Bureau's intention in
23 this fiscal climate not to pay for students that
24 are not eligible to be funded. That's no surprise.

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2 So, we've gotten really a
3 surprisingly positive response from that. Most of
4 it is that services have just submitted their
5 N.O.I.s. They've been carrying EpiPens for a
6 while. So, that is -- that's -- we're very pleased
7 about that.
8 Another big thing that we
9 discussed and we'll talk probably about this in the
10 safety tag, has to do with the question of bucket
11 seats or transporting a second patient in an
12 ambulance. New York State's eight hundred twenty
13 two reg, which requires you to be able to
14 accommodate two recumbent patients, after reaching
15 out to a couple of people who have weighed too
16 much, they could recite to you the triple K specs,
17 which I was frightened by a little bit. 1 -- 1
18 got -- I've got some really good information.
19 So, I sort of boiled it down for
20 you in the report, but I also have had discussions
21 with our surveillance staff, our E.M.S. inspectors.
22 We -- we'll continue working on a
23 regulatory change. However, this is, the current
24 triple K specifications are F and G, as in George,

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2 It's clear in the funding policy statement. But it
3 does not bode well for course sponsors to be
4 submitting vouchers for students that are not
5 eligible. That becomes, you know, fraud. So, I
6 would ask you to kind of discuss this locally. Be
7 sure your education sponsors kind of have a good
8 understanding of it. And, again, more information
9 as we uncover it. EpiPens: As a result of some
10 torture that New York City had faced regarding
11 putting EpiPens on all of their ambulances, we did
12 some studies to figure out how many ambulance
13 services across the State were either not A.L.S. or
14 did not already declare an EpiPen. And we found,
15 actually a pretty small number of them that were
16 not already -- either had not already submitted an
17 N.O.I. or were not A.L.S. So what we did is we
18 sent them all a letter saying, hey how about using
19 the EpiPen and the EpiPen Jr. And if we sent you
20 this letter, one of two things is going on. One,
21 is that we don't have an N.O.I. on file so could
22 you send us your N.O.I., or a copy, and the other
23 is, we really think you should put EpiPens on your
24 ambulances.

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2 is pending. And there's rumor that suggest that
3 George will require recumbent patients two
4 recumbent patients, because in this climate of
5 multi-casualty incidents and the ability to
6 transport more than one patient safely and all of
7 those things, there is talk that the next version
8 of the K.K.K. will require the transport of a
9 second recumbent patient.
10 So, with that said, we have to
11 revisit our regs, there's no question about that
12 But I'm wondering whether we don't want to kind of
13 slow down, I mean not that we're moving fast
14 anyway, it is regs. But, this -- this kind of
15 gives you a thumbnail sketch of what our staff is
16 doing. We know that it's difficult. Manufacturers
17 design ambulances to make the triple K spec. We
18 know that. We don't want to discourage agencies
19 from buying new ambulances. And, we don't want
20 them to specially order ambulances that comply with
21 our somewhat antiquate regulation with regard to
22 that.
23 So, what we've asked for is that,
24 excuse me, that the crew bench comply with the

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2 current specification as -- as best as possible. I
3 mean I don't want our guys spending time leaving
4 the seats. The spec has seat sizes. I want our
5 staff to write a note on the bottom of the
6 inspection sheet so that we have record that this
7 vehicle meets current specifications, but may not
8 meet eight hundred twenty-two. And we don't -- we
9 will not -- clearly will not issue statements of
10 deficiency to ambulance services because their a
11 hundred and fifty thousand dollar pride of their
12 fleet does not meet our regulation.
13 So that's where we're going with
14 that. We think, you know in the spirit of
15 encouraging that services think in a safety
16 environment for their staff, they're doing that
17 with these vehicles. So, we just need to all be on
18 the same page. And lastly, you can read about our
19 G.T.S.C. thing, we're moving forward, but we put on
20 the web page the latest, or our new policy for
21 reporting incidents. Gary is working on getting
22 the pdf to be fill-in-able. That is an interesting
23 exercise. There's copies of it in your packet.
24 So, that about amounts to it.

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2 But, after -- they're having like
3 this gang C.O.N. committee hearing in September.
4 So we'll do an electronic pulse taking after that.
5 But that's kind of the -- the other thing
6 Westchester did that Southwestern didn't, which I
7 thought was brilliant quite honestly is Westchester
8 has an expiration to this policy. So, we -- I --
9 we appreciate that at the State level. On your
10 behalf, you appreciate that at the State council
11 level because at the end of all of this they're
12 done with this. So they noticed their services,
13 two thumbs up, Dan.
14 MR. FARAONE: That's it?
15 MS. BURNS: I think so.
16 MR. FARAONE: Does anybody else
17 have any questions for Lee?
18 FROM THE FLOOR: Just -- just to
19 thank Lee and the central office for recognizing
20 the safety tag in this new policy for the reporting
21 form, they did a lot of work with it. And we
22 appreciate just seeing it in the policy.
23 MS. BURNS: We're slow but sure.
24 Gary's a little older and a little grayer.

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2 MR. FARAONE: Lee, can you touch
3 on this policy statement from Westchester?
4 Yesterday at the program agency
5 there was a lot of discussion about whether we can
6 or can't use something other than six or six of
7 these non-contested expansions?
8 MS. BURNS: What we have said
9 and -- and talked with both Southwestern and
10 Westchester is that as long as the process is in
11 compliance with the Public Health Law, we -- the --
12 this -- these policies are not in conflict.
13 So, essentially the Public Health
14 Law has very specific requirements for the
15 determination of need, public notice, regional
16 council determination, public meeting, fitness and
17 competency. All of those elements have to be
18 included -- the statutory elements have to be
19 included in their process.
20 Then, above that we've -- we've
21 suggested that the regional councils put together a
22 policy that they can work with. And actually Dan
23 is in the back of the room and he -- he -- the Dans
24 put this together and it's quite eloquent.

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2 FROM THE FLOOR: That would have
3 happened anyway.
4 MR. FARAONE: So, I guess we
5 should divide right into the C.O.N. issue.
6 Lee, do you want to give us a,
7 like a brief synopsis of where we -- where we went
8 to, where we're at and the whole A.L.J. story?
9 MS. BURNS: Actually, before I do
10 that I just want to put on the record, I'd like
11 this kind of brought forward tomorrow, Mr.
12 Chairman.
13 Last week while fighting a fire
14 in the City of Buffalo, two firefighters who also
15 were E.M.T.'s lost their lives when the floor caved
16 in, and our Buffalo folks sent us the articles an
17 it's a, you know, it's a tragic circumstance.
18 So, just to let you know that,
19 Niagara Memorial Hospital; in
20 brief and pardon me that I get the dates kind of
21 confused, but the bottom line description is and
22 I'm hoping against hope you all read this stuff.
23 The Niagara Falls Memorial
24 Hospital located in Niagara Falls, New York

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2 submitted an application to the regional E.M.S., to
3 Big Lakes Regional E.M.S. Council in late summer or
4 early fall of 2008. After going back and forth a
5 little bit with the Council's C.O.N. committee I
6 don't see John -- oh, there he is. What are you
7 doing back there?
8 MR. MALINCHOCK: Hiding.
9 MS. BURNS: Okay.
10 MR. FARAONE: You're not doing a
11 good job either.
12 MS. BURNS: Actually, John is a
13 new representative of -- from Big Lakes to the
14 SEMSCO. So I've now outed you completely.
15 Correct me with the dates if you
16 would be so kind. But so John being the C.O.N.
17 committee chair, so the little bit of back and
18 forth to get the application in order the REMSCO
19 heard the application or actually they had a public
20 hearing in January -- no it was in December of
21 2008. And in -- in your packets the hearing
22 officer made a very good conclusion -- finding of
23 fact and conclusion.
24 The council heard the --

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2 Council for a review and determination.
3 And to -- but to ensure that
4 their deliberations were recorded. And, so, we
5 provided that information to the -- the REMSCO and
6 at the same time I wrote John one of my love
7 letters saying I need your minutes, and why isn't
8 this stuff on the web.
9 So, promptly John provided us
10 with the approved meeting minutes. As is their
11 process they -- he -- they don't approve their
12 meeting minutes until the next meeting which was
13 after the A.L.J. got everything. So we sort of --
14 we sort of leapfrogged each other separately.
15 So, in the middle of -- in
16 August, as you know, if you're a SEMSCO member, we
17 invited you to participate in a conference call.
18 And we can certainly discuss the conference call
19 also. I sent out to all the SEMSCO members the
20 meeting -- the conference call meeting minutes
21 taken by none other than Dana Jonas.
22 And, at that meeting, the -- the
23 group on the telephone, much to my horror
24 recommended that we turn everything back to the

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2 considered the application in their February of
3 2009 meeting. They determined that Niagara Falls
4 Memorial Hospital had indeed proven need for an
5 ambulance service and provided the Department with
6 much of the information. We, it was -- in about a
7 New York minute, it was appealed. And so what we
8 did as is our custom, we compiled all of the
9 documentation that we had at that time and we
10 provided it to the Bureau of Adjudication for the
11 assignment of an A.L.J.
12 And they -- so included in the
13 information that we gave the A.L.J. everything you
14 got by C.D. What was missing at that time though
15 was a complete set of REMSCO meeting minutes. We
16 noted that. Also unavailable at that time was the
17 webcast of the REMSCO meeting. So the A.L.J.
18 issued his decision in July.
19 And his decision was, which comes
20 as no great surprise to anybody, that there wasn't
21 enough information in the packet to render an
22 opinion or a recommendation. And so his
23 recommendation, which also was included, was to
24 send it back -- remand it back to the Regional

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2 A.L.J. I feared for my life actually. So, we
3 compiled everything, even though I must -- I -- I
4 was like I don't think this is a good idea. I
5 don't think this is a good idea. This is a really
6 bad idea.
7 We compiled everything and I said
8 to Dana, here quick take this downstairs to the
9 A.L.J.s and then run. Don't wait for the elevator,
10 take the stairs. So, the A.L.J. who -- I'm kidding
11 really. The A.L.J. was very gracious and he very
12 promptly, I was quite surprised reviewed the entire
13 packet and issued a final A.L.J.'s report, which
14 also got sent to you.
15 And in it he recommends, as you
16 probably have read that the application be
17 approved. Did I miss anything John?
18 MR. MALINCHOCK: (Off mic) No, I
19 think you have given a pretty accurate description.
20 MR. LAMARCA: I'd just like to
21 point out that over the year, year and two or three
22 months regarding this application I think you
23 clarified the application. The application for the
24 hospital was for a restricted site, the remote site

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2 that it operates for an M.R.I. in the community,
3 correct?
4 MR. MALINCHOCK: I'm sorry sir.
5 MR. LAMARCA: Again, we -- could
6 you come up, John why don't you come up here.
7 This C.O.N. really is for a -- an
8 application from the hospital to provide ambulance
9 services for four or five hours a day to a remote
10 site that they operate that has an M.R.I., that
11 they have to send their patients to?
12 MR. MALINCHOCK: That's right.
13 MR. LAMARCA: It is not for a
14 community, it is not for emergency response?
15 MR. MALINCHOCK: (Off mic) Yup,
16 clearly for hospital use, not for emergency
17 response.
18 MR. LAMARCA: And that that
19 premise for application was that they were dealing
20 with the program and there were some contractual
21 issues of payment from Metro, at some point had
22 said on a weekend that they may not supply it until
23 such time as --,
24 MR. MALINCHOCK: (Off mic)

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2 not realize this, but the City of Niagara Falls
3 approximately the population somewhere in the
4 neighborhood of fifty-five to sixty percent of the
5 population of the City of Niagara Falls is on some
6 type of Federal or State assistance.
7 The City itself as is documented
8 is unfortunately, I don't like to use the word
9 decay, but is undergoing some really tough times.
10 Up until this time the hospital serving that
11 City -- continuing to serve that City is Niagara
12 Falls Memorial Medical Center. They had worked out
13 over the years a reduced rate with the providers to
14 help balance this. There was a change in
15 management. The new management came in and what
16 we've been told is that the rates started to
17 escalate, escalate, escalate down the road.
18 During the course of the
19 discussions with the representatives from Niagara
20 Falls Memorial Medical Center, they pointed this
21 out and they also pointed out that at times they
22 had to wait. Now, we have to understand that these
23 are transports of patients that do not need an
24 emergency M.R.I. They still have a contract with

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2 Contractual issues were to be settled.
3 MR. LAMARCA: And can't move
4 forward until this application is.
5 MR. MALINCHOCK: (Off mic)
6 Basically, basically yes.
7 MR. FARAONE: I was just going to
8 say, there are two issues on the table then, there
9 was a monetary issue, but there was also a timely
10 delivery of service?
11 MR. MALINCHOCK: Let me summarize
12 the issue.
13 MS. BURNS: Wait. We need to
14 find a mic for him.
15 MR. MALINCHOCK: I'm not loud
16 enough?
17 MS. BURNS: No, the stenographer
18 is not capturing it.
19 MR. MALINCHOCK: Let me summarize
20 the application and how this all came about.
21 It came about basically over the
22 payment of services. For many, many years Rural
23 Metro and its predecessors had served the City of
24 Niagara Falls. Just for background some of you may

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2 Rural Metro to do that. But these are basically
3 patients who are scheduled at their out center,
4 which is roughly six to seven miles away. And they
5 also have to be transported in the recumbent
6 position.
7 They attempted to work out the
8 issue with, and basically it was not nonpayment but
9 it was the time period involved for the payment.
10 Instead of thirty days, it had been ninety days.
11 After looking at all of it and
12 hearing the testimony at the hearing which you
13 have, talking to the some of the providers that had
14 been called into the city to respond to emergent
15 calls because vehicles were not available, they
16 continued with the process.
17 And, then came to the conclusion
18 that there was a need for this type of services.
19 That's the short version of it. It was a long
20 fourteen or fifteen months. And just so that you
21 all know, Rural Metro continues to provide service
22 to the City of Niagara Falls, continues to provide
23 service to Niagara Falls Memorial Med Center. So
24 they did work out their contractual issues.

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2 The question is: Is there a
3 need -- the question is where is the future, the
4 question is what is going to happen.
5 MR. LAMARCA: Okay. We do have
6 to hear from the other parties. Prior to this
7 hearing, what we have allowed is that, we can allow
8 the applicant and also the appellant I guess to,
9 you know, make a five-minute statement. The rules
10 of engagement for the statement is that you cannot
11 introduce any new evidence, you know you have to
12 say what is on the record. Right now you can
13 clarify any point or any position and we will
14 monitor questions, you know, that are posed to you
15 just to make sure that they conform to pretty much
16 those parameters, am I correct in that?
17 So I would ask, I guess first and
18 foremost is there a representative from the
19 hospital present that would like to make a
20 statement?
21 Again any representative here
22 representing the interest of Niagara Falls Medical
23 Center?
24 So noted.

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2 Is there a representative here
3 from Rural Metro who has appealed and would like to
4 speak? All right. Just please come forward and
5 we'll have to catch you at one of the stationery
6 mics here I believe. This is the best mic here.
7 Karen, are you representing?
8 MS. TADDEO: You got it.
9 MR. LAMARCA: Okay. Just
10 identify yourself when you come up to the
11 microphone, please.
12 MS. TADDEO: Thank you sir,
13 As a lot of you know I'm Karen
14 Taddeo. I am an attorney for Rural Metro. And I
15 put in papers in opposition and on appeal.
16 One of the things that I think it
17 was Andy just said, or it might have been Vinnie,
18 we are constrained by the record. The record
19 that's before you is a little bit different than
20 what the statement that was just made. The
21 allegations in the record and what was upheld --
22 what was found by the hearing officer and upheld by
23 the A.L.J. was they found a need based on a couple
24 of critical facts. One, was if you look at the

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2 under-financed population. They do wonderful
3 things. Unfortunately, they're also very poor
4 money managers.
5 If you look at their financial
6 history which was sorely represented in the
7 application, except I think there was a statement
8 in there that they said that they realized that
9 they had been poorly managed financially and they
10 were looking at ways to save revenue.
11 They didn't bill on time. They
12 didn't get to their carriers. They didn't get to
13 their government payers. They had a cash flow
14 problem. They created their cash flow problem.
15 So, the issue of why you don't pay Rural Metro or
16 you don't pay your transport -- transportation
17 company because you didn't do your billing
18 correctly seems a little poor as an indices of need.
19 Plus, everyone here is aware of the industry.
20 You know if you've got -- the old
21 part As, the transportation for which the -- the
22 Article 28 facility is responsible, they're getting
23 money for those. Hospitals get to get their
24 reimbursement rates determined by telling the

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2 world, their carriers, Medicare, Medicaid what
3 their costs are. Factored in is their
4 transportation. They're getting paid for this.
5 They created a need by not
6 paying. They -- they didn't look at any other
7 alternatives and by looking at their application
8 you would believe there were no other alternatives.
9 You would believe that Rural Metro did hold them
10 hostage. But you heard from the representatives
11 that now Rural Metro is still providing the service
12 and is still going forward and there's been no let
13 up.
14 I think the application is
15 lacking.
16 MR. LAMARCA: I almost cut you
17 off there.
18 MS. TADDEO: Thanks Andy.
19 MR. LAMARCA: Any final?
20 MS. TADDEO: That's it Andy. Not
21 unless someone had a question.
22 MR. LAMARCA: I think now, I
23 think we will open it up to any questions and any
24 observations.

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2 first, a basic comment, a basic question. The
3 hospital's not here to answer it but maybe Karen or
4 counsel can answer it.
5 Why didn't simply the hospital
6 buy a stretcher van to move their non-emergency
7 patients and not get in the ambulance C.O.N. arena
8 because it's more -- it's more cost effective. It
9 saves a hell of a lot more money than purchasing an
10 ambulance, having to equip it.
11 Why are we even here?
12 MS. TADDEO: I don't know.
13 MR. LEWIS: It makes no sense to
14 me as to why we're doing this.
15 MR. LAMARCA: The hospital not
16 being present is duly noted. We really can't
17 respond to it. John, you have to speak up.
18 MR. MALINCHOCK: Just asking the
19 question so that I understand it also. Was the
20 hospital invited here today?
21 MS. BURNS: The hospital's aware
22 that this was being considered.
23 MS. TADDEO: I'm sorry, we all
24 got -- well both sides got notice that this -- that

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2 this is --
3 MR. MALINCHOCK: Verification
4 that there was a meeting today, correct?
5 MS. TADDEO: That there's a
6 committee meeting and that it's being considered at
7 the full council tomorrow.
8 MR. MALINCHOCK: I'm just asking.
9 MR. LEWIS: So, does anybody have
10 an answer to that?
11 MR. LAMARCA: I don't think we
12 would really probably take it into account anyway,
13 if it's not somebody who is a duly authorized
14 representative of the hospital. It is duly noted
15 that there are some other options available.
16 Questions? Michael?
17 MR. MASTRIANNI: I guess this may
18 be more procedural. If this C.O.N. is approved,
19 does that then set a precedent for other hospitals
20 that wish to say we are not getting appropriate
21 service or we are being charged too much?
22 Is this decision going to set
23 that kind of a precedent? Maybe it's my ignorance,
24 I'm asking.

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2 service and then that is the test bed where we need
3 to prove need.
4 That's where we take the letters
5 from. It's not that you're a nice guy but that
6 there's document that need of service, absence of
7 service, or that the provider is incapable of doing
8 the service, however you want to prove it.
9 In this case, the hospital is
10 trying to service itself at a remote location. One
11 that they put in the community probably as most
12 hospitals do because there's better reimbursement
13 if you put that free standing M.R.I. And in doing
14 so they know, or they acknowledge that if they have
15 to use it for the in-house patients there will be a
16 transportation cost. Okay? I understand that.
17 But then the site that we're
18 looking at for the need is only that facility and
19 it's only four hours a day and it's not A.L.S.
20 And it's still being serviced by the current
21 providers. And, you know, we have letters in
22 support in this file which come from everybody else
23 looking at emergency work in the surrounding
24 communities which is not germane to this

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2 discussion. And quite honestly I find in my mind
3 that the council probably took that into account,
4 those letters, probably inappropriately. It wasn't
5 really the service area that was in question. It
6 was only a remote M.R.I. site, not a community at
7 large. And the letters really seem to point to a
8 community at large.
9 Tim?
10 MR CZAPRANSKI: A couple of
11 comments. I mean as far as setting a precedent it
12 seems to me that each hospital, wherever their
13 region would have to again go through the C.O.N.
14 process which has been eighteen months, convince
15 their regional council, convince a hearing officer
16 and so on and so forth.
17 So I don't know that any decision
18 that the council makes tomorrow will be all of a
19 sudden precedent setting. As far as the letters
20 went out, it's a requirement, it's my opinion, it's
21 a requirement of the application to send out
22 certified letters to all the adjacent
23 municipalities, right?
24 MS. BURNS: And they did.

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2 that then fit into the definition of need? If
3 you -- if one takes the position that this
4 primarily was being done for financial reasons, and
5 I don't dispute or disagree or think that that is
6 necessarily a bad thing.
7 When one looks at the criteria
8 and looks at the definition of need, how does for
9 financial -- if the primary reason is financial,
10 how does that meet the definition of need and
11 therefore allow for the C.O.N. to be granted?
12 Public need, excuse me.
13 MR. CZAPRANSKI: And that's one
14 of the things I struggled with because it's a
15 different need than what I've seen in C.O.N.s
16 before, sort of described in here.
17 So I sort of went to the letters,
18 out of the twenty-three letters, twenty two support
19 it and said they understood the definition of need.
20 The hearing officer agreed, he's an attorney that
21 there was -- the definition of need was there and
22 was met.
23 And then the administrative law,
24 the regional council approved it sixteen o and one,

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2 the need was there and met. And then the State
3 Administrative Law Judge agreed there was need and
4 met. And so that's sort of -- I mean it's almost
5 unanimous that everyone who has reviewed this as
6 I'm saying it has agreed that there is some degree
7 of need.
8 MR. MASTRIANNI: Well, that then
9 goes back to the point that I made before about
10 setting a precedent.
11 We brought an element now, and
12 we've never had this conversation before in my
13 recollection of -- in making decisions and making
14 judgments on C.O.N.s and whether or not it fulfills
15 the requirement, whether the qualification of need
16 has been met. We're bringing in a new element now
17 that we've never discussed before and that is
18 financial. And that is my concern about what's a
19 precedent.
20 MR. LAMARCA: Do you want -- Al
21 do you want to defer? Karen and then Rich, I'm
22 sorry.
23 MS. TADDEO: Referring to the
24 financial, the financial hasn't always been

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2 to uphold this REMSCO's decision.
3 MR. LAMARCA: Don't
4 MR. FAETH: With all due respect,
5 I think that the definition of need as it's
6 currently written really just addresses the
7 financial need of the current services that are in
8 there. And that's pretty much what you were saying
9 on one aspect. But on the other aspect of it being
10 a public need, I believe while the hospital's
11 providing the service, it would actually free up
12 resources to provide an emergency service to that
13 region. And I don't -- I don't really see where it
14 would be the hospital's responsibility to be
15 funding a private concern. I don't -- I kind of
16 missed something on that.
17 MS. TADDEO: Maybe I didn't come
18 across clearly. If it costs -- if I've got two
19 paramedics in one vehicle and I've got to pay these
20 guys, and they've got to run all day. If I don't
21 have the money coming in to pay them, they're not
22 going to be there to do the emergency work. If
23 you're saying -- if you want to take out -- and we
24 need them because they're the only service we've

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2 got for emergency in this area.
3 If you take out part of the
4 funding source, if you -- if there are too many
5 providers and not enough work, there's not enough
6 money to support the level of care, the number of
7 vehicles, the number of providers that we need.
8 There's a finite number of patients.
9 MR. FAETH: The hospital is
10 paying personnel that are over at this M.R.I.
11 facility and they're waiting, but they're being
12 told we don't have a resource right now to
13 transport this patient to you. So they're being
14 paid for sitting around doing nothing.
15 FROM THE FLOOR: There's no
16 evidence.
17 MS. TADDEO: There's nothing I
18 said in the record.
19 MR. FARAONE: I have a couple of
20 points that we need to consider. Recently, it's
21 been drilled into our head that the REMACs do not
22 have jurisdiction over inter-facility transfers and
23 it's a whole different entity.
24 So, we're talking about something

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2 MR. MALINCHOCK: I think we're
3 supposedly not introducing new information but I
4 hear a lot of new information.
5 MR. LAMARCA: In what respect
6 John?
7 MR. MALINCHOCK: (Off mic) In --
8 here's what I'd like to say. First of all there is
9 no contract with anyone to provide E.M.S. services
10 to the City of Niagara Falls. If I'm wrong a
11 written contract with the City of Niagara Falls, is
12 there?
13 MS. TADDEO: No.
14 MR. MALINCHOCK: No, there is
15 not.
16 Number two, council brought up
17 the fact that there are two ambulance services.
18 MS. TADDEO: Two that we could
19 identify, there may be more. I don't know.
20 MR. MALINCHOCK: (Off mic) I
21 think we need to consider that, and we need to
22 consider something else also. It is all about
23 money and through the discussions, no one else
24 wants to come into the city of Niagara Falls. This

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2 is significant because that means possibly due to
3 the lack of business from Niagara Falls if this is
4 upheld, we would have no one. You would have
5 mutual aid, you could have problems --
6 MR. LAMARCA: I don't think
7 that's germane to this discussion. Al first.
8 MR. LEWIS: Vinnie, when you talk
9 about a slippery slope, let me ask first of all how
10 many hospitals are there similar to this in the
11 state of New York that could read on the HANYS
12 website that you can now get a C.O.N. because
13 you're saying you don't pay your ambulance
14 contracts. How many hospitals out there could do
15 this?
16 MR. FARAONE: Thirty or forty.
17 MS. BURNS: There's -- there's --
18 there's plus or minus two hundred and fifty
19 hospitals across the State.
20 MR. LEWIS: So, we dilute E.M.S.
21 by allowing this precedent, which is a bigger
22 slippery slope, then you are talking about going
23 against the council, that in my opinion has made a
24 bad decision, and as Paul Cousin said, I have sat

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2 found.
3 MR. QUINN: Okay, thanks.
4 MR. LAMARCA: Mike, do you want
5 to come forward and identify yourself, please?
6 MR. ADDARIO: (Off mic) Mike
7 Addario out of Syracuse. I've just got one quick
8 statement and then one question. Sorry. I guess
9 my first statement is, I'm not introducing any new
10 evidence. I'm talking about the evidence that was
11 presented by the hospital's application, in there
12 twice that Rural Metro's the only licensed
13 provider. So, the REMSCO decision, the A.L.J.
14 decision was based on that information. In
15 reality, that's not the case. There are other
16 licensed providers, at least one if not more if
17 there are more, but at least one other provider,
18 there may be more. There's a big difference
19 between the hospital being held hostage by Rural
20 Metro because they're the only licensed provider
21 there is more than one. So I, that's one of my big
22 concerns with this. There are a lot of other
23 concerns I have in terms of need. That's my
24 biggest concern. People made decisions based on

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2 information provided that is not correct.
3 My question to the Department of
4 Health is, to issue a C.O.N., their intent on this
5 obviously is to restrict their C.O.N. I know of no
6 other C.O.N. restricted in that manner. My concern
7 is that the information provided is not correct.
8 Is there another intent that's underlying this
9 application. So, my question is if they -- if they
10 are given a C.O.N., are you going to restrict that
11 to point A and point B the hospital, Monday through
12 Friday ten to two? Or is the C.O.N. going to be
13 more open ended and allow them to fulfill a mission
14 that is greater than that?
15 MS. BURNS: I can only speak to
16 in reading the application and -- and -- you know
17 what the Department has done historically. And the
18 application specifically asks for the geography as
19 you know, the hospital property and the City of
20 Niagara Falls and then, you know, the health plex,
21 wherever it is.
22 But, we do have a -- we do have a
23 fairly recent history with another service where
24 they had -- we had issued them for their property a

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2 at the State level, it could be done at the
3 regional level.
4 MR. DARBY: (Off mic) Suffern,
5 New York had an issue back with their medical
6 C.O.N. prior to the Federal decision. And we did
7 put restrictions at the local level which was we
8 were told later, did not hold water. So, I show
9 you a precedent, but we can't put restrictions on
10 the local level, it won't stand.
11 MS. BURNS: Actually also an
12 attorney with whom you've become recently familiar
13 would argue that an ambulance certificate is an
14 ambulance certificate. And years ago, a service
15 one of their areas said for inner facility
16 transfers only. And it was argued that the way
17 that public health law is written you're issued an
18 ambulance operating certificate.
19 MR. CZAPRANSKI: Wasn't that an
20 F.A.A. issue though, I mean in an air medical
21 service?
22 MR. DARBY: No, this was prior to
23 the F.A.A. We were trying to hold to our -- our
24 medical protocols and whatnot and we were told we

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2 MR. LAMARCA: There are so many
3 issues really at play here that, you know, even
4 just looking at the application you may not really
5 realize and I think that the issue of precedent
6 setting believe in it what you want, but I am kind
7 of concerned because large areas of this State
8 incorporate emergency services and non-emergency
9 services together by the same providers, who are
10 mixing or performing a case mix of work in a
11 non-emergency basis, and work in an emergency basis
12 to actually fund, you know, the resource necessary
13 to provide nine one one services.
14 And they do count on hospital
15 work if -- if we had for any reason, a large number
16 of hospitals decide that they want to go into the
17 ambulance business and that cost was going to be
18 their pathway in as far as their determination of
19 need because they weren't going to do it as a
20 normal community-based need, it would probably have
21 a negative effect on many systems across this
22 state. That if you pull that and this is a very
23 limited ten to two, I understand that. But the
24 hospital gets into the ambulance business and pulls

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2 couldn't. That was prior to F.A.A.
3 MR. MASTRIANNI: So, if I'm
4 understanding what will come out of this is a
5 certificate to operate in a certain geographic
6 area, latitude, longitude, period?
7 MS. BURNS: That's what's
8 described in public health law. You're going to
9 explode over there.
10 MS. TADDEO: (Off mic) If I'm
11 correct you can't do you can't do non-emergency
12 versus emergency. You can't --
13 MR. LAMARCA: So it's a permit?
14 MS. TADDEO: And working with
15 Dana on this project we've run into this behavior,
16 one of the ones down in the lower Hudson Valley, we
17 had to come up with a geopolitical. We wound up
18 giving it a hamlet or something because we had to
19 come up with a geopolitical area. And Lee and I
20 have actually discussed what's a geopolitical for a
21 single facility?
22 MR. LAMARCA: I think that --
23 MS. BURNS: You're ahead of
24 yourselves.

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2 out four thousand trips that they gave a number of
3 service providers in an area that are doing both
4 emergency and non-emergency, it will have a
5 definite negative effect on the capability of the
6 service in that region.
7 So, Niagara is not asking that,
8 I don't want to make it seem like they are. It's a
9 ten to two, small operation, non weekend, not
10 A.L.S., not anything else. But an ambulance is an
11 ambulance permit and if the cost is going to be the
12 issue of need, then I just feel that we have to see
13 a lot more of what went into that determination.
14 MR. CZAPRANSKI: I guess I, you
15 know, dealing with the hypotheticals of what all
16 the hospitals in the State might do in the future,
17 I don't really want to go into that. But any
18 hospital can apply for a C.O.N. today. There's no
19 restrictions from doing that. So, you know the
20 landscape really doesn't change in my opinion,
21 whatever our decision may be. I guess I have a
22 concern and just a question maybe for Lee for
23 verification. But, Twin Cities is C.O.N. for that
24 area? Okay. Thank you.

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2 MR. LAMARCA: I'm sorry, Michael.
3 MR. REID: I understand that this
4 is the first time I'm sitting on this panel as a
5 seated member. But, I remember some discussions
6 last year and perhaps there already is a precedent
7 set. Wasn't there a discussion of an ambulance
8 service that wanted to run an inter-facility
9 transport for children and that was denied because
10 they -- another service in the area had said that
11 they could meet that need? Isn't there a precedent
12 that's already been set?
13 MR. LAMARCA: Maybe, I don't -- I
14 don't honestly remember. In the last year you're
15 talking about, or two years or?
16 MR. REID: Yeah, it has to be
17 within the last few years.
18 MR. LAMARCA: I don't remember.
19 MS. BURNS: Not at this level I
20 don't think. I think the last C.O.N. this
21 committee heard was Neil's.
22 MR. LEWIS: Have we ever issued a
23 C.O.N. based on financial reason versus public
24 need? Never have done it? So we're setting a

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2 council. I -- I think from the perspective of a
3 regional council when I say this. The other thing
4 is that if -- if this determination is ultimately
5 sustained by the State council, it seems to me that
6 the only precedent being set is within the Big
7 Lakes regionally and that's council area, not a
8 State-wide precedent.
9 MR. LAMARCA: Alan might make a
10 motion, I've seen some people walk in and out of
11 the room, but has anybody come in from the
12 hospital?
13 No. All right, duly noted.
14 MR. FARAONE: Can I just ask a
15 question? I mean doesn't anybody find it odd that
16 Twin Cities didn't have any opposition to this?
17 They had the C.O.N., right?
18 They -- and the judge says the only opposition was
19 heard from Rural Metro. I find that odd.
20 MR. MURPHY: (Off mic) Good
21 afternoon. I've had conversations with Twin City.
22 I think to even make the inference that they are
23 not opposing this would be -- would be ill advised.
24 MR. LAMARCA: So, are you saying

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2 precedent. Can I make a statement and make a
3 motion?
4 MR. LAMARCA: First let me just
5 entertain -- Ray?
6 MR. SEROWIK: I would like to
7 echo the comments before that after reading the
8 original A.L.J. report, my concerns were -- were
9 whether or not due process went into this
10 determination on the part of the regional council.
11 The second A.L.J. report makes it
12 very clear that he, the A.L.J., arguably an expert
13 on whether or not these proceedings encompass due
14 process, says unequivocally that -- that there was.
15 I am loathe to want to substitute
16 the judgment this committee or this council for
17 that of the regional E.M.S. council.
18 Clearly, the way the law is
19 framed, you can see the intent of the legislature
20 that the regional council is closest to the
21 situation and all this nuances would be the best
22 judge whether or not public need is demonstrated.
23 I don't see where there is
24 substituting our judgment for that of the regional

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2 that the judge is incorrect in his statement?
3 MR. MURPHY: My -- my question
4 is: Is there any proof that Niagara Falls Memorial
5 reached out to Twin City and asked if they could do
6 the service, which they have a C.O.N. to do in that
7 area?
8 MR. FARAONE: Well, if you're
9 looking for the letter, the letter must have been
10 sent to them. The letter must have been sent and
11 they must have been present or invited to the
12 public hearing.
13 MR. MURPHY: Were they asked to
14 provide the service that they said Rural Metro --
15 MR. LAMARCA: Again, the hospital
16 is not present answering, we couldn't.
17 MR. FARAONE: And Twin City is
18 not.
19 MR. MURPHY: I'm sorry?
20 MR. FARAONE: And Twin City is
21 not present to speak today, but the judge says
22 there was no other oppositions. I didn't see any
23 opposition, opposition to this C.O.N.
24 MR. MURPHY: I understand that

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2 but to get back to the basic premise of the
3 application, because what I'm finding is a lot of
4 inference, a lot of nuance when it comes down to
5 the core fact. They said it was for financial
6 reasons only. They said there was nobody else to
7 provide those. The first premise has been argued
8 in the past should not be allowed. The second is
9 blatantly untrue.
10 There is another service that has
11 a C.O.N., that is irrefutable. We keep dancing
12 around the subject, they were never asked to
13 provide the service. I spoke with them personally.
14 So, I don't -- I don't know what more I can say. I
15 mean do we draw an inference that Niagara Falls
16 Memorial was not here, I don't know. Thank you.
17 MR. LAMARCA: AI?
18 MR. LEWIS: I'd like to make a
19 statement and put a motion on the floor and we can
20 discuss it.
21 Similar to the Burger Commission
22 to review the adequate number of hospitals across
23 the State, our charge is to determine the
24 appropriate number of ambulances in a given area.

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2 MR. BRANDT: Second on the
3 motion.
4 MR. LAMARCA: Richard Brandt
5 seconded the motion. Is there discussion on the
6 motion? Don Faeth.
7 MR. FAETH: I keep on hearing
8 public need and that's not what's being addressed
9 here. More ambulances out on the street means a
10 much quicker response time to a person who is in
11 need.
12 I don't -- I understand that
13 there is a corporate issue here with dilution of --
14 of revenue and funding. But I know -- I can speak
15 for New York City, we've increased the amount of
16 ambulances that are doing nine one one calls, not
17 only for municipal but through voluntary hospitals
18 and through -- through the commercials. And our
19 cardiac arrest survivability has improved
20 significantly because that golden five minutes, six
21 minutes that someone has to get somebody there
22 is -- is pertinent. That's public need. That is
23 public need. But, we keep on going with this
24 public need and the public need definition right

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2 As more ambulances in a given area is not better
3 but creates quality issues with diminished skill
4 levels of providers and can over time undermine
5 financial stability of existing ambulance services
6 in the area.
7 Issuance of a C.O.N. must
8 continue to be based on public need and not on
9 failure to meet accounts payable obligations. And
10 should a hospital establish a contracted ambulance
11 service to move their patients as many do across
12 the State, the hospital needs to be certain minimum
13 performance standards are included with penalties
14 for failures to meet prescribed minimum standards.
15 It is my opinion and I'd like to
16 make the motion that due to the absence of proof of
17 the determination of public need, and that the
18 applicant clearly states in their narrative the
19 purpose of the application is strictly cost
20 savings. I would like to bring forth a motion to
21 deny the C.O.N. application as no public need has
22 been established.
23 MR. LAMARCA: There's a motion on
24 the floor, is there a second?

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2 now is inappropriate.
3 All that does is protect what
4 everybody's now saying that the arguments here that
5 the hospitals only looking at financial issues,
6 that's what this public need definition addresses,
7 the financial need of other agencies that are
8 currently working that system. More ambulances
9 equals better patient care, improved patient care.
10 That -- that window of opportunity for that
11 astigmatic to receive --
12 MR. LAMARCA: The only thing is
13 that this applicant is not asking to do that work.
14 This applicant is not asking to do that work
15 though. That ambulance would not be placed into
16 the emergency call system. It would not affect,
17 you know, the nine one one system as far as that
18 ambulance being added to the fleet.
19 MR. FARAONE: No, I think Don's
20 point is that by freeing up the ambulances, more
21 ambulance is available.
22 MR. FAETH: Correct.
23 MR. FARAONE: I mean the thing
24 that I keep coming back to is these are the

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2 hospital's patients. Their responsibility from the
3 minute they come to that hospital, it's their
4 responsibility and they have to put them in someone
5 else's ambulance and we've done it historically.
6 But it may not be in the hospital's best interest.
7 These are their patients, if they can save money
8 and put their patients in their hospital and bring
9 their patients back to their hospital who they're
10 paying for through the D.R.G.'s, maybe it's in the
11 hospital's best interest.
12 MR. LAMARCA: Comments? Bob.
13 MR. DELAGI: Just a procedural
14 question. Any real or perceived conflicts of
15 interest, do they get resolved at the committee
16 level or at State council tomorrow before a vote?
17 MR. LAMARCA: State council, I
18 believe.
19 MR. FARAONE: This is going to be
20 just a seconded motion, right?
21 MR. LAMARCA: Just a seconded the
22 motion.
23 MR. FARAONE: So, is there
24 conflicts at the committee?

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2 twelve seated delegates eligible to vote. The
3 Department has reviewed that. We actually have ten
4 delegates. I will read them out to you at this
5 time. Richard Brandt, Paul Cousins, Robert Delagi,
6 John Hassett, Lee, Vinnie, myself, Al Lewis, Warren
7 Darby, Don Faeth and Michael Reid. One, two,
8 three, four, five, six, seven, eight, nine, ten,
9 FROM THE FLOOR: What about Ray?
10 Ray got left off.
11 MR. LAMARCA: Ray got left off?
12 MR. SEROWIK: I would offer
13 acceptance by appointment letter.
14 MR. LAMARCA: We have eleven.
15 Does anybody else feel that we are in error as far
16 as the voting delegates? Can we do this on a roll
17 call, or a show of hands?
18 MS. BURNS: It doesn't matter,
19 it's a seconded motion. I don't -- do we need a
20 roll call vote also?
21 MR. LAMARCA: I don't think so.
22 There's going to be a roll call tomorrow. All
23 right. The motion on the floor, the seconded
24 motion on the floor is to reject the application of

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2 MR. CZAPRANSKI: Well, I would
3 think both because if you -- if you have a conflict
4 of interest and make a motion and it ends up on the
5 council floor. I mean I don't want to run into
6 procedural issues.
7 MR. FARAONE: Yeah. It's a good
8 point.
9 MR. LAMARCA: A conflict of
10 interest is determined to be a direct fiduciary
11 interest, is it not?
12 MR. DARBY: Yes, it is. I was
13 the test case on that.
14 MR. LAMARCA: Does anybody here
15 have a direct fiduciary interest in this operation?
16 MR. LEWIS: Let me speak. I used
17 to work for Rural Metro and I'm a part-time
18 employee of Rural Metro. It is not -- does not
19 meet the criteria of conflicted so, that needs to
20 be said we're here today and I will say it tomorrow
21 for the record also.
22 MR. LAMARCA: Are there any other
23 questions? I have a matter of housekeeping before
24 this is put to vote. Initially, we thought we had

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2 Niagara Falls Memorial Hospital, failure to prove
3 need.
4 MR. LEWIS: Are you sure the
5 number's right?
6 MR. FARAONE: Let's make sure.
7 We have Rich, Paul, Tim, Bob Delagi, Don, myself,
8 Warren, John Hassett, Al, Andy, Mike's out?
9 MS. BURNS: Mike's out.
10 MR. FARAONE: Mike's out. Wait
11 is not here, Mark is not here and Mike
12 FROM THE FLOOR: Mike Reid is
13 here, I understand.
14 MS. BURNS: Mike Quinn is. I
15 think it's Tim that we missed.
16 MR. LAMARCA: I'd ask for a vote
17 by a show of hands, and please keep them up. Those
18 in favor of the motion to reject, please raise your
19 hands. One, two, three, four, five, six. Those
20 opposed raise. One, two, three, four, five.
21 Any -- obviously there's no
22 abstention. The vote is five four to reject. It
23 is a seconded motion to be brought forward to the
24 State council tomorrow to reject the application of

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1 EMS Systems - 9-2-2009
2 Niagara Falls, possible based upon failure to prove need.

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1 EMS Systems - 9-2-2009
2 advising them that they cannot respond to New York 3 you know they don't have the certificate to

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1 EMS Systems - 9-2-2009
2 MR. LEWIS: Inter-facility.
3 We're not -- we're not totally talking inter

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1 EMS Systems - 9-2-2009
2 MR. CZAPRANSKI: So, if the
3 pick-up point is within New York and the

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