Saratoga County EMS
Standard ALS Intercept Agreement
Final Review Package

Saratoga County ambulance agencies have had difficulty developing and executing agreements to deliver ALS intercept services to patients who require this level of care. Obstacles are many and varied, ranging from reimbursement to patient care to insurance and liability issues. At the suggestion of two agencies, County EMS Coordinator Mike McEvoy assembled a draft Saratoga County EMS Standard ALS Intercept Agreement from the collective input of local, state, and national attorneys, billing companies, the Centers for Medicare and Medicaid Services (CMS), administrators and business managers from both large and small ambulance services in New York State, and local providers.

There were two tenants of the draft agreement. Firstly, a standardized County ALS Intercept Agreement would be helpful by eliminating barriers that presently interfere with delivery of available ALS to patients who need it. Secondly, ALS is not a free service and when requested, must be accompanied by a previously agreed means for reimbursing the agency providing the service.

The original draft agreement was discussed by the EMS Council in the spring of 2003 and sent to the ALS QI group for review, comment, and suggestions for change. Feedback from the ALS agencies in the County helped refine the agreement and resolve oversights and errors before soliciting comment from the entire EMS community. Questions, answers, and four revisions of the agreement evolved from this review; these are included in this information packet.

Note that participation in the County agreement is not intended in any way to change or affect existing or future ALS Intercept agreements between individual agencies. It does, however, eliminate the need to have multiple agreements with all possible intercept services by allowing any agency (BLS or ALS level) to receive and provide intercept services to and from any other agency in the county as well as those in neighboring counties who elect to participate.

The Council would like to implement a Standardized ALS Intercept Agreement in Saratoga County that every agency will be happy with, and agree to participate. Problems that would preclude an agency from wanting to participate are important and were solicited during a 3-month open comment period ending July 16, 2004. The comments received drove significant change in the evolution of the attached final draft.

This final review package is being distributed to all Saratoga County ambulance agencies as well as posted on the Council web site at www.saratogaems.org. **Please review this package and submit any final comments to the Council before Friday, October 1, 2004** either by email to the council at info@saratogaems.org, by fax to 518-383-4915, or by mail to Saratoga County EMS Council, PO Box 624, Ballston Spa NY 12020. We expect to approve this Agreement by the end of 2004 for implementation in early 2005.

Questions and Comments
Saratoga County EMS
Standard ALS Intercept Agreement
[Includes attached Revised Version 6.1 of the draft Agreement]

First Round Dated: January 4, 2004

1. If an ALS agreement is not in effect between a BLS agency and an ALS agency, will ALS requests be denied by dispatch?

   We do not plan to deny ALS requests in the absence of an agreement. One purpose of this standardized agreement is to facilitate the implementation of simultaneous (automatic) ALS dispatch for BLS agencies in the county when necessary. An automatic ALS dispatch protocol would require written agreements between BLS and ALS agencies involved. The County is not likely to automatically dispatch ALS into the primary operating territory of a BLS corps without evidence of an agreement between the two agencies. Participating in a standard agreement (such as this one) minimizes the number of individual agreements an agency would need to effect with their neighbors.

2. Who determines the reimbursement rate scale, and how?

   Reimbursement would be set by the EMS Council and revised annually. Each agency holds a voting seat on the Council. We did consider adopting an already published rate (such as the CMS rates for transport of Medicare patients) but felt that the complexity of such published rates coupled with their continual evolution renders them unacceptable for use in Saratoga County. Obviously, input from billing companies, commercial services, and third party payors would be considered in setting and revising this rate.

3. What happens if agreements that are already in place call for higher reimbursement?

   Good point. To avoid such conflicts, item # 15 was inserted into version 4.0 of the draft to read, *"Any and all other ALS agreements between agencies will be considered to supercede those elements of this agreement that they might duplicate."* This will allow agencies to both maintain already existing agreements and to execute new agreements while ALSO being a Participating Agency in the Standard Saratoga County agreement.

4. How will requests for out of County ALS be handled?

   Out of County agencies (including commercial services) would be welcome to sign the agreement as Participating Agencies.

5. In regard to item # 8 [*Each Agency will be responsible for compensation, insurance, disability, and liability for their respective members or employees*], would an ALS intercept between two ALS agencies be considered Mutual Aid, and how does that affect liability? (Is it the same as FD mutual aid liability)?

   Firstly, ALS intercept is not considered mutual aid in New York State. The responsibility of Certified Ambulance services is transport. No NYS laws, rules, or DOH regulations make any differentiation between BLS and ALS level of care for transport. Given this, it is essential to include a liability clause in any New York State ALS agreement. For the purposes of this agreement, the liability item (# 8) was written to mirror the presently existing liability statements for responses that ARE considered mutual aid under DOH policy as well as the recently GML (General Municipal Law) amendment permitting fire service based EMS to provide and receive mutual aid from non-fire based EMS agencies. All these statements specifically place liability on the responding department or agency. This includes fire based EMS services who provide EMS (ie: non-fire) mutual aid to non-fire based EMS agencies.

6. In item # 5 [*Responsibility for patient care decisions will initially reside with the Transporting Agency and transfer to the ALS Intercept Agency after their provider receives a report from Transporting Agency personnel and begins assessment and treatment of the patient(s). The provider responsible for patient care will determine the priority mode of transportation. Transport destinations will be decided collaboratively between the patient(s) and both ALS Intercept and Transporting Agencies. Any disputes will be resolved by contacting an on-line medical control authority.*], while all agree that collaborative decision making is best, ultimately the decisions may rest with the highest level of care, since they will be held accountable for everything by DOH (as we have already seen!).

   This is a good point and one recently made somewhat foggy by DOH actions against certified providers. We are referred by legal counsel to DOH policy statement # 98-05 (http://www.health.state.ny.us/nysdoh/ems/policy/98-05.htm) that addresses this "Who's In Charge?" issue. The wording contained herein mirrors the spirit and intent of 98-05 as well as public health law cited therein. Note that the level of care of the provider is significantly outweighed by both authority (conferred by holding a primary EMS operating territory), and by capability to transport (conferred by having a transport vehicle). It is our intention in this section to best balance decision making between all parties involved, keeping the interests of the patient in mind. In doing so, we purposely take away the ability of DOH to hold the highest level provider fully accountable for all treatment and transport decisions by specifically authorizing who will decide what (as provided for in 98-05). The final option of consulting on-line medical control (OLMC) was included to take advantage of numerous DOH policies, regulations, and statue to defer to an authority that is legally considered the absolute highest level of care involved in the call.

7. If we read it correctly, and understand it's intent, item # 1 [*A Participating Transporting Agency operating in Saratoga County may request services of any Participating ALS Intercept Agency when, in the opinion of the individual providing patient care, ALS is needed. Requests for ALS at time of initial call dispatch under a Medical Priority Dispatch Protocol will be considered a request for ALS Intercept by the Participating Transport Agency.*] sets the groundwork for automatic ALS dispatching if agencies sign the agreements?

   Yes. We would like to initiate an automatic simultaneous ALS dispatch for any call where ALS is recommended by the Medical Priority Dispatch Protocol. This would occur in any area or at any time when only BLS service is available for a call. We previously began work on this project 4 years ago but were stymied by lack of agreements between agencies. We believe that a Standardized agreement (such as this) will greatly facilitate this process, allowing us to move forward with automatic simultaneous dispatch protocol development.

8. Item # 12 [*In the event that the Participating Transporting Agency does not bill the patient for services, they agree to forward payment to the Participating ALS Intercept Agency for the ALS portion of services provided at the currently published Saratoga County ALS Intercept Rate in effect at the time the service was provided. A chart of these rates will be posted on the Council website at www.saratogaems.org.*] should be reworded to, "allow the participating ALS Intercept Agency, should they bill for services, to bill the patient directly."

   We recognize that this practice is currently utilized by some agencies in the County that do not presently bill, yet request ALS services from other agencies who do bill. When an agency receives a bill for ALS services from the ALS provider they requested for intercept, they mark the bill, "please bill patient directly," and return it to the ALS provider agency. While this practice is feasible, incorporating it into this agreement is contradictory to the very purposes that gave birth to this agreement. Specifically, ALS intercept services are not a freebie. Agencies providing ALS intercepts have a right, and should expect, to be paid for their services by the agency that requested them. Asking for ALS without at least a good faith assurance of fair remuneration for the service leads to overuse initially, financial loss secondarily, and refusals to respond eventually. All of these exist presently in Saratoga County. By clearly placing the financial burden on the requesting agency, all three of these issues will ultimately vanish and ALS will be more consistently available for patients who need it.

   We understand that this may cause some agencies who do not presently bill for services to do so because of estimated costs they would bear for ALS intercepts. Optionally, those so affected could create agreements with agencies they ordinarily intercept with to continue their prior practices while also participating in this countywide agreement. Any separate agreements supercede the applicable sections of this county agreement for the agencies involved, regardless of whether the other (separate) agreements were signed before or after joining the countywide agreement.

9. We do not see a need for the county to be involved with ALS provision contracts as most agencies already have these contracts in place.

   Actually, the majority of agencies in Saratoga County do not have ALS agreements in place. Large areas of the county do not have consistently accessible ALS availability because of a lack of agreements between individual agencies.

10. We do not feel the county should regulate our billing practices or existing contracts. As you know, there are big differences in billing rates among Saratoga County agencies.

    The county is not interested in regulating billing practices or existing contracts. However, in order to implement an ALS agreement between agencies, billing must be included or the agreement would be incomplete. In any and all cases where other ALS agreements or contracts exist or are placed into existence (in the future), Item # 15 in the county agreement assures that no conflicts arise. Specifically, # 15 reads, "*Any and all other ALS agreements between agencies will be considered to supercede those elements of this agreement that they might duplicate.*"

11. It was stated in Questions and Comments # 1 that the Council does not plan to deny ALS requests in the absence of an agreement. This language needs to be a bit stronger; perhaps "will not deny" would be better. The original question asked if a non-participating agency would be skipped over for ALS requests in preference to a participating agency (one that has signed the county agreement)?

    Firstly, the agreement only applies to agencies that sign it (participating agencies). It cannot apply to agencies that choose not to participate, since non-participating agencies have not agreed to have it apply to them. To say that the Council "will not deny" as mentioned here might be unfairly imposing portions of the agreement on agencies that do not wish to participate. Secondly, while implementation of this standardized county-wide ALS Intercept Agreement has been described as paving the way for simultaneous ALS dispatch, it in no way authorizes, establishes, or initiates such a protocol. Implementation and call up order for automatic and simultaneous ALS intercept dispatch would be done by adding to the dispatch policy in the Saratoga County EMS Mutual Aid Plan.

12. When calling for an ALS intercept, you are looking for a higher level of care, which includes a higher level of decision-making. Although interested in the opinion of all involved parties, the treatment, transportation mode, and destination should rest with the patient and ALS provider once at the bedside. If questions arise between these two parties, medical control should be contacted. It would be incorrect to hold up such time critical decisions debating with a provider of lesser training.

New York State laws, rules, regulations, and DOH Policies dictate that each provider assume responsibility for decision-making specific to his or her capability to deliver care and/or transport. Strict interpretation would place all responsibility for transportation mode and destination on the transporting agency and all patient care responsibility on the ALS intercept provider. Since this seems impractical in the real world, we have attempted in the agreement to allow ALS intercept providers input into decisions about tasks they are incapable of performing themselves, namely transport mode and destination. On advice of both New York State and private counsel, item # 5 in the agreement, "*Responsibility for patient care decisions will initially reside with the Transporting Agency and transfer to the ALS Intercept Agency after their provider receives a report from Transporting Agency personnel and begins assessment and treatment of the patient(s). The provider responsible for patient care will determine the priority mode of transportation. Transport destinations will be decided collaboratively between the patient(s) and both ALS Intercept and Transporting Agencies. Any disputes will be resolved by contacting an on-line medical control authority,"* represents the best balance of decision making between all parties involved, keeping the interests of the patient in mind. This issue was also discussed earlier in Question and Answer # 6.

13. To avoid calling for ALS only for the purpose of staffing an ambulance, Item # 4 of the agreement should require additional crewmembers be EMT's.

    This is a good point. We have changed the wording of Item # 4 to read, *The Transporting Agency agrees to provide an ambulance, driver, additional EMT crew member(s), and BLS equipment and supplies needed to care for the patient(s).*

14. If an agency has an average recovery rate of $100, they would pay an average of $50 for each ALS intercept. If an agency does not bill, they stand to pay much more, depending on the county rate established, correct? This seems unfair. Also, is it possible for the ALS portion of recovery to exceed the BLS portion? If so, then the BLS agency would not be allowed to keep the ALS portion, even if it exceeded 50% of the total recovery.

    You are correct in your first assumption. We purposely favor agencies that bill to avoid use of this standardized agreement to "shop" for ALS at rates cheaper than available by independent contract. On your second point, it is possible for the ALS portion of revenue recovery to exceed the BLS portion in certain circumstances. This does not imply however, that the BLS transport agency cannot retain 50% of the revenue recovered. Expenses for mileage, personnel, and expendable equipment incurred by the transporting agency most likely total at least 50% of reimbursement, regardless of what subcontractor is utilized to deliver ALS level care. There is no obligation for any agency to turn over any specific amount of revenue recovered to another individual or agency employed to deliver a specific service or level of care, aside from contractual obligations created in agreements such as this. In revenue recovery, the only obligation of

the agency billing for service is to establish that the service they provided was both necessary and actually provided to the patient.

15. We are suspicious that establishment of a countywide rate would offer cheaper alternatives than presently available to some Corps in the county. How could we be sure that this sort of agreement would not be bad for business?

    This is a legitimate concern, and one that we alluded to in the previous question (#14). Clearly, an advantage of a self established rate is the ability for the members of the Saratoga County EMS Council to regulate their own EMS system. While it certainly would be possible to set a countywide rate that would under price existing agreements, it seems unlikely that the agencies who collectively set the rate would be willing and able to provide ALS more cheaply than existing agreements. Additionally, keep in mind that the set rate only applies to agencies that choose not to participate in revenue recovery. This further limits the impact that a countywide rate would have on existing and future ALS intercept agreements.

Third Round: Dated July 25, 2004

16. Item # 10 seems to presume that all agencies bill their patients. Could a provision be inserted to accommodate Participating Transport Agencies that do not bill?

    This is a good point. We have changed the wording of item # 10 to recognize that not all services bill their patients. It now reads, *Participating Transporting Agencies (who bill their patients) and ALS Intercept Agencies agree that all patients who receive ALS Intercept services from a Participating ALS Intercept Agency will receive a bill, regardless of whether or not those recipients are Medicare beneficiaries.* Note that the main function of this clause is to satisfy CMS requirements for billing.

17. We continue to have concerns about the EMS Council assuming a rate setting function. Is there not a published rate that could be tied into item # 12 to relieve the Council of this duty?

    Yes. A local billing company and the United New York Ambulance Network (UNYAN) suggested that we utilize a rate called the, “Paramedic ALS intercept (PI), rural area, transport furnished by a volunteer ambulance company which is prohibited by State law from billing third party payers.” This rate is published annually (indexed for inflation) by the Centers for Medicare and Medicaid Services (CMS) under HCPCS code AO432. In 2004, the rate was set at $249.53. Medicare would typically pay a provider 80% of this rate which would amount to $199.62, a figure slighter higher than that typically set by individual agency intercept agreements for the same time period. As this rate satisfies a principal reason for implementing a county wide ALS Agreement, will be indexed for future inflation, and alleviates the need for the Council to set rates itself, we have changed item # 12 to reflect this published rate rather than a rate set annually by the Saratoga County EMS Council.

18. New DOH guidelines for electronic PCR reporting allow agencies to prepare printed copy of PCRs after returning to their station. Could item # 7 be amended to accommodate this?

    Certainly. We have changed item # 7 to read, *each provider having responsibility for patient care will separately document his or her assessment and treatment provided in a format approved by the NYS Bureau of EMS. The Transporting Agency and the ALS Intercept Agency agree to provide a completed copy of their documentation to each other and to the receiving Emergency Department before departing the Emergency Department or in electronic form on return to their respective stations.*

DRAFT ONLY- NOT REAL Version 6.1

Saratoga County EMS Council
Standard ALS Intercept Agreement

The purpose of this agreement is to standardize ALS intercept services, facilitate payment for care, and define obligations of agencies providing ALS intercept services (hereafter called ALS Intercept Agency) as well as agencies requesting and receiving ALS intercept services (hereafter called Transporting Agency). An ALS Intercept Agency is any NYS Certified ALS FR or Ambulance Service operating at the AEMT-CC or AEMT-P level. A Transporting Agency is any agency providing a NYS Certified ambulance, driver, and additional crew. Participating ALS Intercept and Participating Transporting Agencies are any organizations that have a signed copy of this agreement on file with the Saratoga County EMS Council (PO Box 624, Ballston Spa NY 12020).

1. A Participating Transporting Agency operating in Saratoga County may request services of any Participating ALS Intercept Agency when, in the opinion of the individual providing patient care, ALS is needed. Requests for ALS at time of initial call dispatch under a Medical Priority Dispatch Protocol will be considered a request for ALS Intercept by the Participating Transport Agency.
2. The ALS Intercept Agency agrees to respond to requests from the Transporting Agency when sufficient staffing and equipment is available, as determined by the operating guidelines of the ALS Intercept Agency.
3. The ALS Intercept Agency agrees to provide ALS personnel and equipment in accordance with the requirements of their Regional Medical Control Authority as necessary to care for the patient(s).
4. The Transporting Agency agrees to provide an ambulance, driver, additional EMT crew member(s), and BLS equipment and supplies needed to care for the patient(s).
5. Responsibility for patient care decisions will initially reside with the Transporting Agency and transfer to the ALS Intercept Agency after their provider receives a report from Transporting Agency personnel and begins assessment and treatment of the patient(s). The provider responsible for patient care will determine the priority mode of transportation. Transport destinations will be decided collaboratively between the patient(s) and both ALS Intercept and Transporting Agencies. Any disputes will be resolved by contacting an on-line medical control authority.
6. Disputes arising in patient care decisions will be decided by the individual responsible for patient care at the time the dispute arises and subsequently referred to the authority responsible for operations of the respective agencies for mediation and resolution.
7. Each provider having responsibility for patient care will separately document his or her assessment and treatment provided in a format approved by the NYS Bureau of EMS. The Transporting Agency and the ALS Intercept Agency agree to provide a completed copy of their documentation to each other and to the receiving Emergency Department before departing the Emergency Department or in electronic form on return to their respective stations.
8. Each Agency will be responsible for compensation, insurance, disability, and liability for their respective members or employees.
9. Participating ALS Intercept Agencies agree to allow Participating Transporting Agencies to bill patients for service at the current billing rate schedule used by the Transporting Agency for the level of service actually provided. This bill will include the costs of all services provided by both agencies.
10. Participating Transporting Agencies (who bill their patients) and ALS Intercept Agencies agree that all patients who receive ALS Intercept services from a Participating ALS Intercept Agency will receive a bill, regardless of whether or not those recipients are Medicare beneficiaries.
11. In the event that any portion of the total bill is collected, the Participating Transporting Agency agrees to forward payment to the Participating ALS Intercept Agency for 50% of the amount collected.
12. In the event that the Participating Transporting Agency does not bill the patient for services, they agree to forward payment to the Participating ALS Intercept Agency for the ALS portion of services provided at an amount equal to 80% of the CMS (Centers for Medicare and Medicaid Services) Paramedic ALS intercept (PI), rural area, transport furnished by a volunteer ambulance company which is prohibited by State law from billing third party payers (HCPCS code AO432) in effect at the time the service was provided.
13. This agreement shall also apply to situations when an ALS Intercept Agency requests ALS Intercept Services from another ALS Intercept Agency for reasons such as unavailability of an ALS provider.

14. This agreement does not cover instances where the ALS Intercept Agency is also the Transporting Agency. Such circumstances are considered Mutual Aid and are covered under the Saratoga County EMS Mutual Aid Plan.
15. Any and all other ALS agreements between agencies will be considered to supercede those elements of this agreement that they might duplicate.
16. This agreement constitutes a valid contract between the undersigned and all Participating Agencies as defined previously. A Participating Agency may terminate their participation in this agreement at any time by providing 30 days advance written notice to the Saratoga County EMS Council.

"This agreement has been discussed and approved by the governing body having authority to contractually engage the agency named below"

Signed: _____ Date: _____

Print Name: _____ Title: _____

Agency Name: _____

Address: _____

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