147th General Assembly of the State of Delaware

Task Force on the Funding of Ambulance and EMS Services in Delaware

Final Report

Dated: February 17, 2014

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Introduction

The Ambulance and EMS Funding Task Force (the "Task Force") was established by the 147th Delaware General Assembly in House Bill No. 215 (the "FY 2014 Grants-In Aid Act"). In authorizing the Task Force, the General Assembly recognized that the State of Delaware "has an obligation to establish a mechanism for funding Ambulance and EMS service . . . ."[1] To that end, the purpose of the Task Force is to study and "develop the methodology for reimbursement of such services, across the state . . . ."[2] This Report summarizes the work of the Task Force.

The members of the Task Force discharged their duties over the course of six meetings. The members worked diligently, in good faith, and with the goal of finding a solution to a looming fiscal crisis that threatens to disrupt the system by which basic ambulance and EMS service is provided throughout the State of Delaware. By some accounts, the public may begin to see diminished ambulance service in as little as 8 to 12 months, if steps are not taken promptly to meet the funding need.

In the pages that follow, the findings and recommendations of the Task Force are set forth and its proceedings are described. The Task Force Chair and Co-Chairs wish to thank each and every member of the Task Force for their service, and for a job well done. The Chair and Co-Chairs also wish to recognize and thank Daniel P. Burris, Sr., President of the New Castle County Volunteer Firefighter's Association, for his tireless support. While Mr. Burris was not an official member of the Task Force, he attended all of its meetings and provided invaluable assistance, information and support.

It will be the responsibility of our elected and appointed officials, in partnership with the ambulance and EMS service providers for the State of Delaware, to respond to the fiscal challenges that currently confront the system.

Sen. Bruce C. Ennis, Chair
Rep. William J. Carson, Co-Chair
C. Malcolm Cochran, Co-Chair.

February 17, 2014

[1] FY 2014 Grants-In-Aid Act Sec. 31.

[2] *Id.*

Executive Summary

"Basic life support" ambulance and EMS services (hereinafter "BLS Ambulance Service") are provided in Delaware primarily by 51 non-profit, volunteer fire companies and 3 other volunteer, non-profit ambulance companies (collectively herein, the "Volunteer Ambulance Companies").[3] In 1999, House Bill 332, entitled *the "Delaware Emergency Medical Services System Improvement Act of 1999* (hereinafter "HB 332") established (and authorized) new response time goals and certification standards to be met by the Volunteer Ambulance Companies (among others). In order to meet the new standards, the Volunteer Ambulance Companies needed to hire paid EMT's and ambulance attendants, primarily to ensure the availability of sufficient numbers of trained (and certified) staff (24/7) to meet the new response time goals.

The authors of HB 332 recognized that compliance with the new goals and standards would impose additional expense on the Volunteer Ambulance Companies. Evidence of legislative intent in this regard is found in House Amendment No. 7 to HB 332, which noted that "a commitment of money and other resources may have to be provided by the State of Delaware or other sources" if the response time and other goals of the statute are to be met.[4] Despite the acknowledgement, in the fourteen years since the enactment of HB 332 no modifications have been made to the system by which BLS Ambulance Service is funded in Delaware. And what was predicted in 1999 has since come to pass: Substantial additional costs are being incurred by the Volunteer Ambulance Companies, most of which relate to the need to hire trained (and certified) staff sufficient to meet the response time criteria established in HB 332.

The increased (and increasing) costs, without corresponding increases in revenues, have eroded the financial stability of the Volunteer Ambulance Companies. Thus, of the 54 non-profit, Volunteer Ambulance Companies that provided ambulance and EMS operations in 2012, 40 reported to the Task Force that they are now conducting ambulance/EMS operations at a loss.[5] Salary and benefits for ambulance personnel currently exceed 75 cents of every dollar of revenue generated or received for ambulance/EMS operations. Financial information collected with the assistance of the Delaware State Fire Prevention Commission indicates that the combined ambulance-side deficit for the Volunteer Ambulance Companies in 2012 was in excess of $8 million. While capital expenditures were accounted for on a normalized basis due to reporting

[3] As of January 1, 2014 the Houston Fire Company initiated ambulance service, bringing the total number of Volunteer Ambulance Companies in Delaware to 55.

[4] HB 332 "Whereas" clauses.

[5] When the reporting of capital expenditures is normalized, as described later in this Report, the number of companies providing ambulance/EMS service at a loss climbs to 50, though the total amount of the reported deficit is less.

variations (accounting for depreciation varied from company to company), even if all "cap ex" were (hypothetically) removed from the consolidated income statement (for all companies) the combined account deficit would still exceed $1.5 million. The need for ongoing, and substantial, capital expenditures, however, cannot be ignored and adds significantly to the combined operating deficits. For example, most active ambulance companies must replace or substantially rehabilitate each ambulance on a 3 to 5 year schedule.

The problem of cost is thus comprehensive in scope and growing rapidly. The current revenue base, which consists primarily of a combination of premium tax, grants in aid (state and county level), third party payor reimbursements (public and private), and citizen contributions (via volunteer fundraising efforts) is insufficient. Companies that currently operate their BLS Ambulance Service at a loss are diverting funds from the "fire side" of their operations in order to keep their ambulance service on line. All involved recognize that this practice is unsustainable. Action is therefore required in the short term, if the current level of service is to be maintained.

The findings and recommendations of the Task Force are as follows.

Findings and Recommendations

Findings. Based on the information presented, the Task Force makes the following findings:

1. The primary, BLS Ambulance Service providers throughout the State of Delaware (outside the City of Wilmington) are the 55 Volunteer Ambulance Companies. These companies are non-profit organizations, traditionally staffed by volunteers that provide fire, rescue and ambulance service to their communities, throughout the State. As non-profit service providers, the Volunteer Ambulance Companies must provide service regardless of the patient's ability to pay.

2. To meet the response time goals and certification standards set forth in (or pursuant to) HB 332, the Volunteer Ambulance Companies have needed to hire properly trained and certified personnel to ensure round the clock (24/7) ambulance coverage, throughout their service territories. This has resulted in substantial increases in personnel costs (including in particular employee salaries and benefits), together with additional equipment and capital costs.

3. Employee expenses for ambulance/EMS personnel hired by the Volunteer Ambulance Companies now consume more than 75% of the revenues generated or otherwise received by the Volunteer Ambulance Companies from (or for) their ambulance operations. This is based on reported income for the 54 Volunteer Ambulance Companies that conducted operations in 2012 of approximately $27 million for ambulance/EMS operations, as against salary expense of approximately $20.6 million--leaving less than 25% of gross revenue (for 2012) available to fund all other expenses.

4. As noted above the Volunteer Ambulance Companies were left with an estimated system-wide funding deficit for ambulance service of approximately $ 8 million in 2012. The problem is wide-spread, resulting in projected deficits at all but one of the ambulance companies in New Castle and Kent Counties, and at 16 out of 21 companies in Sussex. Most companies have been required to divert funds from the "fire side" of their operations, in order to meet the need.

5. The added personnel costs imposed by HB 332 have been magnified by (i) increasing population(s), (ii) reimbursements from government and other third party payors at rates that are below the cost of providing the service,[6] and (iii) a

[6] For example, the Medicaid reimbursement rate for BLS ambulance service is $61.94 per run as compared against costs (per "compensated run") that can run in excess of $450.00 per run.

general decline in insurance premium assessments dedicated (by statute) to the funding of ambulance services.

6. Thus, while costs have increased (substantially) revenues have not kept pace. For example, "allowable" rates set by Delaware's largest, health benefits provider have been substantially below the cost per compensated ambulance run in Delaware, apparently for many years. While the company is now in the process of raising its "allowable" to approximately the "Medicare" reimbursement rate (by April 1, 2014) information collected by the Task Force suggests that the resulting rate will still be below the cost of providing the service. The company is also exempt from the payment of state-level premium tax allocable to EMS/ambulance service.

7. Insurance premium tax assessments dedicated to ambulance service (from health, life and accident) also have declined in recent years, due primarily to (i) the rise of self-funded health plan options, which are (purportedly) exempt (under ERISA) from state-level premium tax, and (ii) the decline in the market for certain employer and trust owned life insurance products. In addition, and as noted above, certain types of insurance plans, such as managed care organizations, health maintenance organizations, and plans offered by health service corporations are currently exempt from Delaware's premium tax. The historical reason for these exemptions is unclear. The Department of Insurance and the Department of Finance have indicated that an increase in the premium tax rate may provoke retaliatory premium tax increases in other states.

8. Government payors (primarily Medicaid and Medicare) provide reimbursement at rates that are below the cost (and in the case of Medicaid, a fraction of the cost) of the service. The Volunteer Ambulance Companies have little or no ability to recover the difference from the beneficiaries of such programs, and thus must absorb these costs, or allocate them among other payors and funding sources.

9. The current revenue base is likely not sufficient to cover the increased cost of BLS Ambulance Service, post HB 332. Additions to the revenue base must be considered, to help to defray the cost of BLS Ambulance Service. While some local governments have successfully implemented emergency medical service fees (and other, similar revenue measures) others have not. In order to close the current funding gap, private sector payors must pay or allow for reimbursement at levels consistent with cost, and all levels of government, including local governments, must be counted on to contribute.

Recommendations. To address the issues identified in its Findings, the Task Force recommends consideration of the following. In making these recommendations, the Task Force intends herein to identify options for policy makers to consider (whether individually or in combination), as and to the extent required to address the funding need:

1. Additional funding must be made available to the Volunteer Ambulance Companies in the short term, in order to address funding shortfalls that threaten to degrade and disrupt BLS Ambulance Service throughout the State of Delaware. By some accounts, service may be degraded in as little as 8 to 12 months if additional funding is not received.

2. Revenues should be secured from state, local and private sector sources to address these funding needs.

3. BLS ambulance providers should be required to continue to meet the response time (for urban and rural areas) and certification criteria (set forth in or adopted pursuant to) HB 332 in order to receive funding from the State of Delaware. A funding allocation methodology should be adopted, following consideration of the BLS funding formulas developed in 2002 by the Budget Director and the Controller General.

4. Legislation should be considered to extend the current ambulance premium tax assessment (*see* 18 *Del. C.* § 713) to all health benefit plans that currently do not pay the assessment, including (but not limited to) those offered by managed care organizations, health maintenance corporations, and health service corporations. Further, and because it is argued that ERISA pre-empts state level assessments on self-funded health benefit plans, consideration should be given to assessing an "EMS Fee" on those groups that do not pay the premium tax, in order to ensure that all groups carry their fair share of the financial burden. This may require legal analysis and structuring in order to avoid restrictions imposed by ERISA.[7]

5. Information received from the Department of Finance indicates that an EMS assessment (intended to "level the playing field" with traditional insurers subject to the ambulance premium tax) may be appropriate for third party companies that administer self-insured health benefit plans, but are not subject to the premium tax.

6. Consideration should also be given to increasing the ambulance premium tax assessment, due to (i) the increase in costs caused by HB 332, and (ii) the general decline of certain corporate owned life insurance products ("COLI and BOLI") that previously generated substantial premium tax revenue. Further, and in light of

[7] Highmark Blue Cross Blue Shield of Delaware ("Highmark Delaware") does not support extending the "ambulance premium tax" to health service corporations, and has asked that its dissent from this recommendation be noted in the Task Force Report.

the concern raised by the Departments of Insurance and Finance regarding retaliatory tax treatment of Delaware domestic insurers on business written in other states, those Departments should be asked to conduct a survey of relevant premium tax rates in all 50 states, so that policy makers can have specific information regarding the potential for (and impact of) tax retaliation, if in fact the rate is raised.

7. Additional revenue sources should be considered, since the current revenue base is likely inadequate to meet the need. Concepts discussed include: (i) a state level "EMS Fee" or surcharge, (ii) a special assessment on every moving traffic violation, state wide, (iii) an EMS Fee addition to hotel/motel lodging tax assessments, (iv) per-parcel real property assessments, (v) establishment of a mandatory BLS fee schedule for third party (insurer and patient) reimbursement, (vi) EMS service fees, in addition to the ambulance transport and medical expense charges, (vii) a motor vehicle registration surcharge dedicated to EMS and, (vi) EMS district assessments. Policy makers will need to consider these, or other measures (or some combination of such) in order to determine which are politically feasible, and which will address the need.

8. Consideration should also be given to increasing the Grant-In-Aid appropriation for the maintenance and operation of ambulances, which is currently only $4500 (approximately) per company, per year.

9. Legislation should be drafted to ensure that health insurers (and others who offer health benefit plans) do not set their "allowable" rates below the costs incurred by the Volunteer Ambulance Companies in providing the service. For ERISA exempt "self-funded" plans that adopt "below cost" allowables, consideration should be given to legislative measures directed at plan sponsors or administrators (such as a separate EMS fee) to ensure that those who implement "self-funded" plans pay their fair share of the cost of the ambulance service. Again, research should be undertaken to ensure that any such fee is structured so that ERISA is not violated.

10. The Department of Insurance ("DOI") should examine whether health insurers (and others who offer health benefit plans) doing business in the State of Delaware offer higher "allowable" rates for ambulance service in other states. The DOI should report to the General Assembly on any differences discovered, and the reasons for such.

11. Local governments should be asked to consider (as a priority) the adoption of revenue generating measures dedicated to EMS, in order to maintain current levels of BLS Ambulance Service. Legislation at the State level should be considered to authorize the imposition of such measures at the county and municipal levels, as and to the extent required.

12. Legislation should be considered to require the payment of BLS Ambulance Service billing prior to the application of PIP no-fault coverage to wage, under Title 18 of the Delaware Code.[8]

13. The Volunteer Ambulance Companies should be permitted to participate in State purchasing arrangements and benefit plans, where doing so will produce cost savings.

[8] Near the end of its deliberations the Task Force was made aware of draft legislation that would permit PIP insurance benefit recipients to designate all "PIP" benefits for the payment of lost wage, prior to satisfaction of billings for ambulance and EMS service. The Task Force resolved to oppose such legislation, unless amended to ensure that funds are first reserved from PIP benefits for the payment of ambulance and EMS charges.

Supporting Information

The findings and recommendations of the Task Force are set against the backdrop of HB 332. A brief discussion of the statute and its impact(s) is thus warranted. Costs and revenues are then examined, followed by a summary of each meeting of the Task Force.

HB 332.

By 1999, Delaware's emergency medical services ("EMS") system was made up of over 1700 emergency care providers, including paramedics, medical technicians, volunteers, dispatchers and other first responders.[9] It was recognized at the time that the EMS system (as it then existed) had several weaknesses that needed to be addressed, to optimize performance.[10] Among others, system-wide response time and certification standards did not then exist.[11] Uniform call processing standards, for the classification and processing of calls for assistance, were also non-existent. Furthermore, there was no system by which data could be collected centrally, in order to monitor response time, call processing and other performance metrics.[12] The State Fire Prevention Commission lacked statutory and regulatory authority to manage BLS services, to ensure compliance with overall performance standards, or to certify agencies (and individuals) qualified to provide BLS (and other) emergency medical services.[13]

HB 332 addressed these deficiencies directly. It established the Delaware Emergency Medical Services Oversight Council ("DEMSOC"), which was granted the authority to evaluate the effectiveness of Delaware's EMS system, and to report annually on its performance as measured by established goals and performance criteria.[14] Under HB 332 the State Fire Prevention Commission was granted the authority to adopt regulations applicable to ambulance service providers, including regulations providing for operational and certification requirements. The Commission was expressly granted the authority to establish a process for certification renewal, as well as the authority to "de-certify any agency for noncompliance with its regulations."[15] Ambulance service

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[9] HB 332 at 1

[10] *Id.*

[11] *Id.*

[12] *Id.* at 2

[13] *Id.* at 3

[14] *Id.* at 5

[15] *Id.* at 6

providers not certified by the Commission are not eligible to receive state funding, (including funding raised by the ambulance premium tax, under 18 *Del. C.* § 713), and Medicaid payments.

The Commission was also granted the authority under HB 332 to establish certification requirements for individual EMS providers, and to adopt treatment protocols for use in the provision of BLS services (based on specific recommendations from the State EMS Medical Director, among others).[16] Further, in the "Whereas" clauses of the bill, specific response time and call processing "goals" were adopted, applicable to all "BLS ambulance agenc[ies] within the Delaware EMS system . . . ."[17]

Following the enactment of HB 332, the State Fire Prevention Commission used its new regulatory authority to adopt the regulations that now set forth the certification and performance standards for ambulance and EMS providers engaged in the provision of BLS Ambulance Services. These have included, for example, regulations providing for specific training and certification of EMT's, the staffing of ambulances, coverage areas, required ambulance supplies, and many others.[18] As reflected in HB 332, the BLS providers (now, effectively, the Volunteer Ambulance Companies) are thus the "front line"—they are the first responders in the vast majority of the tens of thousands of medical and other life threatening (and less serious) incidents reported in Delaware each year. These regulatory certification and performance standards derive from the authority granted in HB 332, and have resulted in the substantial cost increases that have been seen since the enactment of HB 332, as the Volunteer Ambulance Companies have sought to come into (and remain in) compliance with the law.

Costs Associated With The Provision of BLS Services Since The Enactment of HB 332.

During the meetings of the Task Force, a number of the Volunteer Ambulance Companies presented detailed information regarding the costs currently faced in the provision of BLS services. In each case, the largest cost item (by far) was the cost of personnel. All of the companies questioned indicated that to obtain properly trained and certified staff in sufficient numbers to meet the standards set forth in HB 332, it is necessary to hire trained personnel. In this regard, it was expressed that the training and duty hour(s) requirements are so great that basic ambulance service (as defined since the enactment of HB 332) now cannot be staffed solely with volunteers. The financial

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[16] *Id.* at 8

[17] Specific performance and certification criteria were also provided for "ALS" agencies (primarily, the paramedic services), but responsibility for staffing and funding was effectively assigned to the three counties. *See* HB 332 at 8-9.

[18] 1 Del. Admin. Code § 710 ("Ambulance Service Regulations")

impact is illustrated in the following charts, which were compiled by State Fire Prevention Commission staff, reflecting income and expense items allocable solely to the provision of basic ambulance service (BLS or less), by each of the Volunteer Ambulance Companies:

NEW CASTLE COUNTY

AMBULANCES $40,000 - RESCUES $20,000 - FIRST RESPONDER $4,000(AFR)

COMPANY	EMS CALLS	INCOME	FT	PT	SALARIES	INSURANCE	MAINTENANCE	EQUIPMENT	A	R	F	CAPITAL EXP	TOTAL COST	P&L
Aetna	8291	1,464,575	11	58	1,535,860	36,471	192,412	339,705	6	4	3	332,000	2,436,461	(971,886)
Belvedere	358	207,039	0	17	191,676	4,600	29,467	49,052	1	1	1	64,000	338,798	(131,759)
Brandywine Hnd	2571	552,417	8	5	468,832	9,010	24,437	71,249	2	1	0	100,000	673,531	(121,114)
Christiana	9,899	1,856,137	10	54	1,283,063	39,971	215,362	372,352	6	5	1	344,000	2,254,760	(398,623)
Claymont	5,913	896,869	9	25	732,754	10,657	47,000	143,104	3	1	2	148,000	1,081,521	(184,652)
Cranston Heights	2532	538,880	6	30	612,024	8,067	27,613	98,584	2	1	7	128,000	874,298	(335,418)
Delaware City	1482	339,566	4	4	324,286	5,180	36,790	65,898	2	2	2	128,000	560,160	(220,594)
Elsmere	2168	348,012	4	25	296,208	10,464	29,711	72,090	2	1	1	104,000	512,477	(164,465)
Five Points	1532	275,562	2	25	330,978	9,227	22,632	48,320	1	1	3	72,000	483,162	(207,600)
Goodwill	1674	359,002	6	0	513,527	20,645	45,567	125,523	2	1	1	104,000	809,266	(450,264)
Hockessin	1562	556,141	9	11	521,641	6,897	32,405	92,051	2	1	1	104,000	756,998	(200,857)
Holloway Terrace	1695	221,988	0	35	291,725	12,000	34,092	86,788	1	3	1	104,000	528,610	(306,622)
Mill Creek	5050	999,309	9	15	688,592	18,375	60,117	157,486	4	2	1	204,000	1,128,577	(129,268)
Minquadale	1894	342,523	8	10	470,094	4,505	29,351	65,424	1	1	1	64,000	633,377	(290,854)
Minquas	1623	472,842	2	24	349,503	4,327	38,967	56,269	1	1	2	68,000	517,070	(44,228)
Odessa	885	426,790	0	30	271,492	14,441	35,325	114,744	2	2	2	128,000	564,008	(137,218)
Port Penn	280	182,955	1	15	245,689	47,007	48,033	56,953	1	2	5	100,000	497,690	(314,735)
Talleyville	3650	1,022,202	11	9	657,381	11,000	50,000	59,500	3	2	0	160,000	937,886	84,316
Townsend	763	313,377	2	4	201,211	12,955	18,730	153,256	3	1	7	168,000	554,163	(240,786)
Volunteer Hose	3298	810,827	10	20	725,496	6,785	85,611	60,370	4	2	4	216,000	1,094,272	(283,445)
Wilmington Manor	2601	542,914	8	8	458,149	9,646	47,558	138,554	2	1	4	116,000	769,914	(227,000)
													0	0
TOTALS	59721	12,729,927	120	424	11,170,181	302,230	1,151,180	2,427,272	51	36	49	2,956,000	18,006,999	(5,277,072)

KENT COUNTY

AMBULANCE $40,000 - RESCUE $20,000 - FIRST RESPONDER $4,000(AFR)

COMPANY	EMS CALLS	INCOME	FT	PT	SALARIES	INSURANCE	MAINTENANCE	EQUIPMENT	A	R	F	CAPITAL EXP	TOTAL COST	P&L
American legion	3225	844,397	11	12	733,231	8,962	56,678	198,147	4	0	1	164,000	1,161,023	(316,626)
Bowers	401	124,648	0	20	93,334	4,139	4,000	44,394	1	1	1	64,000	209,870	(85,222)
Camden Wyoming		569,231	5	25	371,382	9,940	22,190	64,830	2	1	1	104,000	572,346	(3,115)
Carlisle	2944	652,607	2	21	454,070	5,743	30,221	114,912	2	1	0	100,000	704,949	(52,342)
Cheswold	1920	411,922	4	21	324,265	6,713	12,453	80,490	2	2	2	128,000	551,927	(140,005)
Citizens Hose	NO AMBULANCE 115	40	0	0	0	4,000	150	1,800	0	1	1	24,000	29,952	(29,912)
Clayton	NO AMBULANCE		0	0									0	0
Dover	NO AMBULANCE		0	0									0	0
Farmington	NO AMBULANCE 157	0	0	0	0	1,411	11,303	25,093	0	1	1	24,000	61,809	(61,809)
Felton	1185	278,591	8	20	361,551	3,072	26,314	98,777	2	2	2	128,000	617,720	(339,129)
Frederica	511	54,055	0	1	7,335	4,857	4,943	29,418	2	1	0	100,000	146,556	(92,501)
Harrington	1780	414,078	2	31	261,009	16,000	23,000	79,050	4	1	2	188,000	567,066	(152,988)
Hartly	833	204,318	1	4	57,395	5,229	17,712	107,535	3	1	1	144,000	331,876	(127,558)
Houston	NO AMBULANCE		0	0									0	0
Leipsic	360	96,875	0	0	11,315	3,168	8,203	39,989	2	1	4	116,000	178,682	(81,807)
Little Creek	NO AMBULANCE		0	0									0	0
Magnolia	1035	232,224	0	21	195,293	2,233	2,582	40,220	1	1	1	64,000	304,331	(72,107)
Marydel	494	116,585	0	0	0	5,079	12,346	35,607	2	1	1	104,000	157,036	(40,451)
South Bowers	NO AMBULANCE		0	0									0	0
TOTALS	14688	3,999,571	33	176	2,870,180	80,546	232,095	960,262	27	15	18	1,452,000	5,595,143	(1,595,572)

SUSSEX COUNTY

AMBULANCES $40,000 - RESCUE $20,000 - FIRST RESPONCER $4,000(AFR)

COMPANY	EMS CALLS	INCOME	FT	PT	SALARIES	INSURANCE	MAINTENANCE	EQUIPMENT	A	R	F	CAPITAL EXP	TOTAL COST	P&L
American Legion	2668	818,211	5	21	524,015	17,545	67,104	136,450	3	0	0	120,000	865,117	(46,906)
Blades	939	290,497	4	0	169,180	22,994	24,838	71,123	2	1	2	108,000	396,140	(105,643)
Bethany Beach	1127	733,149	8	19	485,004	4,482	29,015	141,281	2	1	3	112,000	771,788	(38,639)
Bridgeville	970	357,034	2	23	158,738	3,663	23,816	66,585	2	1	1	104,000	356,806	228
Dagsboro	509	275,532	3	0	131,305	4,082	7,471	73,550	2	1	0	100,000	316,411	(40,879)
Delmar	1715	895,485	12	0	474,792	34,506	27,307	89,121	2	1	0	100,000	725,729	169,756
Ellendale	1036	259,400	4	22	267,300	6,900	34,700	60,700	2	1	2	108,000	477,605	(218,205)
Frankford	521	209,489	3	15	182,310	5,925	10,115	70,554	2	1	1	104,000	372,908	(163,419)
Gerogetown	NO AMBULANCE												0	0
Greenwood		255,220	1	25	240,919	3,457	6,495	44,699	2	1	0	100,000	395,573	(140,353)
Gumboro	315	154,754	4	19	178,019	3,538	59,366	49,753	2	1	1	104,000	394,680	(239,926)
Indian River	NO AMBULANCE												0	0
Laurel	2375	535,203	7	14	399,624	2,241	19,286	81,600	2	1	1	104,000	606,755	(71,552)
Lewes	3238	1,032,437	9	14	491,634	5,800	55,447	133,813	4	1	1	184,000	870,700	161,737
Memorlal	172	84,200	1	15	91,565	9,730	15,700	48,300	1	2	1	84,000	249,299	(165,099)
Mid-Sussex	2650	790,807	10	15	541,705	17,862	88,813	85,200	3	1	3	152,000	885,587	(94,780)
Millville	1714	644,692	9	24	547,565	12,650	56,209	151,461	3	1	1	144,000	911,890	(267,198)
Millsboro	2204	651,057	9	6	406,617	6,040	43,940	113,390	3	1	1	144,000	713,992	(62,935)
Milton	1156	386,808	1	7	196,493	7,556	10,421	47,125	2	1	1	104,000	365,599	21,209
Rehoboth Beach	2637	714,012	8	25	469,483	9,364	31,758	102,249	3	1	3	152,000	764,861	(50,849)
Roxana	958	472,763	3	18	146,123	7,441	36,250	97,726	3	1	3	152,000	439,547	33,216
Seaford	2879	700,641	10	0	517,451	12,316	48,972	118,965	3	1	4	156,000	853,712	(153,071)
Selbyville	523	207,843	3	15	158,408	4,297	21,117	57,709	2	1	1	104,000	345,535	(137,692)
TOTALS	30306	10,469,234	116	297	6,778,250	202,389	718,140	1,841,354	50	21	30	2,540,000	12,080,234	(1,611,000)

TOTALS

AMBULANCE $40,000 - RESCUE $20,000 FIRST RESPONDER $4,000

	EMS CALLS	INCOME	FT	PT	SALARIES	INSURANCE	MAINTENANCE	EQUIPMENT	A	R	F	CAPITAL EXP	TOTAL COST	P&L
SUSSEX TOTALS	30306	10,469,234	116	297	6,778,250	202,389	718,140	1,841,354	50	21	30	2,540,000	12,080,234	(1,611,000)
NEW CASTLE TOTALS	59721	12,729,927	120	424	11,170,181	302,230	1,151,180	2,427,272	51	36	49	2,956,000	18,006,999	(5,277,072)
KENT TOTALS	14688	3,999,571	33	176	2,870,180	80,546	232,095	960,262	27	15	18	1,452,000	5,595,143	(1,595,572)
ALL TOTALS	104715	27,198,732	269	897	20,818,611	585,165	2,101,415	5,228,888	128	72	97	6,948,000	35,682,376	(8,483,644)

The charts clearly demonstrate that staff salaries (inclusive of benefits) exceed, by a wide margin, any other cost item. Further, for most of the Volunteer Ambulance Companies ambulance staff salaries consume more than half of the income of the company. System wide, approximately 76 percent of revenue is now allocated to ambulance service employee costs (i.e. salaries and benefits). These costs are a direct result of the adoption of certification and response time standards, following the enactment of HB 332.

The impact of these substantial personnel cost(s) on the financial well-being of the Volunteer Ambulance Companies is apparent on the face of the charts, which document salary expense (inclusive of benefits) for 2012 in excess of $20.8 million (system wide) as against EMS-side income totaling approximately $27.2 million, leaving approximately $6.4 million to fund all other costs incurred in the provision of BLS Ambulance Service by the 54 Volunteer Ambulance Companies conducting operations in 2012, state-wide. This equates to more than 75 cents of every EMS revenue dollar dedicated to the cost of qualified staff sufficient to meet the need, with less than 25 cents remaining for insurance, maintenance (inclusive of fuel), equipment, capital expenditures, and other

fixed costs. The cumulative, system wide deficit is estimated at $8,392,584.00 for 2012, affecting 50 of the 54 Volunteer Ambulance Companies.[19]

Revenues Are Not Keeping Pace.

In addition to costs, the Task Force examined revenues. The revenue base of the Volunteer Ambulance Companies consists primarily of (i) insurance premium assessments, (ii) reimbursements received from government programs, (iii) reimbursements from insurance companies and patients, (iv) grants-in-aid (at the state and county levels), (v) local fees and assessments (in some cases) and (vi) donations from members of the public. In addition, as noted earlier, information presented to the Task Force suggests that approximately 75 percent of the Volunteer Ambulance Companies now subsidize their ambulance service with funding that was intended for the fire-side of their operations.

(i) Insurance Premium Assessment(s).

Information presented to the Task Force suggests that premium tax receipts have been a declining revenue source for the Volunteer Ambulance Companies (on a percentage basis and in real dollar terms). Specifically, under 18 *Del. C.* § 713 (hereinafter "Section 713"), an assessment on insurance premiums equal "to fifteen one-hundredths of 1 percent of the gross premiums received by insurance companies" on "all types of life and/or health insurance coverage in this State"[20] is paid into a special fund, to be distributed "on a pro rata basis" to "all nonprofit organizations that provide ambulance and/or rescue services within this State . . . ." Tax receipts under this special "ambulance" assessment have declined substantially in recent years, due primarily to (a) a decline in employer/trust owned life insurance premiums, and (b) the rise of self-funded health plan options, which do not pay "premiums" *per se*, and are (reportedly) exempt (under ERISA) from state-level premium tax on traditional "insurance" products.

For example, in FY 2012 the per company allocation of revenues received from the Section 713 ambulance premium assessment was down by approximately 24 percent. In

[19] The Volunteer Ambulance Companies, in their reports to the State Fire Prevention Commission (for this Report) did not account in consistent fashion for the depreciation of capital equipment (primarily, ambulances and other rescue vehicles). Thus, and with the help of the State Fire Prevention Commission, capital expenditures were normalized for purposes of this report, based on the useful life of the particular category of vehicle accounted for, and the assumed replacement cost(s) (based on experience). Thus, ambulances were assumed to require replacement every 5 years, at $200,000 per vehicle, resulting in an annualized capital cost of $40,000 per ambulance. It was assumed that rescue trucks were used 50 percent of the time in connection with EMS calls, and are replaced every 20 years at $20,000 per year (the assumed replacement cost is $800,000 per rescue truck). Other first response vehicles were amortized at $4000 per year, to be replaced every 10 years (at an assumed cost of $40,000 per vehicle).

[20] This has apparently been interpreted to include premiums received on "accident" policies.

FY 2013, the allocation was down approximately 16 percent.[21] In 2013 the *pro rata* allocation of premium tax receipts (under Section 713) was only $45,171 per company.

This level of funding is insufficient to meet the needs of the Volunteer Ambulance Companies, as driven by the requirements of HB 332 (and ensuing regulations).

The Task Force was also informed that not all health plans pay the premium tax. Specifically, Delaware's largest health benefit plan company is classified as a "health service corporation" and not an "insurer" and thus is exempt from the premium tax. "HMO's" and "Managed Care Organizations" are also reportedly not covered by the premium tax. There was also substantial discussion during Task Force meetings regarding the current failure (or inability) to extend the ambulance premium assessment to "self-funded" health benefit plans, due to the perceived impact of ERISA. Anecdotal information presented to the Task Force indicates that the number of self-funded plans (and the number of beneficiaries covered under self-funded plans) may be increasing, thus further impairing the utility of the ambulance premium assessment.

Task Force members considered a variety of alternatives intended to "level the playing field" between those who purchase traditional insurance products, and those who do not. There was general sentiment expressed that it would be fair to treat both groups equally-- that all health benefit companies should be taxed at the same level, inclusive of traditional insurers, health service corporations, HMO's, MCO's and all others. In that regard, it may be necessary to structure the assessment differently for self-funded plans (or their sponsors) in order to avoid the pre-emptive effects of ERISA. Options may include a special ambulance or EMS user fee directed at those employers who do not offer traditional insurance products, or at third party plan administrators, intended to equalize the burden.[22]

The Task Force considered whether an increase in the rate of assessment would be appropriate. It was noted that increasing the assessment from .015 of 1 percent to .045 of 1 percent could raise approximately $4.5 million (an additional $83,000 per company based on receipts for 2012), while imposing an increase in the premium tax of less than $5.00 on an annual life insurance premium of $1,500.00. Representatives of the Departments of Insurance and Finance raised concerns about "retaliatory taxation" if the rate is raised -- that higher tax rates would be applied (if Delaware's rate is increased) on business written by Delaware domestic insurers in other states. But no specific information (apart from the generalized concern with "retaliatory taxation") was

[21] Chart, *Financial Funding to Delaware Volunteer Fire Departments* (include in the Task Force record).

[22] Advice from an expert conversant in ERISA was not available to the task force. One Department of Insurance representative expressed optimism that an EMS user fee or head tax assessed on self-funded plan sponsors may work; another Department of Insurance representative was not optimistic.

presented to the Task Force. Policy makers should require representatives of the two Departments to survey the rates and other risk factors presented in all 50 states, so that accurate assessments can be made of the risks presented (inclusive of actual costs), if Delaware's premium tax is raised.

(ii) Reimbursements From Government Programs.

All of the Volunteer Ambulance Companies bill for their services, but by law must respond to calls regardless of the patient's ability to pay. The amount of uncompensated, and undercompensated, care rendered by the Volunteer Ambulance Companies is thus substantial. Compounding the problem, government programs generally reimburse at rates that are below (and sometimes far below) the cost of providing the service. For example, Medicaid currently allows approximately $61.00 per run. Medicare allows approximately $360 per run (plus mileage), but pays only a percentage of the "allowable."

Information received by the Task Force, however, indicated that costs per "compensated run" can exceed $450 for a basic, BLS run.[23] Where reimbursement is less than the "cost per compensated run" the difference must be absorbed by the ambulance company. In such cases, ambulance users (and third party payors) are being supported by state, county and (in some cases) local level subsidies (grants in aid, premium assessments), by funds diverted from the "fire side" of the operation, and/or by public donations.

In other words, where Medicaid and Medicare are concerned there is little choice but to accept the reimbursement rates offered by the government—even where such are below cost. The Volunteer Ambulance Companies must make up this difference elsewhere.

(iii) Reimbursements From Insurance Companies And Patients.

Many other third party payors (primarily health insurance and other health benefit providers) offer allowable and payment rates that more closely approach the cost(s) incurred by the Volunteer Ambulance Companies in the provision of service. However, some do not, and at least one offers rates that are substantially below the allowable set by Medicare.[24]

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[23] For ambulance operations to be self-sustaining, "compensated runs" (*i.e.*, those for which reimbursement is available) must carry the cost of "uncompensated runs" (i.e. those for which reimbursement is not available).

[24] During the course of the work of the Task Force, Highmark Delaware announced that it would raise its allowable rates to approximately the Medicare rate (approximately $360 per run) by April 1, 2014. The increase is projected to add $1.5 million in available reimbursements for the Volunteer Ambulance Companies, divided between (i) the portion paid by the health benefits plan and (ii) the remainder of the "allowable," which is paid by the patient.

In this regard, the Task Force gave consideration to what an "allowable" rate is intended to accomplish. The Task Force was informed that an "allowable" is not what is paid by the insurer (which is a matter of contract with the customer), but rather what the insurer "allows" its participating providers to recover in total, both from the insurer (in the form of a payment) and by way of "balance billing" to the patient. Thus, the lower the allowable, the lower the total amount of compensation available to the provider (from the insurer and the patient), resulting in competitive benefits for the insurer and lower costs to the insured. Private health plans that use the "allowable" concept generally require providers to enter into contracts in which they agree to bill no more than the "allowable" in exchange for direct payment of the portion to be paid by the insurer.[25]

The Task Force has concluded, however, that this model is not appropriate when it comes to reimbursement for the non-profit, Volunteer Ambulance Companies—which seek only to defray the cost of providing the service. In such cases, where "allowables" are held below cost, the insurer is effectively shifting the cost burden of the ambulance service from themselves and their customers who use the service (where it rightfully belongs) to the Volunteer Ambulance Companies—and ultimately to the public.

It is the conclusion of the Task Force that those who can afford to cover their fair share of the costs of ambulance service -- and particularly private insurers and their customers-- should be required to do so. Legislation prohibiting "below-cost allowables" for BLS Ambulance Service provided by the Volunteer Ambulance Companies is recommended. Such legislation would need to specify a method for certifying and establishing per run costs, below which the allowable may not be set. The Department of Insurance may be the appropriate agency to assume responsibility for this exercise, in conjunction with the State Fire Commission.

It is anticipated that insurers or plan administrators will argue that ERISA precludes the application of such restrictions to self-funded plans. If so, alternatives intended to recapture otherwise unreimbursed cost(s) directly from those who sponsor or administer self-funded plans should be considered.

(iv) Grants-In-Aid.

The Volunteer Ambulance Companies each receive "Grants-In-Aid" funding from the State of Delaware for "maintenance and operation of ambulances." Between 2005 and 2013, that funding has ranged between approximately $3400 and $4500 per company.

[25] Absent agreement to its rates, at least one health benefits company that uses this approach will make payment only to its customer(s), and not directly to the ambulance provider. This practice was prohibited by HB 149, which was enacted last year. The company involved has nonetheless advised that it will continue this practice in the case of its self-funded plans, which it believes to be exempt from HB 149 under ERISA, unless its customers agree otherwise.

An increase in the Grant-In-Aid would be appropriate, given the increased burdens imposed by the State under HB 332.

Each of the three Counties has traditionally provided "grants in aid" dedicated to EMS service. In addition to "fire side" allocations, New Castle County currently allocates $50,000 per company to each of the 21 New Castle County companies for ambulance service. The grant is not tied to the number of ambulances or number of runs undertaken by each company. Kent County allocates $4500 per company, as a grant in aid of EMS service. Sussex County currently grants $1.5 million each year, to be allocated among the 21 companies in that county, 75% of which is split evenly among the companies, and 25% of which as pro-rated by the number of runs per company. Other revenues are allocated by Sussex County to the fire side of the operation, or are not otherwise earmarked for EMS.

The contributions by the counties are vital to the Volunteer Ambulance Companies, however in certain cases the funding is not automatically recurring (in the absence of annual authorization) nor tied to a fixed revenue source (such as a recurring *ad valorem* property tax, or utility fee or surtax). County level assessments of this nature could provide recurring and dependable revenue. Legislation authorizing specific county level assessments may be appropriate. In this regard, it was brought to the attention of the Task Force during its deliberations that legislation is being considered that would authorize the imposition of an EMS fee (in some amount) in New Castle County. It is unknown whether similar fees are being considered for the other two counties.

(v) Local Fees And Assessments.

Some of the Volunteer Ambulance Companies benefit from fees and assessments imposed by local (municipal) governments. Examples include Bethany Beach Volunteer Fire Company, which receives funding from an annual, emergency medical services fee of $53 per parcel.

It appears, however, that there is no uniform practice among municipalities in providing funding for ambulance service. Legislation authorizing local "EMS" fees may be appropriate.

(vi) Donations.

Each of the Volunteer Ambulance Companies engages in significant fundraising activities in the communities in which they serve. These activities range from professional fundraising campaigns, to other, traditional fundraising activities (such as bake sales, raffles, picnics and the like). This source of supplemental funding is of vital importance to the Volunteer Ambulance Companies, but unfortunately is not sufficient to make up the funding deficits now being experienced.

(vii) Other Revenue Sources Considered By the Committee.

In addition to the foregoing, the Task Force discussed a variety of other potential revenue sources. The Task Force has identified the following as meriting further consideration:

- *State Level "EMS Fee" or Surcharge*: A state level fee, earmarked for EMS, was discussed. Various forms were considered, including per parcel fees, utility fees, and others. Many state and local jurisdictions impose such a fee, and relatively modest fees or surcharges have the potential to close the funding gap.

- *Moving Violation Assessments:* A special assessment on all moving traffic violations was considered by the Task Force. This form of assessment would tend to shift at least some of the cost burden to a population that tends to generate a need for EMS response. The task force was advised that currently, law enforcement issues approximately 317,000 moving violations each year.

- *Motor Vehicle Registration Surcharge:* This was also suggested, given the high percentage of EMS calls that are dedicated to motor vehicle accident/rescue situations.

- *Hotel/Motel Lodging Tax:* The Task Force considered an "EMS Fee" addition to the hotel/motel lodging tax, designed to capture the increased burden visitors to our state may place on Delaware's EMS system.

- *EMS Service Fees:* Legislation should be considered to authorize the imposition of EMS service fees, in addition to fees for ambulance transport and medical expenses. EMS service fees, such as "stand by" fees, return and restocking fees, emergency response fees and others would be designed to capture costs not currently addressed by health and insurance carriers, to be defrayed by ambulance users.

- *EMS District Assessments:* Other states have authorized the formation of EMS districts, and have permitted (within certain parameters and subject to public approval) the imposition of *ad valorem* and other forms of direct taxation, for the benefit of the emergency medical organization. This concept would operate much like current public school funding.

- *EMS Fee Schedules:* Given the issues arising in the context of insurance reimbursement, the development of state-approved EMS fee schedules for third party (insurer/patient) reimbursement was discussed.

(viii) Information Received From the Department of Finance

Finally, the Committee requested assistance from the Department of Finance in identifying potential revenues sources. The Department's response is reprinted in this Section, as follows:

"Because it supports essential public services, the most essential goal of any state revenue system is to generate adequate revenues in a stable and predictable manner. This is especially true when contemplating earmarking a single revenue source to bear the responsibility of funding a particular program. Many of the EMS options considered depend on earmarking so it is critical that those options are consistent and dependable.

Understanding this necessity, the Department of Finance evaluates revenue options according to the following criteria:

- **Each option' s revenue potential.**

- **The reliability of the estimates themselves.** All other things being equal, options having tight confidence intervals around their revenue estimates are preferable to those that do not.

- **Administrative and compliance ease, including the time needed for implementation.**

- **Other tax policy considerations, if significant.** If an option under consideration would in a significant manner either enhance or detract from another policy objective (equity, for example), then that attribute should be considered.

- **Legal and political considerations.** This criterion seeks to answer questions, such as:

    - What is the likelihood that the option under consideration would trigger a legal challenge?

    - Would the option survive such a challenge?

    - What is the likelihood that an option, if adopted, would trigger a federal response - i.e., preemption?

Using this analytical framework, the Department was asked to consider revenue options that "leveled the playing field" between insurance providers that are required to pay the insurance premium tax and self-insured plans, which are not subject to the insurance premium tax.

On the surface, this disparate treatment may seem unjustified. Ultimately, both traditional insurance and self-insured plans are in the business of funding plans that cover members' health care needs and expenses. In practice, however, self-insured plans operate differently.

With a self-insured plan, the employer assumes the financial risk for providing health care benefits to its employees, paying for each out-of-pocket claim as incurred, rather than paying a fixed premium to an insurance carrier (which is often referred to as a "fully-insured" plan).

These are not just academic differences. Self-insured plans are practically and, more importantly, legally distinct from fully-insured plans, as explained in the following reference:

ERISA Preemption of State Regulation

In 1974, the Employee Retirement Income Security Act (ERISA) was enacted which pre-empted state law. ERISA offers self-funded plans the advantage of not being controlled by state laws that relate to insurance. ERISA provides regulatory stability to employers that operate in several states, so those companies do not have to adopt a patchwork of design variations to comply with state requirements. Thus, self-funded plans are not subject to state insurance benefit mandates. Furthermore, the Federal authorities that do regulate ERISA and self-funded plans show deference to self-funded plan administrators, unlike state based regulatory entities.

Relief from State Premium Taxes

Most states impose taxes on premiums received by insurers. Insurers shift the burden of state premium taxes onto employers. A self-funded plan enjoys savings, as they are not subject to state premium taxes.[26]

Leveling the playing field between self- and fully-insured plans by simply extending the premium tax to self-insured plans is thus a non-starter. Federal law preempts such an action. Understanding this limitation, the Task Force Committee asked the Department of Finance to seek other means by which the playing field between self- and fully-insured plans might be leveled.

The Department of Finance began by assessing the actors in the self-insured market. While they do not purchase insurance from a third party, self-insured employers typically

[26] The Self-Insurance Educational Foundation, Inc. in Cooperation with The Self-Insurance Institute of America, Inc.; "Understanding Self-Insured Group Health Plans: Solutions For Containing Cost While Providing Quality Benefits" (http://www.hcc.com/portals/0/subsites/hcclife/downloads/HealthCareSuccessPublicationl.pdf)

rely on third parties to administer their plans. These third party administrators are typically the same companies offering insurance products in the fully-insured market. In this capacity, though, the company is not offering insurance; it is providing a basic administrative service, not unlike a third-party providing payroll-processing services.

This distinction is important as the statutory provisions that preclude insurance companies from being subject to the State's corporate income and gross receipts taxes apply only to the extent those companies confine their activities to insurance.[27] Once those companies engage in activities outside the scope of insurance (e.g., plan administration), they are subject to the gross receipts and corporate income taxes.

The Department has concluded that, among the actors in the self-insured market, the most direct method of leveling the playing field would be to earmark to EMS some or all of a portion of the gross receipts tax paid by plan-administrators. This approach, however, has four drawbacks:

1. To the extent that plan administrators are in compliance, any revenue earmarked for EMS services is not available to the General Fund. Given the State's difficult budget position, for the foreseeable future such a loss is likely untenable.

2. There is currently no distinct business license category for "Self-insured Health Plan Administrator." As a consequence, data is not readily available to determine potential revenue from those firms that are currently in compliance with the statute. Developing such a database, while not an insurmountable task, would require time and resources that may not fit the Committee's timetable.

3. The level of compliance among third-party plan administrators is unknown. As a result, any current estimate of the ultimate revenue potential of this approach is at this time little more than speculation and would remain as such until a comprehensive enforcement review of this industry is completed.

4. Any enforcement effort of this industry would have an opportunity cost. That is, current enforcement activities would have to be curtailed in order to provide resources needed to examine this industry. This could lead to fewer audits being completed and lower enforcement collections."

The Department of Finance concluded its submission to the Task Force by noting:

"Considering the drawbacks listed above and the need for a dependable revenue stream, it is clear that as an <u>immediate</u> solution to the EMS funding shortfall, applying the gross receipts tax paid by the administrators of self-insured plans has too much uncertainty to

[27] 30 Del. C. § 2301(o) and 30 Del. C. § 1902(b)(7)

make it a viable option. Over the longer-term, however, this option could emerge as a viable funding source."

The Task Force considered the above input of the Department of Finance at its meeting of February 14, 2014. In response to questions put to the Department's representatives, it was noted that an "EMS Tax" under Title 30 of the Delaware Code, on companies that administer self-insured plans (in an amount equating to the premium tax burden) may be a viable option.

The Meetings of the Task Force

This Section of the Report summarizes the meetings of the Task Force. Reference is made to the minutes of the Task Force for more detail regarding its meetings.

The Meeting of September 5, 2013

The initial meeting of the Task Force was held on September 5, 2013. The Task Force reviewed its Statement of Purpose, as set forth in Section 31 of the Fiscal Year 2014 Grant-In-Aid Act. Senator Ennis provided some historical perspective, in his review of HJR 37. This concurrent resolution was adopted back in 2001, to review the fiscal impact of HB 332. A report was issued by the task force authorized by HJR 37. The report contained findings and recommendations relating to the funding of BLS service, statewide. Among other findings, the HJR 37 task force determined that the "primary means of impacting response time" in response to HB 332, "would be to have a crew ready to respond at the time of the call (this significantly increases costs)."

At the time, the average cost per incident (across a 20 company sample) was $304.94 per incident, as against revenue per incident of $225.09. The HJR 37 task force found that the majority of fire companies providing BLS service were then using non-EMS revenue to support their EMS program. The HJR 37 task force concluded that, based on its sample of 20 companies, the estimated costs to the State of Delaware (to finance the deficits then being incurred) was $3 million.

The funding request recommended by the HJR 37 task force was not funded, however. It was observed by members of the Task Force that costs for funding of the ambulance service in Delaware have continued to increase since the HJR 37 Task Force report was issued. It was noted that the fire service had requested $5.4 million to cover the needed funds for ambulance service throughout the state last year, but this request was not recommended for inclusion in the budget by the Joint Finance Committee for fiscal year 2014.

Several of the volunteer ambulance companies made presentations at the meeting of September 5, 2013. These included Seaford Fire Company, Smyrna American Legion Ambulance Service, and Volunteer Hose Company. Each company indicated that they were running their ambulance service at a deficit, and utilizing funds from the fire side of their operations in order to make up the difference. It was also indicated that this was not a sustainable source of funding. Notably, the deficit last year for Smyrna American Legion ambulance service was approximately $250,000.00. The American Legion does not have a "fire side" to defer its funding deficit.

There was a discussion of House Bill 149, and various issues arising in connection with securing appropriate reimbursement from private insurers. Information was presented that indicates that some insurance companies reimburse at rates below the costs of

service, and below the amount billed by the ambulance companies. For example, Blue Cross Blue Shield set its allowable rate for an ambulance run back in 2005 at $184.00 per service. It was discussed that insurance companies typically reimburse only a portion of the allowable rate, and in the case of Volunteer Hose the average rate of reimbursement from Blue Cross was approximately $100.00 per run, as against average costs per compensated run of approximately $450.00. Further, to receive even this low payment Blue Cross requires fire and ambulance companies to enter into contracts which prohibit them from billing more to the patient than the "allowable." If there is no contract with Blue Cross, however, the insurance payment for ambulance service is paid by Blue Cross directly to the patient, and not to the ambulance company, forcing the ambulance company to pursue the patient to recover the insurance payment. HB 149 was enacted to correct this situation, but Volunteer Hose recently received a letter from Highmark Delaware stating that ERISA exempts self-insured plans from the law, and indicating that it will not voluntarily comply, absent customer consent.

A presentation was also given regarding average ambulance payments for the principal government payor programs (Medicaid and Medicare). Medicaid currently pays $61.94 per run, does not pay mileage, and pays $12.00 per patient for oxygen uses. Medicare pays $363.00 per run, $7.70 per mile, but does not reimburse for oxygen. Highmark Delaware has recently increased its allowable to $211.60, plus $4.31 per mile and $24.00 for oxygen. Notably, both Medicare and Blue Cross only pay a portion of these "allowable" payments. The rest may be billed to the patient (up to the amount of the allowable). The volunteer ambulance companies cannot "balance bill" after billing Medicaid, Medicare and Highmark Delaware beyond the agreed upon allowable rate. It was noted that the volunteer ambulance companies also receive payments from auto insurance companies, generally at higher rates, when the patient is transported to the hospital. However, information was presented to the Task Force indicating that Highmark Delaware is the largest private insurer in the State, and the primary provider that is charged in the State is Medicare.

The Meeting of October 10, 2013

In opening remarks, the Committee Co-Chairs clarified that the focus of the Task Force is ground transport; that there have been 3,917 EMT's that have been trained in Delaware; and that the mission of the group is to clarify the scope of the financial problem facing the volunteer ambulance companies, and find a funding source. Presentations were made by three of the volunteer ambulance companies regarding their financial situations. These included Millville Volunteer Fire Company, Felton Volunteer Fire Company, and Christiana Volunteer Fire Company. Each of these companies is currently operating its ambulance service at a deficit, and is funding the service from the "fire side" of their operations. In the most recent fiscal year, Christiana was without funding to replace any ambulance vehicles (it is scheduled to replace two ambulances each year).

A presentation was given by the Delaware Department of Insurance. The Department representative was asked to explain why there has been a decrease in what is received from the premium tax collected for ambulance companies from all life, health and [accident] health insurance plans. Currently, .0015% of the 2% collected from the premium tax on life, health and accident insurance policies goes to the ambulance companies. The Department representative clarified that one specific reason for the loss related to changes in the writing of employer and trust owned life insurance plans (so called "coli" and "boli" plans). Apparently, changes in the tax code have made these plans less attractive to corporate purchasers (which comprise much of the market for the plans).

In addition, the premium tax assessment for volunteer ambulance companies does not apply to self-funded insurance plans (due to ERISA). Questions were raised regarding whether the .0015% assessment could be extended to include self-funded insurance plans. The Department representative indicated that this has been discussed, but never moved forward on.

There was discussion with the Department representative as to whether those insurance companies that are not fully reimbursing the volunteer ambulance companies for the cost of providing the service may be required to pay or provide for an enhanced tax. The Department representative indicated that the Department of Insurance would look into it.

There was discussion among members of the Task Force regarding whether the portion of the premium tax allocated to the ambulance service should be increased.

There was a presentation at the meeting of October 10 on ambulance billing practices. It was pointed out during the presentation that there is a significant difference between Highmark Blue Cross Blue Shield's reimbursement rates in Pennsylvania and in Delaware. It was also indicated that there is little flexibility in the government payment programs, with respect to the rates at which they reimburse.

It was indicated during the presentation that Delaware is one of the only states in the country that does paramedic billing. It was also discussed that rescue billing is another option to consider, which would involve billing auto insurers in vehicle rescue cases.

A second witness from an ambulance billing company indicated that, based on her records, Highmark Delaware pays only approximately $94.00 of the $184.00 allowable rate. In addition, it was indicated that in the case of auto insurance claims (arising from auto accidents), there is a practice of designating personal insurance protection benefits to go to lost wages, rather than to pay for ambulance service and other medical bills. The Task Force was informed that 21 *Del. C.* § 2118 may allow the insured to determine how the funds from the PIP coverage will be used (*i.e.*, whether as lost wages or for medical reimbursement).

The Task Force was informed that the Delaware State Fire Prevention Commission was collecting financial data from each of the Volunteer Ambulance Companies. The Commission and Controller General staff were asked to work together to correct problems with accuracy in the reports.

Under "other business" it was pointed out by a member of the public that all insurance carriers reimburse at all different levels, even the same carrier often will not pay the same amount each time.

The billing company representative provided documentary submissions evidencing payment rates for Highmark Blue Cross Blue Shield in other states; Medicare and Medicaid; and other third-party payors.

The Meeting of November 14, 2013

During the meeting of November 14, 2013, the Laurel Volunteer Fire Company presented information regarding financial issues that it faces in the provision of ambulance service. The Task Force was informed that call volume is increasing for Laurel, and that the company's ambulance service is operated at a deficit. Again, the deficit is covered with other funds from the fire side. The Committee was informed that it costs Laurel Volunteer Fire Company approximately $310.00 a call to run its EMS service, while in 2012, it took in only $283.00 a call based on revenue from all sources, and just $204.00 a call if only EMS billing and fund drive revenue were considered. The Task Force was informed that the Laurel Volunteer Fire Company cannot continue to stand these losses and provide the same level of service, without financial assistance. Information presented to the Task Force indicates that, by far, the largest item of cost for Laurel Volunteer Fire Company is for the salaries of personnel necessary to operate this service.

The Task Force was also presented with a report compiled by the State Fire Prevention Commission based on responses to its survey of all of the Volunteer Ambulance Companies. Specifically, the State Fire Prevention Commission collected data from 2012 regarding the number of calls responded to by each of the volunteer ambulance companies, along with total revenue and costs, broken down into various categories (salaries, insurance, maintenance, equipment, capital expense). The final summary charts (by county) presented by the State Fire Prevention Commission are reprinted in this Report.

Based on the data collected by the State Fire Prevention Commission, the Task Force was informed that it is costing the fire service in the State of Delaware approximately $10 million (*i.e.*, the companies are absorbing deficits totaling this amount) to provide ambulance service for the residents of the State. It was also noted that, at the current time, the volunteer ambulance companies are providing $20.5 million or more of salary to residents of the State of Delaware employed to operate these ambulances. Information was presented regarding the substantial increase in the number of ambulance runs in the 14 years since HB 332 was enacted. As reflected on the chart provided by the State Fire

Commission, the volunteer ambulance companies in the State of Delaware responded to more than 100,000 EMS calls in 2012. It was emphasized the service to the public has greatly increased, and that the level of service has greatly increased.

The Task Force held an Executive Session, during which a number of different funding solutions were discussed.

The Meeting of December 12, 2013

During the meeting of December 12, 2013 the Task Force continued its discussion of the various EMS funding ideas that had emerged, as reflected on the listed entitled "Suggestions for Proposed Basic Life Support Funding Options" presented by Senator Ennis. Task Force members also discussed the content of the draft Task Force Report.

Representatives of the Department of Finance, the Budget Office and the Controller General's Office were asked to present BLS funding suggestions to the Task Force.

The Meeting of January 9, 2014

Task Force members commented on the draft Task Force Report during the meeting of January 9, 2014. There was discussion regarding the list of funding suggestions presented by Senator Ennis, and the additions that had been made to that list since the meeting of December 12. There was discussion of the reporting of capital expenditures in the Task Force report, and general agreement was reached to attempt to address variations in the reporting of depreciation by the ambulance companies.

The Deputy Insurance Commissioner, Gene Reed, presented information on ERISA and on the potential for retaliatory action in other states if Delaware's insurance premium taxes are increased. This discussion highlighted the fact that under ERISA, self-insured plans cannot be singled out to be taxed separately.

Discussion of BLS funding options included whether to recommend a request to increase grant in aid funding; the adoption of a method to correct the shortfalls in payment of gross premium tax due to the fluctuations in COLI/BOLI insurance coverage; the implementation of a hotel/motel room tax addition or surcharge; the implementation of an assessment on motor vehicle moving offenses, and other options.

David Gregor, Deputy Secretary of Finance, presented information to the Task Force. Among other things, Mr. Gregor expressed concern regarding the prospect of retaliatory taxation and litigation (under ERISA) if premium taxes were increased, or extended to self-funded plans. Mr. Gregor was asked to consider the BLS funding problem, and to assist the Task Force in finding a solution or solutions.

The Meeting of February 14, 2014

At its meeting of February 14, 2014 the Task Force discussed the various comments received on the draft report that was circulated prior to the meeting. In addition, Mr. Gregor of the Department of Finance presented information in response to questions posed by the Task Force at its meeting of January 9, 2014, which is summarized earlier in this Report. Various amendments to the Report were considered by the Task Force, which approved release of the Report in amended form.

The Task Force Chair asked the representative of Highmark Delaware to report back to the Task Force regarding the letter sent to Volunteer Hose Co. of Middletown, in reference to HB 149 and whether the company would comply with HB 149, in reference to its self-insured plans.

The Task Force Chair and Co Chairs expressed their appreciation to the Task Force members for their hard work, and service.