

This article is designed to provide accurate and authoritative information with regard to third party billing with regard to volunteer first aid and rescue squads. The information in this article may not be applicable in all situations. It is distributed with the understanding that the publisher and author are not engaged in rendering tax, legal, accounting, insurance or other professional services. If tax, legal, insurance or accounting advice is required, the services of a competent subject matter professional should be sought. The specific legal and financial issues in third party billing are innumerable.

Third Party: any corporation, insurance company, public, private or governmental entity who is or may be liable in contract, tort, or otherwise by law or equity to pay all or part of the first party's medical cost of injury, disease or disability.

Municipal Squad: a squad that is not separately incorporated and functions as an arm of a municipality. A municipal squad is automatically exempt from tax by virtue of the fact that is part of the local government. A municipal squad receives a majority of its support from the local government, but may also carry on some fund raising activities.

Independent Squad: a squad that is separately incorporated. The squad may or may not receive financial or other support from a municipality. Usually, an independent squad carries on some type of fund raising activities.

Think again. "Volunteer first aid, rescue and ambulance squad" is defined in the New Jersey Highway Traffic Safety Act of 1987 as "a first aid, rescue and ambulance squad which provides emergency medical services without receiving payment for those services." "Nonvolunteer first aid, rescue and ambulance squad" means a first aid, rescue and ambulance squad which provides emergency medical services on a paid basis."

Raffles and other games of chance. NJSA 5:8-51 exempts volunteer first aid or rescue squads from the need to get a license from the state Legalized Games of Chance Control Commission. Currently, volunteer squads need only get municipal approval.

You will lose a wide range of Workers Compensation Insurance benefits provided under the law. NJSA 34:15-7.3 provides a presumption that any cardiovascular or cerebrovascular injury or death which occurs on a call is considered related to the stress of the call and is subject to compensation. Your municipality will no longer be required to provide and pay for Workers Compensation Insurance for your squad (NJSA 34:15-74). NJSA 34:15-75 provides maximum benefits for volunteers injured or killed on calls.

Municipal provided property and liability insurance will be lost (NJSA 40A:10-2).

Municipal provided group life insurance in the amount of \$10,000, group accidental death, hospitalization, major medical, or health and accident insurance will be lost(NJSA 40A:10-26, 10-27 &10-28).

State third party Medicaid programs will not pay volunteer squads for the transport of their insured patients. (NJSA 30:4D-6.5).

Municipal workers will lose their guaranteed paid time off from work to answer emergency calls afforded by NJSA 40A:9-160.1

The NJ Volunteer Emergency Service Organizations Loan Fund (NJSA 52:27D-361 et seq.) provides 2% loans for emergency vehicles, equipment and facilities upgrades. NJSA 52:27D-362 defines an eligible volunteer emergency service organization as “any non-profit corporation, association or organization located in this State which regularly engaged in providing emergency medical care....” It is unclear if the Department of Community Affairs would consider a “non-volunteer” EMS agency “financially needy” , so that a loan request may be granted.

Non-volunteer squads will lose their statutorily provided ability to request assistance or mutual aid from other municipalities. Only the mayor of a municipality will have that power. (NJSA 26:2K-60). In addition, non-volunteer squads will no longer have the power to approve or reject mutual aid agreements entered into by their municipalities. (NJSA 26:2K-61).

Some squads think that they do not have to bill their patients and will only bill their patients' third party insurers. Third party insurers have no duty to pay any bill unless their insured has a duty to pay that bill. A squad can not discriminate against those with insurance and those without insurance. All patients must be billed for ambulance service. For patients that truly can not afford to pay, a tax exempt squad is required to have a written charity care policy that is applied evenly to all patients.

Currently, in New Jersey, there is no easy answer to this problem. The Highway Traffic Safety Act of 1987 (NJSA 27:5F-18 et seq.) legally defines the term volunteer. NJSA Section 27:5F-20 reads in part:

f. "Volunteer first aid, rescue and ambulance squad" means a first aid, rescue and ambulance squad which provides emergency medical services without receiving payment for those services.

g. "Nonvolunteer first aid, rescue and ambulance squad" means a first aid, rescue and ambulance squad which provides emergency medical services on a paid basis.

No other section of New Jersey law defines the term volunteer in the context of EMS. The law is superior to any other state regulation or opinion. It appears that the only solution to the problem of third party billing jeopardizing volunteer status in New Jersey is to lobby for a law change. The problem with the above definitions is that they place the emphasis on the wrong issue. The

thing that makes a person a volunteer is not getting paid for their services. This current statutory definition places the emphasis on the squad not getting paid by the patient. A change to the law could change the definition to look to the non-paid status of individuals providing the service. If a change to the law could be accomplished, then New Jersey's volunteer squads could retain the legal benefits available to volunteer squads yet bill their patients to recover operating costs. This type of law change would also put New Jersey in parity with our neighboring states of New York and Pennsylvania.

Definition of Volunteer Squad

The only definition of volunteer and non-volunteer first aid, rescue and ambulance squad found in New Jersey Law is NJSA 27:5F-20 (New Jersey Highway Traffic Safety Act of 1987)(“NJHTSA”). NJSA 27:5F-20.f. provides: *“Volunteer first aid, rescue and ambulance squad” means a first aid, rescue and ambulance squad which provides emergency medical services without receiving payment for those services.* NJSA 27:5F-20.g. provides: *“Nonvolunteer first aid, rescue and ambulance squad” means a first aid, rescue and ambulance squad which provides emergency medical services on a paid basis.*

No other section of New Jersey law defines the term volunteer in the context of EMS. This current statutory definition places the emphasis on the squad not getting paid by the patient.

The test for determining whether or not a squad is “volunteer” is applied at the squad level and not the member level. If a squad bills for service it is not a volunteer squad regardless of whether or not the manpower is volunteer. Therefore, under the law, paid EMTs who work for a squad that does not bill for services are working for a volunteer squad.

Don’t confuse “volunteer” status “not-for-profit” status. The two are completely different.

Myth ---- Not-for-profit or tax-exempt status looks to the organizational documents (i.e. Cert. Of Inc. and Bylaws) and what is done with the funds of the organization. Billing patients does not automatically change a squad’s not-for-profit status.

If a squad begins to bill for its services, then under the law it will be considered a non-volunteer squad. Volunteer squads have been granted many benefits under New Jersey Law. Once a squad becomes non-volunteer, many of these benefits will be lost or jeopardized. Each benefit contained in various parts of the law must be compared with the definitions found in NJHTSA to see if those definitions are applicable to the administration of that benefit. If another section of law uses the same phraseology as the definition in the NJHTSA, then that definition will control as the only definition in the law. When the legislature passes any law they are free to provide a definition for what they are addressing.

If they do not provide a definition, then definitions in other parts of the law will control.

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Traditional volunteer squads have generally been organized as follows:

- ◆ Municipal Squad: a squad that is not separately incorporated and functions as an arm of a municipality. A municipal squad is automatically exempt from tax by virtue of the fact that it is part of the local government. A municipal squad receives a majority of its support from the local government, but may also carry on some fund raising activities.
- ◆ A subset of Municipal Squad is a combined municipal fire department and fire department run ambulance.
- ◆ Independent Squad: a squad that is separately incorporated under the NJ Not-For-Profit Act (NJS Title 15A). The squad may or may not receive financial or other support from a municipality. Usually, an independent squad carries on some type of fund raising activities. The squad has to qualify with the Internal Revenue Service and NJ Division of Taxation to be considered tax exempt.

Traditional non-volunteer squads have generally been organized as follows:

- ◆ Single owner proprietorships
- ◆ Partnerships
- ◆ General business corporations (NJS Title 14) both privately held and publicly traded.
- ◆ Hospital-based (Jersey City Medical Center)

◆ City-based (Passaic; Patterson)

Benefits & Incentives Relating To “Volunteer” Squad Status

Benefit	Citation	Issue
Municipal and/or County Contributions to Squads	NJSA 40:5-2	Contributions can be made to both volunteer and non-volunteer squads.
No DOH Licensure	NJAC 8:40	Volunteer squads can not be licensed by the DOH
Length of Service Awards Program (“LOSAP”)	NJSA 40A:14-183	NJ Community Affairs has interpreted law to include volunteer members of both volunteer and non-volunteer squads..
Free Training under EMT Training Fund Act	NJSA 26:2K-54	Free training available only to volunteer squad members
Blue lights and right of way	NJSA 39:3-54.7; 54.11; & 54.12	Members of a non-volunteer squad may not use them or seek right of way.
Captain’s Personal Car	NJAC 13:24-2.5	Captains of a non-volunteer squad may not use Red Light/Siren
Jury Duty Exemption	NJSA 2B:20-10.e	Non-paid members of any squad are exempt
Limited Immunity from civil lawsuits	NJSA 2A:53A-12; 13; & 13.1	Non-volunteer squad members would not have limited immunity for actions on duty.
Free college death benefit	NJSA 18A71-77	Spouses & Children of non-volunteer squad member killed on duty ineligible.
Municipal Death Benefit Pension	NJSA 43:12-28.1	Unclear how the definition in the statute would apply to non-volunteer squad.
Mutual Aid	NJSA 26:2K-60	Non-volunteer squad towns can not force a volunteer squad to provide mutual aid without a contract.
Mutual Aid Contracts	NJSA 26:2K-61	Only volunteer squads can approve or disapprove mutual aid contracts between towns.
Municipally provided liability and property insurance.	NJSA 40A:10-2	Independent non-volunteer squads can not be on the municipal liability policy.

Municipally provided life insurance	NJSA 40A:10-26	Independent non-volunteer squads can not be on the municipal life policy.
Municipally provided accidental death, dismemberment, hospitalization, medical, surgical, health or accident insurance	NJSA 40A:10-27	Independent non-volunteer squads can not be on the municipal policy.
Positive Workers Compensation Presumptions	NJSA 34:15-7.3 NJSA 34:15-75	Non-volunteer squad member not entitled to presumption that cardiovascular or cerebrovascular injury or death occurred as a result of a duty incident or for automatic eligibility for highest payment.
Volunteer Emergency Service Organization Loan Fund	NJSA 52:27D-362.e	NJ Consumer Affairs is not giving loans to non-volunteer squads.
Leave municipal job without penalty to answer calls	NJSA 40A:9-160.1	Protection applies to both volunteer & non-volunteer squad personnel.
State Contract Price and Bids	NJSA 52:25-16.2	Only volunteer squads qualify for preferred pricing on goods and services.
Easy Registration for Games of Chance	NJSA 5:8-51	Only volunteer squads are exempt from state licensing. Volunteer squad needs only municipal license.