

# Yes - Insurance Is Necessary

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## INTRODUCTION AND FOCUS

A disturbing contemporary fact of American nonprofit, charitable organizations in the human care service field is that they are increasingly subject to a variety of legal actions and threats of suits. As our society has changed, the former immunity of charitable organizations from liability in their actions has been withdrawn. The State Of California holds that an organization, that is not existing for purpose of yielding profits, is considered a charitable organization. Further, charitable organizations are subject to the same responsibilities as any other business corporation.

Each agency is tending to deal with the matter on a separate basis interpreting available information, relying on insurance agents and legal advice in face of rapidly changing requirements. Much of the lack of clarity results from the void of legislative precedents, research, known threats of suits, insurance vagaries, and high costs/low budgets.

This attempt to study the current problems being experienced has been hampered by the agencies lack of information and their reluctance to reveal current problems. Two separate surveys were conducted — one to a broad sampling of nonprofit organizations (private and public) focused on obtaining types of currently carried insurances and connected problems. The second was administered to a smaller

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sampling in an attempt to obtain information on the rise in premiums and pending/settled suits or claims.

In general, the problems identified were mainly in the following areas:

- Rapid escalation in insurance rates in the last three to five years for general or public liability (low of 50% increase to high of 359% increase with sample size of 60).
- Exclusion of coverages for volunteers in specified roles.
- Lack of agency's coverage of their board by Directors and Officers Liability Insurance either due to cost or lack of knowledge.
- Agencies experiencing cancellations of policies because of threats of or occurrence of claims.
- Ability/requirement of providing Worker's Compensation for volunteers.
- Liability of agency and bureaus for actions of volunteers.

## TYPES OF RECOMMENDED INSURANCE COVERAGES General or Public Liability - Definition:

General liability insurance provides coverage for a combination of issues arising from indirect liability. In essence, general liability protects the agency against claims by third parties injured in agency functions. However, it does not provide coverage for those re-

tions for which directors and officers are directly responsible. Coverage usually includes bodily injury, property damage, and procedural problems resulting from staff actions.

#### Common Problems

- Rapid rise in premiums
- Cancellations due to claims
- Cancellations due to coverage for volunteers in staff-like roles
- Difficulty of defining volunteers and insurance companies view of lack of control over volunteers

#### Discussion

It is highly recommended that all nonprofit, private agencies or associations of volunteers purchase this type of insurance due to recent trend toward higher court settlements and advent of suits against groups or agencies. Further, that all agencies fully inform volunteers of liabilities they assume in volunteering.

#### Directors & Officers Liability-Definition:

As of 1972, all states, except Idaho and Illinois, had enacted some form of statute regarding the indemnification of corporate officers and members of boards of directors. Directors and Officers Liability Insurance presents suits directly against the members for either wrongful their individual or collective roles as directors of the organization. Again, this is applicable to incorporate groups or formal associations.

#### Common Problems

- High cost of premiums
- Finding an insurance carrier
- Programs funded by grants but still under the directors while not contributing to cost of insurance as part of grant

#### Discussion

Some agencies and groups are not applying for this type of insurance due to cost; however, they do run the risk of their directors being individually sued. Therefore, it is recommended

- agencies carry this insurance.
- explain lack of coverage to each director and make him/her

Lawyers are recommending to prominent persons to not serve on Boards which are not indemnified against such suits in bylaws and where Directors and Officers Liability Insurance is not provided.<sup>1</sup> An alternative is for each member to carry their own insurance.

#### Worker's Compensation - Definition:

In California, this insurance is state regulated and required for paid employees unless waivers through self assurance or other guarantees. Recent changes in California's Labor Code does allow each corporation to make their own decision regarding providing Worker's Compensation to volunteers:

Labor Code - Section 3363.5 — "A person who performs voluntarily service without pay for a public agency, as designated and authorized by the governing body of the agency or its designee shall: upon adoption of a resolution by the governing body of the agency so declaring, be deemed to be an employee of the agency for purposes of this division while performing such service."

Thus, volunteers would be provided medical coverages but not any sort of wage reimbursement. Generally, this insurance does provide medical coverages for injuries incurred as a result of an on-the-job accident. Additionally, the employee's wages lost as result of the injury are reimbursed. The premiums are based on salaries paid to employees.

#### Common Problems

- Escalating costs
- Arbitrary decisions on premiums if volunteers are covered, i.e., value of volunteer time and definition of volunteer
- Insurance companies reluctance to cover volunteers at all due to agency's lack of control as versus control of staff
- Insurance agents refusing to cover public staff volunteers, forcing volunteers at a much higher premium
- Agencies being unclear as to requirements
- Insurance companies are becoming reluctant to provide Worker's Compensation: large exposure, high loss ratio, and extent of coverage not defined

Discussion

Many organizations are unaware of their potential employers liability to their volunteers. Coverage by Worker's Compensation provides this coverage and lessens risk of suit. According to the California Labor Code (1974):

*"... a person who performs voluntary service without pay for a private, non-profit organization which is exempt from federal income tax under subsection (c) of Section 501 of the Internal Revenue Code, as designated and authorized by the board of directors of the organization, in its sole discretion so declare, be deemed an employee of the organization for purposes of this division while performing such service."*

For agencies carrying accident covering volunteers, Worker's Compensation would be duplicate coverage. Worker's Compensation is "no fault" with volunteer only needing to show they were not grossly negligent. Accident insurance is usually much more limiting and sets limits on amount the volunteer can collect. Additionally, the cost of Worker's Compensation is likely to be greater in premiums than accident insurance. However, the agency's expenses rise due to necessity of keeping records of volunteers' time for accident insurance.

Excess Automobile Liability - Definition:

Although jointly liable, agencies are liable for actual or alleged negligent use of an automobile by a volunteer driving on behalf of the agency. Additionally, it is incumbent on the agency to be assured the volunteer, when using their personal auto, does carry their own liability insurance on the automobile. In event of accident/injury, the volunteer's own insurance is claimed against first, and when it is used up the agency becomes liable.

Common Problems

- Again arbitrary definition of volunteer and of the risks involved
- Insurance companies reluctance to provide this coverage
- Escalating costs
- High court awards

Discussion

Agencies or groups utilizing volunteers using their own automobiles to pro-

vide transportation to clients in fund raising activities or other types of services run risk without this insurance. Additionally, agencies or groups should verify the volunteers' own current insurance coverage to limits as specified by the state. Agencies have some liability for paid or nonpaid staff operating on their behalf. However, very few insurance companies will provide this type of insurance coverage.

State Fund Director questions whether this insurance is necessary due to low number of claims and most have been covered by volunteer's own insurance. Hartford withdrew this coverage partially due to settling two claims for over \$100,000.

Other Types of Insurance for Agencies

Rates of all types of insurance are on the rise although those referenced in preceding are subject to more rapid rises and around which there are the most questions. Other types of insurance which are of concern to agencies are: bonds, medical, malpractice and life insurances. In our survey sent statewide through California Volunteer Network, nonprofit agencies, Volunteer Bureaus and others, 68 returns, out of approximately 300 sent, were received with the following results:

INSURANCES CURRENTLY CARRIED BY AGENCIES

<u>Insurance Type</u>	<u>Yes</u>	<u>No</u>	<u>No Answer</u>
<u>Bonds</u>			
Volunteers	17.6%	64.8%	17.6%
Staff	35.3%	52.9%	11.8%
<u>Directors &amp; Officers Liability</u>	11.8%	64.7%	23.5%
<u>General/Public Liability</u>	82.3%	11.8%	5.9%
<u>Liability for Persons In Program</u>			
Volunteers	70.6%	29.4%	---
Staff	70.6%	23.5%	5.9%
<u>Worker's Compensation</u>			
Volunteers	17.6%	64.8%	17.6%
Staff	88.2%	11.8%	---
<u>Auto Insurance/Accident</u>			
Volunteers	41.2%	52.9%	5.9%
Staff	35.3%	47.1%	17.6%
<u>Medical Insurance</u>			
Volunteers	29.4%	58.8%	11.8%
Staff	76.4%	11.8%	11.8%
<u>Life Insurance</u>			
Volunteers	5.9%	70.6%	23.5%
Staff	53.0%	23.4%	17.4%

Of those responses received, the type of agency was:

Public/Governmental	23.5%
Nonprofit, Private	35.3%
Grant Program (i.e., RSVP)	5.9%
Voluntary Association	5.9%
Volunteer Bureau/VAC	29.4%

TOTAL 100.9%

The number of volunteers enrolled in programs ranged from 108 through 36,000 with a mean between 200 to 600. Size of boards ranged from 13 through 36 with mean around 25. On the average, the agencies contacted have experienced an increase of 14% in public/general liability. Few admit either pending or resolved suits but all requested confidentiality of response to avoid giving publicity to idea of suing.

#### Problems Experienced by Agencies

No research which would verify accident, etc. rates among volunteers as versus paid staff has been obtainable. The insurance companies and the State Fund remain unfavorably inclined toward providing volunteers any kind of insurance. There is evidence that there is a significantly higher incidence of accident or injury among volunteers. Some authorities suggest the opposite is true. The issues of control of volunteers while on the job and of efficient and effective screening for positions are clearly labeled as reasons for excluding volunteers from coverage and/or requiring exorbitant premiums. Additionally, the insurance companies question the adequacy of training provided volunteers, motivation that they have to perform well in their positions, and the insurance companies maintain that volunteers are generally less adequately supervised on the job.

Insurance carriers state the premiums they receive for volunteers do not match the risks involved. If they could, they would not insure volunteers at all under any policy. Because Worker's Compensation rates are based on salary of staff, and because volunteer staff receive no salary, rates for volunteers with the foreseen risks involved, are set arbitrarily and at higher rates. Consequently, many agencies are risking utilizing volunteers without insuring them because they can't afford the premiums.

Hartford Insurance Company eliminated excess liability insurance for volunteers because:

- disparity between the low premiums and high limits of coverage (\$500,000 - 1,000,000);
- complicated adjudication of claims involving multiple companies;
- increasing number of judgments in excess of coverage.

To compensate for above, sizeable increase of premiums would have been necessary which would have curtailed broad scale acceptance of insurance.

In the case of court referred volunteers, although not significantly adding to the problem, they are being excluded from some coverage by some companies. One issue is lack of control over who is allowed to become a court referred volunteer because courts decide. This problem coupled with lack of motivation and control/supervision problems are previously cited, given the insurers justification for not providing court referred volunteers coverage.

Legislative definition of court referred persons as volunteers provided volunteers are also legislative defined, would eliminate court referred volunteer's special problems. Without these definitions, claims and coverages may be defined based on coercive nature of court assigned volunteers and finding that these workers are neither employees or volunteers.

#### Definition of a Volunteer

The States of Virginia and Florida have enacted legislation in which an attempt to define volunteers was made (see Appendix). In both, the focus is to define volunteers for the general purpose of the use of volunteers in conjunction with state programs. California has accomplished this through regulation rather than legislation. To date, California does not have legislative definition of volunteers except as referenced in legislated programs, i.e., pending State Senior Citizens Program, AB 998.

If legislation is pursued in California to define voluntarism, we would suggest:

*-definition to broad based and not only focused on state programs;*

*-inclusive of all types of volunteer positions, i.e., those in regular service, occasional service, serving on boards or advisory bodies, and including those selecting volunteerism as alternative as in students for class credit and court referred volunteers;*

*-advocates for social change.*

#### Alternatives Open to Consideration

Legislation, content and purpose(s) have been explored in the above. Providing it is as broadly based as recommended. Legislation would also assist in educating private, nonprofit agencies as to requirements.

For Worker's Compensation being totally state regulated, the soundest recommendation would seem to be to make broad based input to the State Fund (State Insurance Commissioner which acts as insurer of last resort) and the Worker's Compensation Board. This would require the joining together of many nonprofit agencies to advocate and impact these entities.

For other types of insurance if not Worker's Compensation the alternatives to be explored are:

*-self assurance through pooling resources of a great many agencies;*

*-advocacy by even a larger group of agencies on a nation-wide scale to impact insurance companies and to negotiate rates;*

*-exemption, by legislation, of volunteers and/or nonprofit agencies.*

Regardless of the alternative(s) selected, more information must be made available to private, nonprofit agencies on the whole insurance issue, liabilities they face, and current options. In turn, agencies must keep their volunteers at all levels adequately informed of the liabilities they are incurring as volunteers.

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Completed under the auspices of the California Volunteer Network, partial credit for this preliminary review of current problems nonprofit, human care service agencies involved with volunteers are encountering with insurance(s) is given to:

- Steering Committee, CVN
  - Members, CVN responding
  - Ms. Ann Roberts
  - Volunteer Bureau Council, United Way of San Diego
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