

NOVEMBER/DECEMBER 1999

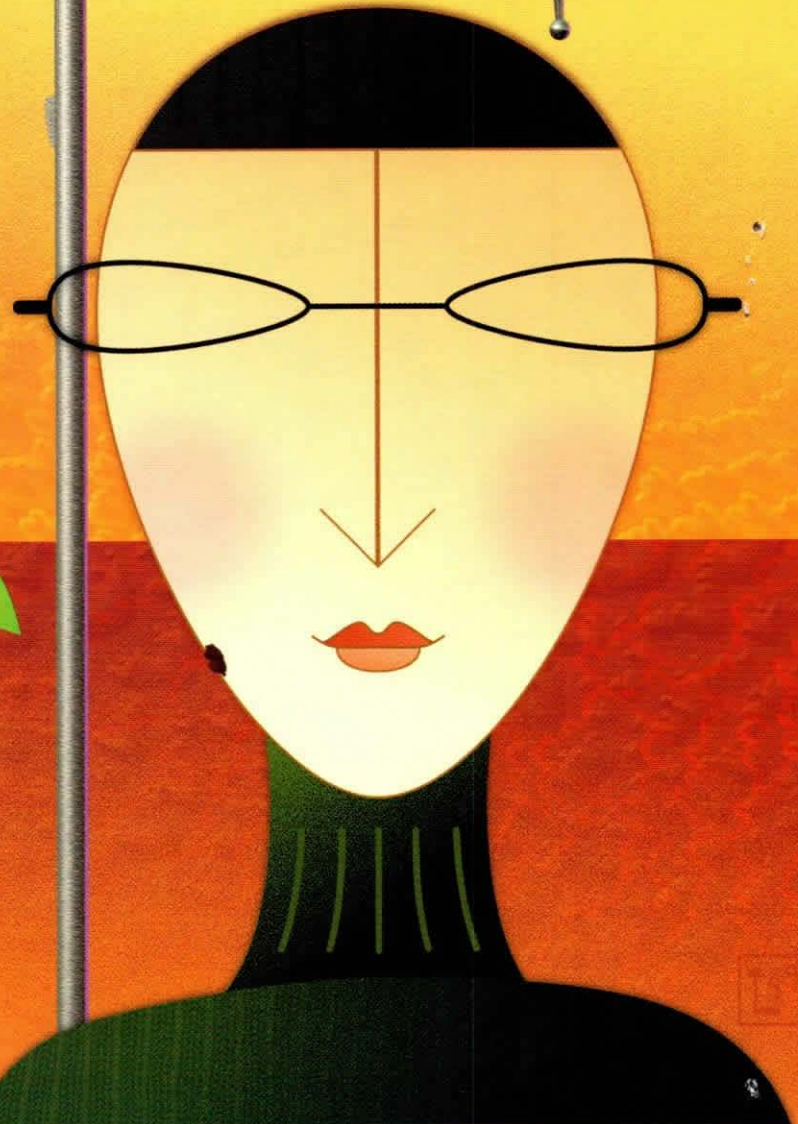
# Public Risk

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Investing in  
coverage for  
volunteers



# Invest in Your Volunteers

**There's no doubt  
that volunteers can  
save you money,  
but if they're not  
properly insured,  
they can also cost  
you money.**

**V**OLUNTEERS PROVIDE A way for public entities to stretch human resources within tight budgets. These unpaid workers, from teenagers to senior citizens, help governments carry out programs ranging from parks and recreation activities to mentoring at-risk kids, day care for the elderly, mental health services and dozens more worthwhile pursuits. Such community services also offer productive alternatives to incarceration, including alternative sentencing and work release programs. Within the justice system, volunteers also act as court-appointed special advocates for families, mediators in "restorative justice" programs and more. Added up, volunteers help governments achieve dozens of worthwhile objectives. But they also add a dimension to those governments' risks—a dimension that has to be addressed properly to keep costs and benefits proportional.

We'll examine ways in which you can protect the interests of your entity, the public and the volunteers themselves. A successful

protection plan has the additional benefit of attracting volunteers to serve the public agency—an important consideration when state and local governments must compete with private nonprofits for good volunteers.

#### **Requirements, Options and Loopholes**

Volunteers can be injured, or they can injure others in the course of their duty. In either case, the governmental entity has a risk exposure. If they were paid employees, these risks would be covered by workers' compensation and general liability insurance, whether the entity self-insures or purchases coverage in the commercial market. With volunteers, however, it isn't that simple.

The federal Volunteer Protection Act of 1997 is limited. It doesn't protect the organization that uses volunteers or the organization staff. Nor does it protect individual volunteers against allegations of "gross negligence," automobile-related liability or claims that federal civil rights laws were violated. Even if the volunteer is blameless under the federal law, that doesn't prevent a lawsuit,

which incurs defense costs.

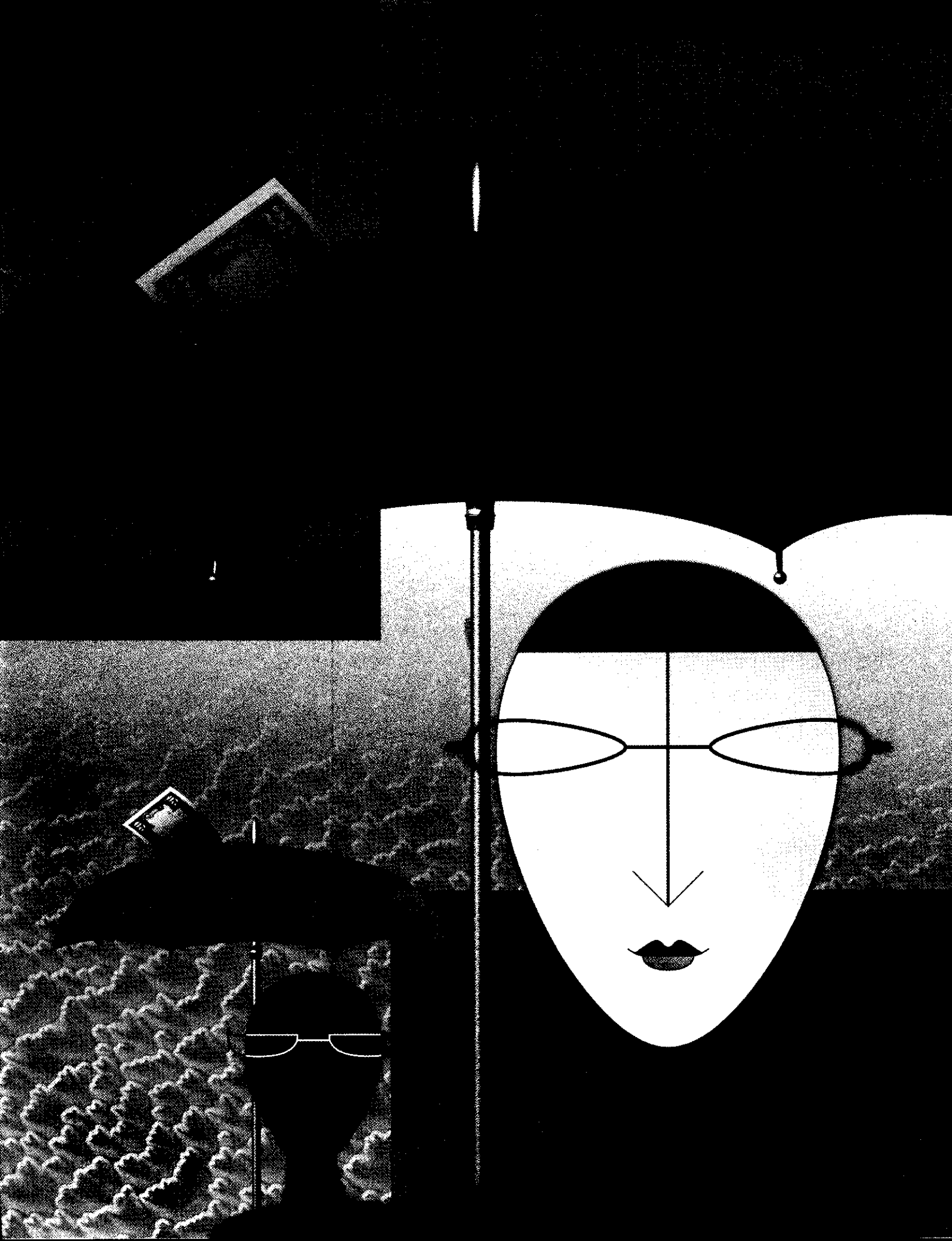
The National Association of Insurance Commissioners has no model law on insuring volunteers, and state

laws take practically every imaginable approach. Some require that *certain* volunteers, such as firefighters, be covered under workers' compensation, but impose no requirements for other volunteers. Others exclude volunteers from the definition of "employees," unless a local ordinance is enacted that includes them. Still others automatically include social service volunteers as "employees," but exclude others unless they're included by local ordinance.

Throw in the fact that tort liability laws also vary from state to state and may affect the public entity's liability for a volunteer's actions or the volunteer's own liability. Add the fact that in many states the insurance department and labor department share jurisdiction over the matter of insuring volunteers and might have regulations that limit your options. Top it off with the fact that federally assisted programs often impose their own insurance requirements, and you have a boiling

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The American Public Works Association (APWA) and the Public Risk Management Association (PRIMA) proudly present:

# Using Risk Management to Protect Investments

## A Satellite Videoconference

December 8, 1999 • 10:30-3:00 Central Time  
(Includes a break)



Being a Public Works Manager has been compared to the plate spinning acts you used to see on the old "Ed Sullivan Show." One of your spinning plates might be 'public building safety and security.' Another plate may be labeled 'road and bridge maintenance.' Another could be 'environmental compliance.'

Everything seems to be under control, all of your plates are in the air and, then, a sudden storm hits washing out bridges and streets; or a water pipe breaks creating significant damage to a public building. Your attorneys are worried about liability and you are concerned for the safety of your employees and the public you serve.

Risk Management involves identifying the different types of risk exposure your agency may face; estimating the potential impact and severity of any loss that could result; analyzing your department's financial and administrative capacity for handling the risk; and selecting strategies for risk control, risk transfer, and risk retention.

Our Speakers will include public works officials, risk managers from city governments, and legal experts who will present case studies on how risk issues are handled in their communities and the types of risk management programs that have worked best for them.

Learn about these strategies and case studies, plus hear about the resources available to public agencies to help them become risk-prepared!

To sign up to be a downlink sponsor or for more information, contact Kendra Bell in the APWA Education Dept. at (816) 472-6100 or via email at [kbell@apwa.net](mailto:kbell@apwa.net).

Dozens of Monterey, Calif., citizens participate in the Independence Day Parade.



cauldron of factors to consider when deciding what's best for your own situation.

There's no substitute for researching and understanding your own federal, state and local requirements. Your insurance broker might be able to provide information and review your contracts from an insurance standpoint, to limit the legal research you need to do. Once requirements that apply to you are clear, you might then turn to the experience of other risk managers to determine your best options for insuring volunteers and learning how to minimize your risks once that determination is made. Let's look at some actual experiences.

#### **Different Approaches to Risk Management**

##### *Santa Rosa, Calif.*

Santa Rosa has declared its volunteers as "employees," under Section 3352 of the state labor code, and it covers them in the city's self-insured workers' compensation program. William Kaslar, risk manager, points out the advantage of bringing the city's volunteers within the "exclusive remedy" doctrine of workers' compensation.

"Workers' compensation insurance is statutory and spells out specific benefits an

## How to Insure Volunteers? Compare These Approaches

State and local governments can be constrained by state laws addressing the insurability of volunteers—particularly in the area of coverage eligibility under workers' compensation. Once you know those constraints, consider and compare the following approaches.

Approach	Advantages	Disadvantages
Include volunteers in workers' compensation program.	<ul style="list-style-type: none"> <li>• "Exclusive remedy" doctrine is available.</li> </ul>	<ul style="list-style-type: none"> <li>• May not be possible under state law.</li> <li>• Would affect entity's own claims experience.</li> <li>• May not cover volunteers' travel to and from the job.</li> </ul>
Include volunteers in general liability coverage.	<ul style="list-style-type: none"> <li>• Entity itself would be protected against claims resulting from volunteers' actions.</li> </ul>	<ul style="list-style-type: none"> <li>• May not be possible under state law to protect volunteers themselves.</li> <li>• Would affect entity's own claims experience.</li> </ul>
Insure volunteers separately for accident medical coverage and liability.	<ul style="list-style-type: none"> <li>• Insulates entity's own claims experience from that of volunteers.</li> <li>• Unlike workers' compensation, covers volunteers' travel to and from the job.</li> <li>• Can protect volunteer from losing personal assets as a result of being sued.</li> </ul>	<ul style="list-style-type: none"> <li>• No "exclusive remedy," as in workers' compensation.</li> </ul>
Transfer liability.	<ul style="list-style-type: none"> <li>• Other organization—or example, a nonprofit with which the entity contracts for volunteer services—assumes all risk.</li> </ul>	<ul style="list-style-type: none"> <li>• Public entity may not have such relationship; nonprofit might not be willing to assume the risk.</li> </ul>

# Finding, Training, Protecting and Keeping

**T**hink about how you'll communicate with your volunteers—even before you've met them—in order to make their public service a positive experience for them and for you. Here are a few ideas.

The city of Monterey, Calif., has a one-color, tri-fold flyer that's distributed by mail as an initial step in reaching potential volunteers. It covers the essentials—how “Citizen Involvement Means Community Success,” kinds of volunteer opportunities, and how to obtain an application. The city also promotes volunteering in local newspaper advertising and on its Web site: [www.monterey.org/vol](http://www.monterey.org/vol).

Interested volunteers receive a detailed packet with an application that includes questions about specific interests, skills, previous experience, how they heard about the city's program, any criminal convictions and other issues. The packet also includes three forms each volunteer must sign: a general agreement form, an authorization for the volunteer to use a private vehicle, and a description of working conditions. Also included are a mission statement; orientation materials covering safety procedures, complaint procedures, prohibition of alcohol and drug use, information on volunteer recognition, CPR training opportunities, city-provided insurance and tax-deductible expenses; a photo and video release form; and time sheets.

Volunteers are assigned and introduced to supervisors for job-specific training, including safety. The volunteer, the supervisor and the volunteer coordinator all attest in writing that the training is completed before the volunteer begins work.

The city also publishes a newsletter that recognizes current volunteers at the same time it advertises opportunities for new ones.

For more information, contact Mary Sue Baker, risk manager, or Susan Schiavone, volunteer coordinator, at (831) 646-3719.

In Fairfax County, Va., volunteers receive a general orientation, then specific training is handled by the department to which the volunteer has been assigned. Some volunteer assignments may require medical screening. Hal Sheikh, risk manager, counsels, “You have to be consistent.” Don't screen some volunteers and not others.

Risk managers interviewed for this article said that they perform criminal background checks for any potential volunteer who'll be assigned to work with vulnerable populations, such as children or the elderly.

The winner of the 1999 PRIMA Achievement Award for Outstanding Pool Product or Program was the Colorado Intergovernmental Risk Sharing Agency, for its *Managing the Risks of Volunteers* video and volunteer program handbook (see *Public Risk*, August 1999). For information, contact Chris Krall, Assistant Director, CIRSA, 950 S. Cherry St., Suite 800, Denver, CO 80246; (303) 757-5475.

injured employee shall receive, and those benefits are automatically forthcoming,” he says. “Should you not extend workers' compensation benefits to volunteers, their recourse would be to sue the employer under its employers liability insurance. In order to collect, the volunteer would have to prove negligence on the part of the employer beyond the employer's three common-law defenses of contributing negligence, assumption of risk and the fellow servant rule.” (In California, there are also a few specific exceptions to the exclusive remedy doctrine.)

To minimize the risk of a claim, Kaslar says, “I'm a very strong believer that you should have a medical screening process.” All volunteers complete a medical questionnaire that includes questions designed to identify physical limitations that would prevent the safe conduct of various volunteer activities. Assignments are made accordingly, and appropriate safety training applied. The questionnaire not only allows the city to place volunteers in appropriate jobs, it also helps weed out anyone who might have sustained an injury previously and is trying to turn it

into a workers' compensation claim.

While these measures don't eliminate all of the risks associated with using volunteers, Kaslar says, “everything you do is part of the picture. You put it all together and hope for the best.”

## *Monterey, Calif.*

Monterey had been self-insuring its volunteers for workers' compensation, like Santa Rosa. But one day an elderly volunteer slipped and broke her hip. By the time medical treatment and rehabilitation were completed, the claim had climbed to \$70,000. That's when Mary Sue Baker, the city's risk manager, chose to insure volunteers through a commercial accident policy.

The program Monterey chose provides both accident coverage and liability coverage, providing protection in the event a volunteer is injured, or injures someone else (including while driving), during the course of his or her duty. The coverage is in excess of any other insurance the volunteer might have. Baker commented that many volunteers are retired people for whom Medicare is their primary health coverage. The accident coverage, which has a limit of \$25,000, provides an important supplement.

“As long as we can make sure they aren't out of pocket, there's a lot less chance that they will want to sue someone,” she says.

Monterey has developed a variety of written job descriptions, orientation and training materials for the city's 400 volunteers and their supervisors, to make sure that volunteers' work is handled in a safe, standardized manner. There's a full-time volunteer coordinator. Like Santa Rosa and other public entities with active volunteer programs, Monterey does criminal background checks and other screening appropriate for the work the volunteer will do. For any jobs involving contact with children, Monterey has a fingerprinting and background-check program, which was in place before California law required it.

## *Fairfax County, Va.*

This populous county in the Washington, D.C. area engages some 8,000 volunteers, and insures them in the same commercial program as Monterey. Hal Sheikh, risk manager for Fairfax County, says he wouldn't consider including them in the county's own insurance program, because they represent an “uncontrolled risk.” Even though Fairfax

County has extensive screening, orientation and training programs for volunteers, and close supervision, he explained, there's a point at which volunteers can't be managed as closely as paid employees can be.

For example, when volunteers violate safety standards, they can be reminded of proper procedure, but it's difficult to impose discipline on someone who isn't depending on your paycheck. If they're injured, it's more difficult to apply case management and early return-to-work programs than it would be with paid workers. Plus, Sheikh points out "a lot of volunteers hold jobs elsewhere. How do I control the risk from their primary jobs?" Like Kaslar in Santa Rosa, he's aware that a volunteer with a pre-existing injury could be looking for a good place to file a claim. By insuring his volunteers separately from the county's employees, Sheikh has taken steps to insure that Fairfax County won't be paying for an injury that happened on some other employer's watch.

Employment practices, including the growing risk of a claim alleging harassment or other discrimination, is another reason Fairfax prefers not to confer "employee" status on volunteers.

"I just believe in segregating the risk," Sheikh says.

Also, he notes, an estimated 30 percent of the county's volunteers don't have insurance coverage on their own that would reimburse medical expenses or protect them if they were sued because of some perceived negligence arising out of their volunteer duties. The fact that the county offers the coverage is an attraction for volunteers who can choose among hundreds of nonprofit organizations in the area that are eager for their services.

**Reduce Risk; Expand Services**

Regardless of how you choose to insure volunteers, having the protection in place benefits a variety of programs and services that otherwise wouldn't operate as efficiently—or perhaps at all.

Baker, in Monterey, cites such programs as the "Homework Pals," in which volunteers meet with kids at the public library to help them with schoolwork, and the parade every July 4 in which volunteers are needed to carry a huge American flag. "We couldn't hire enough people to do all those things," she remarked. The city recruits volunteers primarily with newspaper advertising and on the

city's Web site: [www.monterey.org/vol](http://www.monterey.org/vol).

In Minnesota, where volunteers can't be insured under the state's self-insured workers' compensation plan, the state's risk management division purchased commercial insurance for agencies that need volunteers, the Minnesota Zoo in Apple Valley, for example. The Minnesota Department of Health has a program in which teenagers under the legal

smoking age are sent into stores to attempt to buy cigarettes, resulting in store owners being fined if they make the sale. The program's federal support comes with a requirement that the teenagers have accident insurance. The Risk Management Division insures them with its commercial policy.

In the criminal justice system, the use of volunteers also helps local governments carry

## Volunteer Safety Checklist

Date: \_\_\_\_\_

Volunteer Name: \_\_\_\_\_

Volunteer Assignment: \_\_\_\_\_

Date Assigned/Referred: \_\_\_\_\_

This report is to be completed by the volunteer coordinator and/or supervisor with every new volunteer within two working days after assignment (or reassignment) and before beginning duties. A copy must be filed with the volunteer program and with the volunteer training record in the department/division files. Please be sure to cover those areas where supervisor is to perform the task.

- |   |                          |
|---|--------------------------|
|   | Check Here               |
| • safety rules—general                              | <input type="checkbox"/> |
| • safety rule enforcement procedures                | <input type="checkbox"/> |
| • importance of housekeeping                        | <input type="checkbox"/> |
| • how, when, where to report injuries               | <input type="checkbox"/> |
| • when and where to report unsafe conditions        | <input type="checkbox"/> |
| • volunteer responsible for prevention of accidents | <input type="checkbox"/> |
| • volunteer responsible for reporting accidents     | <input type="checkbox"/> |
| • fire safety                                       | <input type="checkbox"/> |
| • safe operation of personal auto                   | <input type="checkbox"/> |

**Supervisor—Please review the following:**

- |   |                          |
|---|--------------------------|
| • safety rules specific to assignment                       | <input type="checkbox"/> |
| • use of tools, equipment, proper guarding equipment        | <input type="checkbox"/> |
| • proper work shoes and other personal protection equipment | <input type="checkbox"/> |
| • special hazards of assignment                             | <input type="checkbox"/> |
| • department emergency procedures                           | <input type="checkbox"/> |

Additional comments/notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Volunteer's signature Date

\_\_\_\_\_  
Volunteer coordinator's signature Date

\_\_\_\_\_  
Department Supervisor's signature Date

*Source: City of Monterey*



Volunteers carry the American flag during Monterey's annual July 4th parade.

CITY OF MONTEREY, CALIF.

out or expand their mission, without expanding their staffs, as illustrated in the following examples:

- In Philadelphia, volunteers covered by a commercial accident policy do clerical tasks and research in the district attorney's office.
- In the Dubuque County, Iowa, jail, some of the prisoners who want to see the other sides of their cells are allowed to clean floors, do laundry, paint, remove snow or perform yardwork around the facility. Some are also allowed to accompany county conservation officers (who are trained law enforcement officers) to help clear brush along the riverbank each spring. "We're probably saving at least one full-time and one part-time job," says Leo Kennedy, sheriff. The county hadn't been insuring these "jail trusties," but then Kennedy began to hear war stories about prisoners on similar work details being "injured" under dubious circumstances and suing the local government. He chose to insure them under a commercial accident policy.

In Kennedy's program, screening volunteers is a little more complicated than in the



CITY OF MONTEREY, CALIF.

case of volunteers who have no criminal background. Among those he wouldn't allow to participate are prisoners with long sentences ahead of them, those awaiting trial where they might be given lengthy sentences, and nonresidents who would be difficult to bring back if they escaped.

Participants in formal work release and community sentencing programs can also be covered by commercial accident policies.

- In Fairfax County, the Volunteer Center

places volunteers in private-sector nonprofit organizations that need their services. Volunteers include both traditional ones and those who are performing community service as an alternative to sentencing. The Volunteer Center provides accident insurance for all those it places. Jane Kornblut, executive director, says that having the accident insurance covering the court-appointed volunteers "has allowed a growth in the number of places we can refer them to in the community. It's made it an easier sell" because the nonprofits are less concerned that a volunteer will sue them for negligence should they be injured while on duty. (She also requires that the nonprofit receiving the volunteer provide evidence of commercial general liability coverage.)

With more nonprofits willing to accept court-appointed volunteers, it's easier for the center to place volunteers near where they live and near public transportation if that's an issue. "If we didn't have this insurance, I couldn't run this program," says Kornblut. As it is, she says, the center places some 500



## Resources

More training materials and other information for volunteers and supervisors are available from various organizations.

- Energize Inc. ([www.energizeinc.com](http://www.energizeinc.com))
- The Nonprofit Risk Management Center ([www.nonprofitrisk.org](http://www.nonprofitrisk.org))
- CyberVPM Inc. ([www.cybervpm.com](http://www.cybervpm.com))
- The Association for Volunteer Administration ([www.avaintl.org](http://www.avaintl.org))
- Action Without Borders Inc. ([www.idealists.org](http://www.idealists.org))
- The Nonprofit Information Center ([www.nonprofit-info.org](http://www.nonprofit-info.org)).

volunteers a year. "The county saves money by not incarcerating so many, those people have the ability to have their (criminal) record expunged, and they provide a valuable resource for our non-profits. It's a win-win." The center has never had a volunteer insurance claim.

All the risk managers interviewed for this article commented that insuring volunteers helps them attract and retain good people. Often, they're in competition with private sector non-profits for the services of those people (although some public entities avoid the competition by contracting with those nonprofits to provide volunteers as needed.) Many observed that citizens are very aware of the risk that volunteering entails, particularly the risk that they'll be sued. The state, county or municipality that is able to alleviate that concern is well-positioned to take advantage of the help that many citizens are willing to give to make their communities better places to live. ♦



Volunteers help to clean one of Monterey's fire engines.

CITY OF MONTEREY, CALIF.

Members of the Fairfax County business and faith community work to provide gifts for foster children.

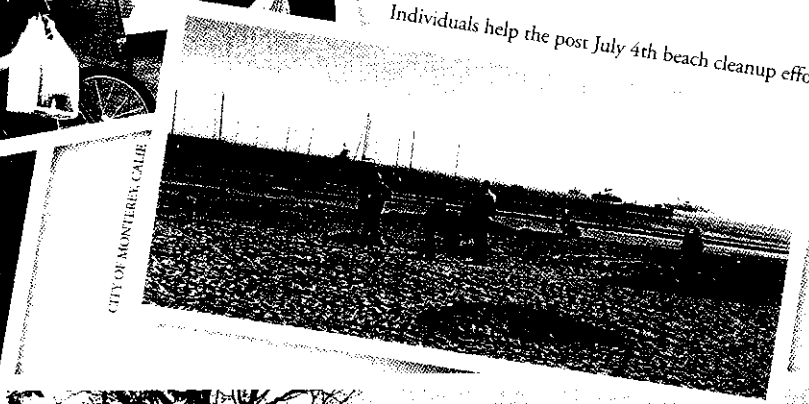


FAIRFAX COUNTY, VA



FAIRFAX COUNTY, VA

Individuals help the post July 4th beach cleanup effort.



CITY OF MONTEREY, CALIF.



One Monterey "Homework Pal" helps out after school.

CITY OF MONTEREY, CALIF.



CITY OF MONTEREY, CALIF.

Proud of their efforts to help the city, Monterey residents show off their volunteer T-shirts.