

# 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 As our society has changed, the former immunity of charitable organizations from liability in their actions has been withdrawn.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 vaguaries, 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 ac-*

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 risks involved.

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 paid staff without including 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 losses in California and extent of coverage required by law

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%      | 29.4%     | 17.4%            |

Of those responses received, the type of agency was:

|                               |        |
|-------------------------------|--------|
| Public/Governmental           | 23.5%  |
| Nonprofit, Private            | 35.3%  |
| Grant Program<br>(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 denied 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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APPENDIX

Virginia State Government Volunteers Act  
Chapter 32

*Title 2.1-422. Declaration of legislative intent: short title — Since the spirit of volunteerism has long animated generations of Americans to give of their time and abilities to help others, the Commonwealth would be wise to make use of volunteers in State service wherever practically possible. Effective use of volunteers in State service, however, requires that State agencies be provided guidelines for the development of volunteer programs and the utilization of volunteers. The General Assembly intends by this chapter to assure that people of Virginia may derive optimal benefit from volunteers, and that the time and talents of volunteers in State service may be put to their best use.*

*This chapter may be cited as the Virginia State Government Volunteers Act.*

*Title 2.1-423. Definitions.— As used in this chapter, the following terms shall have the following meanings unless another may clearly be inferred from the content:*

- 1. "Volunteer" shall mean any person who, of his own free will, provides goods or services, without any financial gain, to any agency, instrumentality or political subdivision of the Commonwealth;*
- 2. "Regular-service volunteer" shall mean any person engaged in specific voluntary service activities on an ongoing or continuous basis;*
- 3. "Occasional-service volunteer" shall mean any person who provides a one-time or occasional voluntary service;*
- 4. "Material donor" shall mean any person who, without financial gain, provides funds, materials, employment, or opportunities for clients of agencies, instrumentalities, or political subdivisions of the Commonwealth;*
- 5. "Department" shall mean and include all departments and divisions enumerated in Title 2.1-1 of the Code and local agencies under the jurisdiction or supervision thereof.*

*Title 2.1-424. Scope of chapter, status of volunteers.— A. Every department, through its executive head, is hereby authorized to develop volunteer programs and accept the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors, to assist in programs carried out or administered by that department.*

*B. Volunteers recruited, trained, or accepted by any department shall, to the extent of their voluntary service, be exempt from all provisions of law relating to State employment, hours of work, rate of compensation, leave time, and employee benefits except those enumerated in or consistent with Title 2.1-426. Volunteers shall, however, at all times comply with applicable work rules.*

*C. Every department utilizing the services of volunteers is hereby authorized to provide volunteers with such incidental reimbursements as are consistent with the provisions of Title 2.1-426, including transportation costs, lodging, and subsistence, as the department deems appropriate to assist volunteers in performing their duties.*

*Title 2.1-425. Responsibilities of departments.— Each department utilizing the services of volunteers shall:*

- 1. Enlist the services of the Virginia State Office of Volunteerism to assist in the development of volunteer programs;*
- 2. Take such actions as are necessary and appropriate to develop meaningful opportunities for volunteers involved in its programs and to improve public services;*
- 3. Develop written rules governing the recruitment, screening, training, responsibility, utilization and supervision of volunteers;*
- 4. Take such actions as are necessary to ensure that volunteers and paid staff understand their respective duties and responsibilities, their relationship to each other, and their respective roles in fulfilling the objectives of their department;*
- 5. Take such actions as are necessary and appropriate to ensure a receptive climate for citizen volunteers;*
- 6. Provide for the recognition of volunteers who have offered exceptional service to the Commonwealth; and*
- 7. Recognize prior volunteer service as partial fulfillment of State employment requirements for training and experience established by the Division of Personnel.*

Virginia State Government Volunteers Act - continued

*Title 2.1-426. Volunteer benefits. — A. Meals may be furnished without charge to regular-service volunteers, provided scheduled work assignments extend over an established meal period. Meals may be furnished without charge to occasional-service volunteers at the discretion of the department's executive head.*

*B. Lodging, if available, may be furnished temporarily, at no charge, to regular-service volunteers.*

*C. Transportation reimbursement may be furnished those volunteers whose presence is determined to be necessary to the department. Rates or amounts of such reimbursement shall not exceed those provided in Title 14.1-5 of the Code of Virginia. Volunteers may utilize State vehicles in the performance of their duties, subject to those rules and regulations governing use of State vehicles by paid staff.*

*D. Liability insurance may be provided by the department utilizing their services both to regular-service and occasional-service volunteers to the same extent as may be provided by the department to its paid staff. Volunteers in State service shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff.*

*Title 2.1-427. Filing of reports: required information. — A. Each department shall include in its annual statement filed subject of Title 2.1-2 of the Code of Virginia:*

*1. Information relating to the total number, location, and duties of all volunteers, including regular-service volunteers, occasional-service volunteers, and material donors; and*

*2. Information relating to the total number of annual hours of service provided to the department by all volunteers, including regular-service volunteers, occasional-service volunteers, and material donors.*

*B. Prior to the development of any new programs or presentation of any budget requests by or on behalf of any department, efforts should be made to explore avenues of community involvement through the use of volunteers. Each budget request made to the General Assembly by or on behalf of any department shall be accompanied by a volunteer impact statement outlining the number and types of services which volunteers will provide during the budgetary period and the fiscal savings occasioned by such services.*