

In volunteer driver programs, safety is no accident

It's the happy result of managing your risks

A guide by Volunteers Insurance Service Association, Inc. and
The Community Transportation Association of America

This article is based on a presentation last June at CTAA's 2013 EXPO preconference on *Volunteer Transportation and Mobility Management*: William Henry, presenter, is the executive director of the Volunteer Insurance Service Association which provides insurance and risk management services to nonprofit organizations under the brand name CIMA Volunteers Insurance.*

**In November 2013, CTAA began offering CIMA volunteer insurance through its insurance partnership with Newtek Business Service.*

In this guide:

- Common risks arising out of volunteer driver programs
- How to address those risks in a practical, sustainable way, through risk identification, volunteer selection, training, supervision and accountability
- How to respond when incidents occur
- Structuring your insurance program to protect your organization and your volunteer drivers
- Two common misconceptions about liability

Risk stops us in our tracks. There's liability everywhere you look and in places you don't even *know* to look! It's a scary thing! Maybe we should just forget about having volunteers drive clients around.

OK, but if we do, we miss a great opportunity to serve the community. So let's stop, take a breath, break down the mission we're trying to accomplish, and see where the risks really are...and are not.

We take risks every day. If we avoided every risk we could imagine, we wouldn't accomplish very much. (Or even get out of bed.) The good news is that when we manage risks in a practical and appropriate way, we can operate safely and effectively, and eliminate much of the fear that otherwise might inhibit our efforts.

The guidance that follows is based on the experience of Volunteers Insurance Service Association in providing insurance and risk management services to thousands of volunteer-based transportation programs over more than forty years. Those programs have volunteers out there every day, safely transporting clients. Your program can enjoy the same kind of success.

The power of negative thinking

Even if you are a positive person most of the time, sometimes you must think negatively, in order to keep negative things from happening. Negative thinking is where risk management begins.

So, we need to recognize that sometimes volunteer drivers *do* cause accidents, and sometimes those accidents are very serious. People have been severely injured, and there have been fatalities. Volunteers who cause accidents are sued sometimes, for significant damages. Sometimes the organizations they work for are sued also, after those accidents, for negligence.

Working definition of negligence -- You did something you should have known not to do, or you failed to do something you should have known to do. If you did not properly screen, train and supervise your volunteers, that is how liability might extend to your organization.

Accidents involving volunteers are a distraction, at the very least. And in addition to causing injuries, or worse, they also can damage the organization's reputation, damage morale of employees and volunteers, and increase your insurance costs.

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On the positive side, an emphasis on safety – or loss control, as it's sometimes called -- can help you accomplish the mission without those negative consequences. It can do something else for you, as well...It **can help you attract the kinds of volunteers who can bring success to the mission.** Good volunteers have many choices where they will contribute their time and talent. A good risk management system can help them choose *you*, because it demonstrates your commitment to their well-being, and that of your clients.

So, for many reasons it is worth our time and attention to do some negative thinking, so we can identify risks, and establish and sustain a risk management system to minimize those risks with your volunteer drivers.

Let's start with an overview of risk management.

What do you mean, a risk management "system"?

Risk management has a number of interlocking parts. Risk identification is one part. Volunteer selection and training is a part. Another is how you supervise volunteers and hold them accountable for following your procedures, and the performance standards you have for them. It includes prompt and effective response if there is an accident. Having the proper insurance in place also is vital to your risk management effort. And finally, **making risk awareness part of the culture of your organization is how you keep the effort going**, even as your staff and volunteers come and go.

Now, let's have a look at the kinds of accidents that sometimes occur.

Common risks arising out of volunteer driver programs

- Accidents at intersections
- Accidents caused by inclement weather
- Diminished skills in elders
- (Not all driver accidents happen in traffic.)

Accidents at intersections are the most common kind of traffic accident. Left turns when you don't have the right of way, resulting in a collision with an oncoming vehicle, for example. A volunteer was killed in 2012 in such an accident, and the two occupants of the other vehicle were seriously injured. Turning from the wrong lane and running stop signs at intersections also are common. Poor visibility in inclement weather is another frequent cause of accidents. But there are many other, less common ones.

Resource -- "Preventer Papers"

Volunteers Insurance Service Association, Inc. has developed a collection of one-page and two-page "Preventer Papers" so nonprofit organizations can have a training resource to help reduce the most common accident and liability risks involving volunteers. There are 24 papers on various aspects of vehicle safety. There also are 19 on injury prevention, which might be helpful for volunteers who do things for your organization other than drive. The injury-prevention papers cover topics such as fall prevention, safe lifting and carrying, safe use of tools, and good housekeeping practices.

The Preventer Papers are good for five-minute training sessions in small groups, or you can just give them to your individual volunteers. If you use training resources like this regularly, your volunteer drivers and other volunteers will understand that you place a high priority on safety, and that can help them become more safety-conscious, themselves.

To order: Contact William Henry, executive director of Volunteers Insurance Service Association, at 800.222.8920 or whenry@cimaworld.com. There is no charge for the Preventer Papers, or any other resources mentioned in this guide.

Diminished driving skills in older volunteers is an issue that has been getting increased attention in recent years. Occasionally we hear about an elder losing control and hitting pedestrians or causing some other kind of accident. Hartford Insurance, the American Automobile Association and the Mayo Clinic, among others, have very good resources on older drivers and safety behind the wheel:

- Hartford Insurance “Life Ahead” series

<http://hartfordauto.thehartford.com/Safe-Driving>

- American Automobile Association – <http://seniordriving.aaa.com>
- Mayo Clinic -- <http://www.mayoclinic.com/health/senior-health/HA00042>

Not all vehicle accidents happen in traffic. There was a fatality in a parking lot, when the volunteer did not realize the client was behind the car, and backed over her. Think about how that might have been prevented...If there had been a rule that the volunteer could not leave the parking spot until the client was safely buckled in, the client might be alive today.

In another incident, a client tried to get into the volunteer’s car while the car was in gear. The volunteer’s foot slipped off the brake pedal, and the client fell and broke her leg. How might that injury have been prevented? If the volunteer had kept her doors locked until the car was in ‘park,’ the client would not have been able to open the door and try to get in.

Here is an incident that caused a serious injury, and could happen in any program where volunteer drivers assist passengers through the door:

An elderly man fell out of his wheelchair that was being pushed by a volunteer. He was afraid the chair was going too fast, put his feet out to stop it, and was thrown out. Actually, the chair was traveling at a safe speed. But the man in the chair didn’t think so, which is all that matters. That accident might have been prevented through proper

training. Teach the volunteer to always ask if the speed of the wheelchair is OK, or the pace of walking to the door or vehicle is OK, and to take time to listen to the answer. Elders who are fragile can be very fearful of injury.

How to address risks in a practical, sustainable way

A good risk management system will enable you to identify risks specific to your particular organization, and manage those risks in a way that will work today, next month or next year, no matter who comes and goes in the organization. The goal is to create an environment – a culture -- of risk awareness. Such a system includes the following:

- Risk identification – Ask, *“What could possibly go wrong?”*
- Volunteer selection
- Orientation, training and supervision
- Accountability

The first step is to get your best people together and brainstorm answers to the question, *“What could possibly go wrong?”* **Your best people might include someone from another organization who’s been through this process. It could include someone in a discussion group on LinkedIn.**

Dig deep. After you have thought about the many kinds of vehicle accidents that sometimes occur, and how your safety training program can help prevent those accidents, think about other risks.

If you have volunteers who drive only vehicles the agency owns and maintains, that takes one risk off the table – the risk that the volunteer will not maintain his or her own vehicle properly, and will keep postponing that brake job or other crucial maintenance

Elements of a good risk management system

- *Risk identification – Ask, “What could possibly go wrong?”*
- *Volunteer selection*
- *Orientation, training and supervision*
- *Accountability*

until it's too late. But many of you have volunteers who drive their own vehicles, so poor maintenance is a potential risk exposure. Have volunteers show you their current state inspection sticker every year, at a minimum.

Risk management for door-to-door

transportation

(NOTE: The issues discussed here are ones you should address in your initial training.)

Think through the entire process of how volunteer drivers arrive at the client's home and park there, how they make sure the client gets into and out of the vehicle safely, and how they transport them to the destination and back home safely. Are they trained to assist clients who are frail, and those with disabilities? It's a good idea to get information about each new client and any special needs he or she might have. Make sure the volunteer driver has that information and the training to go with it.

Dig a little deeper, to answer that question of what could possibly go wrong. What if a client asks the volunteer driver to come inside the home and move some heavy furniture, or reach something on a high shelf? Will you allow your driver to do that? If so, you are accepting the risk that volunteers might hurt their backs lifting and moving heavy objects, or fall and be injured while trying to reach something on a high shelf.

(Falls are the most frequent cause of all volunteer injuries.) Volunteers need to be

aware of such hazards, and trained to do any task that might be required, before they are allowed to carry out those tasks.

Here is a key principle of volunteer risk management – Have your volunteers *mentally prepared* for whatever environment they will be in. It might not be just a vehicle. It could be an icy sidewalk between the vehicle and the front door. It could be inside the client's home, if you allow drivers to go into the homes. It could be a home with a dog that attacks strangers. It could be a home where a client who is mentally unstable says the volunteer sexually molested her...or him. Or accuses the volunteer of stealing something.

In your brainstorming session on risk scenarios, everything should be fair game for discussion. **If a risk cannot be discussed, it cannot be managed. Remember – the question isn't "What is likely to go wrong?" It is "What could *possibly* go wrong?"**

When you have exhausted your risk scenarios, decide how you will address each one. If the client says he or she needs help getting from the door to the vehicle and back, for example, what kind of help? Just an arm to hold, or is a walker or wheelchair involved? Confirm with the client that the volunteer driver will not have a dog to contend with.

If clients ask volunteers to do favors other than transporting them, it creates a dilemma. Your nature is to want to help people. But you have to guard against risk exposures that could jeopardize your mission. So, you must determine what your boundaries will be. Are you a transportation assistance program, or do you want to do more? As you work toward an answer to that question, keep in mind that there are caregiving organizations that might be in a better position to address those nontransportation, aging-in-place needs. The National Volunteer Caregiving Network represents many of those organizations. [Your local Area Agency on Aging with their telephone Information/Assistance is a possible resource. Your own sponsor agency may be a good

resource. Many agencies that sponsor volunteer driver programs are multi-service social service agencies. And, of course, it would be really helpful to cover this issue in initial training.] But back to the question of what you will allow volunteer drivers to do...

If a client unexpectedly asks the volunteer to come inside to lift something or move something heavy, or asks the volunteer to come by next Saturday to carry bags of mulch to the flower beds, or do anything else not related to the transportation you agreed to provide, will you allow that? If so, manage that risk. For example, you could instruct the volunteer to call you as soon as the request is made, so you can discuss it with the volunteer AND with the client. If the volunteer can't reach you right then, have the volunteer put the request on hold until you CAN discuss it – both with the volunteer *and* the client. Remember -- If the volunteer accidentally injures someone or damages someone's property, your organization could be liable. So it's important to know what the task is, and be sure the volunteer can carry it out safely.

If you do give the volunteer permission to perform a task unrelated to the transportation you are providing, it's a good idea to have him or her call you as soon as the job is done – even if only to leave a voice mail message. You need to know where your volunteers are at all times, just as you know where your employees are, whenever they are working for you.

Consider instructing the volunteer to have the client speak on that voice message, too, confirming that the task is done. If that seems like far too much communication about moving furniture to the basement or replacing a rotten board on the back porch, think about the risk scenario mentioned earlier -- a volunteer being accused of sexual molestation. Volunteers sometimes are accused of things they didn't do. If you have a record of the client's request for assistance, and you have a record that the client confirmed that the assistance was provided satisfactorily and then the volunteer left, that could prevent a false accusation, or at least help your defense against one.

If a risk cannot be discussed, it cannot be managed.
Remember – the question isn't "What is likely to go wrong?" It is "What could possibly go wrong?"

Moving on to the crucial matters of volunteer selection, training, supervision and accountability...

Selection – When you recruit volunteer drivers, obtain Motor Vehicle Records on them before they

are allowed to drive for you, and obtain those records periodically afterward – perhaps once a year.

Resource – Motor Vehicle Record acceptability checklist – This checklist provides objective criteria for determining a person's eligibility to drive, based on the Motor Vehicle Record. For a free copy, contact William Henry, executive director of Volunteers Insurance Service Association, 800.222.8920, whenry@cimaworld.com.

Because you serve clients who are vulnerable due to their age or disabilities, obtain a criminal background check for volunteers, also. Obtaining the MVR and criminal background check can not only help screen out unsuitable volunteers, it also can demonstrate that you performed your due diligence in volunteer selection, should a volunteer be held liable for causing an injury or perhaps committing a crime. Having done your due diligence can help you defend against a charge that your organization was negligent in engaging that particular volunteer.

If you are a member of the National Association of Area Agencies on Aging, you can engage LexisNexis for background checks at a discounted rate. Your sponsor agency may have procedures in place for obtaining these records. Members of Volunteers Insurance Service Association also may obtain services at a discounted rate from

IntelliCorp and Sterling Infosystems, for screens that include criminal and credit history, Motor Vehicle Records, employment verification and more. Contact William Henry for more information; 800.222.8920 or whenry@cimaworld.com.

If you don't already require drug-testing for your drivers, you might consider it. Organizations with that requirement have found that some prospective volunteer drivers go back out the door when they learn of that requirement.

However, MVR's, background checks, drug testing, etc. are not enough for managing the risk of volunteer driver selection. You might have a volunteer who has never even had a parking ticket, hasn't been arrested or investigated for anything, and is drug-free, but still could cause an accident or injury, or other kind of loss. That is why you should have *procedures* for your volunteers, and hold them accountable for following those procedures. "Empowering" volunteers does not work in risk management. They need to follow your procedures.

Orientation and training are where you establish those procedures. One of the risks with volunteer engagement is not communicating what's expected. When people are left to improvise, the results might not be very good. In fact, they might be awful. Your orientation program provides a good opportunity to reduce that risk. This is the time to set up limits on what a volunteer can/should do outside of providing transportation. Vehicle safety training is part of it. Incorporate the Preventer Papers from Volunteers Insurance Service Association, or other resources from your insurance company or another safety-training provider, into your orientation and training.

One of the benefits of brainstorming the "What could possibly go wrong?" question is that you can develop written instructions for your volunteer drivers on every aspect of their jobs. Consider developing a written test based on those instructions, that the volunteer needs to pass before getting that first assignment.

Does the volunteer know to whom he or she should report? Whom do they see if they need something, or have a complaint or problem? Exactly what do they say if a client makes a request you have decided volunteers must decline? Take time to explain those procedures. Taking time to do it right shows the volunteer that you're sailing a tight ship. When you have that reputation, it can help with recruitment and retention of good volunteers.

Specialized training such as assisting clients with disabilities provides a good opportunity to **have veteran volunteers train new ones**. That's a good way to reinforce the veteran volunteer's own knowledge, as well as train the new person. And it's one more way of reminding veteran volunteers that you value their skill and experience.

If there is a vehicle accident or any other kind of accident, what are the volunteer's responsibilities, and those of his or her supervisor, to address the issue? Make sure it's written, communicated and understood, as part of your orientation and training.

Accountability -- Just because volunteers are unpaid, that does not mean you can't discipline them, and even terminate them if necessary. Ask supervisors if there have been any occasions when they felt the need to criticize volunteers. What happened? If they let the occasion pass, why did they? Sometimes in a close-knit organization, people are reluctant to question or criticize others. But that reluctance creates a risk, and it can hurt you.

Don't worry about offending the volunteer. As long as you are sincere with them and keep your organization's interests as your first priority, you'll be fine.

If you decide to develop a formal risk management system, or refine the one you have, make it official by adopting a risk management policy statement. Communicate your policy throughout the organization. Play it up in your Form 990 that you file with the IRS, and other documents that your supporters might see.

Resource -- Sample risk management policy – Contact William Henry for a sample one-page policy; 800.222.8920 or wheny@cimaworld.com.

How to respond when incidents occur

Even in the most risk-conscious organizations, incidents can happen. When they do, it's important that you already have in place the procedures for reporting and dealing with those incidents in an effective and timely way.

The chain of command is very important. Make sure volunteers know that if there is a traffic accident, injury, or a potential liability situation, they are to report it to their supervisor. If it's a vehicle accident, of course, law enforcement will be involved. But the supervisor also needs to be notified immediately.

If it is an injury or a potential liability situation that is not vehicle-related, the volunteer needs to be instructed to report the incident to his or her supervisor first – not to the police, and not to a government agency, as long as that procedure is consistent with the mandated-reporting laws of your jurisdiction. Let the supervisor handle it from there. How does the supervisor know what to do? It goes back to the brainstorming of risk scenarios – the “what could possibly go wrong?” exercise -- and how to deal with the risks you can imagine. The appropriate response needs to be developed for each risk scenario you identify.

If there is an insurance policy that might respond, it's important to let the insurance company know what happened, and they can help you. Organizations that participate in the Volunteers Insurance Service Association program can get help in that area, as part of the association's service.

But never leave incident-response decisions to the volunteer's discretion.

In the case of an injury, once the injured person gets medical attention, get as much information as you can about what caused the injury. Were your safety procedures being followed? If not, why not? What should have been done differently? Having that information can help with training to prevent a future occurrence.

Talk to any witnesses, write down what they say, and get their contact information. If there is a dispute over the facts, get both sides of the story. **If it is a situation where a**

Reporting claims in a timely way

- *All claims require timely reporting, so the underwriting company can investigate the claim and, if necessary, prepare a legal defense. This is called putting the company on notice. If you delay, you might jeopardize coverage.*
- *Even if you don't have all the facts, report the facts you do have. The underwriting company will provide instructions for any further action you need to take.*
- *In a liability situation, do not admit liability to anyone. Just tell the other party or parties you will report the incident to your insurance company.*

liability claim might arise, don't admit liability. Just get the facts and tell the other party you will report the incident to your insurance company.

The report needs to be made right away.

Claims often are slow to develop – particularly liability claims -- so it is important to begin your investigation at the first hint of a problem, and also put your insurance company on notice. Don't let your attorney decide whether to report the claim, and don't wait for it to blow over. This could jeopardize your coverage. The insurance contract says you must provide "timely" notification

of claims, and you don't want to be in a position of arguing about whether your claim was timely.

Structuring your insurance program

Insurance to protect your organization -- Every organization should have a **commercial general liability** policy. It protects the organization, should it be named in a suit that alleges some kind of bodily injury, personal injury or property damage. Organizations operating volunteer driver programs also should have **auto liability policies** that protect both the organization and its drivers. If the organization owns or leases vehicles, it needs what is called a **commercial auto policy** covering those specific vehicles and their drivers. On the other hand, if the organization uses only the volunteers' vehicles, a policy called a **nonowned and hired auto policy** usually is appropriate. That policy protects the organization in the event a volunteer causes an accident and the liability limits on his or her own policy are not sufficient to cover the damage.

Also, the organization should consider **directors and officers liability** insurance to protect the board of directors, staff and volunteers against what are called "wrongful acts," and insurance to protect any **property** you might have. **Professional liability** coverage, also called errors and omissions coverage, might be required, depending on the level of professional skill of your employees. Some other commonly needed coverages include workers' compensation, umbrella, employee/volunteer dishonesty, business interruption, cybercrime, fiduciary liability, and special events...to name a few.

Insurance to protect your volunteers – Insuring your volunteers separately, rather than including them on your general liability policy or other policies protecting the organization itself, can prevent your organization from having to share limits of liability coverage with volunteers, as a result of an incident involving a volunteer...avoiding a potential out-of-pocket loss for the organization (and potential premium increase.)

Depending on how the general liability policy is written, insuring volunteers separately also can prevent your having an uncovered liability claim involving a volunteer.

If volunteers are included automatically on the general liability policy, they can be removed by the Insurance Services Office Endorsement CD 21 66 “Exclusion – Volunteer Workers.” For the commercial auto policy (if applicable), one “excludes” volunteers simply by **not** adding “Social Service Agencies – Volunteers As Insureds” (CA 99 34) to the policy.

There are three kinds of insurance available to protect volunteers:

- **Excess automobile liability** – Responds if the volunteer is at fault in an accident
- **Volunteer liability** – Responds if the volunteer is held liable for bodily injury, personal injury or property damage
- **Accident medical reimbursement** – Responds if the volunteer is injured

Resource – “Insurance basics for nonprofit organizations” – Contact William Henry for a summary of the coverages most often needed by nonprofit organizations; 800.222.8920 or wheny@cimaworld.com.

Case history – The value of excess automobile liability coverage for volunteer drivers --

A volunteer in Arizona was driving to her assignment, and an employee of the nonprofit organization she worked for was riding with her. The volunteer failed to yield right-of-way at an intersection, and collided with another vehicle. The passenger was injured, and so were both occupants of the other vehicle.

The volunteer’s own automobile insurance company paid the cost of medical treatment for the occupants of the other vehicle, and those costs were within the policy’s liability limits. But the injured employee who had been riding with the volunteer required \$225,000 for treatment of her injuries. That was exactly \$200,000 more than the policy limit of the volunteer’s own insurance.

In Arizona and every other state, injuries that occur during travel to and from work are NOT covered by workers’ compensation. So workers’ compensation coverage would not apply to the injured employee in this case.

The volunteer could have had a huge out-of-pocket loss – perhaps an unaffordable loss -- to pay her passenger's medical expenses. But the nonprofit she worked for had purchased excess automobile liability insurance for its volunteers, through the CIMA Volunteers Insurance Service program. The policy paid the \$200,000 difference between the volunteer's own policy limits and the amount required by the injured employee.

It is nice to be able to tell a potential volunteer driver that you are making insurance available to them in the event they cause an accident and their own coverage isn't sufficient. The policy actually provides up to \$500,000 above the volunteer's own insurance. And unlike workers' compensation, there is no exclusion for the volunteer's travel to and from volunteer duty.

Two common misconceptions about liability

1. *Volunteer "immunity"* -- Sometimes, nonprofits and volunteers believe that the Volunteer Protection Act of 1997 shields them from liability. But the law does NOT protect against allegations of gross negligence, civil rights violations, or vehicle-related liability. So volunteers causing vehicle accidents are not protected. And if there is a claim for bodily injury or property damage, the plaintiff's attorney probably *will* allege gross negligence. Even if a volunteer is blameless that does not prevent a lawsuit, and volunteers may incur substantial legal expense if that happens. Or the organization itself can be in that situation if you are named in the suit. So please don't rely on any protection from the federal Volunteer Protection Act, or any of the state laws that are modeled on the federal law.

2. *"If I volunteer to drive for you, my auto insurance might be cancelled."* There is a misconception that people might be putting their personal automobile insurance coverage in jeopardy if they drive as volunteers for a nonprofit organization. Sometimes insurance agents caution their customers not to volunteer. They say the customer's premium might go up, or coverage might be cancelled, or a claim denied. This fear has led to legislation in a few states to prohibit such adverse actions by insurers. But according to all current evidence as of this writing, including the results of an exhaustive

study by the National Conference of State Legislatures, no insurance company has ever taken or threatened to take such adverse action against a customer. **Volunteers Insurance Service Association** asked a number of insurance companies about this issue ourselves, and was assured that no one would be penalized in any way just because part of their driving is in their role as a volunteer. *If anyone ever hears of an exception to that, please contact William Henry at VIS (800.222.8920 or wheny@cimaworld.com).*

Closing thought

The more effectively you manage risk, the less you need to fear it. And risks can be managed. When they are, consistently and continuously, safety is no accident.

Best wishes to you and all those you serve.

According to all current writing as of December 2013, no insurance company has ever taken, or threatened to take, action to raise a customer's auto insurance premium, to cancel coverage, or deny a claim, simply because the customer is a volunteer driver.