

COORDINATION

Myths & Realities

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About this Series: This is an occasional publication of the Community Transportation Association's National Resource Center for Human Service Transportation Coordination (NRC). As the name of the series indicates, each issue will explore the myths and realities surrounding one topic that has been identified as a barrier to human service transportation coordination.

About the NRC: Are you trying to improve the linkages between public transportation and human services in your state or community? We have people, resources, and partnerships that can help you improve these connections. Our National Resource Center for Human Service Transportation Coordination is operated by the Community Transportation Association through a cooperative agreement with the Federal Transit Administration. Go to www.ctaa.org for more information on insurance or any other coordination topic, or call us at 800.891.0590 ext. 733.

About United We Ride: United We Ride is a federal interagency initiative that supports states and their localities in developing coordinated human service delivery systems. In addition to state coordination grants, United We Ride provides state and local agencies with a transportation coordination and planning self-assessment tool, technical assistance, and other resources to help their communities succeed.

INSURANCE

In this first issue of "Myths and Realities," we tackle one of those perennial issues — insurance. It seems that insurance has been a major issue from the time human service organizations first began offering transportation. Myths about insurance abound. Attend any meeting where transportation providers gather and you will hear stories about coverage denied, limits on coverage, outrageous claims, and outrageous settlements. Our United We Ride Coordination Ambassadors tell us that insurance is often the first barrier mentioned when they talk to people about coordination, and it is often the one left on the table at the end of the day.

To help shed some light on this contentious issue, Charles Dickson, the Community Transportation Association's Principal Investigator for the National Resource Center for Human Service Transportation Coordination, recently talked with Walt Diangson, President of Pacific Shore Insurance Services, about insurance issues that arise in the context of transportation coordination. Pacific Shore's focus is on the insurance needs of private-non-profit, public and commercial service organizations providing human, social and public transportation services.

Dickson: Walt, let's just jump right into this. We often hear that insurance companies restrict the passengers that organizations can carry on their vehicles — is this true?

Diangson: Some insurance underwriters believe that an insurer cannot legally restrict coverage based on the type of clients or passengers using the transportation service. Other insurers or insurance brokers tell insured providers that they cannot mix clientele (passengers).

An insurance policy is a contract. The contract provides that the insured entity will pay a premium or fee to the insurer in exchange for the certainty that the insurer will pay for a loss that may occur in the conduct of the insured entity's business. The coverage, premium and policy terms are set by the insurer through the underwriting process and reflect the level of exposure the insurer is willing to accept for the particular type of activity specified in the policy, including the level or type of service. In the underwriting process, the insurer also considers a number of other factors; for transportation providers, these would include limits of coverage desired, vehicle types and ages, driver requirements, the geographic area served, the type of service (the passenger types) and the applicant's programs for hiring and training staff and maintaining vehicles. The applicant has the choice to agree to the underwriting terms and rates offered by the insurer when purchasing the coverage or look elsewhere for coverage. However, since it can be difficult to find companies who will insure the public transit and community transportation class of business, there is generally not much room to negotiate such condition, terms or limitations.

When an insurer underwrites a particular passenger transportation operation, it anticipates a certain level of exposure, which can be affected by trip purpose, route, time of travel, and—related to your question—passenger type. An insurer may elect to restrict coverage by passenger type, whether the riders are from the insured's own agency (for example, a client being taken to an adult day health care facility) or from another agency the insured is serving.

Dickson: So what happens if the operator materially changes the level of exposure by altering any of these factors, including the passenger base?

Diangson: The key question here is, "Does the change in type of passenger constitute a material change?" especially if all the passengers generally have the same characteristics (for example, seniors, individuals with disabilities, individuals on non-emergency medical trips). If the insurance company believes that the transportation of clients from a particular human or social service agency, no matter how similar to the originally designated passenger group, changes the exposure or risk to the insurer, the company may choose to restrict coverage or threaten

to cancel coverage altogether. The company may assume that there is more risk involved in transporting other individuals outside the coverage they originally underwrote.

One way to address this issue is to make it clear to the insurance company that the new human service clients are basically the same as those already being transported by the agency, and that there is no material change in the transportation service being provided. Another strategy is to establish contracts among the various agencies coordinating their transportation and sharing trips. The participating agencies agree to transport each other's clients or passengers, sharing their available capacity. The agreement can indicate the similarity in trip purposes and riders. Thus the sharing is a part of the insured service, normal activity and purpose that is being insured.

Dickson: Can you talk about some of the things that transportation providers can do to let insurers know that they are a good risk?

Diangson: The most important thing to realize is that most insurance companies look first at a transportation provider's loss history — the accidents and claims made over time, usually over the previous three to five years. The frequency and severity of losses tell an underwriter how well the service is being managed and operated by the insured. A good past performance is the key indicator that the provider will be a good insurance risk. (It is important to note that many insurance companies view repeated small claims from the same provider just as negatively as a major fatality stemming from that provider's service.)

It is also essential that the underwriter who is rating an operator's insurance application know exactly what level and type of service the operator is providing. Besides the coordination agreements among other agencies mentioned above, this includes such things as the following:

- The operator's focus on safety, which is illustrated by references to safety in its mission statement
- The various management and operational policies, procedures and programs that the operator and its drivers adhere to, with emphasis on its policy and programs for safety
- The extent to which the operator will go to achieve safe, secure, dependable/reliable, well-maintained and emergency-responsive community transportation service, including

How the operator seeks safe and qualified drivers and understands that “safety begins at hiring”;

How extensively the operator trains and supervises drivers;

How closely the operator monitors drivers on the road (including the use of unobserved ride checks, automatic vehicle locator systems and security cameras);

How the operator routinely checks driver motor vehicle records (MVRs);

What type of employee safety incentives the operator uses;

What topics are covered in safety meetings with drivers, such as Bus Talks by John Hendrickson, GM of Waco Transit;

How well the operator maintains its vehicles;

How the operator tracks and responds to accidents and incidents, including near misses.

This information should be explained in a clearly written, detailed statement, as if the operator were doing a proposal; the operator should not simply attach copies of training and safety manuals to the application.

Dickson: We often hear about problems with organizations sharing vehicles. Can you talk a little about this issue?

Diangson: If an agency loans a vehicle to a secondary operator — giving them permission to drive the vehicle — then the secondary operator should be covered by the vehicle owner’s insurance. Any claim will first be made on the insurance of the vehicle owner or primary operator. In the event of a loss (accident), the vehicle owner’s insurance will pay the claim first. Then that insurer subrogates the loss to the secondary operator’s insurer, meaning the primary insurer seeks reimbursement/repayment from the secondary operator’s insurer.

However, most vehicle owners would rather have the secondary operator’s insurance cover the borrower during its use of the vehicle. This assumes that the borrower has its own commercial auto, general liability, and physical damage insurance. If not, the owner bears the loss through its own coverage.

In either case, the vehicle owner and borrower would

enter into a lease agreement for some nominal consideration (e.g., \$1) for the “lease” of the vehicle. Thus both parties are establishing a formal arrangement between the parties for use that specifies the insurance coverage of the borrowed vehicle or vehicles. The borrower then adds the borrowed vehicle(s) as “non-owned” vehicles to its policy. Both agencies should then name each other as “additional insureds” on their respective policies and provide certificates of insurance to each other. In addition, the vehicle owner should be confident — and request the borrower to demonstrate — that the borrower’s driver selection, training, safety and supervision programs meet the vehicle owner’s standards.

Dickson: How do organizations address the use of volunteer drivers?

Diangson: Any authorized driver assigned to drive an insured vehicle should be covered by the vehicle owner’s or operator’s insurance, whether the driver is a paid staff person or a volunteer. As a viable risk management approach, volunteers should go through the same orientation and training (for example, defensive driving, the vehicle’s operating characteristics and procedures, customer service, communications, emergency management) programs as paid employees. Operators should follow the same hiring practices they use for paid employees when recruiting volunteers. For example, the operator should ensure that volunteers go through appropriate screening (for example, drug testing) and have a valid, appropriate-class vehicle operator licensing. MVR and background checks as well as other normal hiring practices would be equally appropriate for volunteers. The website of the Non-Profit Risk Management Center (www.nonprofitrisk.org) has some valuable resources on minimizing risk with volunteer pools.

An operator should have the insurance company factor in the use of volunteers as part of the transportation service when writing a policy. The operator should list the volunteer drivers on its master list of drivers for the insurer, and ask the broker or insurer to add an ISO (International Organization for Standardization) form for Volunteers as Insureds as an amendment to the automobile and general liability contracts.

Dickson: What about volunteers using their own vehicles?

Diangson: There are several public and community transportation services that employ the use of volunteer drivers and escorts using the vehicles of the volunteers. This trend is likely to grow very rapidly in the next few years. Key resources in the use of volunteer driver programs

are the Beverly Foundation (www.beverlyfoundation.org) and the Supplemental Transportation Program (STP) Exchange (www.stpexchange.org).

Some agencies assume any added liability under their own agency coverage, while others simply rely on the personal auto coverage of the volunteer. In this latter arrangement, volunteers are fully liable under their own policy to the limits under their personal insurance policy and personal financial responsibility. It is important that both the agency and volunteers check with the insurer to understand the limits, conditions and exclusions of the auto liability insurance being provided under a volunteer driver and vehicle program. They should consult their insurer and/or broker.

Whether coverage is extended by the agency using volunteers with their own vehicles or relying on the volunteer's personal auto coverage alone, the agency should follow some best practices: As pointed out by the STP Exchange—a web-based resource for peer-to-peer communication co-sponsored by the AAA Foundation for Traffic Safety, the Independent Living Partnership, and the Beverly Foundation—these practices might include:

- Checking references, criminal records and driver records;
- Checking insurance coverage on the volunteer's vehicle and the volunteer;
- Performing vehicle inspections on the volunteer's own vehicle;
- Possibly fingerprinting drivers;
- Conducting random drug testing prior to and/or during employment;
- Conducting road tests to evaluate driving skills of volunteers;
- Providing driver training and/or supplementing such training with the AARP or AAA driver improvement program;
- Other supplemental training, such as, alcohol/drug use prevention; first aid, CPR, and HIV/AIDS and blood borne pathogens; sensitivity or empathy training; proper lifting and passenger assistance techniques; and mobility device training;
- Training in basic vehicle maintenance

Dickson: Can you address the issue of insurance pools and what issues may arise in crossing state lines?

Diangson: Some states do not recognize insurance pools as rated insurance carriers. An operator whose operations cross state lines should check the policies of all involved states. It is also important to look at the structure of the insurance pool and see if out-of-state transportation is covered, or if the pool is associated with a rated carrier that the adjacent state(s) would honor. The best source of information on what provisions must be met when using an insurance pool or what clarifications need to be made about pool coverage is the applicable state's department of insurance. For more in-depth experience with this issue, look at the Association of Government Risk Pools (AGRiP) website (www.agrip.org).

Dickson: Some insurance companies will not allow provision of door-through-door service (driver escorts passenger through their residence front door and assists them inside the dwelling). Is there separate coverage available to cover such service? Do such restrictions apply to front doors of public facilities, such as hospitals, clinics, senior centers and city hall?"

Diangson: The issue of assisting a passenger into a building adds significant liability to the equation for obvious reasons. The primary insurance concern has to do with private residences and not the front door of public facilities, where more people are present to witness actual events. However, that is not to say that a particular insurer won't prohibit all personal assistance beyond any "front door."

Another related issue is that an operator, while providing door-through-door service, may expose the vehicle and on-board passengers to potential harm or theft if left unattended and accessible. Because of the increased liability and potential losses, many insurers do not provide for this type of exposure.

The key to finding coverage for such supplemental services is in the scope of service outlined in an operator's application to an insurance carrier. If "through-the-door" service is a part of the operator's normal activities, it will either be covered or excluded by the carrier. Generally in public transit paratransit service, there is an assumption that there is more risk exposure in terms of general liability by assisting a passenger through the door of a private residence.

Another reason for not allowing “through-the-door” service is more operational: it is time-consuming and therefore more costly to provide. However, this is not a concern of the insurer. An agency that provides such supplemental service can ask for an endorsement to the general liability portion of its policy, but should consider the potential for increases in rating or declination of an application for coverage. Important risk management practices to consider in providing through-the-door supplemental service are proper screening, training and supervision of staff and the establishment of clear communications and reporting procedures.

Dickson: Do you have any final words of wisdom about insurance for coordinated transportation?

Diangson: The key to insurance in coordinated human service transportation is to actively manage your risk: create an organizational culture of safe operations and manage your exposures wisely and proactively. Practice risk management by asking yourself what can go wrong. If something goes wrong, how much will it cost? What can you do about it? Know the whys and hows of your loss history, utilize appropriate technology, and act now to correct past mistakes and formalize policies.

BOOKSHELF

Insurance and Coordination

Insurance and Liability Issues—Coordination Mountains or Hurdles?

Ohio Statewide Transportation Coordination Task Force Transportation Coordination Brief No. 14, April 1999

www.web1.ctaa.org/webmodules/webarticles/articlefiles/OHTransportationCoordinationBrief.pdf

Minnesota Public Transit Human Services Coordination Study, including insurance information

By the Center for Transportation Studies, University of Minnesota

www.cts.umn.edu/ct/coordination/documents/0-FullCoordinationStudy.pdf

UMN/CTS Transportation Coordination Toolkit Module on Insurance

By the Center for Transportation Studies, University of Minnesota

www.cts.umn.edu/ct/coordination/toolkit/documents/03-Insurance.pdf

UMN/CTS Transportation Coordination Toolkit Module on Coordination Obstacles

By the Center for Transportation Studies, University of Minnesota

www.cts.umn.edu/ct/coordination/documents/III-CoordinationObstacles.pdf

UMN/CTS Transportation Coordination Toolkit Module on Best Practices, including insurance

By the Center for Transportation Studies, University of Minnesota

www.cts.umn.edu/ct/coordination/documents/IV-BestPractices.pdf

Regional Coordinated Public Transit and Human Services Coordination Plan, includes section on insurance
By Minnesota Region 7-W Transportation Policy Board
www.cts.umn.edu/ct/coordination/plans/documents/LocalCoordinationPlan-Region7W.pdf

PasRide: A Pilot STPs: A Low Cost/Low Maintenance
By the Beverly Foundation
www.beverlyfoundation.org/resourcestore/educational_presentations/pasride_stps_pilot.pdf

Insurance—General

Insurance 101 Terminology
By the Wisconsin 4-H Youth Development Staff
www.4h.uwex.edu/resources/mgt/documents/Insurance101Terminology.ppt (For download.)

National Insurance Directory Website Glossary
By Insurance Information Institute, Inc
www.nationalinsurancedirectory.com/glossary.html

Putting the Brakes on Paratransit Operator Losses from Insurance Journal
www.insurancejournal.com/magazines/west/2006/09/04/features/72738.htm

Taxi and Limousine Market Catches a Good Fare with Sound Underwriting from Insurance Journal
www.insurancejournal.com/magazines/west/2006/05/08/features/69947.htm

Insuring Volunteer Drivers

Information for State Volunteer Driver Liability Laws
By the National Conference of State Legislatures
www.ncsl.org/programs/transportation/SVDLLaws.htm

Volunteer Transportation Resource Sheets
By the Health Ministries Network of Minnesota
www.healthministries.info/module7/7resourcesheets.html

Volunteer Driving Force Comes at a Price
By the Center for Transportation Studies, University of Minnesota
www.tzd.state.mn.us/ct/publications/eneews/effortarea/local/wca.html

Volunteer Drivers
By the Beverly Foundation
www.beverlyfoundation.org/ca_stp_clearinghouse/stp_documents/volunteer_drivers_an_option_for_action.pdf

Volunteer Issues Presentation
By the Washington Council Citizen Corps
www.medicalreservecorps.gov/2004Conference/PDF/Karin%20Frinell-Hanrahan.pdf

Volunteer Drivers Guide—A Guide to Best Practices
By the Washington State Department of Transportation
www.wsdot.wa.gov/transit/training/vdg/default.htm

Getting There Safely: Insurance and Liability Information (for volunteer drivers)
By the Center for Transportation Studies, University of Minnesota
www.cts.umn.edu/ct/publications/documents/2008-GettingThereSafely.pdf

Easter Seals Volunteer Transportation Survey
By Lisa Peters-Beumer, Easter Seals Transportation Solutions for Caregivers, May 2003
www.web1.ctaa.org/webmodules/webarticles/anmviewer.asp?a=458&z=5

Insurance Resources from Localities

Policy for members of the Community Transportation Association of Virginia (CTAV)
www.ctav.org/insurance.html

Washington State Transit Insurance Pool
www.wstip.org

Washington State Insurance Coverage and Related Requirements

www.ofm.wa.gov/policy/12.40.pdf

Kitsap (WA) Transit VanLink Driver Agreement

www.kitsaptransit.org/Vanpool/Vanlink/NewVanLinkDriverAgreement.doc (For download.)

Nebraska Department of Health and Human Services Senior Companion Volunteer Program

www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health_and_Human_Services_System/Title-15/Chapter-4.pdf

Organizations

National Association of Insurance Commissioners

www.naic.org

The NAIC works to assist state insurance regulators, individually and collectively, in serving the public interest and achieving fundamental insurance regulatory goals in a responsive, efficient and cost effective manner.

The Public Risk Management Association (PRIMA) is a professional association of public sector risk managers. PRIMA has numerous resources on all aspects of risk management and offers basic training programs that could be attractive to small community managers. Information on PRIMA can be accessed at www.primacentral.org.

The Association of Governmental Risk Pools (AGRiP). AGRiP is the national association of risk pools. Its membership consists of more than 250 pools that provide insurance and risk management services to over 35,000 small local governments around the United States. Information on AGRiP can be accessed at www.agrip.org.

The Public Entity Risk Institute (PERI). PERI is a nonprofit organization that is charged with the advancement of risk management practices in small public, private and nonprofit organizations. It has a wide range of resources, reports and information that can be useful to small community leaders. PERI can be contacted at www.riskinstitute.org.

From the Public Entity Risk Institute

Risk Identification and Analysis for Small Public Entities
www.riskinstitute.org/peri/images/file/RiskIdentification_and_Analysis_62006.pdf

Community Leadership in a Risky World — Risk Management Starter Kit

www.riskinstitute.org/peri/index.php?option=com_bookmarks&task=detail&id=652

Are We Insured?

www.riskinstitute.org/peri/content/view/547/5/

Hard Market: A Double Entendre that Means Work for You

www.riskinstitute.org/peri/index.php?option=com_bookmarks&task=detail&id=631

Negotiating Contractual Insurance Requirements with Small Businesses: Three Perspectives

www.riskinstitute.org/peri/index.php?option=com_bookmarks&task=detail&id=252

Available for purchase from the PERI Bookstore:
www.riskinstitute.org/peri/component/page,shop.browse/category_id,6/option,com_virtuemart/Itemid,41/

- 2005 Cost of Risk Survey Report (\$15)
- 2007 Risk Management Resource Guide (\$20)
- How to Read an Insurance Policy (\$30)
- Insurance Basics for Local Governments (\$30)
- Negotiating Risk Financing Arrangements (\$30)
- Understanding the Insurance Industry (\$30)
- Risk Management Basics for Local Governments (\$30)

Research/Surveys

Risk Management for Small and Medium Transit Agencies
By the Transit Cooperative Research Program

<http://onlinepubs.trb.org/Onlinepubs/tcrp/tsyn13.pdf>

“This report provides information on how small and medium-sized transit agencies can evaluate various approaches to risk management and can access risk management services at reasonable cost.”

Availability and Accessibility of Liability and Excess Insurance for Public Transit and Private Coach Operators
By the National Cooperative Highway Research Program
www.onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rrd_295.pdf

"This digest provides alternatives to conventional liability insurance coverage for public transit agencies and private motorcoach operators in response to the insurance crisis of the early 2000s that has had, and continues to have, a significant impact on the cost and availability of liability insurance coverage."

Identification of Liability-Related Impediments to Sharing §409 Safety Data among Transportation Agencies and a Synthesis of Best Practices
By the National Cooperative Highway Research Program
http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rrd_306.pdf

"This digest examines liability risks associated with sharing safety data among transportation agencies pursuant to Section 409 of Title 23, U.S.C. The report also explores best practices; reviews the Pierce County, Washington v. Guillen decision and its potential impact on managing state liability risk; and describes potential strategies for overcoming the impediments to data sharing, specifically those related to liability."

Successful Risk Management for Rideshare and Carpool-Matching Programs
By the Transit Cooperative Research Program
www.onlinepubs.trb.org/onlinepubs/tcrp/tcrp_lrd_02.pdf

"This report is organized as follows: (A) Introduction; (B) Public and Private Rideshare Programs; (C) Legal Liability; (D) Statutory Limitations on Liability; (E) Insurance; (F) Strategies to Minimize Potential Tort Liability; and (G) Conclusions. A bibliography is included and Appendix A presents a chart which summarizes state laws affecting rideshare arrangements."