Important Content Note:

This technical assistance resource was developed prior to the August 2017 release of the Health Center Compliance Manual by the Health Resources and Services Administration’s (HRSA) Bureau of Primary Health Care (BPHC). The BPHC Compliance Manual, issued August 2017, indicates where PINS, PALs and other program guidance are now superseded or subsumed by the BPHC Compliance Manual.

See:
Protecting Health Center Volunteers from Personal Liability

From community board members to clinical providers who work without compensation, and countless others, volunteers are vital to the successful operation of health centers. Not only do centers operate in accordance with federal regulations that require a majority of board members to be actual users of center services, while explicitly authorizing payment of lost wages only to those with annual incomes below $7,000 for individuals and $10,000 for families, but most centers operate under significant budgetary constraints and have goals for empowering health center patients. These elements combine to create a fertile ground for volunteering in and around health centers. Yet as with any endeavor, there is a certain element of risk involved in volunteering. Mistakes happen, errors are made, and sometimes people are harmed unintentionally.

Because of this potential for risk, some would-be volunteers may be afraid to assist nonprofit organizations, such as health centers. They fear lawsuits stemming from accidents or being held personally liable in the event of a problem arising from their volunteer actions. Lawsuits against health centers are uncommon, however, and suits against health center volunteers are even less common.

The purpose of this information bulletin is to explain the protections that exist for health center volunteers, so that they realize they are at low risk of being held personally liable for their actions as volunteers. Health centers can and should encourage their volunteers to understand how they are protected so that they feel comfortable continuing to serve. In particular, this Information Bulletin summarizes federal and state laws that protect volunteers of nonprofit organizations, as well as private insurance options. Special emphasis is placed on the Federal Volunteer Protection Act, with an explanation of whom it protects, how it does so, and what is excluded from its coverage.
WHY DO VOLUNTEERS NEED PROTECTION FROM LIABILITY?

Individuals can be held legally accountable if they cause injury or harm to another person or property while volunteering at a nonprofit organization such as a health center. Apart from the burden of having to pay damages to the injured party, the costs of defending a lawsuit, including attorneys' fees, can be substantial. Persons might, understandably, be quite reluctant to volunteer their services when there is a significant risk that they could be subject to lawsuits and potential legal liability. Fortunately, both federal and state laws provide some protection for volunteers and most, if not all, of the financial risks can be eliminated through private insurance coverage.

FEDERAL PROTECTIONS FOR VOLUNTEER LIABILITY

Volunteer Protection Act

Historically, only a few states had laws that protected volunteers of nonprofit organizations from liability for their acts or omissions while donating their time. Congress determined that a sizable number of potential volunteers were fearful that they could be held personally liable if something went wrong during the course of their service, and noted that some nonprofit organizations were having trouble recruiting and retaining volunteers—a vital source of supplemental staffing for many nonprofit organizations. Wishing to promote volunteerism in charitable nonprofit organizations, Congress enacted the Volunteer Protection Act (“VPA”) in 1997.

The VPA provides protection to many health center volunteers in situations arising from their volunteerism. It “immunizes” volunteers from liability for ordinary negligence (i.e., failure to use reasonable care) in the course of their normal volunteer work. The VPA also limits punitive and non-economic damages that can be assessed against volunteers who are held liable for acts of gross negligence.

Who is Protected by the VPA?

The VPA specifically covers volunteers of two types of organizations. Volunteers at organizations, including most health centers, which have 501(c)(3) tax-exempt status are protected by the VPA. Additionally, even if a center is not a 501(c)(3) organization, but is a nonprofit entity organized and conducted for the public benefit and operated primarily for charitable, civil, educational, religious, welfare, or health purposes, its volunteers are also covered by the VPA.

Importantly, the health center itself receives no protection from liability under the VPA, nor do its paid employees. Only a center’s individual volunteers are protected by the VPA. Thus, according to the legal doctrine of respondeat superior (meaning literally, “let the master answer”), the VPA does not eliminate the liability of health centers for their volunteers’ harmful actions—the health center can still be held liable even if the volunteer is not. As such, maintaining appropriate insurance coverage remains important for the health center. Types of coverage are described below.

It is important to note that while on its face, the VPA would appear to protect volunteer clinicians, we are unaware of any test case. Moreover, the Federal Tort Claims Act (“FTCA”) (described more fully below) does not cover volunteer providers. Accordingly, we would recommend private insurance coverage for volunteer providers because of the high risk associated with malpractice claims.
Who is a “Volunteer” under the VPA?

The VPA defines a volunteer as an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation (other than reimbursement for reasonable expenses actually incurred) or anything of value in lieu of compensation, exceeding $500 per year. The definition of volunteer specifically includes persons serving as board members, officers, trustees, and direct service volunteers. A volunteer physician or nurse practitioner would be considered a direct service volunteer.¹

For example, if for some reason, a health center volunteer received a stipend of $50 per month, a cash award of $550, or was given something worth more than $500 by the center to show its appreciation for years of hard work, this person would not be covered under the VPA.

What Volunteer Actions are Protected by the VPA?

Not all volunteer conduct is covered by the VPA. To be protected by the VPA, the volunteer must be acting within the scope of his or her responsibilities. Therefore, board members performing their defined duties are protected, as are volunteer providers who are serving in a licensed, appropriate capacity for the health center. But a volunteer receptionist or non-provider who offers harmful medical advice to a center patient would not be covered by the VPA because he or she would be acting outside the scope of his or her responsibilities.

Additionally, to be protected by the VPA, the volunteer must be licensed, certified, or authorized, as appropriate, for the specific volunteer actions that caused the harm. Thus, an unlicensed doctor who volunteers at a health center and provides harmful medical advice is not covered by the VPA.

What Volunteer Actions Are Not Protected by the VPA?

The VPA does not cover volunteers’ intentional misconduct or criminal acts, such as libel or slander; sex offenses; hate crimes; gross negligence or any act performed with “conscious, flagrant indifference” to the rights or safety of the person or property that was harmed. Importantly, any incident resulting from the volunteer operating a motor vehicle (for which a license or insurance is required) is not covered, nor is any conduct performed under the influence of alcohol or other drugs. Thus, a board member driving to a board meeting who has a car accident would not be covered by the VPA in a claim by an injured third party.

¹ As previously noted, FTCA does not cover volunteer providers; private insurance coverage is therefore recommended.
Damages under the VPA

Because the VPA protects volunteers against personal liability for harm caused to someone else due to actions resulting from the volunteer’s normal course of volunteer activities, volunteers are not at risk of punitive damage awards (i.e., those intended to punish) for their ordinary negligence. For example, if a volunteer accidentally caused harm in the scope of his or her volunteer health center duties, he or she would be immune from liability, including punitive damage awards. However, the VPA does not give immunity to volunteer conduct that goes beyond ordinary negligence. Additionally, punitive damages can be assessed in instances when the harm caused by the volunteer was a result of willful or criminal misconduct, or conscious, flagrantly indifferent conduct. Therefore, if a volunteer acted recklessly or he or she willfully intended to harm another person at a health center, he or she would not be protected under the VPA from punitive damages.

Volunteers whose actions – or lack of action when there is a duty to take action – cause harm to others can still be held liable for non-economic losses, such as physical and emotional pain, suffering, or impairment. However, the VPA limits the amount of this liability. Volunteers are only liable for the proportional amount that they were responsible for the harm. This provision of the VPA eliminates the common law rule of joint and several responsibility that states if more than one defendant is found liable for an injury, any defendant may be required to pay 100% of the damages regardless of how responsible he or she is. But under the VPA, if a volunteer acting within the scope of his or her health center duties is 50% responsible for an accident that harmed someone else, the volunteer would only be liable for 50% of the damages claimed by the accident victim in a lawsuit.

For example, if a health center patient were accidentally harmed at the center and named a volunteer and the salaried Executive Director in the lawsuit as defending parties, the volunteer would only be responsible for the percentage of the harm he or she actually caused. A judge or jury determines how responsible someone is; for example, whether one would be 15%, 50%, or 100% responsible, or not at all.

While the VPA limits damages and provides a complete legal defense for certain volunteers, it does not prevent an injured party from filing a lawsuit challenging whether or not the VPA applies in the first place. The volunteer still must pay the legal costs of litigating the applicability of the statute. Additionally, by claiming that the volunteer is guilty of gross negligence or flagrant disregard, a plaintiff can persist in filing and pursuing a lawsuit.

Federal VPA Generally Preempts State Laws

The VPA preempts, or takes the place of, state laws that provide lesser protections to nonprofit volunteers acting within the scope of their duties. Like many other federal laws, the VPA establishes a floor, or a minimum level of protection. States can provide greater protections to their residents who volunteer on behalf of nonprofit organizations. (See below, State Liability Protection, for more on this topic.)

However, the VPA explicitly does not preempt four types of state laws:

1. those that require nonprofit organizations to adhere to risk management procedures, including mandatory training of volunteers;

2. those that make the nonprofit organization liable for actions or omissions of its volunteers to the same extent that an employer is liable for the actions or omissions of its employees;
(3) those that make liability limitations inapplicable if a lawsuit is brought by state or local officials, pursuant to state or local law; and

(4) those that allow immunity only to volunteers of nonprofit organizations that provide a “financially secure source of recovery,” such as insurance to pay out in the event that an individual suffers harm.

Additionally, the VPA authorizes states to nullify VPA coverage completely by statute, in certain circumstances, such as actions brought in state court where all parties are citizens of that state and when the action is brought by the state or local government. This allows states to “opt out” of specific provisions of the federal law by creating their own statutes, but, in fact, states have not chosen to do so.

The Federal Tort Claims Act

The Federal Tort Claims Act ("FTCA") is another federal statute that offers some volunteers additional limited protections from personal liability. FTCA provides protection to Section 330-supported health centers, their board members and officers (as well as employees) vis-à-vis medical malpractice claims. Under FTCA, the government defends the named health center party in a law suit and is responsible for paying any judgments or settlements that result. It is important to note that, with respect to volunteers; FTCA covers only volunteer board members and officers, and covers only medical malpractice claims resulting from activities that are within the health center’s approved scope of project. FTCA does not cover volunteer providers under any circumstances.

STATE LIABILITY PROTECTIONS

Just as volunteers’ anxieties about incurring liability while performing good deeds for charitable nonprofit organizations prompted Congress to act, states too have responded with legislation to quell fears. (See Suggested Sources for Information on State Volunteer Immunity Laws below for more details on specific state laws and trends.) According to the Nonprofit Risk Management Center, every state has some form of volunteer protection law. However, the laws are far from uniform. Some laws limit the personal liability of nonprofit board members, others focus on volunteers generally. Some state laws offer greater protection to volunteers than does the VPA. The organization Volunteers in Health Care notes that still others (38 states plus Washington, DC) specifically reference health care providers:

♦ Many states expand the protections for volunteer physicians and licensed health care workers.

♦ Some states limit the amount of damage awards that can be recovered by patients through lawsuits against volunteer providers.

♦ Several states raise the legal standard of care at which a clinician can be held liable to a higher degree, requiring gross negligence instead of ordinary negligence, thereby narrowing the situations in which a plaintiff can recover damages.

♦ Some state laws provide a mechanism for purchasing malpractice insurance for volunteer providers.

♦ Several states even limit the organization’s liability for the consequences of their volunteers’ actions.
Some states indemnify volunteers by extending the same protections to them as if they were state employees. These indemnity laws, similar to the many other approaches states use to protect volunteers, range in scope. Here, indemnity may mean that the volunteer is immune from civil liability; or it may mean that the state will pay legal costs to defend and/or accept liability for the volunteer’s conduct. Additionally, compensation for claims is often capped at a specific dollar amount and punitive damages are not allowed.

State volunteer protection laws have many limitations or conditions. The following list is a sample of the approaches states have used, individually or in combination, with respect to volunteer liability protection.

**SAMPLE STATE LIMITATIONS OR CONDITIONS ON VOLUNTEER PROTECTIONS**

In order to be covered, the nonprofit organization and/or volunteer must:

- act in good faith;
- act within the scope of their license, certification or authorization;
- be insured;
- treat uninsured and/or indigent patients;
- provide specific services in certain settings;
- obtain necessary licenses;
- join certain affiliations; and/or
- finance their own legal defense costs.

**SUGGESTED SOURCES FOR INFORMATION ON STATE VOLUNTEER IMMUNITY LAWS**

**Volunteers In Health Care:**

**Nonprofit Risk Management Center:**

It is imperative for health centers and their volunteers to know the laws that protect volunteers in their own states.

**PRIVATE INSURANCE TO LIMIT VOLUNTEER’S RISK**

Health centers can purchase additional insurance to protect against those risks to volunteers that are not covered by federal and state laws. Because volunteer activities can be site-specific and will differ center to center, each health center should assess its risks and the coverage of its volunteers under its insurance policies to determine what additional protections, if any, are needed. Health centers are encouraged to get information on Directors and Officers insurance policies and other insurance options to cover board member volunteers.
Commercial General Liability Policies

Volunteers may be protected by a health center’s commercial general liability insurance policy, but this will depend on the specific coverage available under any given policy. Health centers may want to determine whether, and under what circumstances, their volunteers have protection under federal and state laws and then fill in the gaps with commercial liability insurance. Consulting legal counsel well-versed in insurance and related liability issues is advised.

Commercial general liability policies may cover:

♦ the organization;
♦ the officers;
♦ the employees;
♦ the costs to investigate and defend allegations of wrong-doing;
♦ “vicarious liability” for employees (meaning that the health center would bear the risk for the conduct of the employee); some insurers are willing to extend this to volunteers;
♦ injury to property; and/or
♦ personal injury.

Because commercial liability insurance packages commonly exclude employment practices, professional liability, intentional acts, improper sexual conduct, employee injuries, and/or automobile incidents, health centers may choose to obtain added coverage through an add-on or separate policy.

Directors and Officers Liability Coverage

In addition to commercial liability insurance, health centers can and should have Directors and Officers ("D&O") insurance. D&O insurance protects volunteer board members and other officers of health centers (possibly management team members) against harm that results from board and executive decision-making and covers legal costs if the directors or officers are sued. D&O insurance is designed to provide reimbursement of costs incurred in defending a claim and indemnification for any judgment or settlement in a case.

Akin to other private insurance, D&O insurance may not be all-inclusive. In fact, it may exclude protections for defamation; dishonesty; harassment; discrimination; conduct engaged in for personal profit; wrongful termination; bodily and property injury claims; failure to procure and maintain insurance; Employee Retirement Income Security Act ("ERISA") claims; pollution claims; administrative hearings; lawsuits between board members; and/or fines and penalties imposed by law. Health centers and their boards should assess their D&O policies and determine if the policies cover their needs.

In addition to commercial liability insurance, health centers can and should have Directors and Officers (“D&O”) insurance.
Health centers rely heavily on volunteers to provide key services – community board members who govern the centers, volunteer providers who help centers deliver care to the community, and other community members who assist centers in a wide range of activities. Because volunteers are covered by a comprehensive array of federal and state protections, and also may be covered by a center’s insurance policies, they should feel comfortable continuing to serve health centers with the enthusiasm and dedication they bring to the mission. Efforts to protect volunteers from liability are, after all, a reflection of concern for the volunteers who help to make health centers viable. Limiting volunteer liability not only protects volunteers from lawsuit, but also recognizes their invaluable service to health centers. Acknowledging volunteer concerns and educating volunteers about exposures and liability coverage are necessary steps in ensuring that health centers run smoothly and efficiently. Of course, a first and critical step is to provide appropriate training and education for every volunteer regarding his or her responsibilities to the health center and steps he or she can take to ensure that those responsibilities are discharged with due care.

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