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. 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 under 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: UWR United We Ride is an interagency Federal national 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 a transportation-coordination and planning self-assessment tool, help along the way, 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. Many 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 Principle Investigator for the National Resource Center for Human Service Transportation Coordination, recently talked with Walt Diangson from Pacific Shore Insurance Services about insurance issues that arise in the context of transportation coordination.

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 can¬not 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 (e.g., a client being taken to an adult day health care facility) or from another agency the insured is serving.

So what happens if the operator materially changes the level of exposure by altering any of these factors, including the passenger base? The key question here is, "Does the change in type of passenger constitute a material change?" especially if all the passengers are generally of the same characteristics (e.g. 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 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 the following factors:

> 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 check driver MVRs

The 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 in organizations sharing vehicles. Can you tall a little about this issue?

Diangson: If an agency loans a vehicle that it insures to a secondary operator, giving them permission to drive ther 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 their 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 their 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 (e.g., 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 (e.g., 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 (http://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 (http://www.beverlyfoundation.org) and the Supplemental Transportation Program (STP) Exchange (http://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 later arrangement, the volunteer is 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 volunteer check with the insurer 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 both the Beverly Foundation and the STP Exchange, these practices might include:

• Checking references, criminal records and driver records;

• Checking insurance coverage on the volunteer's vehicle and volunteer;

• Performing vehicle inspections on the volunteer's own vehicle;

• Possibly finger printing 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 prevention; first aid, CPR, and HIV/AIDS and blood borne pathogens, sensitivity or empathy training, and proper lifting and passenger assistance techniques, mobility device training; and

• Training in basic vehicle maintenance and/or More often, though, it involves training

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 of 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 (http://www.agrip.org/index.html).

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 provide 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 be either 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.

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