NATIONAL ASSOCIATION OF
Community Health Centers®

Protecting Health Center Board Members and Other Volunteers from Personal Liability

Governance Legal Briefs focus on important legal topics for health center boards. This Governance Legal Brief addresses volunteer protection from personal liability. Since various protections apply to board members and to other important volunteers, various types of health center volunteers are addressed in this document.

From board members, to clinical providers who work without compensation and countless others, volunteers are vital to the success of health center governance and operations. The purpose of this document is to explain that individuals who offer their talent and time to volunteer at health centers have a low risk of being held personally liable for their actions. There are protections that exist for health center volunteers who act in good faith. Health centers can and should let their volunteers know how they are protected, so they feel comfortable serving.

This document summarizes the federal law that protects volunteers of nonprofit organizations: the Federal Volunteer Protection Act. You will learn who this law protects, how it does so, and what is excluded from its coverage. You will also learn about private insurance as an additional option to limit volunteer and health center risks.

I. 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 potentially paying damages to the injured party, the costs to defend a lawsuit with the help of attorneys could be substantial. People might, understandably, be reluctant to volunteer if there is significant risk that their actions could lead to lawsuits or legal liability. ***Fortunately, both federal and state laws provide some protection for volunteers and most, if not all, financial risks can be eliminated through private insurance coverage.***

II. FEDERAL PROTECTIONS FOR VOLUNTEER LIABILITY

Volunteer Protection Act

Historically, only a few states had laws to protect volunteers from liability for their acts or omissions while donating their time at nonprofit organizations. Congress found that many volunteers feared they could be held personally liable if something went wrong during their service, and this made it difficult for some nonprofits to recruit and retain them. Since volunteers are a vital source of support or staffing, Congress made an effort to remove barriers and promote volunteerism for charitable nonprofits. In 1997, Congress enacted the Volunteer Protection Act (VPA).

The VPA provides protection to many health center volunteers. It "immunizes" – meaning protects – volunteers from liability for ordinary negligence (i.e., a failure to use reasonable care) during the course of their normal volunteer work. The VPA also limits punitive damages that can be assessed against volunteers except for acts that are willful, criminal, or that amount to the conscious or flagrant indifference to the rights and safety of the individual harmed.

Who is Protected by the VPA?

The VPA specifically covers volunteers with two types of organizations:

1. Volunteers (e.g. board members) at organizations that have 501(c)(3) tax–exempt status, including most health centers
2. Volunteers at a nonprofit entity organized and conducted for the public benefit and operated primarily for charitable, civil, educational, religious, welfare, or health purposes even if not exempt under 501(c)(3).

It is important to note that the health center receives no protection from liability under the VPA, nor do its paid employees. Only a center's individual volunteers are protected by the VPA. Since health centers can be held liable for their volunteers' harmful actions, even if the volunteer is not, maintaining appropriate insurance coverage is important for the health center. [See section IV titled *Private Insurance to Limit Volunteer's Risk* for more information on this topic.]

Who is a "Volunteer" under the VPA?

The VPA defines a volunteer as: an individual performing services for a nonprofit or governmental entity who does not receive compensation other than reimbursement for "reasonable expenses actually incurred"[1] or anything of value exceeding $500/year in lieu of compensation. The definition of volunteer specifically includes persons serving as board members, officers, trustees, and direct service volunteers. A volunteer physician or nurse practitioner likely would be considered a direct service volunteer, although we are not aware of any court case on point.

In other words, if a health center volunteer received a stipend of $50 per month or more, a cash award of $550, or was given something worth more than $500 by the center in appreciation for 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 act within the scope of their responsibilities. So, board members performing their defined duties are protected, as are volunteer providers who serve in a licensed, appropriate capacity for the health center. But a volunteer board member who counsels an employee on an employment matter, for example, would not be covered by the VPA since they are acting outside the scope of their board responsibilities.

To be covered by the VPA, where applicable, a volunteer must be appropriately licensed, certified, or authorized for the specific volunteer actions that may have caused harm. For example, an unlicensed doctor who volunteers at a health center and provides harmful medical advice would not be covered by the VPA.

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1 Under certain circumstances, health centers may reimburse board members for wages lost on account of participating in board activities. See 42 CFR 51c.107.4 and 42 CFR 56.108.4. It is not clear if a court would treat lost wages as an "expense actually incurred" for purposes of VPA coverage. Accordingly, health centers should be cautious in assuming that those board members are protected by the VPA. As noted below, volunteer protection may be available under state law.

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 (a reckless disregard for the safety or lives of others in a way that appears to consciously violate their rights); or any act performed with "conscious, flagrant indifference" to the rights or safety of the person or property that was harmed. Also, if an incident results from a volunteer operating a motor vehicle (even with a license and insurance), it is not covered. Nor are incidents resulting from the influence of alcohol or other drugs. For example, if a board member drives to a board meeting and has a car accident, they would not be covered by the VPA in a claim by an injured third party.

To be protected by the VPA, the volunteer must:

- Be a director, officer, trustee, or direct service volunteer
- Not receive compensation (or anything of value in lieu of compensation) exceeding $500 per year
- Act within the scope of their responsibilities
- Be licensed, certified, or authorized as appropriate for their specific volunteer actions
- Have played a role in harm only through ordinary negligence (i.e., lack of reasonable care), not more (e.g., gross negligence, intentional misconduct, etc.)

Damages under the VPA

The VPA protects volunteers against personal liability for harm to someone that results from the normal course of volunteer activities. Volunteers are not at risk for punitive or other damage awards (i.e., those intended to punish) for ordinary negligence or an accident. The VPA does not give immunity, however, to volunteer conduct that goes beyond ordinary negligence. Punitive damages may apply when harm caused by a volunteer results from willful, criminal, or consciously negligent misconduct. So, if a volunteer recklessly harms another person at a health center, the volunteer could be responsible for punitive damages and not be protected under the VPA.

If a volunteer's action – or lack of action when there is a duty to take action – harms others, they can be held liable for physical and emotional pain, suffering, or impairment (non-economic losses). Still, the VPA limits the amount of this liability. Volunteers are only liable for the proportional amount of harm that they were responsible for. This VPA provision removes the common law rule of *joint and several responsibility* that states if more than one defendant is found liable, any defendant may be required to pay 100% of the damages. Under the VPA, however, if a volunteer acting within the scope of their duties is 50% responsible for an accident, then in a lawsuit they would only be liable for 50% of the damages claimed by the victim.

As another example: if a health center patient were accidentally harmed at the center and named a volunteer and the paid Executive Director in the lawsuit as defending parties, the volunteer would only be responsible for the percent of harm they actually caused. A judge or jury determines how responsible each person is; for example, not responsible, 15%, 50%, or 100% responsible.

While the VPA limits damages and provides a complete 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 must still pay the legal costs to litigate if the statute applies, or if the victim (plaintiff) claims that

the volunteer is guilty of gross negligence or flagrant disregard.

Federal VPA Generally Preempts State Laws

As a federal law, the VPA takes the place of (preempts) state laws that provide fewer protections to nonprofit volunteers acting within the scope of their duties. The VPA establishes a floor, or a minimum level of protection. States can provide greater protections to residents who volunteer for nonprofit organizations. (See the section III titled, *State Liability Protection,* for more on this topic.)

There are four types of state laws that the VPA does not preempt:

1. State laws that require nonprofit organizations to adhere to risk management procedures, including the mandatory training of volunteers.
2. State laws that make a nonprofit organization liable for actions or omissions of its volunteers to the same extent an employer is liable for its employees.
3. State laws that make liability limitations inapplicable if a lawsuit is brought by state or local officials, pursuant to state or local law.
4. State laws that allow immunity to volunteers of nonprofit organizations that provide a "financially secure source of recovery," such as insurance, to provide payment if an individual suffers harm.

States may "opt out" of specific provisions of the federal law by enacting state-specific statutory provisions. However, states have not chosen to do this.

The Federal Tort Claims Act

The Federal Tort Claims Act (FTCA) is another federal statute that offers some volunteers 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 Federally Qualified Health Center (FQHC) in a lawsuit and will pay any judgments or settlements that result. Further, under 2017 amendments to the FTCA,[2] certain volunteer health providers (VHP) performing medical, surgical, dental, and related functions can be covered under FTCA if the volunteer services are provided to a health center that already is deemed covered under FTCA.

Coverage is *not automatic,* however. Among other things, a health center must "sponsor" the VHP and submit an annual deeming sponsorship application to HRSA for approval. Coverage is not available unless and until HRSA approves the sponsorship application.[3]

The **FTCA Policy Manual** and the **Health Center Volunteers Protection website** are important resources for health centers.

III. STATE LIABILITY PROTECTIONS

Just as volunteers' anxieties about incurring liability while performing good deeds for charitable nonprofit organizations prompted Congress to act, states have responded with legislation to ease fears. 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, while others focus on volunteers generally. Some state laws offer greater protection to volunteers the federal VPA. Below is a generalized summary of protections:

2 See 42 USC 224(q). Note that this provision will expire October 1, 2022, unless extended by Congress.

3 For more information, see HRSA Program Assistance Letter 2019-13, *Calendar Year 2020 Volunteer Health Professional Federal Tort Claims Act (FTCA) Deeming Sponsorship Application Instructions*.

- 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 limit the organization's liability for the consequences of their volunteers' actions.
- Some states indemnify (financially or legally protect) volunteers by classifying them as if they were state employees. These indemnity laws, similar to other volunteer protections, 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. Furthermore, compensation is often capped at a specific dollar amount for claims, and punitive damages are not allowed.

State volunteer protection laws have many limits and conditions. It is imperative for health centers and their volunteers to know the laws that protect volunteers in their state.

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
- Finance their own legal defense costs

IV. PRIVATE INSURANCE TO LIMIT VOLUNTEER'S RISK

Health centers can purchase additional insurance to protect against risks 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 volunteer board members.

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 helpful.

Commercial general liability policies may cover the:

- Organization
- Officers
- Employees
- Costs to investigate and defend allegations of wrong-doing
- "Vicarious liability" for employees (This means the health center would bear the risk for the conduct of the employee. Some insurers extend this type of coverage to volunteers.)
- Injury to property
- Personal injury

Because commercial liability insurance packages commonly exclude employment practices, professional liability, intentional acts, employee injuries, automobile incidents, and other losses, 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) if harm results from board and executive decisions, and covers legal costs if the board or an executive is sued. D&O insurance is designed to reimburse costs incurred when defending a claim for any judgment or settlement in a case.

Like private insurance, D&O insurance may not be all-inclusive. 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 the center's D&O policies and determine if the policies cover their needs.

V. CONCLUSION

Health centers rely heavily on volunteers including board members who govern the center, volunteer providers who help centers deliver care, and other community members who assist with a wide range of activities. Because volunteers are covered by several federal and state protections, as well as a center's insurance policies, they should feel empowered to safely serve with the enthusiasm and dedication they bring to the health center's mission.

Limiting volunteer liability protects volunteers from a lawsuit, recognizes their invaluable service, and reflects a concern for the individuals who help make health centers viable. Acknowledging volunteer concerns and educating them about exposures and liability coverage are necessary steps in ensuring that health centers run smoothly and efficiently. A first and critical step is to provide every volunteer with appropriate training and education so they understand their responsibilities to the health center and how to serve with due care.

The term **"health center"** refers to public or private nonprofit entities that: (1) receive grants under Section 330 of the Public Health Service Act (Section 330), including Sections 330(e), 330(f), 330(g) and 330(h) (collectively "Health Center Program Grantees"); and (2) entities that have been determined by the Department of Health and Human Services (DHHS) to meet the Section 330-Related Requirements to receive funding without actually receiving a grant ("health center look-alikes").

The term **"Section 330-Related Requirements"** refers to requirements set forth in:

- Health Center Program Statute
- Program Regulations: **42 CFR Part 51c** and **42 CFR Parts 56.201-56.604**
- Health Center Program Compliance Manual: **https://bphc.hrsa.gov/programrequirements/compliancemanual/introduction.html**
- HRSA's Federal Financial Assistance Conflict of Interest Policy

The term **"Grant Requirements"** refers to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: 2 CFR Part 200, as adopted by DHHS at 45 CFR Part 75.

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