
Insurance Issues in Community Transportation

Potential liability is a concern for small organizations involved in providing transportation. These organizations are understandably worried about the financial implications of losses through accidents and lawsuits. When liability is a concern, having comprehensive insurance coverage is key to preventing losses. This brief goes over some of the insurance options available to small transportation-providing organizations in Massachusetts. These options help mitigate risk and liability arising from their transportation programs.

Insurance Landscape in Massachusetts

Community transportation providers and programs vary widely in Massachusetts. There are volunteer driver programs, transportation management associations, human service agencies, organizations that focus on a specific population, municipalities, and many more. Vehicles can be owned by the agency that is providing transportation service, or leased from a different entity such as a Regional Transit Authority (RTA). Drivers may be employees or volunteers. When the drivers are volunteers, the vehicle may be owned by the volunteer driver or by the agency. Insurers see these variations as complications that add risk, which makes community transportation operations challenging to insure.

However, small transportation providers all across the state are successfully insuring their transportation programs. Many small transportation providers secure insurance through a local insurance agent. Here are some types of

liability coverage that organizations should consider when seeking to purchase insurance:

- **General liability** policies are standard for businesses and organizations. They cover the insured for losses related to bodily injury, property damage, medical expenses, libel, slander, the cost of defending lawsuits, and settlement bonds or judgments required during an appeal procedure. Most organizations already have a general liability policy and will not need to purchase a new one if they begin a transportation program.
- **Excess liability** policies provide coverage above and beyond the general liability policy.
- **Automobile liability** policies (also called *personal* or *commercial* auto policies) provide coverage for property damage to vehicles and medical payments for passenger injuries in case of accident. These policies are required by the state of Massachusetts for all vehicles; state mandatory

minimum coverage for automobiles is 20/40 ~ \$20,000 per person, \$40,000 per accident ~ but this is considered insufficient by most insurance professionals. Recommended liability limits are in the vicinity of \$100,000 per person, \$300,000 per accident for personal vehicles and \$500,000-\$1 million for vehicles owned by organizations.

- **Excess auto liability** policies provide coverage above and beyond the automobile liability policy
- **Professional liability** (also called “Errors and Omissions”) policies protect the board of directors and officers from liability claims following their oversight of the organization.
- **Volunteer coverage** – some organizations purchase separate policies to cover their volunteers. These policies can be accident insurance, volunteer liability insurance, excess automobile liability insurance, and/or volunteer/employee dishonesty coverage. This provides a way for organizations to provide security for both their volunteers and their consumers.

In addition to insurance policy coverage, organizations that provide transportation services should consider creating a risk management plan. A good risk management plan will accomplish two goals. The first is to help the organization prevent incidents from happening; the second is to help employees know what to do if there is an incident or accident.

Automobile Liability

Aside from general liability policies, specific auto liability policies are essential for organizations with transportation programs. All organizations and

businesses that own and operate vehicles must have a commercial auto insurance policy. This kind of policy functions just like a personal auto insurance policy except the named insured is the organization itself. Commercial auto policies can be sourced from both the voluntary market and the residual market. For organizations that provide transportation, policies are usually written on the residual market due to the higher-risk nature of transporting passengers. Because the residual market plays such a big role in insuring transportation providers, it is worth explaining how it works here.

Residual Market

Individuals looking for auto insurance in Massachusetts look for policies through insurance companies or agents. Insurance agents write policies for people if the insurance agent thinks that the individual in question is a good risk. This process is known as the voluntary insurance market, and it is how most insurance policies are written. However, if an individual or organization for some reason is considered high risk, their insurance policy will be written on the residual market. This includes individuals who have had multiple accidents in a short length of time, and operators who are deemed to be inherently at higher risk of incurring losses. Community transportation operations are often seen as high risk, so the residual market is where most organizations get their auto insurance policies.

Because vehicle insurance coverage is mandatory in Massachusetts, and because private insurers work hard to minimize risk (and thus do not want to cover individuals and organizations where losses may be high), state regulators

created the residual market to make sure that high-risk individuals and organizations can purchase legally mandated insurance coverage. All Massachusetts insurance providers who write policies in the voluntary auto insurance market are required to participate and write a certain number of policies in the residual market.

The rates for policies written in the residual market are state-mandated. Losses for the prior year are calculated and the present year's rates are set by that standard. These rates can be competitive with private insurance, but can also be quite a bit higher depending on the type of vehicle and what it is used for. Generally with the residual market, pricing depends on a number of factors: geographic area, vehicle passenger capacity, and the loss history of the insured agency. Insurance policy rates will be higher for transportation providers due to the higher risk nature of the activity, although pricing itself varies widely across organizations.¹

Different Transportation Models

Vehicle sharing

Some community organizations form partnerships with each other and share vehicles. In these cases, partners should define their relationships clearly and formalize those relationships through a contract or agreement. One single entity usually takes responsibility for owning or leasing the vehicle, and that organization also insures the vehicle. Policies for these

¹ One insurance provider quoted a rate of \$6000/year for a commercial auto policy for a general-purpose passenger van. Another small transportation provider's insurance increased by about \$3000 when they added a vehicle to their fleet. This shows that prices vary widely depending on the location of the business, type of service, and loss history.

types of arrangements are usually found on the residual market.

Transportation Management Associations (TMAs)

Transportation Management Associations (TMAs) are non-profit organizations that bring together businesses (and in one local case, communities) to offer a range of transportation programs and services, from helping to arrange carpools to providing commuter shuttles. TMAs do not own and operate their own vehicles, but instead contract with private companies to provide transportation services; these transportation providers are responsible for purchasing insurance coverage for those vehicles. These transportation providers insure their vehicles through the residual market.

Municipal Transportation Programs

Many municipalities in MA use town-owned or -operated vehicles to transport residents around town. Vehicles owned and operated by municipal offices are insured through that community's insurance policy, which covers all vehicles owned and operated by the town itself. Councils on Aging (COAs) are generally the main providers of passenger transportation in a municipal setting.² Towns have different approaches to purchasing insurance – some are insured through the Massachusetts Interlocal Insurance Association (MIIA, part of the Massachusetts Municipal Association), some purchase insurance policies through a commercial agent, and some are self-insured. If the town owns the COA

² Veterans Service Officers (VSOs) also occasionally provide transportation services to the town's veterans, but that is less common than Council on Aging transportation. When they do provide transportation services, the insurance situation would be the same for VSOs as for COAs.

vehicle, then the town insurance policy would cover the COA vehicle.³

However, if the town does not own the vehicle, the COA has a few different ways to approach insurance. COAs can partner with their local RTA to apply for vehicles through the MassDOT community transit grant program.⁴ These vehicles can either be owned and insured by the RTA, or leased from the RTA and insured by the COA. In both cases, the COA operates the vehicles. COAs can also contract with an external entity such as a nonprofit Friends of the COA group. Some COAs have a group like this that fundraises on behalf of the COA for insuring and operating vehicles for their transportation programs. These nonprofits generally purchase this insurance through the residual market. However, one insurance provider indicated that a COA would be best served by either seeking to insure their vehicle through the RTA (if they are partnering with an RTA to provide vehicles) or through their town's municipal insurance policy, as a COA on its own might be seen as higher-risk than a larger established entity.

Volunteer Drivers

The Federal Volunteer Protection Act⁵ provides liability protection for individuals acting in service to nonprofit organizations and governmental agencies. However, incidents involving the operation of motor vehicles by volunteers are expressly

excluded from this protection, making specific volunteer coverage a good idea for transportation programs that use volunteer drivers. In addition, a recent survey of 53 organizations in 24 states found that none of the organizations had suffered liability losses over the course of providing transportation through volunteer driver programs – in all cases, insurance had covered all claims that arose from vehicular accidents.⁶ This highlights both the importance and the efficacy of having comprehensive insurance coverage. Insurance requirements vary depending on whether the volunteers are driving vehicles owned by the organization, or driving their own vehicles. In general, organizations hosting volunteer driver programs should have a general liability policy; if the organization owns vehicles, then it should also have auto liability policies on each vehicle it owns.

Volunteers Driving Organization-Owned Vehicles

When volunteers are driving vehicles owned by the organization, those vehicles can be covered by commercial auto policies most likely obtained in the residual market. A commercial auto policy does not distinguish between the organization's staff and volunteers, but the cost will increase as the number of covered drivers increases. This coverage does not change with the type of vehicle – as long as the volunteer is qualified to drive the type of vehicle owned by the organization, the liability insurance is the same.

³ Acton is one town that uses this structure. The total liability limit for their COA van is \$1 million.

⁴ Link to more information about the community transit grant program:
<http://www.massdot.state.ma.us/transit/CommunityTransitGrantProgram.aspx>

⁵ Full text of the law here:
<http://www.gpo.gov/fdsys/pkg/PLAW-105publ19/pdf/PLAW-105publ19.pdf>

⁶http://ilpconnect.org/wp-content/uploads/2013/06/Risk-Liability-Loss-Experience-in-Volunteer-Driver-Services_REPORT.pdf

Volunteers Driving Personal Vehicles

When the volunteer is driving a personal vehicle, it is a good idea for the organization to take steps to ensure that the volunteer's vehicle is adequately⁷ covered by their own personal insurance. Some organizations ask for a proof of adequate insurance from the prospective driver. Other organizations offer to pay the difference between the mandatory minimum insurance required in Massachusetts and a policy with higher limits to make sure that passengers will be covered in case of an accident. It is also possible to purchase supplementary coverage for the volunteer, the volunteer's personal vehicle, and the passengers (see next section).

Insurance Coverage Specifically for Volunteers

In addition to coverage available under a commercial auto policy, some policies exist to specifically provide insurance coverage for volunteer activities. CIMA,⁸ an insurance company based in Virginia, has a special program for insuring volunteers called the "Volunteers Insurance Service program" (VIS). This program is available nation-wide and includes four types of coverage – accident insurance, volunteer liability insurance, excess automobile liability insurance, and volunteer/employee dishonesty coverage. Of these coverages, the volunteer liability and excess auto liability are particularly of interest to transportation-providing organizations.

⁷ Different organizations define 'adequate' coverage differently. We recommend carrying at least \$100,000 per person/\$300,000 per accident coverage for bodily injury and \$50,000 in property damage coverage.

⁸ See the "Resources" section for the web address for CIMA

The volunteer liability policy has a \$1 million limit, and auto policies have a limit of \$500,000. These policies require that volunteers carry adequate insurance on their vehicles. These policies provide for coverage over and above the volunteers' personal auto policy – they do not replace the personal policy for damage to the volunteers' vehicles.

In 2013, per-volunteer costs for these policies are \$1.72/year for volunteer liability and \$6.34/year for excess automobile liability coverage. These policies have a \$100 minimum premium per policy, which covers up to ten volunteers. In addition, organizations must pay a yearly fee of \$135 for membership in the VIS program.⁹ When selecting these policies, organizations must cover all of their volunteers at once – partial coverage for some volunteers and not others is not available. CIMA recommends that organizations insure for the maximum number of volunteers they expect to have over the course of the year. CIMA does not require organizations to specify volunteers individually on the policy.

Risk Management

Although a risk management plan is not required, organizations can find it helpful to have one when looking for an insurance policy. A comprehensive risk management plan functions as an overview of where the organization is vulnerable and can be used to determine what kind of insurance the organization needs. A risk management plan should include protocols for reporting an

⁹ If an organization were to purchase both volunteer liability and excess auto liability coverage, the total cost would be \$335, plus \$8.07 for each volunteer after the first ten. VA state tax also applies, so there would be a small charge on top of the base fee.

accident, vehicle maintenance plans, passenger release forms, and driver/employee training programs. In particular, insurers may wish to see a risk management plan with detailed

procedures for what to do in an accident and what each party's responsibilities are in case something happens in the case of a vehicle shared among multiple organizations.

Recommendations

Between the commercial auto policies available on the residual market in Massachusetts and insurance that specifically covers volunteers, there are many options for insuring a community transportation or volunteer driver program. Here are some things to keep in mind when securing insurance for your organization:

- Create a comprehensive risk management plan showing that your organization is prepared if something goes wrong and you have to file a claim.
- If you are sharing vehicles, have a binding Memorandum of Agreement between all organizations in the group to spell out the rules and responsibilities each organization is assuming.
- If your organization uses volunteer drivers, cover them separately with a volunteer policy in addition to the commercial or personal auto policies that apply.
- For vehicles used to transport passengers, whether owned by the organization or a volunteer, the mandatory insurance coverage levels in Massachusetts are not sufficient. Volunteer-owned vehicles should carry at least \$100,000/300,000 in liability coverage, and organization-owned vehicles should carry \$500,000-\$1 million in liability coverage.
- Municipal vehicles covered by municipal insurance policies are covered under the town's insurance. Liability limits for these policies are often around \$1 million.
- The perceived risk associated with volunteer driver programs is often greater than the actual risk. Organizations that have adequate insurance coverage do not need to worry about liability when using volunteers as part of their transportation programs.

Any insurance provider will be able to talk your organization through the process of insuring your vehicles.

Resources

Municipal Insurance:

www.emiia.org

The Massachusetts Interlocal Insurance Association (MIIA) is associated with the Massachusetts Municipal Association and provides insurance for municipalities and municipal organizations such as schools.

Commonwealth Auto Reinsurers:

www.commauto.com/aboutcar/role.aspx

Commonwealth Auto Reinsurers is the state-wide industry operated residual market and statistical agent for motor vehicle insurance in the Commonwealth of Massachusetts. All vehicle policies written in the residual market are overseen by this organization.

CIMA Insurance Coverage for Volunteers:

www.cimaworld.com/nonprofits/cima-volunteers-insurance/

CIMA provides insurance coverage for volunteers, including drivers, nation-wide for reasonable rates through a membership program.

Volunteer Screening

Screening volunteers is an important part of risk management. Check out the resource published by HST on screening driving records and performing a CORI:

www.mass.gov/eohhs/docs/hst/volunteer-screening-resource.pdf,

<http://www.mass.gov/eohhs/docs/hst/volunteer-screening-resource.doc>.

Driver Training

HST also published a resource on driver training: www.mass.gov/eohhs/docs/hst/driver-training-resource.pdf, www.mass.gov/eohhs/docs/hst/driver-training-resource.doc.

Vehicle Share Agreements

See our resource on crafting a comprehensive agreement if your organization is partnering with others to share vehicles: www.mass.gov/eohhs/docs/hst/vs-agreements.pdf, www.mass.gov/eohhs/docs/hst/vs-agreements.doc.

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Reference: Theadora Fisher. (2013) Insurance Issues in Community Transportation. Executive Office of Health and Human Services' Human Service Transportation Office, Quincy, MA.

For additional briefs, resources, and information related to community transportation in Massachusetts, please visit www.mass.gov/hst.

