RISK MANAGEMENT AND INSURANCE
Public charities are all 501(c)(3) but have various missions.

Each mission carries significant risks and innocuous risks.

Amount of risk depends upon:
  - Scale of operation: revenue, assets, staff.
  - Town, City, State, Multi-state, International.

Your particular mission, size and location = your risk = your insurance need.
Risk management is the process of:

- Identifying risk – a constantly moving target – and how that risk can cause liability or other problems;
- Taking steps to mitigate that risk so that it is less likely that a bad event will happen; and
- Then transferring the risk that remains as much as possible to insurance companies.
Example We Will Use

- Your nonprofit operates an after-school program. Your mission is to provide a safe and secure environment for at-risk children and to enrich their lives by offering opportunities for learning and mentoring by adults.
- Children attend five days a week during the school year.
- You provide the children with a snack.
- The children work one-on-one with volunteers who tutor them and assist them with their homework.
- The children then have 60 minutes of structured play and have access to the computer lab.
You can be sued in a civil action for basically one of three things:

1. Contract: breaching an agreement, written or verbal, causing financial damage.
2. Tort: breaching a duty you owe to someone else, causing personal injury, property damage, or certain business injuries.
3. Administrative: violating a statute or regulation, resulting in a fine or penalty.
People Who Can Sue You

- Your program participants
- Your guests and invitees
- Your employees and volunteers
- Anyone with whom you contract or agree
- Your funders and banks
- Anyone to whom you owe a duty of any kind
- Your government!
- Your friends!
- Almost anyone!
Assess the Risk - What Could Possibly Go Wrong

- A child is injured will at your facility.
  - Play equipment not safe.
  - Inadequate supervision.
  - Another child who is violent was not disciplined.

- A child contracts an illness while at your facility.
  - Vaccination records are not properly maintained.
  - Sick children or staff are not sent home.
  - Food safety not observed.

- A child is a victim of sexual abuse.
  - Employees and volunteers are not properly screened.
  - Proper procedures are not followed.
  - Building not secure and intruder enters.
### STEP ONE . . . Identify Risks

<table>
<thead>
<tr>
<th>Specific Risk</th>
<th>Mitigation</th>
<th>Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Child hurt playing with equipment</td>
<td></td>
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<td>2. A child is a victim of sexual abuse</td>
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<td>3. Child become ill from food poisoning</td>
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STEP TWO: Mitigate the Risk

- Once risks are assessed, they can be mitigated…
- Create a safe workplace.
- Attend to any other safety issues.
- Put controls in place – regular training – you & employees.
- Take courses – you & employees.
- Put policies in place – such as how to protect confidential information.
- Background checks.
- Address issues promptly.
STEP TWO: Mitigate Risk

- Liability waivers/releases:
  - Get a model & use one.
  - Sometimes enforceable, sometimes not (NY, NJ, GA, DC CT and MD yes – VA no).

- Get indemnifications from others.

- Employee/Policy Manual.

- Attend trainings.

- Consider each policy (conflict of interest, whistleblower, financial oversight) -- think of these as risk mitigation tools for nonprofit.
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<td>1. Child hurt playing with equipment</td>
<td>Equipment checked for safety. Staff trained in first aid</td>
<td></td>
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<td>2. A child is a victim of sexual abuse</td>
<td>Employees &amp; Volunteers screened and activities monitored</td>
<td></td>
</tr>
<tr>
<td>3. Child become ill from food poisoning</td>
<td>Food safety measures followed</td>
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Some risk will remain no matter what.
Accidents, fires, carelessness of others...
Insurance is the *transfer* of risk from you to an insurer.
For a price, an insurer will take your risk.
Leaving you nearly *(but never entirely)* risk-free.
Insurance Policies 101

- Property policies – “first-party” insurance. Policies can cover both building and contents.
- Liability policies – “third-party” insurance.
  - Commercial General Liability or “CGL” insurance
- Auto policies – a mixture of both.
- Workers Compensation – MANDATORY coverage.
Covers “physical loss or damage” to property.
Covers resulting business interruption.
Generally covers third-party theft.
May provide for employee theft.
Water damage commonly excluded – flooding, burst pipes, etc.
Other common exclusions: mold, asbestos, lead paint, terrorism, pollution, boats, more.
Read a policy in light of your own risk.
Each state sets number of employees that trigger requirement to buy workers comp. In CT, DC, MD, NJ and NY one employee triggers need for workers comp. GA and VA – three.

You want to have this insurance – it limits liability to nonprofit because employee cannot sue nonprofit otherwise. Worker’s Comp is an exclusive remedy.

Covers any injury to an employee in the “course of employment” – this term is broadly construed.

Must promptly notify worker’s compensation board and/or carrier if there is an injury.

Beware of wrongly calling an employee an “independent contractor” – if a worker is an employee, worker must be covered.
Policy covers claims for “bodily Injury.”
  - “bodily injury, sickness or disease” including accompanying emotional distress.

Also covers other “personal injury”
  - false arrest, false imprisonment;
  - malicious prosecution;
  - wrongful entry or eviction, invasion of right of private occupancy; and
  - invasion of privacy; and slander, libel, and disparagement.
Many policies have endorsements.  
An endorsement amends the terms of the policy.  
Read them closely.  
Consider a “Non-Owned & Hire Auto” endorsement to cover nonprofit in case someone working or volunteering for nonprofit is in accident while driving personal vehicle.  
If maintain sensitive data, consider cyber liability policy.
CGL Policies – Insurer Duties

- See if your policy has a duty to defend – With a duty to defend the insurance carrier must provide lawyers to defend the nonprofit. Nonprofit does not have to pay up-front legal costs and be reimbursed at the end.

- Duty to defend applies if:
  - There is any possibility of coverage.
  - There are both covered and uncovered claims.

- Generally, defense costs are outside of policy limits, but need to check your policy.

- Duty to indemnify – duty to pay any valid claims in accordance with provisions of the policy.
Directors and Officers Insurance

- Directors & Officers coverage (D & O) insures against claims of negligence when carry out fiduciary duties as officers and directors.
- Also covers claims of discrimination in providing benefits.
- In nonprofit context, usually covers nonprofit, officers, directors, employees and volunteers.
Other Liability Policies

- Business automobile.
- Errors & Omissions – covers mistakes made when professionals provide services. (a.k.a. malpractice coverage.)
- Employment Practices Liability or EPL coverage. (Covers claims of employment discrimination - may be included in D & O policy.)
- Sexual Molestation. (May not be covered by CGL.)
- Accidental Medical Insurance – pays uninsured medical expenses, up to policy limits to:
  - Volunteers and clients.
  - Claims paid on no-fault basis.
# Specific Risk

## Mitigation

## Insurance

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<td>1. Child hurt playing with equipment</td>
<td>Equipment regularly checked</td>
<td>General Liability Insurance</td>
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<tr>
<td>2. A child is sexually abused</td>
<td>Workers screened &amp; monitored</td>
<td>GL Insurance – check to ensure not excluded</td>
</tr>
<tr>
<td>3. Child &amp; employee are ill from food poisoning</td>
<td>Food safety measures followed</td>
<td>General Liability Insurance &amp; worker’s compensation</td>
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In Case of Serious Incident

- Contact broker immediately to report the claim.
- A failure to report claim promptly may result in a loss of coverage.
- Do not admit liability or commit to make any payments.
- Offer medical attention as warranted and if possible, have injured party complete an “incident report.”
- Inspect area or condition and note any defects or contributing factors.
In Case of Serious Incident

- Take photos or video of the area/condition as soon as possible, document the date, time, name of person taking photos and retain for your records.
- Retain any evidence relevant to the incident. Immediately tag and store in a protected place until contact is made with your insurance adjuster.
- Identify witnesses and if possible have them complete a witness form – even if they did not see the incident occur.
- Keep copies of your insurance polices permanently.