Insurance Challenges for Paratransit

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Providers of public transportation services—in particular, those entities that provide paratransit—face a number of challenges related to insurance. Paratransit passenger transportation is more flexible than conventional fixed-route transit, most often refers to customer-requested wheelchair-accessible service, also referred to as "demand response." Paratransit is offered by various providers, including large transit agencies, specialized for-profit and nonprofit transportation entities, and businesses such as taxi cab companies.

Because paratransit providers must have insurance to cover liability inherent in providing services, they are subject to the cyclical nature of the insurance market. When the market is "hard," premium prices are high, difficult to obtain, or nonexistent, which can force providers to cut back their services, or exit the market. Insurance market intricacies also can negatively affect the services a paratransit service can to provide.

As the large baby-boomer generation increases the population of those who need paratransit, paratransit providers will be increasingly vital to help boomers maintain their mobility. If insurance for paratransit services is too costly; however, choices may be limited and demand for necessary transportation services could go unmet.

Demographics dictate the growing need. During the last decade, the number of people over age 65 in the United States increased to more than 35 million, and the number of people over age 85 grew by more than 1.1 million, to more than 4.2 million.[1] By 2025, that number is expected increase by 80 percent to 62 million.[2] Common age-related impairments—such as frailty, loss of vision and slower response times—can make walking or driving difficult.[3] As the U.S. population ages, it will become increasingly difficult for some to retain their driver's licenses because of age-related impairments. This may diminish their freedom of mobility, but not their desire to be mobile.[4] Thus, public transportation and paratransit services will need to expand.

This issue brief presents an overview of the most pressing insurance challenges facing paratransit, including providing door-through-door services, crossing state lines, using volunteer drivers, mixing populations, sharing vehicles and addressing insurance market stability. Discussion follows of state laws regarding paratransit insurance. Various risk management techniques for paratransit providers then are explained. The final section includes discussion of state policy approaches to help provide vital services. Three appendices detail state statutes that establish insurance pools for governmental entities and nonprofit organizations, state statutes that explain the extent of volunteer driver liability, and an overview of risk management tools and risk financing.

Paratransit Insurance Issues

Actions paratransit agencies take when moving passengers from one point to another create the risk of an incident that could result in injury to either the passenger or the employee. Because of the relatively high possibility that an injury could occur during certain high-risk activities related to paratransit, some insurance companies either deny coverage or raise premium costs if a paratransit company provides certain services. These high-risk activities include door-through-door service; crossing state lines to drop off or pick up passengers; mixing populations; dealing with Americans with Disability Act (ADA) issues; employing volunteer drivers; and sharing vehicles. Each of these is explained below.

Door-Through-Door Service

Paratransit providers can provide either curb-to-curb, door-to-door, or door-through-door service. The service provided usually depends upon client needs. Curb-to-curb service, where the agency picks up and drops off a passenger at an agreed-upon location, is the minimum service required under the ADA.[5] The driver must help the passenger into and out of the vehicle and secure or fold and store a wheelchair on the vehicle.[6] With door-to-door service, the driver picks up passengers at the door at the point of origin and takes them to the destination doorway.[7] Drivers can help passengers by pushing a wheelchair or by steadying or carrying the passenger.[8] For door-through-door service, the driver or two or more aides cross through the threshold of both the pickup and drop-off locations to help the passenger on or off the paratransit vehicle.[9]

Service contracts between the paratransit agency and the passenger usually prohibit the driver from entering a client's dwelling or from leaving the vehicle unattended. Although door-through-door service is rare[10] paratransit agencies sometimes encounter problems with scheduled curb-to-curb or door-to-door service when a client requests assistance to the vehicle because they are not feeling well or cannot move from a sitting or lying position. The driver, knowing the conditions of the service agreement, provides the door-through-door service either because he knows the passenger or knows the trip to the doctor's office will provide some measure of relief for the passenger. Numerous risks are posed by door-through-door service. The driver, for example, runs the risk of exacerbating the client's condition, or risks having something happen to the vehicle. Once inside the client's home, the driver then must negotiate obstacles to get the client out safely and must conduct himself as a reasonably prudent paratransit driver. If the driver's actions cause injury to the client, he could be found negligent. Since the driver was acting within the scope of his employment by providing the door-through-door service (depending on his employment contract), the paratransit agency can be held vicariously liable for the extent of the client's injuries. There is a valid assumption that, by helping a client into the house, the operator will face additional general liability; therefore paratransit providers can apply for insurance coverage for door-through-door service.

Crossing State Lines

In rural areas where paratransit services are provided, it may be more practical to take a client to a doctor or hospital across a state or county line instead of to one in-state. It is easier for an East Texas operator to take veterans to the VA Hospital in Shreveport, La., then to the VA Hospital. Although the distance is further, the trip takes less time because traffic in the Dallas metropolitan area is usually heavy.[11] An operator in Alturas, Calif., has to drive into Reno, Nev., or Oregon because Modoc County hospitals in sometimes do not provide all of the services the clients require.[12]

When a paratransit provider wants to cross state lines to pick up or drop off a client two problems can occur. The first involves Federal Motor Carrier Safety Administration (FMCSA) and Federal Transit Agency (FTA) regulations that govern interstate commerce and public transportation, respectively. The ICC Termination Act of 1995, which established the FMCSA,[13] did not carry over particular Federal Transit Agency provisions for grantees, but the FMCSA did not notify its field offices about the changes.[14] The ICC Termination Act made a special provision for 49 USCA §5307, 49 USCA §5310, and 49 USCA §5311 grantees that crossed state lines.[15] These grantees are subject to the highest level of financial responsibility instead of the minimum levels set by the FMCSA.[16] Nevertheless, "FMCSA has not issued notice of change to its field offices, nor have they updated the existing regulations to account for this special provision."[17] This has led to confusion among those who insure grantees under 49 USCA §5310 (5310) and 49 USCA §5311 (5311) that cross state lines (see Appendix A for an explanation of these programs).[18] Further, the FMCSA does not recognize statewide and municipal insurance pools.[19] Thus, under these regulations, paratransit grantees that cross state lines and belong to an insurance pool must obtain private insurance for the fleet vehicles that make such trips.

The second problem involves the regulatory environment of the other state.[20] Since insurance is regulated at the state level and regulations may differ, the state into which the paratransit provider travels might have stricter regulations on price controls, for example. This could lower insurer profits. The insurance company also could perceive the trip as a risk that it will not insure. If the paratransit company then makes the trip, its claims could be denied or its coverage could be canceled.[21]

Volunteer Drivers

Many nonprofit companies that provide transportation services use volunteer drivers to fill gaps and supplement the traditional transportation services. Volunteer driver programs often provide services to senior citizens and others who need assistance to travel to essential activities such as a trip to the doctor's office or the grocery store or who need assistance to go on a shopping trip or visit a friend's house.[26] According to the Beverly Foundation, volunteer drivers also provide door-to-door and door-through-door services. As more baby boomers lose the ability to drive, the role of volunteer drivers will increase because paratransit companies likely will be unable to meet new demands.[27]

It can be different to obtain insurance for volunteer drivers, or, if it is available, the cost for paratransit companies can be prohibitive (especially if door-through-door service is provided).[28] Volunteer driver providers also could face annual policy premiums increases for their volunteer drivers.[29] According to a 2007 National Conference of State Legislatures report, "…organization officials in some jurisdictions have reported that volunteers were required to obtain special clauses or carry higher insurance amounts to cover the extra use of their personal vehicles for regular volunteer activities," or that volunteer drivers could be categorized as "for hire" and "be required to pay premiums similar to the much higher rates for taxi cab drivers."[30]

> **CTAA Creates a Solution for Some Transit Organizations**
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> The Community Transportation Insurance Program (CTIP) is a captive insurance company that is operated by Community Transportation Association of America (CTAA) members from various states.[22] The CTAA created the program to help address members' need for a better alternative to general liability and vehicle insurance. The program is offered to qualifying members of the association through Nova Casualty Company, and provides access to all lines of insurance coverage.[23] The insurance offered differs from traditional insurance because it allows those insured to influence their rate prices.[24] To fund the program, the insurance companies must make a one-time contribution of 30 percent of their first-year premium in addition to the yearly premium.[25] Since the program is underwritten through an insurance company, it allows paratransit providers to cross state lines. Captive insurance companies are recognized by the FMCSA, but not insurance pools.

Mixed Populations

Paratransit companies normally transport various of clients simultaneously to streamline services.[31] Insurance companies, however, have been hesitant to cover paratransit companies that transport mixed populations. One reason is the perceived risk of client injury if the driver is not fully trained to provide an array of services. Transporting Senior citizens requires different services than individuals with disabilities, for example.[32] Even if the various populations have similar characteristics and the driver has been adequately trained to mitigate risks, the insurance company could refuse to insure or threaten to cancel or restrict coverage or refuse to insure. The perception is that commingling two or more client populations changes the amount of risk to which the paratransit provider is exposed to.[33]

Sharing Vehicles (Coordination)

According the National Conference of State Legislatures' *Coordinated Humans Service Transportation: State Legislative Approaches*:

> "…coordination can reduce or eliminate many of the problems caused by multiple specialized transportation programs. Generally, coordination means better resource management, shared power from agency to agency, shared responsibility among agencies, and shared management and funding. The Federal Transit Administration (FTA) has defined coordination of specialized transportation services as '… a process in which two or more organizations interact to jointly accomplish their transportation objectives.'"[34]

One aspect of coordination involves several agencies that share vehicles to prevent duplication of service or to prevent the underutilization of resources (too many service providers could mean vehicles and other resources are not used to capacity).[35] The insurance problem here lies not with the insurance companies, but with structuring an agreement between the two agencies to cover responsibility for damages that occur while the agency borrowing the vehicle is in possession.[36] According to the Community Transportation Association of America, "…any claim will first be made on the insurance of the vehicle owner," and "…in the event of a loss, the vehicle owner's insurance will pay the claim first."[37] To hold the borrower of the vehicle liable for the damages caused, the Community Transportation Association of America recommends either that: The vehicle owner have his insurance company assign the benefit of rights and remedies under a contract (subrogate) the loss to the second operator's insurance company, or have the vehicle owner of the second operator's insurance company cover any loss incurred while he or she is in control of the vehicle.[38]

Stability of the Insurance Market

As with financial markets, the insurance market is cyclical. When a market is "soft," insurance is readily available and premiums are low.[39] When the market is "hard," however, insurance is difficult to obtain, premiums increase significantly, and higher liability limits are either expensive or discontinued.[40] During the 1980s, the transportation market was shocked by a "hard" insurance market with premium rate increases of more than 500 percent and little or no available coverage.[41] In conjunction with the 2000 economic downturn and the tragic events of Sept. 11, 2001, the insurance market began to harden.[42] Those events contributed to increased premium prices and limited the availability of coverage. When the market is hard paratransit companies must make a tough decision to 1) pass the increased costs to their customers when possible, 2) self-insure, 3) join an insurance pool, 4) increase their deductibles, 5) voluntarily or involuntarily change insurance carriers, change the type or limits of coverage, or 6) go out of business.

State Law and Paratransit Insurance

The insurance industry today is subject to considerable oversight and regulation by state governments.[43] To help mitigate fluctuations in the insurance market, states require that insurance companies be licensed; audit them for consumer and taxpayer protection; require them to pay into guaranty funds to protect against company insolvency or bankruptcy; broadly regulate though indicators and guidelines charged to customers; and, create assigned risk pools for consumers who cannot obtain coverage.[44]

The majority of states currently require paratransit companies to obtain insurance by broadly defining a motor vehicle. In Florida, for example, a motor vehicle is "…any self-propelled vehicle with four or more wheels which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semitrailer designed for use with such vehicle."[45] The law requires "…every owner or registrant of a motor vehicle … required to be registered and licensed in this state shall maintain (insurance) … continuously throughout the registration or licensing period."[46] Only two states specifically require transit companies to have insurance. Colorado requires motor vehicle carriers of passengers to file with the state their insurance policy or a surety bond in an amount the state deems "necessary to adequately safeguard the public interest."[47] California also requires private carriers of passengers to file "…a currently effective certificate of insurance or a surety bond evidencing protection against liability imposed by law for the payment of damages for personal injury to, or death of, any person or property damage, or both."[48]

Insurance Pools

In response to the hard insurance market of the 1980s, states created insurance pools or arrangements where paratransit companies could jointly fund each other's losses.[49] Members contribute to the pool as they would pay premiums to an insurance company, and the funds are used to pay for any loss caused by one of its members.[50] The pool usually manages its own administrative functions and claims management.[51] Insurance pools can provide some margin of cost savings because of their small size.[52] Their small size allows these pools to avoid some of the market forces that affect larger insurance companies;[53] however, if the pools costs are not structured properly, additional costs could be assessed. Of course if no insurance pool exists in a company's region, joining one is not an option.[54]

Pools usually are created to insure government entities, including transit agencies. California, Ohio, Washington, Michigan, Virginia, and Wisconsin have transit-related pools.[55] Appendix B details state statutes that enable use of governmental entities, government agencies, transit-related organizations and nonprofit corporations.

Volunteer Drivers

Every state provides some liability protection to volunteer drivers for their acts or omissions, but amounts vary by state. In many states, volunteer protection depends on the type of agency the volunteer works for; a government agency, nonprofit organization, or religious charity of a for-profit company.

According to the National Conference of State Legislature's *Volunteer Driver Liability and Immunity* report, "…approximately half specifically exclude acts committed in motor vehicles from immunity protections. Georgia and Oregon provide explicit protections from civil liability for volunteer drivers. In the remaining jurisdictions, laws regarding volunteer driver liability are unsettled, and legal arguments could be made either way."[56] This ambiguity has made it difficult for service providers to determine the most appropriate coverage for their volunteer drivers.[57] Appendix C details the extent to which states protect volunteer drivers.

Risk Management and Transit

Risk management techniques offer low-cost ways to reduce insurance costs for paratransit providers. Risk management is "…a structured process for reducing uncertainty about risks of accidental loss."[58] It involves a process of protecting assets and income by identifying all possible ways an accident or a loss can occur, then taking action to ensure the loss is as small as possible.[59] Every action a company takes is considered a possible risk, and steps are taken to mitigate those risks. Risk management can protect the transportation provider from severe financial loss due to forces beyond the provider's control and can do so at a set cost that does not fluctuate from year to year.[60] The frequency of hard insurance markets has provided an impetus for paratransit providers to more closely examine their business operations to make moving the transportation disadvantaged a less risky business.[61] This so not only reduces the amount of capital the company must spend to cover any accidents, but also keeps the industry attractive to insurance companies.[62] Premium costs are set by the underwriting process, and a provider's loss history will dictate the cost of premium. Therefore it is in the provider's best interest to take any possible action to reduce its exposure to high-risk activities.[63] Appendix D details various risk management tools.

State Policy Issues to Lower Insurance Costs

Insurance coverage for paratransit companies currently is required, but no state regulates how an insurance company can insure a transit company. If the state legislated the type of coverage an insurance company could not deny, or to what extent it can cover a transit company insurance companies could raise their prices so that certain insurance for activities could be prohibitive, or the transit company might decide it is too expensive to do business in the state.[64] Insurance companies generally have resisted this type of change because it could adversely affect the market.

States have acted to protect consumers when an insurance company's action is contrary to public policy. In February 2008, Anthem Blue Cross, for example, California's largest health insurance provider, sent physicians "…copies of health insurance applications filled out by new patients, along with a letter advising them the company has a right to drop members who fail to disclose 'material medical history,' including 'pre-existing pregnancies.'"[65] To prevent this practice, the California Legislature recently passed a bill to allow health plans or health insurers to cancel policies only under certain provisions; those cancellations would be reviewed by the regulator agency.[66] Insurance companies argue that the law will have to little or no effect because the legal standard the bill sets is too broad and will allow them to continue rescinding policies in certain situations.[67] The cost of this bill to patients in California remains to be seen.

Conclusion

Both public and private paratransit providers offer a valuable service to the transportation disadvantaged, but transporting these types of passengers involves higher risk. If insurance costs are too high providers either will be forced to reduce the types of service available or go out of business. If a state's response to insurance companies is too drastic, however costs could become prohibitive for providers or coverage could cease. States therefore continue to seek a balance when they attempt to help the paratransit insurance market cope with fluctuating insurance costs.

Appendix A. 49 USCA §5310 and 49 §5311

49 USCA §5310

This declares as national policy that the elderly and those with disabilities have the same right to access transportation services as other people and authorizes federal capital assistance grants to meet the special needs of the elderly and disabled where public mass transportation services are unavailable, insufficient or inappropriate. Eligible applicants include private nonprofit organizations and public bodies that coordinate specialized transportation services.

The program supplements other Federal Transit Administration capital assistance programs by funding equipment for transporting the elderly persons and disabled.

49 USCA §5311

The statute sets up a funding scheme for public transportation in non-urbanized areas with a population of less than 50,000. Both public bodies and nonprofit organizations are eligible to receive funding, which can be used for capital, operating, state administration and project-related expenses. Fifteen percent of the funding must be used to support intercity bus service, unless the governor certifies these needs already have been met.

Appendix B. State Insurance Pool Laws/Government Cooperation Agreements[68]

State	Statute	Provision
Alaska	Alaska State. §21.76.010 et seq. (2008)	Allows municipalities, their public corporations, city and borough school districts, and regional educational attendance to enter into agreements to participate in joint insurance arrangements.
Arizona	Ariz. Rev. Stat. Ann. §11-952.01 (2008)	Two or more public agencies can enter into contracts or agreements to purchasing insurance.
Arkansas	Ark. Stat. Ann. §25-20-101 et seq. (2008)	Two or more public agencies can enter into a contract or agreement to perform any government service, activity or undertaking. Allows two or more government agencies to enter into a joint cooperative agreement.
California	Cal. Corporate Code §5005.1(b) (2008) Cal. Government Code §6500 et seq. (2008)	Two or more nonprofit corporations can enter into an arrangement to pool insurance. Two or more local public entities can enter into an agreement to pool insurance.
Colorado	Colo. Rev. Stat. §24-10-115.5 (2008) Colo. Rev. Stat. §29-13-102 (2008)	Public entities can enter into agreements to form a self-insurance pool to provide all or part of their insurance coverage. Local governments can cooperate to form a self-insurance pool to provide all or part of their insurance coverage.
Connecticut	Conn. Gen. State. Ann. §7-479(b) (West 2008)	Two or more municipalities can form and become members of an interlocal risk management agency. The agency then may "(1) pool its risks, other than workers' compensation risks, in whole or in part…, (2) pool its workers' compensation risks in whole or in part …, (3) pool its risks of loss in excess of loss retentions as the agency may determine in whole or in part …, (4) jointly purchase public liability insurance, workers' compensation insurance, property perils insurance, automobile insurance and reinsurance for any risk, (5) take any other action."
Delaware	Del. Code Ann. tit. 18, §401 et seq. (2008)	Both public and private employers can form workers compensation self-insurance groups with the approval of the Commissioner of Insurance.
Florida	Fla. Stat. Ann. §768.28(b) Fla. Stat. Ann. §163.01 (2008) Fla. Stat. Ann. §624.4623 (2008)	The state and its agencies are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose. Counties and municipalities can enter into interlocal agreements to acquire coverage from a local government entity pool. Two or more nonprofit colleges or universities, and accredited secondary educational institutions, can form a self-insurance fund.
Georgia	Ga. Code Ann. §36-85-2 (2008)	A group of municipalities or counties can execute an intergovernmental agreement to jointly purchase general liability, motor vehicle liability, or property damage insurance with other municipalities or counties participating in the intergovernmental agreement.

Appendix B. State Insurance Pool Laws/Government Cooperation Agreements (continued)

State	Statute	Provision
Illinois	Ill. Ann. Stat. ch. 5 §220/5 (Smith-Hurd 2008)	One or more public agencies can contract with other public agencies "… to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform."
Iowa	Iowa Code Ann. §87.4 (West 2008)	Groups of employers (cities, counties or both) by themselves or in an association with any or all of their workers, can form insurance associations.
Kansas	Kan. Stat. Ann. §12-2630 (2008)	Allow municipalities in Douglas, Johnson, Leavenworth, Miami and Wyandotte counties to pool with municipalities outside the state for their sickness and accident related-liabilities.
Kentucky	Ky. Rev. Stat. §342.350 (2008) and Ky. Rev. Stat. §304.50 et seq. (2008) Ky. Rev. Stat. §341.530(5) (2008) Ky. Rev. Stat. §65.210 et seq. (2008)	Under Kentucky law, two or more governmental employers can pool their liabilities under the workers' compensation law as a self-insured group. Two or more governmental employers to establish a group reserve or reimbursing account can pool their liabilities under the unemployment insurance law. The Interlocal Cooperation Act allows governmental entities to join together to jointly exercise any power, privilege or authority which the entities could exercise individually.
Louisiana	La. Rev. Stat. Ann. §1341 et seq. (2008)	Two or more local governmental subdivisions can execute an intergovernmental agreement to form an interlocal risk management agency. This agency can pool all forms of insurance with other local subdivisions, and jointly purchase all forms insurance with other members of the interlocal risk management agency.
Maine	Me. Rev. Stat. Ann. tit. 30, §2251 et seq. (2008)	Any public self-funded pool formed by ten or more municipalities or school administrative districts or an organization representing 10 or more political subdivisions can provide risk management or insurance coverage for pool members.
Maryland	Md. Labor and Employment Code Ann. §9-404 (2008)	Counties, municipalities, boards of education and community colleges can form a self-insurance group to cover workers' compensation costs.
Massachusetts	Mass. Gen. Laws Ann. ch. 40M §1 et seq. (West 2008)	Five or more public entities can participate in a self-insurance group to insure property and casualty insurance coverage.
Michigan	Mich. Comp. Laws Ann. §124.1 et seq. (West 2008)	Two or more municipal corporations can, by contract, form a self-insurance pool to fund casualty, property, automobile, surety, and umbrella or excess insurance coverages.
Minnesota	Minn. Stat. Ann. §471.981 (West 2008)	A public subdivision can by ordinance or by resolution, self-insure itself or join with another political subdivision to insure itself against any liability exposure.
Missouri	Mo. Ann. Stat. §537.700 et seq. (Vernon 2008)	Creates the Missouri Public Entity Risk Management Fund (MOPERM). Any public entity can participate. The fund is used to pay and settle claims where coverage has been obtained, pay and settle tort claims, and pay attorney fees and expenses related to settlement and defense of the claims.
Montana	Mont. Code Ann. §2-9-211 (2008)	Any political subdivision of the state can separately or jointly use a self-insurance plan.

Appendix B. State Insurance Pool Laws/Government Cooperation Agreements (continued)

State	Statute	Provision
Nebraska	Neb. Rev. Stat. §44-4304 et seq. (2008)	Two or more public agencies can agree to form and become members of a risk management pool to risk management services and insurance coverage in the form of group self-insurance or standard insurance, including any combination of group self-insurance and standard insurance.
Nevada	Nev. Rev. State. §277.055 (2008) Nev. Rev. State. §277.067 (2008)	Two or more public agencies or nonprofit medical facilities may enter into an agreement to purchase insurance under a plan of casualty, marine or transportation, property, surety, health, or any combination of these. Two or more political subdivisions can enter into an agreement to purchase insurance under a plan of casualty, marine or transportation, property, surety, health, or any combination of these.
New Hampshire	N.H. Rev. Stat. Ann. §5-B:1 et seq. (2008)	Two or more political subdivisions can enter into an agreement to form a risk management pool to provide any or all of casualty, property, vehicle, surety, environmental impact, health or life insurance.
New Jersey	N.J. Stat. Ann. §40A:10-36 (West 2008)	A governing body of any local unit can contract with another local unit to insure against liability, property damage, workers' compensation, and bodily injury and property damage claims arising from environmental impairment liability and legal representation.
New Mexico	N.M. Stat. Ann. §3-62-2 (2008)	Two or more political subdivisions can enter into an agreement to purchase insurance through a pool.
North Carolina	N.C. Gen. Stat. §58-23-1 (2008)	Local governments can enter into an agreement to jointly purchase insurance or pool retention of their risks. The governments also can pool to pay purchase workers' compensation claims.
North Dakota	N.D. Cent. Code §26.1-23.1-01 et seq. (2008)	Two or more governmental agencies can enter into an agreement to insure their legal liability against casualty, automobile and property losses.
Ohio	Ohio Rev. Code Ann. §2744.081 (2008)	A political subdivision can join with other political subdivisions in the state to enter into a self-insurance program.
Oklahoma	Okla. Stat. Ann. tit. 74 §1004 (2008)	Any powers of a public agency can be exercised jointly with another public agency, or a public agency of another state. Before the agreement becomes valid, it must be approved by the attorney general.
Oregon	Or. Rev. Stat. §190.010 (2008)	A local government can enter into an agreement with another local government for performance of any or all functions that a party to the agreement has authority to perform.
Rhode Island	R.I. Gen. Laws §45-5-20.1 (2008)	Cities and town councils, school committees, and water and fire districts can, by passing a resolution, enter into an agreement with two or more cities, town councils, school committees, and water and fire districts to obtain self-insurance.
South Carolina	S.C. Code Ann. §15-78-140 (2008)	Requires political subdivisions to obtain either liability insurance through the state for areas where immunity has been waived; obtain it from a private carrier; self-insure; or form an insurance pool with other political subdivisions through an intergovernmental agreement. A pooled self-insurance liability pool is authorized to purchase specific and aggregate excess insurance.

Appendix B. State Insurance Pool Laws/Government Cooperation Agreements (continued)

State	Statute	Provision
South Dakota	S.D. Codified Laws Ann. §1-24-1 et seq. (2008)	Two or more public agencies can enter into agreements for obtaining insurance coverage for property, personal injury, and workers' compensation, group life, health or accident coverage.
Tennessee	Tenn. Code Ann. §29-20-401 (2008)	A governmental entity can maintain a reserve or special fund to the purchase liability insurance. Also, two or more governmental entities can enter into an agreement to pool their financial and administrative resources to provide risk management, insurance, or reinsurance.
Texas	Tex. Government Code Ann. §791.001 et seq. (Vernon 2008)	Local governments can contract with other local governments and state agencies to the greatest extent possible for various governmental functions and services.
Utah	Utah Code Ann. §11-13-102 et seq. (2008)	Local governments can cooperate with other localities to provide various services "that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities."
Vermont	Vt. Stat. Ann. tit. 24 §4942 et seq. (2008)	Two or more municipalities, by resolution, can enter into an agreement to obtain insurance, excess insurance, reinsurance, and pay, and defend claims. Before the agreement can take affect, the state commissioner of insurance must approve it.
Virginia	Va. Code §15.2-2703 (2008)	Any political subdivision of the state can contract with another political subdivision to form a self-insurance pool to provide risk management and liability insurance for pool members.
Washington	Wash. Rev. Code Ann. §48.62.031 (2008)	A local government can self-insure or join or form an insurance program with other local governments for property and liability risks, health and welfare benefits.
West Virginia	W. Va. Code §29-12A-16 (2008)	A political subdivision can use public funds to self-insure to protect itself against different types of liability. A group of two or more political subdivisions also can establish a self-insurance pool relative to their liability.
Wisconsin	Wis. Stat. Ann. §611.11 (West 2008)	Any number of municipalities can organize a municipal insurance mutual to provide workers' compensation insurance, liability insurance, risk management services and property insurance.
Wyoming	Wyo. Stat. §16-1-101 (2008)	The state and any of its counties, municipalities, school districts, special districts, public institutions, agencies, boards, commissions or political subdivisions can cooperate and assist one another. The agreement can be either formal or informal.

Source: Association of Governmental Risk Pools, 2008.

Appendix C. State Volunteer Protection Laws[69]

State/Jurisdiction	Statutes	Provision
Alabama	Alabama Code §6-5-336	Provides protections for volunteers of nonprofit corporations, non-profit organizations, government entities and hospitals. Volunteers are immune from civil liability if the volunteer was acting in good faith in the official functions and duties with the agency or organization. Contains no provision related to volunteer use of motor vehicles.
Alaska	Alaska Stat. §09.65.170.	Limits liability of certain officers of nonprofit organizations. Contains no provision related to volunteer drivers.
Arizona	Ariz. Rev. Stat. Ann. §12-981 et seq.	Provides protection to volunteers for a nonprofit corporation, or organization, hospital or governmental agency. The term also includes a volunteer who serves as a director, officer, trustee or direct service volunteer. A volunteer is immune from civil liability for any act or omission resulting in damage or injury if the volunteer was acting in good faith and within the scope of duties; and, the damage or injury was not caused by willful, wanton or grossly negligent misconduct by the volunteer. The statute does not contain a section specifically related to volunteer drivers. Extends liability to organizations that use volunteers for acts or omissions of the volunteer. Liability insurance must extend to the organization or agency that is using the volunteer driver's insurance.
Arkansas	Ark. Stat. Ann. §16-6-101 et seq. (2006); Ark. Stat. Ann §21-13-101 et seq. (2006).	Provides immunity from liability for volunteers unless the volunteer negligently operates a motor vehicle. Damages are limited to the volunteer's liability insurance coverage. Volunteers for the state may be reimbursed for liability insurance if the agency made provisions for such benefits, established proper safeguards for eligibility and determined that there are sufficient funds available. Volunteers for the state are protected by the state's sovereign immunity.
California	Cal. Corporations Code §5239 (West 2006).	Protects directors and volunteer officers of nonprofit organizations from personal liability. Provides that damages caused by a volunteer director or officer of a nonprofit organization are covered by the organization's general liability insurance. Requires that automobile insurance policies cannot be issued if the impliedly or expressly exclude coverage for the use of an automobile for the performance of services for a nonprofit or charitable organization or a government agency.

Appendix C. State Volunteer Protection Laws (continued)

State/Jurisdiction	Statutes	Provision
Colorado	Colo. Rev. Stat. §13-21-115.5	Provides immunity for volunteers unless the damages arise from the operation of a motor vehicle. Does not provide immunity to organizations for the negligent acts of volunteers.
Connecticut	Conn. Gen. Stat. Ann §§4-61hh et seq; 4-165; 52-556 (West 2006)	Provides sovereign immunity for volunteers for state agencies. Allows state volunteers to be reimbursed for liability insurance purchased through the State Insurance and Risk Management Board. Any person who is injured by a motor vehicle operated by the state through the negligence of a state official shall have the right of recovery for such injuries.
Delaware	Del. Code Ann. tit 10§8133	Provides protections for volunteers and the organization or agency that engages their services unless the action arises from the operation of a motor vehicle. Damages recovered cannot exceed the amount of applicable insurance coverage.
Florida	Fla. Stat. §§768.1355; 430.204	Provides protections for volunteers unless they acted with malicious intent. If the volunteer is not liable because of the provisions in the statute, the nonprofit organization shall be liable for his or her acts or omissions.
Georgia	Ga. Code Ann. §51-1-42(2006)	Provides protection to volunteers who transport senior citizens unless any injury or damage was caused by the volunteer's malfeasance.
Hawaii	Hawaii Rev. Stat. §§662D-1 et seq.	Provides immunity for volunteers if the organization carries a minimum amount of general liability insurance. Immunity is provided unless the damages arise from the operation of a motor vehicle or other malfeasance.
Idaho	Idaho Code §6-1605 (2006).	Provides immunity for volunteers unless the damages arise from the operation of a motor vehicle. Damages are limited to the extent of the volunteer's or the nonprofit's amount of insurance coverage.
Illinois	Ill. Rev. Stat. ch 105 108.70 (2006)	Protects directors, officers and volunteers of nonprofit organizations from personal liability unless they acted with malicious intent. The statute does not apply to directors of nonprofit organizations that earn more than $5,000 per year. Contains no provision related to volunteer drivers.
Indiana	Ind. Code Ann. §§34-30-4-1 (West 2006)	Provides immunity to directors of nonprofit organizations. Provides immunity to volunteers who donate their time to a Community Mental Retardation and Other Developmental Disabilities Center, or other nonprofit organizations, so long as the damages did not arise from the volunteer's malfeasance.
Iowa	Iowa Code §§669.24; 670.2 (2006)	Provides immunity for volunteers for state agencies if the act or omission was not caused by the volunteer's malfeasance.
Kansas	Kan. Stat. Ann. §60-3601 (2006)	Provides protections for volunteers unless they acted with malicious intent. Damages are limited to the extent of the volunteer's or the nonprofit's amount of insurance coverage. Contains no provision related to volunteer drivers.

Appendix C. State Volunteer Protection Laws (continued)

State/Jurisdiction	Statutes	Provision
Kentucky	Ky. Rev. Stat. §411.200 (2006)	Protects directors, officers and volunteers of nonprofit organizations from personal liability unless they acted with malicious intent. Contains no provision related to volunteer drivers.
Louisiana	La. Rev. Stat. §9:2792.3; 9:2792.9 (2006)	Provides immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance.
Maine	Me. Rev. Stat. Ann. tit. 24-A §2902-F; tit. 14 §158-A (2006)	Provides immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. An insurance company cannot refuse to insure a volunteer driver and cannot charge a surcharge or increase the rate of a volunteer driver.
Maryland	Md. Courts and Judicial Proceedings Code Ann. §§5-406 et seq. (2006)	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. Limits civil liability to the amount of personal insurance carried by the volunteer with some exceptions.
Massachusetts	Mass. Gen. Laws Ann. ch. 231, §85k (West 2006)	Provides civil immunity for directors, officers and volunteers of nonprofit organizations unless the damages arise from the operation of a motor vehicle or other malfeasance.
Michigan	Mich. Comp. Laws Ann. §691.1407 (West 2006)	Provides immunity for volunteers for state agencies if the act or omission was not caused by the volunteer's malfeasance. Volunteers are liable for damages if they are the proximate cause. Contains no provision related to volunteer drivers.
Minnesota	Minn. Stat. Ann. §317A.257 (2006)	Protects directors, officers and volunteers of nonprofit organizations from personal liability unless they acted with malicious intent. Contains no provision related to volunteer drivers.
Mississippi	Miss. Code Ann. §95-9-1 (2006)	Provides civil immunity for directors, officers and volunteers of nonprofit organizations unless the damages arise from the operation of a motor vehicle or other malfeasance. Volunteers can be reimbursed for the cost of their insurance coverage.
Missouri	Mo. Rev. Stat. §537.118.1. (2006)	Protects directors, officers and volunteers of nonprofit organizations from personal liability unless they acted with malicious intent. Contains no provision related to volunteer drivers.
Montana	Mont. Code Ann. §27-1-732 (2006)	Limits liability of certain officers of nonprofit organizations. Contains no provision related to volunteer drivers.
Nebraska	Neb. Rev. Stat. §25-21,188.02 (2006)	Provides civil immunity for directors, officers and volunteers of nonprofit organizations unless the damages arise from the operation of a motor vehicle or other malfeasance.
Nevada	Nev. Rev. Stat. §§616A.130 et seq. (2006)	Volunteers for both the state and the government may be considered employees of either the agency or the state at a salary of $100 per month. Contains no provision related to volunteer drivers.

Appendix C. State Volunteer Protection Laws (continued)

State/Jurisdiction	Statutes	Provision
New Hampshire	N.H. Rev. Stat. Ann. §508:17 (2006)	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. Liability on behalf of a nonprofit organization for damage or injury sustained by a person is limited to $250,000. Damages sustained by persons are limited to $1,000,000.
New Jersey	N.J. Rev. Stat. §§2A:53A-7.1 et seq. (2006)	Provides civil immunity for directors, officers and volunteers of nonprofit organizations unless the damages arise from the operation of a motor vehicle or other malfeasance.
New Mexico	N.M. Stat. Ann. §§41-4-3 et seq. (2006)	Provides immunity for volunteers for state agencies if the act or omission was not caused by the volunteer's malfeasance. Volunteers are provided a state defense unless the insurance company is required to provide a defense.
New York	N.Y. Not-for-Profit Corporation Law §720-a (McKinney 2005); N.Y. Public Officers Law §17 (McKinney 2006)	Limits liability of certain officers of nonprofit organizations. The state will provide for a volunteer's defense in a state sponsored program if the act or omission was committed while the volunteer acted in his or her official capacity.
North Carolina	N.C. Gen. Stat. §§1-539.10 et seq. (2006)	Protects directors, officers and volunteers of nonprofit organizations from personal liability unless they acted with malicious intent. If either the volunteer or the nonprofit organization has liability insurance, they have waived their liability to the extent of their coverage. Contains no provision related to volunteer drivers.
North Dakota	N.D. Cent. Code §10-33-48; §32-03-45	Provides civil immunity for directors, officers and volunteers of nonprofit organizations unless the damages arise from the operation of a motor vehicle or other malfeasance. Contains no provision related to volunteer drivers.
Ohio	Ohio Rev. Code Ann. §2305.38 (2006)	Protects directors, officers and volunteers of nonprofit organizations from personal liability unless they acted with malicious intent. Contains no provision related to volunteer drivers.
Oklahoma	Okla. Stat. Ann. tit. 76 §31; tit. 19 §168 (2006)	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. If the volunteer is considered to have immunity, the nonprofit is still liable for the volunteer's actions.

Appendix C. State Volunteer Protection Laws (continued)

State/Jurisdiction	Statutes	Provision
Oregon	Or. Rev. Stat. §30.475 et seq.	Limits the liability of volunteer drivers who transport senior citizens and disabled persons. The statute provides amounts the organization is liable for in the event that someone the volunteer is transporting is injured or dies as a result of the volunteer driver's actions. The driver has to have a valid Oregon Driver's License and can only be reimbursed for actual expenses.
Pennsylvania	Pa. Cons. Stat. Ann. tit. 42 §8332.4	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. The volunteer can be found negligent for any acts or omissions.
Rhode Island	R.I. Gen. Laws §9-1-31.1	Provides immunity for volunteers for state agencies if the act or omission was not caused by the volunteer's malfeasance.
South Carolina	S.C. Code Ann. §8-25-10 et seq. (Law. Co-op 2006)	Provides immunity for volunteers for state agencies if the act or omission was not caused by the volunteer's malfeasance.
South Dakota	S.D. Codified Laws Ann. §§47-23-28 et seq. (2006)	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. If the volunteer or nonprofit organization participates in a risk sharing pool or purchases liability insurance they waive their immunity to the extent of their coverage.
Tennessee	Tenn. Code Ann. §29-20-310; §29-20-403 (2006)	Provides immunity for volunteers for state agencies if the act or omission was not caused by the volunteer's malfeasance.
Texas	Texas Charitable Immunity and Liability Code Ann. §84.001 et seq. (2006)	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. Religious charitable organizations that own or lease their own motor vehicles are not liable for damages arising from someone entrusted to provide transportation services.
Utah	Utah Code Ann. §§78-19-1 et seq. (2006)	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. A nonprofit organization is not liable for the actions of its volunteers unless the organization had, or reasonably should have had knowledge of the volunteer's malfeasance.
Vermont	Vt. Stat. Ann. tit. 29 §1403 (2006)	Limits liability of certain officers of nonprofit organizations. Contains no provision related to volunteer drivers.
Virginia	Va. Code §§2.2-3600 et seq. (2006)	Provides immunity for volunteers for state agencies so long the act or omission was not caused by the volunteer's malfeasance. Limits liability of certain officers of nonprofit organizations. Contains no provision related to volunteer drivers.

Appendix C. State Volunteer Protection Laws (continued)

State/Jurisdiction	Statutes	Provision
Washington	Wash. Rev. Code Ann. §4.24.670	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. Damages are limited to the extent of the volunteer's or the nonprofit's amount of insurance coverage. The statute leaves the non-profit organization or the state the option to be able to sue the volunteer.
West Virginia	W. Va. §§55-7C-1 et seq. (2006)	Limits liability of certain officers of nonprofit organizations and does not cover the negligent use of an automobile. Contains no provision related to volunteer drivers.
Wisconsin	Wis. Stat. Ann. §181.0670 et seq. (West 2006)	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance.
Wyoming	Wyo. Stat. §1-1-125 (2006)	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. Expressly links the liability of non-profit agencies to the actions of their volunteers. Proof of the act or omission of a volunteer is sufficient to bring an action against the non-profit agency under the doctrine of respondeat superior
Guam	Guam Code Chapter 16 (2006)	Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. Punitive damages can be awarded to a claimant so long as they can prove that by the volunteer's willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed. The volunteer is liable for any noneconomic harm caused.
Virgin Islands	§42 Immunity in emergency and other cases.	Provides immunity for volunteers for state agencies if the act or omission was not caused by the volunteer's malfeasance. Contains no provision related to volunteer drivers.
U.S. Federal	42 U.S.C. §§14501 et seq. (2006)	Preempts state laws that are inconsistent with it. Provides civil immunity for volunteers unless the damages arise from the operation of a motor vehicle or other malfeasance. Allows states to establish additional requirements that do not conflict with the federal statute. Punitive damages can be awarded to a claimant so long as they can prove that by the volunteer's willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed. The volunteer is liable for any noneconomic harm caused.

Source: National Conference of State Legislatures, 2006.

Appendix D: Risk Management Tools and Risk Financing Tools

Risk Management Tools

- ***Risk Elimination:*** To eliminate a risk, the paratransit provider should closely examine the types of activities that in the past have caused losses to determine if they can be eliminated altogether.[70]

- ***Risk Transfer:*** The paratransit company could hire an independent contractor to handle a certain amount of routes or vehicle maintenance.[71] Under tort theory, employers are not liable for the negligence of their independent contractors unless the activity that the contractor undertakes is non-delegable or the activity is inherently dangerous. Paratransit providers also can have patients sign a hold-harmless agreement for activities such as door-to-door or door-through-door service.[72]

- ***Standards:*** Paratransit providers should have standards for hiring and, training, and for conduct when in the presence of clients.[73] Programs of the American Public Transportation Association (APTA) and the Community Transportation Association of America (CTAA) address these standards.[74]

- ***Hiring Practices:*** A paratransit company can avoid both potential accidents and litigation by checking a potential new hire's motor vehicle record and status of the commercial driver's license.[75] A driver who has no previous accidents is about half as likely to be involved in an accident as one who has two previous accidents or violations.[76] The paratransit provider also should test for drugs and check the driver's personal references.[77]

- ***Employee Training and Retraining:*** Using standards created by either by the paratransit company or another professional organization, the paratransit company should train drivers on passenger relations, transportation of senior-citizens and the handicapped, and emergency procedures.[78] Retraining should be scheduled in a few years to reinforce original training and cover any new material.[79]

- ***Loss Control Practices:*** To encourage good behavior by employees, the paratransit provider could provide bonuses (either monetary or non-monetary) to drivers who have exemplary records.[80] Undercover riders also could be used by larger providers to ensure drivers follow company procedures.[81]

Risk Financing

The cost of paying for certain unpreventable losses caused by a paratransit company can be prohibitive for a company to undertake by itself. To cover these costs, paratransit companies can turn to insurance companies, insurance pools, captive insurance companies, or they can self-insurance.

- ***Insurance:*** Insurance transfers the risk of loss from the paratransit company to the insurance company, which "…accepts responsibility for paying any losses incurred by the organization in return for a premium."[82] An insurance policy is a contract where terms are set in 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..."[83] The paratransit company can of either accept the terms offered by the insurance company or look for more favorable terms elsewhere.

- ***Insurance Pools:*** Members of the insurance pool pay into the pool as they would pay an insurance company. Funds then are used to pay for any loss caused by one of its members. A pool usually manages its own administrative functions and claim management. Insurance pools can provide some margin of cost savings because of their small size. Their size further allows them to avoid some of the market forces that affect larger insurance companies.

- ***Captive Insurance Companies:*** A captive insurance company is a subsidiary or affiliate of a business or organization formed to insure or reinsure the risks posed by business operation.[84] Captive insurance companies also can provide lower premium prices and, since it is recognized by the federal government, client paratransit companies can safely transport patients across state lines.[85] The captive insurance company also being able to reinsure, while an insurance pool must cover costs up to a certain amount.[86]

- ***Self-Insurance:*** The paratransit company can choose to pay for its own losses and related costs such as legal fees.[87] Most companies that self-insure will cover their losses up to a certain amount then purchase excess insurance to cover higher losses.[88]

Source: National Conference of State Legislatures, 2008.

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