

Resource Guide

Guide to Insurance in Contracting

Introduction

Insurance requirements are nothing new for aging and disability community-based organizations (CBOs). While every business needs to mitigate potential areas of liability exposure through insurance, different business models and product lines may require different levels and types of insurance.¹ This Resource Guide is focused on the types of coverage CBOs should consider—or may be required by a payer to secure—when establishing contractual arrangements with a health system or plan.

This guide provides general information about a variety of insurance coverage options for CBOs. Please keep in mind that each state develops its own insurance laws, regulations and associated terminology. Contact your state’s department of insurance for help with understanding the specific terms that apply in your state. In addition, government-based CBOs will have unique needs and requirements not covered in this guide. Always read contracts carefully and speak with your agency’s risk manager, insurance agent or legal advisor to identify provisions that may create liability exposure and discuss insurance options to mitigate those risks. If you are unsure about insurance requirements, what insurance your CBO should have or coverage options, seek professional advice. You can’t insure something after the damage is done!

For specific coverage information, please seek the advice of your CBO’s risk manager or a qualified licensed insurance professional.

Choosing the Right Tool

Insurance is a tool CBOs should use to manage their exposure to risk. When deciding which risks to insure and how much coverage your CBO needs, your leadership will want to think broadly about the following three areas:

- insurance your health care partner, such as a managed care organization (MCO), requires your CBO to have;
- insurance your CBO wants to have to protect itself as a result of exposures created by the work it will be doing for its health care partner(s); and
- insurance your CBO requires any subcontractors (if any) to have to protect your CBO from exposure related to the subcontractor’s actions.

General Considerations

The following general list of insurance risk types should be addressed in your CBO’s risk management planning. This should not be viewed as an exhaustive list and generally does not address many of the standard types of coverages that are commonly used by CBOs.

NOTE: Specific minimum financial coverage maximums are included only as examples and should not be considered recommendations. Your CBO should work with its risk management, insurance and legal advisors to determine the exact types and amounts of insurance necessary.

Professional and General Liability Coverage: Your CBO should already maintain professional and general liability insurance coverage, also known as commercial liability insurance. General liability and professional liability insurance coverages are both designed to

¹ Many government agencies, including many Area Agencies on Aging housed in government structures, use forms of self-insurance. As such, use of the term “insurance” in this document should be read as inclusive of those arrangements.

protect your CBO against claims made by a third party (i.e., anyone who does not work for your CBO). However, the two differ in the types of risks they cover. General liability insurance covers physical risks, such as bodily injury and property damage, while professional liability insurance covers more abstract risks, such as staff errors and omissions that are alleged to cause harm in the services your CBO provides.

MCOs will have minimum coverage requirements, often between \$1 million and \$5 million, which may be specified with two limits (e.g., \$1 million/\$5 million). The first is generally an “occurrence” limit and the larger is an “aggregate” or policy period limit. Occurrence limits and aggregate limits define maximum payouts in different settings. Although occurrence limits define the maximum amount the insurer will cover for all claims from a single incidence (or “occurrence”), aggregate limits define how much an insurance policy will pay over the policy’s duration or the aggregate duration of a particular claim period. Your CBO should review minimum coverage and limits to ensure they meet the MCO’s minimum coverage standards as expressed in your contracts.

Directors’ and Officers’ Coverage: This type of policy covers your CBO’s Board of Directors and Officers (D&O) from personal liability related to acts of the organization generally—and the specific actions those directors and officers take (as well as certain omissions) in their official role on behalf of the organization. Your CBO should already have this type of coverage. For work involving contracting with health care entities, be certain to review the policy to verify that it covers—or does not exclude coverage of—the types of work your CBO will be doing under contract. Also note that your CBO’s D&O policy covers the organization and the officers generally but does not extend to covering individuals who do not act in a prudent, professional and legal manner. For example, an executive who embezzles funds from contract work should not be covered against a personal civil suit.

Subsidiary Coverage: When CBOs begin the work of contracting with MCOs to provide services, they frequently create a subsidiary nonprofit or other legal structure for that work. If this is how your CBO is positioned, make certain to discuss the new structure(s) with your insurance provider to ensure that the new entity is adequately covered.

Crime Insurance: Think of this as insurance for white-collar crimes against your organization. A commercial crime policy typically covers several different types of crimes, such as employee dishonesty, forgery and computer fraud. The amount of coverage your CBO and its subcontractors need will vary based on the value of your CBO and the value of its contracts. Most standard policy coverage maximums are at least \$100,000 but can differ by state or entity.

Terrorism: Consider what would happen if an act of terrorism were to impact your CBO’s ability to perform under a contract. Terrorism wouldn’t have to occur at your physical location, it could happen across the street, around the corner or on the other side of the world and still impact your CBO, your employees and your ability to continue the work required under your contract. Terrorism insurance is designed to cover those types of risk, though the limits insurers are willing to issue are typically fairly low.



Contracts with subcontractors should specifically require them to have workers’ compensation coverage and to provide your CBO with advance notice if the subcontractor’s coverage lapses (this applies to all required coverages).

Workers’ Compensation: As is the case for any CBO with employees, your agency should ensure that everyone involved with your CBO has workers’ compensation coverage. Although some small businesses are exempt, most employers are required by state law to purchase this coverage for employees. Contracts with subcontractors should specifically require them to have workers’ compensation coverage and to provide your CBO with advance notice if the subcontractor’s coverage lapses (this applies to all required coverages). If your state allows limits, make sure that the limits that your CBO and its subcontractors have are at least as high as your contract requires.

Business Automobile Policies: There are three types of automobile coverage considerations that your CBO and any of your CBO’s downstream providers should carry:

1. Automobile Insurance for Vehicles Owned or Leased by Your CBO: This coverage works much like a personal automobile insurance policy except that it covers the organization's risk exposure and generally carries limits such as \$1 million for individual bodily injury or property damage and a per-accident maximum of \$3 million.

2. Insurance for Vehicles Not Owned by Your CBO: This type of policy covers your CBO for instances in which a CBO employee or subcontractor drives their own personal vehicle on official CBO business. While their personal auto insurance should cover the employee or subcontractor and their liability, their personal coverage will not cover your CBO.

HANDS-ON APPLICATION:

One of your CBO's service coordinators has an at-fault accident while driving a personal vehicle on official CBO business and the victim sues your organization. It is this type of risk exposure that non-owned auto coverage is intended to address.

3. Employee Consideration: Employees who drive their own personal vehicles routinely for work activities should consider classifying their personal vehicles as "business" with their personal automobile insurance company. This is especially true for subcontractors and others who are self-employed. If the employee in this situation is in an accident while on CBO business and has not properly classified their use with their automobile insurer, the insurance company may have rights to limit or deny the claim.

Note: This is simply an observation that may be useful as guidance for your employees and subcontractors to help them consider potential risk exposures the employee or subcontractor may have in their own coverage because of the work they do.

Umbrella Policy: An umbrella policy is designed to cover situations in which liability exceeds the upper limit on your liability policy or some combination of insured risks and may be required by the health care entity your CBO is contracting with. For example, limits required by your MCO contract might be \$5 million

or higher. If your basic liability policy has a \$3 million limit, an umbrella policy might be appropriate to cover that gap. Think of umbrella coverage as secondary to your basic coverage because it does not pay until the limits on that basic coverage are exhausted. Umbrella policies are typically not very expensive, but can provide significant increases in upper-end liability coverage (limits) for your CBO and can address gaps or gray areas between coverage types. In order to secure an umbrella policy, insurers will require your agency to have certain coverages and minimum limits in place.

Cyber Insurance or Network Security Coverage:

Information system breaches can be one of the most damaging events for an organization—compromising data, operations and credibility. Also known as Privacy Liability Insurance, this type of insurance may cover liability and expenses incurred as a result of malicious acts, errors and omissions in connection with data security breaches that impact electronic information under your agency's control, including but not limited to:

- unauthorized use or theft of sensitive data, including financial information, personally identifiable information, personal health information (PHI) of your employees or clients, and other confidential, non-public information;
- violation of laws relating to the care, custody, control or use of PHI, your CBO's confidential information or the privacy or security of such information;
- data damage, destruction or corruption; or
- an act, omission or failure that results in a breach of network security, including unauthorized access to, unauthorized use of, a denial of service, attack by a third party against, or transmission of a computer virus, trojan, malware, ransomware or other type of malicious code to or from your CBO's computer systems.

CBOs should retain insurance coverage to protect themselves against these cyber risks; in fact, many MCOs are requiring it. Appropriate upper coverage limits are still evolving in this field but should be substantial given the nature of the work and the fact that CBOs often have access to considerable amounts of PHI. Limit requirements of \$3 to \$5 million are not unusual.

Additional Insurance Considerations

Notifications: Your CBO’s contracts with subsidiaries or subcontractors should include a provision that requires them to notify your CBO in advance of any change to insurance coverage requirements. Your contracts should also provide your CBO with clear rights of termination if required coverage levels are not maintained.

Insurance Company Selection: Insurance companies are required to be “admitted” or “authorized” (as a surplus lines insurer) to conduct business in the state(s) in which your CBO intends to do business. Surplus lines insurers—insurers that provide coverage options (e.g., supplemental coverages, higher limits, unique terms and conditions, etc.) when the standard market cannot or will not underwrite the level of coverage needed—may be “authorized” to conduct business in the state as well. It is less important for CBOs to understand the fine points here, but really important to ask the question of your insurer, insurance advisor or your state’s department of insurance to ensure that any company your CBO is considering has the legal authority necessary to conduct business in your state. Additionally, insurance providers are subject to ratings based on evaluations of their financial health. Ask to see these ratings to ensure that you are working with a financially stable insurance company that will be there in the event of a claim.

Additional Insured: Certain coverages your CBO and its subcontractors purchase can be extended to cover acts that may otherwise leave your CBO’s client(s) exposed to risk. The most notable type of policy that typically does not allow additional insureds is professional liability insurance that covers professionals based on their personal expertise (e.g., lawyers, doctors, etc.).

MCOs may request that your CBO add them as an additional insured to your agency’s general liability coverage. Your CBO should consider doing the same with its subcontractors. However, this does not take the place of your CBO and its subcontractors having their own general liability coverage. Adding an additional insured to a general or professional liability policy can add a layer of protection for the client organization (the health plan or provider with which you are contracting), essentially extending the reach of your policy to others



Your CBO’s contracts with subsidiaries or subcontractors should include a provision that requires them to notify your CBO in advance of any change to insurance coverage requirements.

in case they are sued as the result of the actions your CBO, its employees or subcontractors take on their behalf. Your agency’s insurance agent should be able to secure an additional insured endorsement for your contracted partner (your client), as should your subcontractors be able to secure an endorsement to provide additional insured status for your agency (the subcontractor’s client) on the subcontractor’s general liability coverage. An endorsement, also known as a rider, is a document attached to an insurance contract that amends the policy in some way. It may add, remove or alter the scope of coverage under the policy.

Before any contract work begins, ensure that all subcontractors furnish your CBO with policies or certificates of insurance (e.g., general liability and workers’ compensation) and endorsements as appropriate for the relationship and the work involved. For example, depending on the relationship between your organizations, your CBO may wish to require subcontractors to secure an endorsement adding your CBO as an additional insured on the subcontractor’s liability insurance. These documents must be signed by a person authorized by that insurer to bind coverage on its behalf. Verbal assurances from an insurance agent are not typically binding on the insurer.

HANDS-ON APPLICATION:

Your CBO contracts with a construction contractor to perform a home modification on a client’s home. The client’s neighbor trips and falls on an electric cord that your contractor ran across the neighbor’s lawn. This neighbor may sue the client, your contractor and your CBO. If your CBO routinely requires its home modification contractors to include the agency as an additional insured on its liability insurance policy, then the contractor’s coverage should extend some protection to your agency as it relates to the subcontractor’s actions under the neighbor’s lawsuit.

Downstream Subcontractor Requirements: For any MCO-required minimum coverages, your CBO should include matching minimum coverage requirements in your downstream, subcontracted provider agreements. For example, if your contract with an MCO requires your agency to carry a \$5 million cyber insurance policy because you have access to, manage or communicate their members' PHI electronically (via computer, physical agency server, email system, phone calls, voice mail, cloud service, etc.) and you have downstream subcontractors that handle some or all of this PHI for you, your contract with that subcontractor should include a matching \$5 million minimum cyber insurance policy requirement. Simply put, if the MCO requires your CBO to have certain levels of coverage and the CBO uses downstream subcontractors to perform some of the work covered by those policies, your CBO should pass on the same minimum coverage requirements to its downstream providers to protect your agency and ensure it is in compliance with your contract with the MCO. Without your subcontractors having such coverage, your CBO's policy may not cover your CBO for liabilities arising from the actions of your subcontractors.

Conclusion

Insurance can be a nuanced part of your CBO's contracting experience, and this Resource Guide covers only the basics of contracting-related insurance considerations. Yet it is essential to your organization's contracting success to have an understanding of insurance as it relates to contracting with health care entities. For more information on contracting issues, see the evaluate contracts section of the Aging and Disability Business Institute's [resource library](#).² **When in doubt, seek the advice of an experienced risk manager or licensed insurance professional.**

Many of the common terms used throughout this Resource Guide are defined and discussed in more detail in the Aging and Disability Business Institute's [Resource Guide: A Lexicon of Contracting Terms](#),³ which can be found on the Aging and Disability Business Institute's website at www.aginganddisabilitybusinessinstitute.org.

² Aging and Disability Business Institute, *Resource Library*, <https://www.aginganddisabilitybusinessinstitute.org/resources/resource-library>.

³ Aging and Disability Business Institute, *Resource Guide: A Lexicon of Contracting Terms*, <https://www.aginganddisabilitybusinessinstitute.org/wp-content/uploads/2020/06/6-1-ADBI-RG-Contracting-Terms.pdf>.

April 2021

This publication was produced by the Aging and Disability Business Institute. Led by the National Association of Area Agencies on Aging (n4a) in partnership with the most experienced and respected organizations in the Aging and Disability Networks, the mission of the Aging and Disability Business Institute is to build and strengthen partnerships between aging and disability community-based organizations and the health care system. Funded by The John A. Hartford Foundation, The SCAN Foundation and the Administration for Community Living, the Aging and Disability Business Institute provides community-based organizations with the tools and resources to successfully adapt to a changing health care environment, enhance their organizational capacity and capitalize on emerging opportunities to diversify funding. Learn more at www.aginganddisabilitybusinessinstitute.org.