Medical Reserve Corps

Office of the Surgeon General
U.S. Department of Health and Human Services

Technical Assistance Series

Special Topics: Risk Management and Liability Basics for MRC Units

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www.medicalreservecorps.gov

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Technical Assistance Series

Office of the Surgeon General, U.S. Department of Health and Human Services

As part of its effort to support the growth and sustainability of **Medical Reserve Corps (MRC)** units across the United States, the MRC Program Office—headquartered in the office of the U.S. Surgeon General—has developed a series of technical assistance documents. Each one addresses topics considered important for MRC units. The Technical Assistance Series is available at: www.medicalreservecorps.gov. Some of the topics addressed are as follows:

- **Getting Started: A Guide for Local Leaders**
  Each MRC functions differently. The first step in forming a unit is to carefully evaluate your local situation. It is important to secure a broad base of support from others in your community. Identifying and acquiring resources is essential to meeting your MRC's operational needs.
- **Organizing an MRC Unit: Operational Components and the Coordinator's Role**
  The coordinator's main job is matching community needs for emergency medical response and public health initiatives with local volunteer capabilities. Establishing and sustaining the unit's internal organization also is a priority.
- **Coordinating With Your Local Response Partners**
  MRC units supplement a community's existing emergency medical response capabilities and public health infrastructure. Coordinating with local response partners is critical, as is developing and nurturing a broad network of partners. Conducting exercises with response partners will be necessary, as will close communications during and after an emergency or engagement.
- **Developing Volunteer Relationships and Capabilities**
  Developing volunteer capabilities is a key mandate for every MRC unit. The process begins by advertising your MRC unit to the community. As volunteers are screened and matched with existing needs, they must be informed of any risks associated with their MRC activities. They also will require additional training.
- **Establishing and Maintaining Your MRC Unit's Organization**
  A well-run organization is the foundation for every successful MRC unit. Information must be tracked and updated for volunteers and local partners. Policies must be established and followed. Operating funds must be solicited, along with leveraged public and private sector resources. Planning—strategically, financially, and operationally—is an essential, ongoing function of the MRC unit's administrators.
- **Special Topics**
  Some of the more complex aspects of operating an MRC unit are related to differences in local laws and the evolving technical nature of the MRC's work. For example, legal liability is something every unit member should know about. Another special topic of interest to MRC units is sustainability. Special publications address these and other emerging topics.

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The information in this publication is intended as a general guide to establishing and operating a Medical Reserve Corps unit. The MRC Program Office encourages communities to consider alternative approaches that may offer a better fit for their local circumstances, resources, and needs. The MRC Program Office welcomes learning from these successes.

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Risk Management and Liability Basics for MRC Units

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Risk Management and Liability Basics for Medical Reserve Corps Units

As the Medical Reserve Corps (MRC) program has developed, several common themes have emerged with leaders at all levels. One theme is legal liability for volunteers. Although protection from legal liability is important, other aspects of volunteer management also are important. Risk management activities can help protect the MRC and its volunteers while providing a safe, supportive working environment as volunteers serve the program's mission.

Two important aspects of risk management and liability issues to remember are that:

1. Within certain limits, anyone can file suit against anybody at any time. Laws can give you a defense, and insurance policies can help pay for legal defense and for loss or damages, but they do not replace a common-sense approach to protecting your volunteers and those they serve from harm.
2. Regardless if you think your organization and volunteers are sufficiently protected from legal liability for unintended harm, other assets are irreplaceable and cannot be protected. These assets include your organization's reputation and partnerships. A comprehensive risk management program can help you protect them.

What is Risk Management?

Risk management is identifying the potential risks an organization is challenged with and seeking ways to remove or mitigate them.

Why is Risk Management Important?

All activities involve risk, and the activities undertaken by MRC volunteers involve some specific risks, such as the risk of unintended harm to an individual treated by an MRC volunteer. Although an MRC unit cannot remove all of its risks and accomplish its mission, it can reduce the risk involved while protecting the unit, its volunteers, and those they serve.

The basic purpose of any volunteer program's risk management plan is to reduce:

1. The risk of harm (intended or unintended) to the volunteers and the individuals they serve.
2. The risk of financial loss to the volunteers and the agency they volunteer for.
3. The potential for damage to the agency's intangible assets such as its reputation, its partnerships, and its ability to recruit volunteers and raise funds.

General Principles of Risk Management in Volunteer Programs

Many aspects of risk management in volunteer programs may include activities you are already involved in, such as screening volunteers to ensure they are a good fit for your

unit. The best way to incorporate effective risk management practices into your MRC unit—without adding additional work—is to view every interaction with a volunteer as a chance to manage risk.

For example, risk management can be incorporated into the following activities:

1. **Selecting volunteers**—Recruiting and screening volunteers ensures they are suited for their roles in the MRC. Recruiting materials can manage risk by helping potential volunteers determine whether serving in an MRC unit suits them. Not every volunteer is a good fit for your organization (see the TA Series publication *Developing Volunteer Relationships and Capabilities* for more information).
2. **Preparing volunteers for their roles**—The better prepared volunteers are to fill their roles in the MRC, the smaller the chance of unintended harm. Volunteers need to know what they should and should not do. Your unit's volunteer position descriptions, code of conduct, training, and exercises are part of this strategy.
3. **Proper volunteer utilization**—A clear plan for activating the volunteer unit can help ensure the volunteers have a clear mission and that there are provisions for their physical and emotional well-being, in addition to protection from legal liability, where applicable.
4. **Protecting safety and well-being**—Providing MRC volunteers with protective equipment to safely fulfill their roles, ensuring the areas they work in are safe, and protecting the physical and emotional well-being are ways of protecting your volunteers, your most important asset.

Checklist: Specific Policies for MRC Units as Part of a Comprehensive Risk Management Plan

From the recruiting plan to post-response activities, all interactions with volunteers are opportunities to optimize the volunteers' experience and manage the risks inherent in the MRC unit's mission. Examples of some of the policies and procedures outlined below are available in the Resource section of the MRC Web site at: (http://www.medicalreservecorps.gov/resources.asp?mode=BrowseByCategory&category=11). Others (such as confidentiality policies) may be established through your unit's housing agency.

The following list is a starting point from which your unit can develop its own plan based on its particular needs:

- **Position descriptions**—Each position or volunteer role should have a written description with as much detail as possible, to include:
  - Purpose of the position
  - Title
  - Location (if known)
  - Key responsibilities
  - Sample tasks/activities
  - Who the volunteer reports to

  - Length of appointment/time commitment (if known/applicable)
  - Qualifications (including required training)
  - Support provided (what the volunteer can expect from the organization)

- **Volunteer application**
- **Volunteer selection/screening**
- **Documented screening policy**—Make your volunteer placement decisions based on this policy, using a combination of the following screening methods (or other appropriate methods):
  - Application review
  - Interviews (with standardized questions based on the position description)
  - Reference checks (with standard questions)
  - Verification of licensure and credentials
  - Criminal background checks

  Also, it is important to be consistent with your screening procedures.
- **Orientation**
  - Clarify what is expected of your volunteers
  - Clarify what is not allowed, even if it seems intuitive
  - Handbooks with written policies provide a good reference for volunteers
  - Volunteers should receive an orientation to the mission and policies of the MRC unit
  - What is expected of them, and
  - What they can expect
  - Orientation to the chain of command (e.g., Incident Command System, National Incident Management System) and how the MRC is integrated
- **Training**—Volunteers should receive additional training appropriate to their roles, including training on safety measures and protective equipment, if necessary.
- **Additional policies regarding volunteer activities**
  - Confidentiality (volunteers' personal information and of those they serve)
  - Representation of your MRC Unit or its housing agency (e.g., media interviews)
  - Fundraising/handling funds
  - Alcohol and drug use
  - Safety guidelines
  - Requirements regarding identification (ID) badges and other ID methods
  - Activation/deployment and deactivation procedures
- **Policy for termination of volunteers**
  - Clarify which actions warrant dismissal
  - Document decisions
  - Do not fail to act
  - Apply policies consistently

Legal Liability

Note: The following information is provided for information purposes only and does not constitute legal advice. MRC unit coordinators should not act on this information without seeking a lawyer's advice.

Glossary of Terms

Information about legal liability issues may be difficult to understand. Some legal terms that you may encounter as you address these issues with your MRC unit include:

- **Charitable immunity**—Immunity from liability granted to charitable or nonprofit organizations (varies by state)
- **Civil liability**—Being subject to liability for damages or restitution
- **Criminal liability**—Being subject to fine or imprisonment for having committed criminal acts
- **Federal protection**—The Volunteer Protection Act (VPA) of 1997. Because liability issues are primarily handled at the state level, there has been very little Federal legislation that protects volunteers. However, in 1997, the VPA was passed, which provides some limited immunity to volunteers.

  However, the VPA has some limitations as it:
  - Does not include acts of willful or wanton misconduct
  - Requires that the volunteer be properly licensed, certified, or otherwise authorized to perform the act
  - Requires that the volunteer act in the scope of his/her duties as a volunteer
  - Does not cover the operation of motorized vehicles
  - Covers volunteers for nonprofit organizations and government agencies, and it does not cover the organization or agency itself
  - Does not prohibit lawsuits; rather, it provides a potential defense for the volunteer if he/she is sued
  - Defines "volunteer" as someone who does not receive compensation (or anything of value exceeding $500 in lieu of compensation) for his/her services
  - Allows states to place additional conditions on immunity for volunteers
  - Does not specifically include or exclude medical or health volunteers.
- **Immunity**—Exemption from liability or the defense of being exempt from liability
- **Indemnity**—A form of security against loss or an exemption from penalties
- **Negligence**—A specific tort that is the basis for many lawsuits. The four components that must be present consist of:

  1. **Duty of care**, a legal obligation (imposed on all) to act according to a standard of care when performing activities that could cause harm to

others. There are special duties of care for medical and health professionals.

2. **Breach of duty**, or failure to act according to a reasonable standard of care when performing activities that could cause harm to others
3. **Causation**, or the determination of whether the breach of duty caused loss or damage
4. **Damages** refers to: 1) loss, damage, or injury caused by the breach of duty; or 2) the compensation for loss, damage, or injury

- **Sovereign immunity**—Immunity of a state government or subunit of a state government from suit (state governments, although not all, may waive their sovereign immunity)
- **Tort**—A wrongful act, omission, or violation of the duty of care resulting in injury or damage to a person or property
- **Vicarious liability**—The liability of a superior entity for the acts of its subordinates (e.g., the liability of an organization for the actions of its volunteers)

State-Specific Liability Laws and Other Protections

Note: Every state's liability laws and other protections differ, and the general information below may not apply to your state. For more information on your state's liability laws regarding volunteers, see the Public Entity Risk Institute Publication, *State Liability Laws for Charitable Organizations and Volunteers – 4th Edition,* available for download at: http://www94311.temp.w1.com/pubs/sll.htm.

- **Good Samaritan Acts**—Most states have some form of the Good Samaritan Act, which protects an individual who provides emergency care. However, a legal professional should review your state's specific legislation. In some states:
    1. The act only protects an individual who spontaneously assists at the scene of an accident or other emergency—it does not protect organized volunteer groups.
    2. The act places licensure or training requirements on volunteers who provide medical aid and may restrict the protection to specific categories of volunteers.
- **Emergency Management Acts**—Many states have laws that protect volunteers who respond to an emergency as part of an established response. Seek legal advice, because in some states:
    1. Volunteers must be pre-registered with the division of emergency management or another state or local agency.
    2. Protection may not cover the operation of a motor vehicle.
    3. Protection will not cover wanton, willful, or intentional acts.

- **Worker's Compensation**—In some states, volunteers (particularly volunteers registered with a state governmental agency) may be eligible for worker's compensation, which would compensate them or their families if they are injured or killed during their service. However, in many states, volunteers are not eligible for worker's compensation. This is an issue you should discuss with your state's division of public health or emergency management agency. If your volunteers are not covered by worker's compensation, you will need to determine what compensation, if any, you can provide if a volunteer is injured or killed. The agency that sponsors your unit may require these volunteers to sign a liability waiver.
- **Other Protections**—States address volunteer liability issues in various ways, including specific protections for free clinic volunteers, indemnification of volunteers acting as agents of the state, laws protecting public immunization volunteers, and laws specifically protecting MRC and Community Emergency Response Team volunteers. These laws vary by state.

Special Considerations for Out-of-State Volunteer Deployment

Although the MRC is intended to serve the local community's needs, MRC volunteers may have the opportunity to serve other communities in their state or another.

Before considering any opportunity to deploy your volunteers outside the local area, consider the following:

- **Mission**—Is there a specific need that can be met by MRC volunteers appropriately?
- **Licensure**—Will the volunteers' licenses be recognized in another state?
- **Liability**—Are the volunteers protected from liability for unintended harm?
- **Worker's compensation**—If a volunteer is injured during a deployment, how will he/she be compensated?
- **Health and well-being**—How are volunteers' physical and emotional health protected?
- **Food, lodging, supplies, transportation, and security**—What will be provided for the volunteers, and what will they need to provide for themselves?

Volunteer deployment depends on the missions required to meet the affected area's needs. Depending on which resources are available in the affected area, there may not be many missions that require volunteer staffing. There are several existing mechanisms for out-of-state volunteer deployment.

See the Technical Assistance Series publication *Establishing and Maintaining your MRC Unit's Organization* for more information on mechanisms for out-of-state deployment.

Resources

- Centers for Disease Control and Prevention's Public Health Law Materials: http://www2a.cdc.gov/phlp/lawmat.asp
- Energize Inc. – Risk and Liability Library: http://www.energizeinc.com/art/subj/risk.html
- Health Resources and Services Administration's Emergency Systems for Advance Registration of Volunteer Health Professionals – Legal and Regulatory Issues: http://www.publichealthlaw.net/Research/Affprojects.htm#HRSA
- Herman, M., & Jackson, P. (2001). *No Surprises: Harmonizing Risk and Reward in Volunteer Management*. Washington, DC: Nonprofit Risk Management Center.
- How to Create Volunteer Position Descriptions: http://www.pointsoflight.org/resources/details.cfm?ID=10068
- MRC Deployment Information from the 2005 Hurricane Season: http://www.medicalreservecorps.gov/Hurricane/DeploymentInfo
- MRC Liability Resource Page: http://www.medicalreservecorps.gov/resources.asp?mode=BrowseByCategory&category=3
- MRC TrainingFinder Real-Time Affiliate Integrated Network and MRC Core Competencies: http://www.medicalreservecorps.gov/TRAINResources
- NonprofitLaw's Volunteer Liability and the Volunteer Protection Act of 1997: http://www.nonprofitlaw.com/quicktipsvol.shtml
- Public Entity Risk Institute: http://www.riskinstitute.org/
- Risk Management Tutorial: http://nonprofitrisk.org/tutorials/ns_tutorial/intro/1.htm
- State Liability Laws for Charitable Organizations and Volunteers: http://www94311.temp.w1.com/pubs/sll.htm
- The Emergency Management Assistance Compact: http://www.emacweb.org/
- The Mid-America Alliance: Mutual Assistance for Public Health Preparedness: http://www.unmc.edu/dept/midamerica/index.cfm