



WHITE PAPER

MISSION TO SERVE:
**Understanding Risk Management
for Nonprofits Offering Counseling
and Mental Health Programs**

Introduction

In March 2020, the [National Council for Mental Wellbeing](#) predicted that the U.S. would soon face an overwhelming need for mental health counseling and treatment services due to COVID-19, and even went as far as describing the increased demand as another “public health epidemic.”

This white paper will look at the increased exposure your nonprofit clients may be up against when offering counseling and mental health programs, along with risk management considerations for securing the right insurance.

A SPECTRUM OF EXPANDING PROGRAMS AND SERVICES

Since the pandemic began, there has been an increased demand for the counseling and mental health services that certain nonprofit organizations provide. Addressing issues that range from food insecurity to layoffs to work-from-home and remote learning challenges, many organizations have reinvented themselves to better meet vital needs, including the restructuring and expansion of programs and services to provide greater access and support to those who need help.

“More than ever before, today’s nonprofit organizations are expanding programs and outreach services to be more all-inclusive in an effort to better serve their communities,” Maureen Dyson, executive VP at Charity First said. “Since COVID-19, we are seeing more examples of crossover activity, such as organizations responding to individuals and families with food insecurities while at the same time addressing their mental well-being associated with specific financial challenges.”

The services that nonprofit organizations provide today are more vital than ever in helping support, connect and aid in the recovery of our communities. However, providing these types of human services programs to the public brings new risk exposures, which specific lines of insurance can help mitigate.

EXPOSURES

Nonprofit organizations that offer counseling and mental health services face a number of specific liability exposures. The following represents key issues that remain top concerns.

SEXUAL ABUSE ALLEGATIONS

It is no surprise that allegations involving sexual abuse and misconduct are at the top of this list. In many situations, counseling services provided to the public involve unsupervised interactions with children and adults. Allegations of sexual assault involving employees, volunteers and board executives can have serious financial and reputational consequences for the organization.

Best-practice considerations should include:

- Establishing a sexual abuse and misconduct prevention policy that defines what is considered sexual abuse, misconduct or harassment by employees, volunteers or third parties.
- Implementing a standard procedure for immediately reporting suspected acts of abuse or misconduct.
- Properly vetting all staff, volunteers and board members who may be involved in the supervision of youth or in the organization's counseling and mental health services. Screening should include performing a criminal background check and following up on professional references.

PROFESSIONAL LIABILITY EXPOSURES

There are a number of professional liabilities that nonprofits need to be aware of when providing counseling or social services to the public.

Negligent counseling. It isn't uncommon for organizations to counsel clients who are facing difficult personal challenges in their lives. In fact, for many, this type of mental health counseling is a core service. If an individual feels he or she has received treatment that was inappropriate, such as failing to address an issue, not referring them to someone better suited to treat their needs, being overly critical, abusive, or aggressive, or being too directive or opinionated, they may choose to file a lawsuit against the organization claiming negligent or abusive counseling.

Failure to intervene. There are specific situations that demand compliance with various law such as the reporting of suspected child neglect or abuse. Failure to comply with legally mandated disclosure requirements is in direct violation of the law.

Breach of confidentiality. While providing mental health or any other type of counseling to others, organizations are often privy to highly personal and sensitive information — including details regarding medical histories. Information that is not kept confidential can be considered a breach of privacy laws.

Best-practice considerations for developing a professional liability risk prevention program should include:

- A policy that outlines the appropriate level and scope of advice that can and can't be offered when providing certain services, along with clear instructions as to when individuals should be referred to other professionals.
- Steps and procedures to take when intervening in a suspected sexual abuse or other type of abuse situation, and knowing what incidents should immediately be reported to legal authorities.
- A confidentiality policy and/or agreement for employees, volunteers and board members that outlines procedures and privacy laws, including how to safeguard a client's personal identifiable information.

MITIGATING RISKS WITH THE RIGHT INSURANCE COVERAGE

“It’s important for organizations that offer counseling and social services to understand how these types of programs can affect their legal liability,” said Dyson. “Brokers who are experts in the nonprofit space need to work closely with their clients to determine how to best incorporate insurance into their risk management strategy.”

When reviewing insurance for clients who may have sexual abuse exposures and/or professional liability exposures, the following coverages should be carefully considered.

Depending on the carrier, some coverages may be offered as monoline policies or part of a package.

Social services professional liability. A main exposure for nonprofits operating in a well-being capacity is being held liable for damages as a result of errors and omissions while providing professional services. Social services professional liability typically includes coverage for a wide range of nonprofit professionals, including counselors, psychologists, therapists, instructors, social workers, mentors and tutors. Most social services professional liability policies will also provide protection for directors and officers, employees, volunteers and the organization itself.

Despite the level of a professional’s training or certification, when a nonprofit uses a professional to perform social services, the organization and the individual are at risk of being held legally liable for any harm he or she might have caused.

security technology could run into the hundreds of thousands of dollars. Even more significantly, a nonprofit’s brand value could be diminished, and gaining the public’s trust — not to mention their donors’ trust — could take years.

Be sure to educate your clients that even if the language in their general liability policy doesn’t specifically exclude coverage for sexual abuse, they shouldn’t assume they’ll have coverage should an incident occur.

Sexual abuse and misconduct liability. Typically purchased as an add-on coverage with separate limits, sexual abuse liability insurance covers costs associated with allegations of sexual abuse.

Directors and officers (D&O) liability. A poor decision or a failure to meet regulatory standards can put an executive board member or other leader in an organization at risk for a lawsuit. Should a claim occur, D&O liability insurance provides coverage for legal expenses for actions made on behalf of the organization.

Cybersecurity liability. The capacity in which many nonprofits collect and store sensitive personal information puts them at risk for a breach of data that is protected by law as confidential. Dealing with ensuing lawsuits and recouping the costs of cleanup and new

According to the [National Council of Nonprofits](#), “Data breaches that are both likely to happen and can result in serious harm fall in the high priority category. [This] poses a risk for the individuals whose data was disclosed, and for the nonprofit that will now potentially be subject to liability for the breach.”

Umbrella or excess liability. The additional policy limits provided by an umbrella or excess policy can be critical in the event of a catastrophic liability loss, protecting an organization from financially draining lawsuits.

Specific products for counseling and human services. Certain insurance products can be purchased separately and packaged together to better meet the needs of organizations. At Charity First, we offer insurance products specifically designed for counseling and human services organizations that includes coverage for sexual abuse, social services professional errors and omissions, and property and general liability. Other important insurance considerations should include crime, commercial auto, inland marine, workers’ compensation, umbrella and excess, and employment practices liability.

CONCLUSION

Today, more than ever before, it’s important to work with your nonprofit clients and help them make informed decisions about their insurance coverages. And while some of your clients may already understand the potential risk exposures when providing counseling and mental health services to the public, they may feel that they simply can’t afford the coverage. As an insurance professional, you have an opportunity to help them realize that should a claim occur without these protections, the financial and reputational costs to the organization could far outweigh any potential savings.

As nonprofit organizations continue to remain focused on COVID-19 and the transition to a post-COVID-19 environment, it’s clear that insurance will play a pivotal role in helping them focus less on the risk and more on staying true to their missions and the communities they serve.

A nonprofit’s brand value can be significantly diminished after a cyberattack. Having to recoup the public’s — not to mention their donors’ — trust could take years.

Source: [Nonprofit Quarterly](#).

ABOUT CHARITY FIRST

At Charity First, our core focus is on serving the risk management needs of nonprofit organizations. We offer comprehensive insurance products and services that are designed around what matters most to nonprofits, playing an integral role as part of a long-term sustainability plan. To learn more about Charity First, call us at 800.352.2761 or email marketing@charityfirst.com.

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