



Insurance | Risk Management | Consulting

COVID-19 RESPONSE

Gallagher Strategies Bulletin

Civil Authority and
Use of College and
University Facilities,
Personnel and Supplies

Risk Management and
Transfer Issues

Gallagher Higher
Education Risk
Management Team

April 3, 2020

Contents

1	I. Introduction
1	What is the nature of the request?
1	Who is asking your institution for support?
2	What legal protections may already be in place for the institution?
2	Has your institution already entered into a Mutual Aid Agreement with the requesting entity?
2	What are the Risks?
3	II. Risk Issues Associated with Providing Facilities
3	Facilities Use Risks
3	<i>Property Damages and Related Losses (examples)</i>
3	<i>Liability Claims (examples)</i>
4	<i>Workers' Compensation Claim</i>
4	<i>Time Risks -- Contractual</i>
4	<i>Educators Legal Liability/D&O</i>
5	Managing the Risks Associated with Providing Facilities
5	<i>Risk Transfer by Contract or MOU</i>
7	<i>Assumption of Risks Associated with the Provision of Facilities</i>
10	III. Risk Issues Associated with Providing Personnel
10	Personnel Risks
10	<i>Liability Claims (including Professional Liability)</i>
10	<i>Property Damage Claims</i>
10	<i>Workers Compensation Claims</i>
11	Managing the Risks Associated with Providing Personnel
11	<i>Transfer of risk by contract or MOU</i>
11	<i>Assumption of the personnel risks</i>
13	IV. Risk Issues Associated with the Donation or Sale of Products
13	Products Liability
13	Managing the Risks of Donation or Sale of Products
13	<i>Transfer of Risk by Contract or MOU</i>
13	<i>Assumption of Risks for the Donation or Sale of Products</i>
14	V. Reputation Risks
14	VI. Conclusion

I. Introduction



Institutions are being asked to pitch in and support their community in responding to the COVID-19 pandemic! [US News reported](#) on March 25th that schools are opening shuttered dorms to house hospital workers, patient overflow, isolated or quarantined individuals and even homeless individuals (though not all in the same facilities!) Colleges and universities are being asked to “donate” medical staff and student trainees for temporary support of hospitals and community services. Some schools are “manufacturing” masks and other medical supplies to fill in supply chain gaps. We applaud any institutions willingness to provide support, but we recommend that all requests be carefully evaluated before agreeing to terms, and that all agreements be fully documented, preferably in a formal contract, or at least in a Memorandum of Understanding (MOU). We also recommend that internal counsel, and external counsel with governmental relations and contracting expertise, review the terms of any agreement and provide guidance on waivers of liability that may be appropriate. If applicable, Gallagher’s Higher Education team can help review *insurance provisions* in these agreements.

When evaluating risk management and risk transfer concerns, several areas of concern must be explored:

What is the nature of the request?

Typically, institutions are being asked for three different levels of support: use of **facilities**, use of **personnel**, and **donation of supplies**. We will address risk concerns in each area individually, but acknowledge that any request may include one, two, or all of these elements. We have not seen requests for cyber support; if these do arise we will address them in a separate Bulletin.

Who is asking your institution for support?

We have seen requests to institutions from local or state governments; hospitals both public and private, private entities and nonprofit organizations. The legal status of the requesting entity will determine the structure of any risk transfers in the agreement.

What legal protections may already be in place for the institution?

The ability to include immunities or indemnification into any agreement may be related to whether the institution is:

- A public entity with the same immunities or tort protections afforded to all governmental agencies in your state. Or, you may be in a state that limits immunities for public universities.
- A semi-public entity with some immunities afforded to all governmental agencies.
- A private entity which may have immunities (e.g. the state has a charitable immunity statute). Note that these immunities may be limited, e.g., they may apply only to the institution, but not to employees.

Has your institution already entered into a Mutual Aid Agreement with the requesting entity?

Many institutions entered into Mutual Aid Agreements with their local and state governments in the aftermath of 9/11. If the institution is not aware of any such agreement, we recommend that your own records for any prior agreement. Such an agreement, if it exists, may determine the extent to which the institution can seek to transfer risk to the requesting entity.

What are the Risks?

There are a few basic classes of risks that must be considered. These include:

- First party property damage and/or loss including the potential for business interruption.
- Third party liability claims, including Products Liability, against your institution and your employees, trustees and agents.
- Professional Liability arising out of activities of employed professional staff such as doctors, nurses, therapist, etc.
- Statutory workers' compensation claims for injuries and losses arising out of work-related injuries.
- Increased employee benefits cost as result of illness or even death that may be the result of, but cannot be directly traced to the institution's support of the community as discussed in this Bulletin.
- Reputation risks.
- Wrongful Acts of the Board in preparing for and overseeing the Institutions response to the crisis.

We will address these classes of risk in context with the risks and risk treatments specific to those associated with providing facilities, providing personnel, providing or donating supplies, and reputation risks.

¹ Visit Gallagher's Pandemic Preparedness page for information to prepare your institution and your employees for pandemic outbreaks, including COVID-19 <https://www.ajg.com/us/coronavirus-covid-19-pandemic/>.

II. Risk Issues Associated with Providing Facilities

Because most institutions are currently closed, their empty residence halls are an appealing option for civil authorities and hospitals for housing people whose needs cannot be easily met elsewhere in the community. One school is considering providing housing to non-ICU coronavirus patients, and (presumably in a separate building) patients recovering from surgery or other treatment to free up hospital beds. When being asked to provide facilities, the institution will need to know things such as:

- The purpose of the use (e.g., housing patients, housing staff, others).
- Who is responsible for preparing the facility for use?
- Whose staff will be present in the facility during its use?
- Who is responsible for any ancillary service providers in connection with the facility?
- Are other services to be provided by the institution in connection with the facility?
- Who is responsible for any response in cases of unintended contamination of the facility?
- How long will the use be required?
- Who is responsible for returning the facility to its original condition after use?

These and additional questions are detailed further in the section below on “Risk Transfer by Contract or MOU”.

Facilities Use Risks

Property Damages and Related Losses (examples)

- Physical loss of or damage to the facility arising from the operations of the resident.
- Physical loss of or damage to the contents — furnishings may be damaged, contaminated, or destroyed, including bedding such as mattresses or pillows.
- Cleaning and other costs to bring the facility and contents back to original condition and/or meet civil authority standards before returning the facility to students may be significant. Consider whether textiles (bedding, carpet, drapes, soft upholstery, etc.) would be restorable, or would they have to be removed and replaced via hazardous waste disposal protocols if used in rooms with infected patients. This may not be in response to just housing COVID-19 patients, but possibly other patients with infectious diseases or non-patients who become ill with COVID-19 while residing in the facility.
- Business interruption costs that could result from damages to the facility.

Liability Claims (examples)

- Claims from persons permitted to use the facilities may arise. These include “ordinary” premises liability claims such as slips and falls.
- Claims from persons using the facility alleging to have been infected by improper cleaning of facilities, assuming the institution maintains responsibility for maintenance.
- Claims alleging that social distancing was improperly enforced or maintained, resulting in bodily injury or death.
- If the institution turns the facility over to the requesting entity without staff, but trains the requesting entity’s staff, claims for bodily injury arising from improper training could be alleged.

-
- Claims alleging failure to secure the premises from theft, violence or other crimes.
 - Claims from employees who become infected alleging they were required to work in an inherently dangerous condition.
 - Claims from students for bodily injury or property damage resulting from the school providing the facility to a third party, especially if the action introduces the COVID-19 virus to the campus. Students could allege that the Institutions knowingly exposed them to an inherently dangerous condition carrying serious liability implications.

Workers' Compensation Claims/Employers' Liability

- The institution's employees may make claims for ordinary work-related injuries and for COVID-19 related injuries arising from increased exposure to the virus as a result of facility usage.
- Families of injured workers can file claims against the institution and the requesting entity for failure to protect workers.
- Employees can attempt to bring suit under Employers Liability theories thus voiding workers' compensation protections employers normally enjoy. Allegations that the Institutions knowingly exposed them to an inherently dangerous condition carrying serious liability implications can also trigger exclusions for bodily injury either expected or intended from the standpoint of the Insured.

Time Risks — Contractual

- There is a risk that different sectors will recover at different rates of time. For example, things may have settled sufficiently by mid-July for the institution to prepare for reopening in September, but the requesting hospital can't move or release people out before mid-August. This could result in the institution being unable to complete its cleanup in time to open the facility in September with resulting losses from being unable to house students with additional costs to find suitable housing until the facilities are ready, or having to delay opening until the facilities are ready.

Educators Legal Liability/D&O

There is a possibility of event-driven Wrongful Acts claims against the Board and the Institution alleging failure to provide proper oversight of actions taken by management during the crisis where such actions/inactions hurt the financial condition of the Institution, harmed the reputation of the Institution, and/or harmed the ability of the Institution to carry out its mission. The possibility of such claims always exist, but are heightened during a crisis. This risk exists for all decisions and is not repeated further in the document.

Managing the Risks Associated with Providing Facilities

Risk Transfer by Contract or MOU

Governmental Authority Considerations for Indemnification

Indemnification or immunity is a critical issue that must be addressed whether the agreement is by contract or Memo of Understanding (MOU). How the contracting is accomplished may differ depending upon whether the requesting entity is a government entity or private entity.

- Many civil authorities have broad immunities, and are prohibited by law from indemnifying private contractors. If this is the situation in your state, and your institution is private or semi-public, you may need to obtain documentation from the state's Attorney General, Governor, Emergency Manager or other authority that will extend full immunity protections to your institution and employees from third party liability claims. This may not be possible to obtain, but should be requested.
- If the state or civil authority does not have broad immunity, and is not prohibited from indemnifying the institution, a contractual transfer of risk may be appropriate.
- In some cases, a hybrid of these two options may be necessary and appropriate.
- Be sure that the transfer of liability risk from the institution to the requesting entity includes all personnel who may be working in support of the facility use, whether they are assigned 100% to the facility or have other campus responsibilities (e.g., campus police).

We strongly encourage institutions who may be working with a civil authority to work with legal counsel who have experience in contracting with civil authorities in your state. Keep in mind that the institution may have to obtain special considerations from the state to ensure that it is not left financially responsible for losses associated with its loan of its facilities. If there is no opportunity for risk transfer due to state laws, the institution may be faced with trying to seek payment for the use of its facilities (if such payment has not been offered) in order to cover some losses that it may experience. There are multiple other issues that should also be addressed in an Agreement. *See (2) below for more details on a contract.*

If the school is providing personnel for the management and maintenance of the facility, and the state's indemnification laws exclude natural persons, (as opposed to the institution as entity) the institution will want to work as diligently as possible to ensure that the state's insurance coverage for liability for state employees is extended to the institution's employees, i.e., that the coverage is applicable to all temporary workers and volunteers. Then ensure that, in your agreement, all institution personnel are characterized as temporary workers or volunteers in connection with management and maintenance of the facility.

Contract Considerations

Private and semi-public entities will likely be able to enter into a contract for facilities use that can cover all transfer of risk issues. This does not mean they will have adequate insurance to support the breadth of contractual obligations as potential exclusions in property and liability policies for pollution and contamination (this includes contamination from COVID-19) could limit the ability of contracting entities to rely on their insurance to support their contractual agreement to indemnify you for damage to your facilities arising from their activities.

-
- Transfer as much risk as possible by contract, including
 - Damage to or loss of facilities and any personal property (e.g. furnishings, linens, etc.) that are provided. At a minimum, ensure that the requesting entity covers all deductible that may exist under the institution's property and business interruption insurance policies with a waiver of subrogation in favor of the institution.
 - Full coverage for cleaning costs or replacement costs of soft furnishings if and as necessary as a result of the facility use (this may not be covered on the institution's insurance policy, so it should be considered to be a direct cost of using the facility). An alternative is that the requesting entity is made directly responsible for the cleaning of the facility and replacement of any property as necessary. If this option is used, the institution will want to have some authority on accepting the final result.
 - Indemnification of the institution and all personnel in connection with the requesting entity's use of the facility. There should be no exception on the indemnification for ordinary negligence of the institution or its personnel.
 - Address maintenance and other facility use issues in your contractual agreements, including:
 - Who will be responsible for cleaning the facility to the requesting entity's standards? If the requesting entity is responsible, the institution should stipulate that it provides no warranty as to the cleanliness of the facilities and their suitability for the entity's patients or building residents.
 - What are the cleaning requirements – pre-use and post-use (decontamination standards)?
 - What Campus Police/Security services will be needed? Is the institution's Campus Police required to be a first responder with these patients or building residents?
 - Who is responsible for the collection and disposal of both medical and non-medical trash? Is there adequate personal protective equipment?
 - Who is responsible for janitorial services? Is there adequate personal protective equipment? Who provides the PPE?
 - Who is responsible for, and what campus/community communication needs to take place regarding housing COVID-19 or other people on campus?
 - Use of the institution's guest wireless network (which may not be HIPAA compliant). Other technology/phone considerations?
 - Use and protection of institution's medical supplies in simulation labs and academic buildings, if applicable.
 - Access restrictions (restricted building access for medical providers and patients, ban on visitors, etc.).
 - Parking for requesting entity's staff, patients, others.
 - Handling of medical waste including removal, if applicable.
 - Ongoing use, removal, and cleaning of bed linens and towels.

-
- Evacuation and shelter-in-place protocols for patients and medical staff in case of fire or secondary emergency (e.g., hurricane, tornado). What alternate location will be available?
 - If applicable, how or will food services be provided?
 - If housing COVID-19 patients, process for safe food distribution and removal of contaminated food items and containers.
 - If housing non-patients, consider pet issues. Homeless people frequently have pets; medical staff being housed may need to keep a pet at the facility, etc.
 - Door signage (warnings, prohibitions).
 - Other maintenance issues, including who services the buildings for plumbing, lighting, electrical issues? If housing COVID-19+ patients, who is responsible for PPE and decontamination issues.
 - Protocol for removing the deceased from institutional facilities.
 - Stipulate insurance requirements.
 - Adding the institution and its trustees and employees as additional insureds to all applicable policies.
 - Waiving subrogation against the institution for workers' compensation claims by requesting entity's employees.
- Set a clear time-line, e.g., “the requesting entity will return the facility to the institution on or before [date]”, with options for the institution to extend the contractual agreement as needed. Include penalties if the requesting entity cannot meet the deadline to cover the potential costs of having to house students in other facilities.
 - Don't neglect standard contract terms and conditions.

Assumption of Risks Associated with the Provision of Facilities

Even with a contract, the institution may find itself assuming many of the risks associated with providing facilities to the requesting entity. Some of these risks may be insurable; others may not. This article is not intended to be a guide to insuring all risks, but as a resource for identifying both insured and uninsured risks, and proving some alternative sources of protection from uncovered losses. [See Coronavirus \(COVID-19\) Pandemic Information Hub.](#)

Physical Damage / Cleaning / Contamination of the Facility

- Physical Damage from risks like fire and theft to buildings and contents arising from occupancy of your facilities by others are typically covered risks under the institution's property insurance policy. Most Property policies contain exclusions that severely limit the Insured's ability to collect for loss arising from damage related to contamination from COVID-19. Even if you have a contract with the requesting entity, the potential exclusions in their liability policies for pollution and contamination (this includes contamination from COVID-19) could limit your institution's ability to rely on their insurance to support their contractual agreement to indemnify you

for damage to your facilities arising from their activities. This conundrum makes it particularly challenging to evaluate the impact of risks related to the use of your facilities by others.

- Costs for cleaning and restoring the facility and furnishings to original condition, if the use was “ordinary”, i.e., not used to house patients, would typically be considered to be an operational expense, and not insured. In the absence of any contractual agreement to the contrary, the institution would have to assume this risk.
- Costs for cleaning and restoring the facility and furnishings to original condition, if the use was “extraordinary”, (i.e., used to house infected patients), might be insured under either the property or environmental liability policy, again depending on the insurer and coverage terms and conditions. Such costs might also be covered, at least in part, by FEMA. In the absence of any agreement to the contrary, the institution would have to assume this risk and seek insurance coverage to the extent that it would apply, if available, subject to policy terms. There is a possibility that the institution could be uninsured for this risk; coverage availability should be verified before assuming this risk.

Liability Arising from Use of the Facility

- Third party claims for most common types of bodily injury or property damage arising from use of the facility should be covered by the institution’s general liability insurance, subject to policy deductibles and terms.
- Third party claims for bodily injury arising from exposure to infection in the facility **may** be covered by the institution’s general liability or environmental liability insurance, subject to policy deductibles and terms. However, there is a distinct possibility that exclusions in the institution’s policies could exclude or severely limit coverage. Careful coverage analysis with your risk management team (internal personnel, broker and carrier) is strongly encouraged.
- All other operational risks (maintenance of the facility, trash removal, security) would be covered as any other operational liability in the absence of a risk transfer agreement.

Workers’ Compensation Claims

- As long as the institution’s employees are being compensated by and working on behalf of and at the direction of the institution, Workers’ Compensation coverage applies. While workplace illness can be difficult to prove, it is likely employees who sustain COVID-19 related illness or injuries when working in a facility that is housing infected patients will be able to make a successful claim.
- Families of injured workers can file claims against the institution and the requesting entity for failure to protect workers, which can be filed as workers’ compensation claims
- Employer’s liability coverage may offer some coverage if liability claims are brought against the school by ordinary personnel (e.g., custodial or dining staff) working in the institution in a facility used by others because the loan of the facility put the employee into an unreasonably dangerous situation (gross negligence.)

Time Risks

We noted earlier that there is a risk that the facility user may not be ready to return the facility on the institution's deadline. It is unlikely that any insurance that the college has would apply to this risk, though the property insurance business interruption coverage may apply if the facility has been commandeered by a civil authority.

Educators Legal Liability / D&O

Risks of claims against the leadership or the trustees for mismanagement of the institution are not transferable. These risks would likely be covered by the institution's ELL or D&O insurance (subject to Bodily Injury and Property Damage exclusions), as decisions such as those described here are clearly management issues. It is very important that all the decision-making processes be well documented so that it is clear that the institution's leadership was acting in the best interests of the institution and the community. Such documents will create a defense for the institution and its leaders.

III. Risk Issues Associated with Providing Personnel

Providing personnel to support the use of your facilities by others or to provide needed professional resources to others in responding to this crisis carries its own risks and should be carefully assessed before promising personnel resources. Here is an example of the type of requests we are seeing our insureds receive:

“[Our local hospital is] in desperate shape to combat Coronavirus and are looking for our senior Physician Assistant students to help out with patient care. We have some faculty and students who are interested in volunteering. If we move forward with this, we will try to give the students academic credits just like they do when they have clinical rotations as mandated by their program. The faculty will be different. We will look for [the Hospital] to cover any faculty, but anyone can be sued if something goes wrong.”

Personnel Risks

Liability Claims (including Professional Liability)

Liability claims are the most significant risks associated with providing personnel

- Personal injury claims (GL) made by third parties alleging that they have been harmed by the institution personnel.
- Medical malpractice claims made by third parties alleging that they have been harmed by the institution personnel.
- Claims made by institution personnel against the institution for discrimination in the work environment (e.g., allocation of protective gear, work assignments, accommodation of a disability, general treatment).
- Claims made against the institution for loss of or damage to personal property (e.g., phones, laptops) resulting from the volunteer activities.
- Claims made against the institution by employees alleging they were requested to work in an inherently dangerous situation without properly vetting the activities, providing proper training, and possibly without proper PPE.

Property Damage Claims

First-party property damage claims would not be applicable to the “loan” of personnel. If the personnel are loaned in conjunction with the use of facilities, the facilities use agreement should address these concerns, as noted above.

Workers' Compensation Claims

- Employee claims for bodily injury, illness or death as a result of the volunteer work including infection or illness acquired as a result of the volunteer assignment.
- Students acting as volunteers may make claims for bodily injury, illness or death as a result of the volunteer work including infection or illness acquired as a result of the volunteer assignment.

Managing the Risks Associated with Providing Personnel

Use of Institutional Personnel at campus facilities being used by others is addressed in Risks Associated with Facilities.

Transfer of risk by contract or MOU

- If the requesting party needs personnel (staff or students) to work in the requesting entity's facilities, ask the requesting entity to hire the institution's personnel as temporary, casual workers in accordance with applicable state guidelines. If the entity is unable to hire the volunteers outright, ask instead that they be given volunteer status with full coverage for workers' compensation benefits and the same indemnifications that any other employee would enjoy as respects their work. If the requesting entity is unwilling or unable to do this, and your institution still wishes to support the requesting entity, it will need to assume certain risks. See below for specific issues with assumed risks.
- Student internships are usually governed by agreements in which the sponsoring institution assumes significant liability for the actions, both general and professional, of the interning student. As with staff, we cannot predict how insurers will respond to liability claims made against students in the volunteer placements, as they may not be considered (technically speaking) to be working for, or at the direction of, the college or university, or working towards their degree unless a specific agreement is created. As noted above, institutions should consult with legal counsel before any consideration is given to the transfer of student volunteers to participate in COVID-19 activity.

Assumption of the personnel risks

Staff

If the institution is unable to transfer employment status or secure covered volunteer status for its staff working in another organization's facilities, it will likely be assuming the risks for those individuals, especially if it continues to pay those individuals' salaries. We cannot predict how insurers will respond to liability claims made against our staff in the volunteer placements, as they may not be considered (technically speaking) to be working for the college or university. The same issue may apply to workers' compensation claims made by the employees against the institution's workers' comp insurer. Before agreeing to any placements, the institution should consult with their broker and insurers and secure written agreement that the institution's policies will cover the employees as if they were working at another organization while still being paid by the institution.

Students

Student internships are usually governed by agreements in which the sponsoring institution assumes significant liability for the actions, both general and professional, of the interning student. As with staff, we cannot predict how insurers will respond to liability claims made against students in the volunteer placements, as they may not be considered (technically speaking) to be working for, or at the direction of, the college or university, or working towards their degree unless a specific agreement is created. As noted above, institutions should consult with legal counsel before any consideration is given to the transfer of student volunteers to participate in COVID-19 activity.

Check Your Insurance Policies for Coverage

- Careful review of your medical professional, student health and internship professional liability coverage is warranted as restrictions may apply.
 - MDs typically have their own medical professional insurance or are covered by their medical practice or hospital affiliation, and this coverage is usually not restricted to work that they perform for the institution.
 - Faculty with medical degrees who are not practicing physicians and do not carry **medical professional** insurance should not be permitted to volunteer as a medical professional in connection with their institutional affiliation unless the institution has coverage for the physicians or coverage is extended by a third party.
 - Students in medical internships or clinical rotation receive academic credit for their work, and depending on the institution, may be insured by the institution for their professional liability in this work. Some institutions are offering students who wish to volunteer academic credit for their work, which will trigger coverage under the institution's policies (subject to relevant policy terms and conditions). Other institutions require students to secure their own personal coverage for their professional liability. Institutions must ensure that student volunteers, covered under their own personal coverage, verify with their insurance carrier that coverage will apply to volunteer activities being considered.
- Coverage for **General Liability** against individual employees and students is dependent on whether or not the employee or student was acting for, or on behalf of, or at the direction of, the institution, and if they are performing within the scope of their responsibilities. Since the institution has no control over the requesting entity's operations, coverage disputes are possible.
- **Workers' Compensation Claims** Workers' compensation policies and state regulations on workers' compensation coverage should be carefully reviewed to determine coverage. If the employee will continue to be paid by the institution while working for the requesting entity, check with the carrier to confirm that coverage will apply to the outsourced locations. Also note, there may be premium charges upon policy payroll audit, if the employment code differs with the outsourced placement.
- **Employer's liability** may offer some coverage if the employee did not file a workers' compensation claim but sued the institution for having put the employee into an inherently dangerous situation.

IV. Risk Issues Associated with the Donation or Sale of Products

Products Liability

Donating products or supplies opens the institution to products liability claims, i.e., claims against the institution for bodily injury caused by the product supplied. The degree of risk varies by the type of product and whether or not the school is the producer of the product.

- We believe that the risks associated with donating **existing supplies** (i.e., those manufactured by other companies) are minimal. These would typically be claims for general liability (bodily injury) or products liability because of an alleged known defect with the donated supplies.
- Donating **existing equipment** to others (maintenance, medical equipment, 3D printers) presents a greater risk to the institution than the donation of basics supplies and warrants risk minimization techniques discussed later in the document.
- Many schools are being asked to produce or **manufacture new supplies** such as masks, shields and other equipment. While most GL policies cover product liability, they were not underwritten with the production and sale of medical equipment in mind. Supplying institution-manufactured equipment and supplies, especially any equipment that is subject to federal or state regulations, such as FDA approval, exposes the institution to product liability claims.

Managing the Risks of Donation or Sale of Products

Temporary Statutory Immunities

Federal and state legislative acts have been passed that offer immunity protections to those providing critical supplies during this crisis. Careful legal review and analysis of these provisions should be made before relying on these acts. Also note that defense costs associated with claims filed may not be covered by these statutory acts, so do not overlook defense coverage offered under a products liability policy.

Transfer of Risk by Contract or MOU

Donation of surplus supplies, sales of products of others, and manufacture and sales of goods create a Products Liability exposure. Use common sense in determining the need for an MOU or contract in these situations. The donation of cleaning supplies may not warrant spending time crafting a contract or MOU. However, the donation of critical medical equipment may require a well-crafted contract detailing indemnification expectations and risk transfer. An agreement to manufacture masks or other equipment for use at local hospitals may warrant contractual protections especially if such products are being manufactured at or below cost for the benefit of the community. Insurance issues with respect to Product Liability are discussed in the following section.

Assumption of Risks for the Donation or Sale of Products

EXERCISE CAUTION! The product liability and general liability risks would be covered as any other general liability claim, subject to policy deductibles and terms. However, while most Higher Education GL policies cover product liability, they were not underwritten with the production and sale of medical equipment in mind. If your institution is selling or supplying institution-manufactured equipment and supplies, especially any equipment that is subject to federal or state regulations, such as FDA approval, there is a possibility of running into coverage disputes with carriers contending coverage was not designed or rated for this type of exposure. Gallagher recommends that institutions report the exposure to their Gallagher representative, so that coverage with your existing carrier can be confirmed or a separate policy placed.

V. Reputation Risks

Institutions, like individuals, are likely to be second-guessed during the crisis, and Monday-morning-quarterbacked when it has passed. No one can predict how this will end. Institutions will always be best served by adhering to their mission and goals, and documenting their decision-making processes. Consider both short- and long-term risks and outcomes in the decision-making process, and do not be afraid to identify the “unknowns” as well as that there may be “unknown unknowns”. Balancing the impetus to serve the community and concerns for the ability of the institution to resume its core functions are not easy choices.

VI. Conclusion

As we can see, the risks associated with being a “good citizen” are complex and numerous. If you have any questions on how to assess or manage these risks do not hesitate to reach out to your Gallagher team for assistance.

Disclaimer: Gallagher provides insurance, risk management and consultation services for our clients. When providing analysis and recommendations regarding potential insurance coverage, potential claims and/or operational strategy in response to national emergencies (including health crises), we do so from an insurance/risk management perspective, and offer general information about risk mitigation, loss control strategy and potential claim exposures. Any statement or information provided is for informational purposes only and is not intended to be, nor should it be interpreted as, medical, legal or client-specific risk management advice. The general insurance descriptions and other information contained herein does not include complete insurance policy definitions, terms and conditions and should not be relied on for coverage interpretation. Policy-specific terms and conditions dictate whether coverage applies to any particular risk or circumstance, and this information in no way reflects or promises individual client or policy specific insurance coverage outcomes.

Gallagher publications may contain links to non- Gallagher websites that are created and controlled by other organizations. Gallagher claims no responsibility for or endorsement of the content of any linked website, as we have no responsibility for information referenced in material owned and controlled by other parties. Gallagher strongly encourages you to review any separate terms of use and privacy policies governing use of these third-party websites and resources.

Insurance brokerage and related services to be provided by Arthur J. Gallagher Risk Management Services, Inc. (License No. OD69293) and/or its affiliate Arthur J. Gallagher & Co. Insurance Brokers of California, Inc. (License No. 0726293).

Perhaps most importantly, we note that these comments are at made at a specific moment in time: the response of the Federal Government and State governments to the virus is changing daily. It is essential that, as your institution prepares to support your local community that current information is checked on issues including legal immunities and liabilities.