

2009 Non-Mandated Expenditures Department Response

DEPARTMENT: Risk Management

DEPARTMENT HEAD / ELECTED OFFICIAL: Eric Stuckey, Assistant County Administrator

OCA TITLE: Risk Management

Hamilton County departments and agencies have the opportunity to respond and provide insight to the Office of Budget and Strategic Initiatives (BSI) initial assessment as to non-mandated services. This response form should be used for each specific BSI assessment; not a general response for entire department. Take as much space as necessary for each question.

1. Are there elements of the BSI non-mandated services that you believe are mandated? If so, provide the specific Ohio Revised Code (ORC) citation, Code of Federal Regulation (CFR) and/or relevant case law information. Please be especially diligent if there is a specific service or staffing level prescribed by law.

Risk Management and Workers' Compensation provide services for the following mandates under the Ohio Revised Code, Attorney General of Ohio Opinion and the Code of Federal Regulations.

Employee Health and Safety - Risk Management & Workers' Compensation

ORC 4167 PUBLIC EMPLOYMENT RISK REDUCTION PROGRAM

4167.04 Duty of Public Employer to provide a safe place of employment

4167.05 Compliance with risk reduction standards, rules and procedures

4167.07 Commission to adopt rules for employment risk reduction standards:
29CFR1910, 29CFR1926, 29CFR1928 standards

4167.11 Program of collection compilation and analysis of employment risk
reduction statistics

4167.28 Duties of Employer concerning exposure incidents

Workers' Compensation - Workers' Compensation

ORC 4123 WORKERS' COMPENSATION

4123.26 Employer is required annually to provide statement

4123.28 Employer to keep record of all injuries and occupational diseases

4123.343 Employing and retaining handicapped employees

OAG Opinion Letter dated March 2, 1988 (Attached)

"The board of commissioners is the employer of all county employees for purposes of workers' compensation laws." Ref: ORC 4123.01(B)(1)

ORC 4127 PUBLIC WORKS RELIEF COMPENSATION

4127.07 Employer is required to contribute to the fund.

Claims and Insurance - Risk Management

ORC 2744 POLITICAL SUBDIVISION TORT LIABILITY

2744.02(B)(1) County is liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority.

2744.02(B)(2) County is liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

2744.02(B)(3) County is liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads... .

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2744.02(B)(4) County is liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

2744.02(B)(5) County is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code.

ORC 2744.08 Liability and self – insurance programs

2744.08

ORC 307.86 Competitive bidding required – exceptions

307.86(F)(1-3) This is a cost effective way to obtain insurance. To do so, County must negotiate with insurers.

Public Officials Bonds and Bonding – Risk Management

ORC 313.03 County Coroner

ORC 315.03 County Engineer

ORC 305.04 Commissioner

ORC 309.03 Prosecuting Attorney

ORC 319.02 Auditor

ORC 2303.02 Clerk of Court

ORC 317.02 Recorder

ORC 311.02 Sheriff

ORC 329.01 DJFS Director

ORC 9.35 Public Official

ORC 3.06 Deputies and Clerks

ORC 325.12 Prosecuting Attorney Furtherance of Justice

ORC 325.071 Sheriff Salary amount

ORC 321.02 Treasurer

2. Who are the recipients of the service or activity for the non-mandated service? How many recipients? Please note any internal customers, other county departments, jurisdictions, businesses, etc. If the service is geographic specific (i.e., a satellite probation office), please identify the neighborhood, township or municipality.

Risk Management and Workers' Compensation provide mandated (see above) and non mandated services and activities. Non mandated activities include contractual risk transfer and transfer of risk financing. Recipients include elected and appointed officials, employees, general public, lessees, vendors and other governmental agencies. Mandated workers' compensation is offered to approximately 13,000 individuals. Mandated liability covers each employee, each board owned building and each board owned vehicle. Employee health and safety is another mandatory activity required by the ORC for the county's 6000 employees.

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3. Are there county revenues associated with the non-mandated services? If so, please provide the methodology for any lost revenues. Please consider state or federal reimbursements, grants, fees, etc. Please note if the service or activity is included in the county's indirect cost plan.

This function is partially reimbursed through the indirect cost plan.

4. If the county did not provide the non-mandated service, is there the potential for increased expenditures in another jurisdiction within Hamilton County? If so, please list the specific municipality and/or township.

The county is required to provide workers' compensation and cover liability imposed by the ORC. The centralized function provides that programs are in place and financial products are secured from the market in the most cost effective manner possible by pooling the risk and securing the appropriate coverage collectively.

5. Does the non-mandated service include Board of County Commissioner policy via resolution or motion?

The risk management function relates to the effective implementation of a county mandate as described in item #6 in the Board's approved budget goals.

Workers' compensation function is provided by board resolution.

6. Are there contracts or agreements that preclude the elimination of a non-mandated service? If so, please provide the specific language as to termination and/or amendment terms.

Insurance coverage is: legally required of the county in various areas (i.e. workers comp, elected official liability policies), and/or; contractually required in leases (i.e. – Cincinnati Reds and Bengals leases or Queensgate Corrections lease or multiyear insurance broker agreements) and/or; a necessary operational function to protect the county's assets (i.e. – property insurance, aviation liability insurance, multiyear insurance broker agreements).

7. What are the equipment/non-personnel expenditure considerations with discontinuing a non-mandated service? (i.e., surplus equipment).

Buy out of remaining multiyear agreements with Vendors, e.g., insurance brokers. Continue procurement and maintenance of insurance as required by the lease agreement

8. Do any of the non-mandated services include employees represented by a bargaining unit? If so, please note the union and provide information as to reduction-in-force and job abolishment considerations.

No.

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9. For positions within non-mandated services, are there are special circumstances that preclude a traditional job abolishment process? Separation costs will be addressed centrally including leave balance payouts, unemployment compensation and severance (based on current Commission policy).

Age discrimination

10. In addition to positions associated with non-mandated services, the Budget Office included a review of management layers, support staff, and currently vacant positions. Please comment on the impact of eliminating these positions.

By decentralizing the Risk Management and Workers' Compensation through elimination of the position, the county will be placed in a noncompliance with: ORC on workers' compensation; the Board's resolution to centralize administration of workers' compensation in one individual; contractual obligations with the professional sports teams and other landlords and; the ORC on employee health and safety issues. Further the county will suffer in its ability to adequately, timely and reasonably deal with liability issues under ORC 2744.

11. What is the performance impact of not providing the non-mandated service? For example, wait times, waiting lists, case loads, operating hours and other consequences of not providing the service.

The county risk management program would not be centrally coordinated, resulting in: inefficient acquisition of coverage by various departments; failure to secure adequate coverage, and; inconsistent claims management and processing. There would be a high likelihood of failure by the county in meeting it's obligations further exposing it to additional financial and legal issues.

12. Are there any alternatives that result in savings to the general fund?
No.

13. Are there more efficient ways to deliver a mandated service that may allow for the savings to offset the cost of a non-mandated service?

No. In fact, the elimination of the central risk management function would lead to less efficient implementation of required programs.

14. Is there an opportunity to transfer any non-mandated expenditures to another funding source (i.e., restricted fund or grant)?

This has taken place previously through the funding of workers' compensation administration and through the inclusion this function in the indirect cost plan.

15. Does your department have any fees that could be raised to offset the cost of a mandated service?

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No.

Other Considerations and Comments:

The current workers' compensation program is a guaranteed cost program. In exchange for a given premium, based upon previous county experience and the experience of like organizations, the county is provided annual protection. A premium rate per \$100 of payroll is calculated and the entire premium is then determined.

At the county level, the total premium is divided by the total number of employees. Each department / agency is charged on this per capita basis. Unfortunately, the claims that drive the annual premium are not based on a per capita basis.

It is a known fact that a few departments / agency / boards are generating the highest number of claims and usually the most severe claims. Likewise some small departments have a higher percentage of more highly compensated individuals. In either case, neither department is paying its "true share" of protection.

Would it not serve the county to institute an experienced based reimbursement program, where salary and claim severity / frequency determine the workers' compensation premium reimbursement? Hence departments / agencies with high severity high frequency claims would have an incentive to drive claim numbers down. Likewise those departments / agencies with highly compensated individuals would begin to pay their fair share.