

R37. Administrative Services, Risk Management.

R37-1. Risk Management General Rules.

R37-1-1. Purpose.

The purpose of this rule is to establish the liability and property insurance coverage provided by the Risk Management Fund, and the conditions, underwriting standards, and other rules that govern or control the use of this coverage.

R37-1-2. Authority.

This rule is established pursuant to Section 63A-4-101 which authorizes the State's Risk Manager to recommend rules to the Director of the Department of Administrative Services who is authorized to enact rules.

R37-1-3. Definitions.

(1) "Conditions" specific policy requirements the violation of which will invalidate coverage.

(2) "Coverage or coverage provision" means the type of protection provided against specific risks or losses.

(3) "Covered Entity" means a state department or other state agency not within a state department, a state college or university, a public school district, a participating charter school, or other entity which is covered under the terms of a coverage document issued to it by the Risk Management Fund.

(4) "Underwriting Standard" or "Risk Control Standard" means an action or procedure which must be performed by a covered entity in order to reduce the risk of loss or to avoid imposition of coverage restrictions, deductibles, increased premiums, or loss of credits or dividends.

R37-1-4. Description of the Fund and its Activities.

The Risk Management Fund, hereafter referred to as the Fund, is a self-insurance mechanism established by statute to handle losses to or claims against the state, its agencies, institutions of higher education, participating school districts, participating charter schools, and other entities, which are treated as state agencies when participating, all hereafter referred to as covered entities. Although coverage through the Fund may be in formats like or similar to insurance policies, the relationship between the Fund and covered entities is not that of insurer and insured. No special duties, rules of construction or other legal doctrines recognized by the courts or created by statute with respect to the relationship of an insurer to its insured shall apply to the Fund or entities covered by it, except those which are specifically required by Title 31A, Chapter 12 with respect to some coverage provided to school districts. The duty to defend employees, as defined in Section 63-30d-102 UCA, or volunteers, as defined in Section 67-20-2 UCA, of covered entities extends only as far as the entities' duty to employees or volunteers under the "Governmental Immunity Act" and no special relationship of insurer to insured exists between the Fund and employees or volunteers of covered entities.

R37-1-5. Coverage, Deductibles, Duties and Conditions.

Specific risks covered, properties covered, coverage limits, exclusions, deductibles,

conditions and other coverage provisions for coverage through the Risk Management Fund shall apply in accordance with coverage policies issued by the Fund to each covered entity.

Subject to specific provisions of the coverage policies, the Fund provides the following coverage:

(1) Liability

(a) Risks Covered - General, automobile, personal injury, errors and omissions, malpractice and garage keepers' liability, and personal injury protection coverage applying to all premises, operations, approved contracts, products and completed operations; owned, non-owned and hired automobiles, other than personal use automobiles; employees, volunteers, and students in the scope of employment or approved services to the public.

(b) Limits - Typically, the limits are the maximum liability calculated pursuant to Section 63G-7-604 UCA; lower or higher limits for other situations as indicated in coverage policies issued to each covered entity.

(c) Deductible - Deductibles apply to some specific property coverages and situations as noted in the coverage document, but there is no general deductible with regard to liability coverage.

(d) Conditions - The following conditions apply to liability coverages:

(i) In the event of an occurrence, personal injury, act, error, omission, incident, or any other situation likely to give rise to a claim covered by the Fund, written notice containing particulars sufficient to identify the covered entity or person and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the potential claimant, and of available witnesses, shall be given by or for the covered entity or person to the Fund or any of its authorized agents as soon as practicable. The covered entity shall promptly take all reasonable steps to prevent additional injury or damage arising out of the same or similar conditions. A covered entity's failure to take preventive measures shall not constitute a breach of this condition unless the Fund has requested the covered entity, in writing, to undertake the preventive measures. Costs incurred by a covered entity to implement preventive measures shall not be recoverable from the Fund.

(ii) If claim is made or suit is brought against the covered entity or person, whether in court or through an administrative proceeding with the Utah Anti-discrimination Division, the Federal Equal Employment Opportunity Commission or similar body, the covered entity or person shall immediately forward to the Fund a copy of every demand, notice, summons or other process received by it or its representative. Any covered person who is an employee or volunteer of the covered entity shall comply with all provisions of Sections 63G-7-902 UCA, 63G-7-903 UCA, or both before the Fund shall have any duty to defend or pay any judgment against such covered person.

(iii) The covered entity or person shall cooperate with the Fund and, upon the Fund's request, provide the fund with requested information, assist in making settlements, assist in making rule 68 offers of judgment, and assist in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered entity or person because of bodily injury or property damage with respect to which coverage is afforded by the Fund; and the covered entity or person shall attend hearings and trials and assist in securing and providing evidence and obtaining the attendance of witnesses. The covered entity or person shall not, except at its own cost,

voluntarily make any payment, assume any obligation or incur any expense other than for qualified first aid to others at the time of the accident.

(iv) In the event any employee or volunteer requests under the terms of Section 63G-7-902 UCA that the covered entity defend him relative to any action or claim which would be covered by the Fund, the covered entity shall immediately forward the request to the Fund and the Fund shall have the right to determine on behalf of the covered entity whether to defend, defend under a reservation of rights, or decline to defend.

(v) The covered entity or person shall share with the Fund all records requested by the Fund, relative to any claim under this coverage, to the fullest extent permitted by the Utah Government Records Access and Management Act (GRAMA). If the covered entity falls under the provisions of Section 63-2-701, 702 or 703 UCA, the covered entity shall adopt an ordinance or policy, or make rules which allow the sharing of records with the Fund to at least the extent permitted by GRAMA and shall share with the Fund all records requested relative to any claim under this coverage to the fullest extent permitted by the ordinance, policy or rule.

(vi) This coverage does not apply to any claim under the Americans With Disabilities Act, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, or similar laws based in whole or in part on the failure of any covered entity to provide a reasonable accommodation unless the covered entity has notified the Fund of its preliminary intention not to provide the requested accommodation, has allowed the Fund a reasonable opportunity to consult with the covered entity before the covered entity denies the requested accommodation, and the Fund agrees with the proposed denial.

(2) Conditions applicable to all coverages provided by the Fund:

(a) In accordance with Subsection 63A-4-101(2)(b)(v) UCA, in the event of any coverage dispute between the Fund and any covered entity or person, there shall be no right of legal action against the Fund.

(b) In the event of any payment under any coverage provided through the Fund, the Fund shall be subrogated to all of the covered entity or person's rights of recovery therefor against any person or organization and the covered entity or person shall execute and deliver instruments and papers and do whatever else is necessary to secure these rights. The covered entity or person shall do nothing after the loss to prejudice these rights.

R37-1-6. Premium Establishment.

In addition to other actuarially sound factors, the Risk Manager may use the following in determining the appropriate premiums for coverage provided to each covered entity:

(1) Entity efforts at exposure management including completion of self-inspection surveys, employee training, agency attendance at Fund-sponsored seminars, agency risk control meetings, risk-related policy development and implementation, etc.

(2) Entity accidents, claims and loss history.

(3) Recent state and federal statutes or court decisions affecting covered entities and operations.

(4) Number of employees in the entity and size of the entity's budget.

(5) Value, protection and other characteristics of the entity's buildings and contents.

(6) Number, type, and value of entity vehicles.

(7) Entity operations and activities.

- (8) Actuarial studies.

R37-1-7. Risk Control Standards.

In accordance with Subsection 63A-4-101(2)(b)(i), each covered entity shall comply with the following risk control standards:

(1) Covered entities shall appoint an entity risk coordinator who shall report directly to the covered entity's director, school superintendent or university/college president, or to another individual who reports directly to the covered entity's director, school superintendent or college/university president. Subordinate risk coordinators or other individuals may be appointed at the division, school or lower levels of the organization as the entity deems appropriate. The day to day implementation or management of the entity's risk management duties may be assigned by the risk coordinator to subordinate individuals, committees, or groups as necessary for efficient operation and implementation.

(2) The covered entity risk coordinator shall be responsible for the following duties:

(a) Identifying, evaluating and resolving risk exposures for the entity,
(b) Coordinating with the Fund on the reporting and investigation of all claims or losses,

(c) Coordinating with the Fund on all liability prevention and loss control and prevention activities.

(d) Ensuring that the Fund is provided with all reasonable information necessary to compute premiums.

(e) Ensuring that premium billings are processed and paid.

(f) Ensuring that notification is made to the Fund on all incidents, issues or informal or administrative claims, including claims originating at the EEOC and/or UALD that may result in a formal claim against the Fund.

(g) Internally supervising or managing all loss prevention activities.

(h) Normally chairing the entity Risk Control Committee and ensuring staff support to the Risk Control Committee.

(3) Each covered entity shall appoint a Risk Control Committee, hereinafter referred to as the committee. Each covered entity shall include on its committee those positions deemed necessary by the Risk Coordinator and/or the entity director, president, or superintendent to provide comprehensive review and risk management services to all of the entities operations. It is recommended that the following positions be included on the committee:

(a) Entity Risk Coordinator.

(b) The covered entity's maintenance director and/or facilities director, where the entity owns or manages its own buildings or in the case where the building is leased the DFCM manager assigned to that building.

(c) The covered entity's Human Resource/Personnel director.

(d) The covered entity's Americans with Disabilities Act Coordinator, or other entity Civil Rights coordinator or director.

(e) The covered entity's Safety Director.

(f) The covered entity's legal counsel or attorney as an ex-officio member.

(g) Staff from the Fund, who may attend the meetings in an ex officio capacity.

The covered entity may appoint on either a permanent or ad hoc basis other individuals whose job duties or special expertise may be of use to the committee. These

individuals may include the covered entity's internal auditor, the covered entity's security director, the transportation or motor pool director, a representative from the entity's finance and accounting section and employee representatives. School districts may also wish to include on the committee representatives from the district's athletic, vocational, science and other high risk curriculum areas. The Fund, upon request of the covered entity risk coordinator, will provide recommendations on the makeup of the committee.

The committee shall be normally chaired by the covered entity's risk coordinator. The committee shall be responsible for oversight and supervision of the entity's risk coordination and management program and shall meet at least once each quarter. In advance of the meeting, the committee shall publish an agenda of its meetings and shall forward a copy of the agenda to the Fund. The entity or its committee may appoint other ad hoc or standing committees, or subcommittees to deal with specific issues and problems such as safety, risk control training, civil rights, accident review etc.

(4) The duties of the committee shall include the following activities:

(a) Identifying, evaluating and resolving entity risk exposures.

(b) Reviewing the hazards and corrective actions identified during the annual Risk Management self-inspection survey and developing effective and timely plans to eliminate those hazards.

(c) Serving as a liaison between the Fund and the entity at the discretion of the Risk Coordinator.

(d) Reviewing inspection and other reports from the Fund and where applicable, implementing the proposed recommendations.

(e) Reviewing and analyzing investigation reports and recommendations regarding all claims, accidents, workers injuries or near accidents, and making recommendations to entity management at appropriate levels on methods for reducing accidents or claims.

(i) Where appropriate, the committee may recommend disciplinary and/or corrective action for employees who violate safety standards including but not limited to OSHA, health, hazardous materials, fire and entity specific standards and/or other standards, policies or rules that result in claims, accidents, worker injuries or near accidents. Any disciplinary or corrective action imposed shall be taken in accordance with the entity's rules.

(ii) The committee, acting as the agency's Accident Review committee, shall review reports and recommendations from subcommittees and others regarding the driving and accident records of employees and may restrict employees from using entity vehicles or the employee's own vehicle on entity business.

(f) Developing policies related to risk reduction and accident prevention and shall recommend their adoption by entity management.

(g) Conducting appropriate evaluations or audits of entity operations and developing findings and recommendations for resolution of identified problems or risk exposures.

(h) Conducting an annual review or evaluation of the entity's risk reduction efforts and providing the Fund with a copy of this evaluation.

(i) Performing other related duties as assigned by the entity risk coordinator, by entity management, or as requested by the Fund.

R37-1-8. Underwriting Standards.

In accordance with Subsection 63A-4-101(2)(b)(i), covered entities shall comply with

the following underwriting standards.

(1) Covered entities shall annually review, update, and submit a Statement of Values to the Fund before July 1st. Furthermore, within 90 days of acquisition, covered entities shall report to the Fund the description and value of any after-acquired personal property in excess of \$20,000 and real property in excess of \$250,000. If a covered entity fails to comply with this standard, the Fund may deny coverage with respect to any loss associated with a non-reported asset.

(2) Covered entities shall accurately complete and annually submit the Risk Management Online Self-Inspection Survey before June 1st, unless special exemption has been granted by the State Risk Manager.

(3) Covered entities shall provide all volunteers and employees with training approved by the Fund on unlawful discrimination and harassment in the workplace and other civil rights and liability issues as required by the Fund. After initial training all covered entities shall provide updated or refresher training to all staff members every two (2) years. For state entities the Fund shall coordinate the required training with the Department of Human Resource Management as appropriate. This training shall be developed and provided by qualified individuals. Covered entities shall keep records of the training, including who provided the training, who attended the training and when they attended it.

(4) Covered entities shall conduct or shall have conducted for them driver's license verification checks on all new employees and volunteers who operate entity vehicles or their own vehicles on entity business at time of employment. Covered entities shall, at least annually, verify the status of the driver's license of all employees and volunteers who operate entity vehicles or their own vehicles on entity business.

(5) Covered entities shall establish procedures to ensure that any employee or volunteer who does not have a valid driver's license is not allowed to operate an entity vehicle or his own vehicle on entity business.

(6) Covered entities shall develop procedures to ensure that records of driver's license checks and the results of these checks shall be kept confidential.

(7) Covered entities shall include in all written job descriptions or other job analysis documents or individual performance plans where use of a vehicle is an essential function of the job, a requirement for maintenance of a valid and appropriate driver's license.

(8) Covered entities shall require and document that all employees and volunteers who operate entity vehicles, or their own vehicles on entity business, complete a Fund-approved or Fund-provided driver safety program at the time of initial employment and at least once every two years.

(9) Covered entities shall develop and enforce policies and procedures to deal with problem drivers and other hazardous driving situations. In addition to other appropriate provisions, these policies shall contain the following:

(a) Employees or volunteers who are involved in an at-fault accident, shall not be allowed to operate entity vehicles, or their own vehicles on entity business, beyond a reasonable time, not to exceed thirty days. During this time the employee or volunteer must complete the Fund approved driver safety program in order to maintain driving privilege. This training shall not take the place of any agency imposed discipline or corrective action.

(b) Employees and volunteers who are required to operate entity vehicles or their own vehicles while on entity business shall operate the vehicles within the limits or restrictions of their individual licenses.

(c) Employees and volunteers who are convicted of Driving under the Influence of Alcohol or Drugs, or Reckless Driving, shall not be allowed to operate entity vehicles or their own vehicles on entity business, until their driving privileges are legally restored.

(10) Covered entities shall develop return to work and temporary transitional duty procedures. Entities shall ensure that these procedures are in accordance with the requirements of the "Americans With Disabilities Act", as amended, and other applicable laws and rules. The procedures shall provide for the return of injured employees to work at the earliest appropriate date.

(11) Covered entities shall review the performance standards or evaluation plan of each employee and where appropriate add a standard requiring the use of required safety equipment, adherence to safety standards, or other liability and risk reduction requirements appropriate to the position and duties performed by the employee.

(12) All new construction, remodels, additions to existing facilities shall comply with the adopted editions of the International Building Code, International Fire Code, and other applicable codes. Existing facilities known to be out of compliance with the adopted edition of the International Building Code, International Fire Code and all other applicable codes at the time of construction, shall be brought up to compliance as a condition of insurability, otherwise an appropriate premium surcharge or coverage restriction may be instituted upon reasonable notice and opportunity to correct areas of noncompliance.

KEY: risk management

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