

R37. Government Operations, Risk Management.

R37-1. Risk Management General Rules.

R37-1-1. Purpose.

The purpose of this rule is to describe the Risk Management Fund, hereafter referred to as the "Fund," and prescribe the conditions, underwriting standards, and other rules that govern or control the use of coverage provided or purchased by the Fund and any captive insurance company created by the risk manager.

R37-1-2. Authority.

This rule is established pursuant to Section 63A-4-101.5, which authorizes the risk manager to enact rules.

R37-1-3. Definitions.

- (1) "Captive" means a captive insurance company created by the risk manager under Title 31A, Chapter 37, Captive Insurance Companies Act.
- (2) "Conditions" means specific policy requirements the violation of which will invalidate coverage.
- (3) "Coverage or coverage provision" means the type of protection provided against specific risks or losses.
- (4) "Covered Entity" means a state department or other state agency not within 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.
- (5) "Fund" means the Risk Management Fund created by Section 63A-4-201.
- (6) "Risk manager" means the Director of the Division of Risk Management.
- (7) "Underwriting Standard" or "Risk Control Standard" means an action or procedure which must be performed by a covered entity 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.

- (1) The Fund is a self-insurance mechanism established by statute to handle losses to or claims against its covered entities.
- (2) Although coverage through the Fund may be written in formats like insurance policies, the relationship between the Fund and covered entities is not that of insurer and insured.
- (3) 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, State Risk Management Fund, with respect to some coverage provided to school districts, or those that may be required for a captive under Title 31A, Chapter 37, Captive Insurance Companies Act.
- (4) The duty to defend covered entity employees, as defined in Section 63G-7-902, or volunteers, as defined in Section 67-20-2, extends only as far as the covered entities' duty to employees or volunteers under Title 63G, Chapter 7, Governmental Immunity Act of Utah, and no special relationship of insurer to insured exists between the Fund and employees or volunteers of covered entities, unless otherwise required for a captive under Title 31A, Chapter 37, Captive Insurance Companies Act.

R37-1-5. Coverage and Conditions.

- (1) Coverage - Specific risks covered, properties covered, coverage limits, exclusions, deductibles, conditions and other provisions for coverage through the Fund, or through any captive, shall apply in accordance with the terms of annual coverage agreements or policies issued or procured by the Fund, or in accordance with any policies issued by a captive.
- (2) Conditions - The following conditions apply to each line of coverage provided by the Fund or any captive:
 - (a) In the event of an occurrence, loss, personal injury, act, error, omission, incident, or any other situation likely to give rise to a claim covered by the Fund or any captive, each covered entity shall immediately provide written notice to the Fund or captive.
 - (i) Written notice shall include:
 - (A) particulars sufficient to identify the covered entity or covered persons;
 - (B) reasonably obtainable information with respect to the time, place and circumstances thereof; and
 - (C) the names and addresses of potential claimants and all known witnesses.
 - (ii) The covered entity shall promptly take all reasonable steps to prevent additional injury or damage arising out of the same or similar conditions.
 - (iii) 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.
 - (iv) Costs incurred by a covered entity to implement preventive measures shall not be recoverable from the Fund or any captive.
 - (b)(i) 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 or captive a copy of each demand, notice, summons or other process received by it or its representative.
 - (ii) Any covered person who is an employee or volunteer of the covered entity shall comply with Sections 63G-7-902 and 63G-7-903 before the Fund or any captive shall have any duty to defend or pay any judgment against such covered person.
 - (c) The covered entity or person shall:
 - (i) cooperate with the Fund or captive; and
 - (ii) upon the Fund or captive's request;
 - (A) provide the Fund or captive with requested information;
 - (B) assist in making settlements;
 - (C) assist in making rule 68 settlement offers of judgment per Utah Rules of Civil Procedure;
 - (D) assist in the conduct of suits;

- (E) assist 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 or captive;
- (F) attend hearings and trials; and
- (G) assist in securing and providing evidence and obtaining the attendance of witnesses.
- (d) The covered entity or person may not, except at its own cost:
 - (i) voluntarily make any payment;
 - (ii) assume any obligation; or
 - (iii) incur any expense other than for qualified first aid to others immediately following an injury or accident.
- (e)(i) In the event any employees or volunteers request under the terms of Section 63G-7-902 that the covered entity defend them relative to any action or claim which would be covered by the Fund or captive, the covered entity shall immediately forward the request to the Fund or captive, which shall have the right to determine on behalf of the covered entity whether to:
 - (A) defend;
 - (B) defend under a reservation of rights; or
 - (C) decline to defend.
- (f) The covered entity or person shall share each record requested by the Fund or captive, relative to any claim under their coverage, to the fullest extent permitted by Title 63G, Chapter 2, Government Records Access and Management Act.
- (3) Coverage Disputes and Subrogation -- The following conditions are applicable to all lines of coverage provided by the Fund and any captive:
 - (a) In the event of any coverage dispute between the Fund or any captive and any covered entity or person, there shall be no right of legal action against the Fund or any captive unless otherwise required by Title 31A, Chapter 37, Captive Insurance Companies Act.
 - (b) In the event of any payment under any coverage provided through the Fund or any captive:
 - (i) the Fund or captive shall be subrogated to all the covered entity or person's rights of recovery against any person or organization;
 - (ii) the covered entity or person shall execute and deliver instruments and papers and do whatever else is necessary to secure these rights; and
 - (iii) the covered entity or person may not 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) 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.
- (2) Claims and loss history.
- (3) 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, exposures, and other characteristics of the entity's buildings and contents.
- (6) Number, type, and value of entity vehicles.
- (7) Characteristics and exposures of 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)(a) Covered entities shall appoint an entity risk coordinator who shall report directly to the covered entity's director, school superintendent or university or college president, or to another individual who reports directly to the covered entity's director, school superintendent or college or university president.
- (b) Subordinate risk coordinators or other individuals may be appointed at the division, school or lower levels of the organization as the entity deems appropriate.
- (c) 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 and any captive on the reporting and investigation of all claims or losses;
 - (c) coordinating with the Fund and any captive on all liability prevention and loss control and prevention activities;
 - (d) ensuring that the Fund and any captive 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 and any captive on all incidents, issues or informal or administrative claims, including claims originating at the EEOC or UALD that may result in a formal claim against the Fund or any captive;
 - (g) supervising or managing all loss prevention activities; and
 - (h) 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.
 - (a) 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 the entity's operations.

- (b) The following positions should be included on the committee:
 - (i) Risk coordinator;
 - (ii) Maintenance director or manager;
 - (iii) facilities director or manager;
 - (iv) Human resource director or manager;
 - (v) Americans with Disabilities Act Coordinator;
 - (vi) Civil Rights coordinator or director;
 - (vi) Safety director or manager;
 - (vii) legal counsel; and
 - (viii) Staff from the Fund or any captive.
- (c) The covered entity should also appoint on either a permanent or ad hoc basis other individuals whose job duties or special expertise may be of use to the committee, and may include:
 - (i) internal auditor;
 - (ii) security director;
 - (iii) transportation or motor pool director or manager;
 - (iv) a representative from the finance and accounting section; and
 - (v) employee representatives.
- (d) School districts may also include representatives from the district's athletic, vocational, science and other high-risk programs.
- (e) Upon request of the covered entity risk coordinator, the Fund or any captive will provide recommendations on the makeup of the committee.
- (f) The committee shall be normally chaired by the covered entity's risk coordinator.
- (g) 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. 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.
- (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, any captive, and the entity at the discretion of the risk coordinator;
 - (d) reviewing inspection and other reports from the Fund and any captive and, where applicable, implementing the proposed recommendations;
 - (e) reviewing and analyzing investigation reports and recommendations regarding all claims, accidents, worker injuries or near accidents, and making recommendations to entity management for reducing accidents or claims;
 - (f) recommend disciplinary or corrective action for employees who violate safety standards including OSHA, health, hazardous materials, fire and entity-specific standards and 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;
 - (g) receiving and reviewing recommendations from the entity's driver safety committee to reduce auto accidents and improve driver safety;
 - (h) developing policies related to risk reduction and accident prevention and recommending their adoption by entity management;
 - (i) conducting appropriate evaluations or audits of entity operations and developing findings and recommendations for resolution of identified problems or risk exposures;
 - (j) conducting an annual review or evaluation of the entity's risk reduction efforts and providing the Fund or any captive with a copy of this evaluation; and
 - (k) performing other related duties as assigned by the entity risk coordinator, by entity management, or as requested by the Fund or any captive.

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) Annually review, update, and submit a Statement of Values to the Fund before July 1st;
- (2) Within 90 days of acquisition, report to the Fund or any captive the description and value of any after-acquired property in excess of \$25,000,000.
- (3) Within 30 days of receipt, report each leased, donated, or other non-owned asset with a value in excess of \$500,000, and report collections of art or other valuables with an aggregate value in excess of \$500,000, located in a single location;
- (4) Provide each volunteer and employee 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:
 - (a) After initial training all covered entities shall provide updated or refresher training to all staff members every two years;
 - (b) For state entities this training shall be coordinated with the Division of Human Resource Management and shall be developed and provided by qualified individuals; and
 - (c) Covered entities shall keep records of the training, including who provided the training, who attended the training and when they attended it.
- (5) Covered entities shall implement the following driver safety standards:

- (a) conduct or facilitate driver's license verification checks on all new employees and volunteers who will operate entity vehicles or their own vehicles on entity business at time of employment;
- (b) 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;
- (c) 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 their own vehicle on entity business;
- (d) develop procedures to ensure that records of driver's license checks are kept confidential;
- (e) include a requirement for maintenance of a valid and appropriate driver's license 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;
- (f) 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 every two years thereafter;
- (g) develop and enforce policies and procedures to deal with unsafe driving behavior and hazardous driving situations, including the following:
 - (i) prohibit employees or volunteers who are involved in an at-fault accident from operating entity vehicles or their own vehicles on entity business for a reasonable time, not to exceed 30 days;
 - (ii) require each at-fault employee or volunteer to complete the Fund-approved driver safety program before restoring driving privileges;
 - (iii) ensure employees and volunteers who are required to operate entity vehicles or their own vehicles on entity business operate those vehicles within the limits or restrictions of their individual licenses; and
 - (iv) prohibit employees and volunteers who are convicted of Driving under the Influence of Alcohol or Drugs or Reckless Driving from operating entity vehicles or their own vehicles on entity business until their driving privileges are legally restored.
- (6) comply with Rule R27-7 if the covered entity is a state agencies or institution of higher education;
- (7) if the covered entity is a school district or a charter school, establish and maintain a driver safety committee, composed of three or more employees, including the risk coordinator, to perform the following functions:
 - (a) evaluate, within 30 days of occurrence, each vehicle accident and traffic violation involving entity-owned vehicles or personal vehicles on entity business;
 - (b) provide reasonable notice to each employee or volunteer, whose accident or traffic violation will be evaluated, of the driver safety committee meeting and ensure the employee or volunteer can participate in person, via video conference, or by telephone;
 - (c) determine whether each accident was preventable;
 - (d) determine whether each traffic violation resulted from the employee's or volunteers' hazardous driving behavior;
 - (e) document the determination of the driver safety committee as to accident preventability and hazardous driving behavior;
 - (f) develop recommendations regarding driving privileges, remediation, and discipline;
 - (g) promptly report documented determinations and recommendations to entity management;
 - (h) promptly notify the employee or volunteer of findings regarding accident preventability and hazardous driving behavior; and
 - (i) maintain driver safety committee determinations, recommendations, and all reviewed records for a minimum of four years.
- (8) review the performance standards and job descriptions 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; and
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