DEPARTMENT OF PERSONNEL AND ADMINISTRATION

1 CCR 105-1

RULES FOR THE RISK MANAGEMENT

Preamble

Unless otherwise noted in a specific provision, the Risk Management rules found at 1 CCR 105-1 were adopted by the Department of Personnel & Administration, effective July 30, 1986 This version reflects rulemaking by the Department as follows: repeal in their entirety Chapters 1, 2, 3, 4, 5 and 6 effective July 1, 2015.

~~CHAPTER I - GENERAL PROVISIONS~~

~~1-1 Statutory reference. Colorado Revised Statutes, chapter 24, article 30, part 15, shall be known as the Risk Management Act.~~

~~1-2 Purpose and Basis. In 1985, the insurance carrier for state liability claims notified the state of cancellation of coverage. The Governor called the general assembly into a special session for the purpose of enacting legislation permitting the State of Colorado to self insure for general and automobile liability and claims arising under federal law. HB100I provided for a Risk Management Division in the Department of Administration to supervise the claims process, settle valid claims, and establish risk management programs for state agencies.~~

~~These rules and 1986 amendments are designed to effectuate the statute and to facilitate the proper adjusting and processing of claims.~~

~~In 1986 no responsive bids were received from the insurance industry for the state's property insurance. HB 1008, Special Session of the Legislature, August 1986, sec. 24-30-1510.5 authorized the state to be self-insured for property and established a self-insured property fund in the Division of Risk Management.~~

~~The rules will be available to the public and state agencies so that they will be aware of the claims system and be able to file claims where the state may have caused injury or the agency has suffered property damage.~~

~~The rules also provide a framework for administration of risk management programs within the Department of Administration. State agencies will be actively involved in the carrying out of programs of comprehensive risk management including (1) identification of property and liability losses of agencies and (2) reduction of losses by state agencies and (3) inspection of state property.~~

~~These rules coordinate and focus on requirements of the Govern- mental Immunity Act, chapter 24, article 10, part 1, (1973 and & 1985 Supp.) and the Risk Management Act, chapter 24, article 30, part 15.~~

~~1-3 Construction. The rules promulgated here shall be construed liberally to accomplish the purposes of the act and to assist the just administration of claims processing and risk management.~~

~~1-4 Applicability. The rules apply to: claims against state agencies and state employees; any member of the public who makes claim against the state; persons contracting with the state for services tendered under the Risk Management Act, and state agencies and employees in all aspects of the Risk Management Act and its administration.~~

~~CHAPTER II - DEFINITIONS~~

~~2-I Definitions in the Act. The definitions set forth in the Risk Management Act shall apply to these rules.~~

~~2-2 Other definitions.~~

~~a) Act means the Risk Management Act as referred to in the statutory reference in Chapter I.~~

b) Adjustment means the process leading to denial or settlement of a claim by the authorized person.

c) Claimant means any person claiming to have suffered an injury by the state or state employee and filing a claim pursuant to the Immunity Act or federal law.

d) Claim means a notice of claim filed in compliance with the Immunity Act and any law suit subsequently filed pursuant to Governmental Immunity Act or under federal law.

e) Claims adjuster shall include claims adjusters under con- tract, the claims manager, risk manager, executive director of the Department of Administration and the claims board.

f) Employee shall mean officer, employee, servant, and authorized volunteer of the state whether compensated or not, elected, or appointed, but does not include independent contractors or any person sentenced to participate in any type of public service.

g) Authorized volunteer shall mean a person who is acting for a tangible and direct benefit to the state rather than of primary benefit to himself; whose volunteer work or services are at the specific request or requirement of the state, and whose performance of volunteer work or services are subject to the direct control of the state, "Authorized volunteer" excludes person who receive a salary for their work or services paid by a non-state entity, and persons or entities who are in the business of pro- viding the services.

h) Notice of claim under the Immunity Act is the same as a claim under the Risk Management Act.

i) Settlement shall mean an agreement to satisfy a claim which is accompanied by documents as required by these rules and provision for payment, if any. Authorized to settle means authorization to order payment.

j) State means state agency as defined in the Risk Management Act.

CHAPTER III - INVESTIGATION AND ADJUSTMENT OF CLAIMS

3-1 Claims. Every claim against the state or state employee must comply with notice provisions of C.R.S. 24-10-109, (1973) in order for payment, if any, to be made.

3-2 Claim form. For purposes of filing a claim, an approved claim form set forth in appendix A to these rules *will* be avail- able from the Division of Risk Management, contract claims adjusters, and all state agencies. State employees shall be diligent to distribute claim forms when requested.

3-3 Investigation. Within a reasonable period of time after notice or knowledge of an incident or after a claim is filed, an investigation will be initiated under supervision of the Risk Management Division.

State agencies making claims for property damage will complete property claim form, appendix C, and submit it to the Division of Risk Management.

3-4 Cooperation of claimant. A claimant may be required to supply additional information to investigators. Lack of cooperation with investigators may result in lower adjustment or denial of the claim.

3-5 Cooperation of State Agencies and Employees. The involved state agency and state employee shall participate in and cooper- ate with the investigation of claims.

3-6 Scope of Investigation. The investigation will proceed generally to consider the following:

a) compliance with the Immunity Act such as timely filing and adequate notice;

b) whether immunity has been waived in the circumstances or whether the claim arises under federal law;

c) whether the state, claimant, or other party, is at fault in causing the injury;

d) the amount of damages actually incurred by the claimant; e) other considerations bearing on validity of the claim.

3-7 Legal Issues. If, in the course of investigation of an actual or anticipated claim, legal issues are raised, consultation shall be sought with the attorney general, or when appropriate, an attorney or firm under contract.

3-8 Denials. Where no basis is found for the claim, it shall be promptly denied. A letter of denial to the claimant shall be issued by the claims adjuster. A copy shall be filed with Risk Management.

3-9 Negotiation settlement. Where it's determined that settlement is appropriate, the claims adjuster may make an offer of settlement and enter into settlement with the claimant within the adjuster's statutory level of authority subject to payment by the state.

3-10 Payments for State Property Losses. State property losses shall be paid out of the Division of Risk Management's self-insured property fund in accordance with section 24-30-1510.5. State agencies will pay $1,000 deductible. Real property damage will be paid on a replacement cost basis. Personal property claims will be paid on actual cash value basis. Value shall be determined by Division of Risk Management.

CHAPTER IV - SETTLEMENT

4-1 Documents required for settlement. A settlement is not effective until required documents are completed and presented for payment.

Such documents shall consist of:

a) claim:

b) investigative report and any other relevant documents from the investigative file including but not limited to medical and other bills, and evidence of lost income, or other losses;

c) recommendation for payment:

d) appropriate documents of release, hold harmless, and assignments of rights:

e) any other documents required by the risk manager dependent on circumstances of the specific claim.

4-2 Release forms. An approved minimal release form is attached to these rules as Appendix B. Releases shall contain the following items, although a settlement authority may require additional items when appropriate:

a) a statement of knowing and intelligent waiver and release of rights,

b) a statement releasing the state and its employees of all claims arising out of the occurrence including a claim of attorney fees,

c) a statement that no prior assignments have been given,

d) signatures of claimants or his legal representative and the proper state settlement authority.

4-3 Settlement standards. Authorities shall consider the following standards for settlement, among others:

a) the reasonable likelihood that factually and legally state liability exists,

b) the costs of defense in light of that likelihood,

c) fulfillment of requirements under the Immunity Act, d) the existence of waiver under the Immunity Act,

d) the validity and nature of claims under federal law, f) the interests and general welfare of the state.

4-4 Liability Settlement Authorities. Prior to settling a claim of $50,000 or more, the settlement authority shall consult with the head of the affected state agency to determine the appropriateness of the settlement. Settlement authorities are as follows:

a) claims adjusters -- claims of $5,000 of less;

b) claims manager of the division -- claims of $25,000 or less;

c) state risk manager -- claims of $50,000 or less;

d) executive director of the Department of Administration -- claims of $100,000 or less;

e) the claims board -- $100,000 or more not to exceed the maximum liability limits of the Governmental Immunity Act.

4-5 Property Claims Settlement Authority. State property claims may be settled by the Executive Director, Department of Administration, or his designee, to the extent that funds are available in the self-insured property fund. If funds are not available in the self-insured property fund the Department of Administration will seek a special appropriation from the State Legislature.

CHAPTER V - LEGAL DEFENSE AND CONTRACT SERVICES

5-1 The Attorney General. The attorney general will defend suits filed against the state. The executive director of the Department of Administration will, if necessary, after consultation with and concurrence of the Department of Law, have the defense of suits referred to outside counsel under contract with the Department of Administration.

5-2 Consultation. In anticipation of litigation during the processing of claims through investigation, adjustment, settlement, and in the legal defense of a suit, there will be consultation between the Risk Management Division and the attorney general's office and, when appropriate, an attorney or firm under contract, on claims that may result in lawsuits against the state.

5-3 Claims file. Upon filing of a lawsuit or when a suit appears likely, the claims file including investigation materials shall be made immediately available to the assigned attorney.

5-4 Cooperation of state agencies and employees. The involved state agency and state employee shall cooperate in and participate as needed in the conduct of lawsuits.

5-5 Exchange of information. The attorney general or assigned contract lawyer or-firm will keep the Division of Risk Management, settlement authority, and agency informed of the status of the suit and positions taken in defense of the state.

5-6 Contract Services. Contractors providing legal, adjusting, and other services shall timely provide reports as requested and as provided for by contract.

5-7 Complaints. If complaints are received by the Risk Management Division on the adequacy of contracted for services, the risk manager shall review such complaints and take appropriate action as authorized under the act or under terms of the contract.

CHAPTER VI - ADMINISTRATION OF PROGRAMS

6-1 Comprehensive Risk Management Program. A comprehensive risk management program shall be developed which shall include:

a) a program identifying property and liability losses, insurance costs, and administrative costs of risk management incurred by each state agency;

b) a program to reduce property and liability losses incurred by each state agency;

~~c) a program of inspection of state property; d) activities of authorized volunteers.~~

~~6-2 Agency Risk Management Coordinator. Each agency shall appoint a risk management coordinator to assist the risk manager's implementation and coordination of programs.~~

~~6-3 Training. The risk manager may require the agency coordinator to attend or participate in training necessary to carry out this function.~~

~~6-4 Agency Reporting. State agencies may be required to report to the Division of Risk Management on matters including but not limited to:~~

~~a) insurance costs;~~

~~b) property and liability losses;~~

~~c) administrative costs.~~

~~Such reporting shall be in the form, of such content, and within a reasonable time frame as established by the Division of Risk Management. Such time frame will be adequate to allow for necessary investigation, adjustment, and settlement of claims, which may require immediate reporting where the potential loss, nature of the evidence or other circumstance necessitate such action.~~

~~6-5 Reduction of losses. State agencies shall report to the risk manager on losses, potential claims, and foreseeable losses. Agencies shall consult with the risk manager on methods by which losses and liabilities can be reduced. The risk manager or his agents may investigate circumstances and facts of reported or known incidents.~~

~~6-6 Inspection of property. The risk manager may require agencies to inspect property and report periodically on the results of such inspections. The risk manager or his agents may inspect state property.~~

CHAPTER ~~VI~~I - HIGHER EDUCATION EXEMPTION FROM RISK MANAGEMENT PROGRAM

~~7~~1-1 The rules in this chapter apply to services provided pursuant to C.R.S. 24-30-1501 through C.R.S. 24-30-1520 (Part 15).

~~7~~1-2 Risk Management Program. The Risk Management Program is a single program including three service areas: property, liability and workers' compensation. Any higher education governing board electing to be excluded from the Risk Management Program any institution, pursuant to House Bill 04-1009, C.R.S. 24-30-1502(5), as amended, must opt out of all three services as to such institution. Each institution excluded from the Risk Management Program shall assume, or adequately provide for, all liability for claims payments payable on and after the effective date of the-opt out (i.e., both prospective and tail claims liability).

A. Program Waiver. At the sole discretion of the Executive Director of the Department of Personnel & Administration (DPA), the Executive Director may grant a temporary program waiver allowing any institution of higher education to continue to receive services in one or more of the three service areas (property, liability or workers compensation). If a program waiver is granted, the institution of higher education must assume, or adequately provide for, all remaining services by the following July 1st , unless a subsequent waiver is granted.

B. Claims Liability Waiver. Unless the Executive Director grants a claims waiver as to portions of the entire claims liability, any institution of higher education opting out shall assume, or adequately provide for, all liability for claims payments payable on and after the effective date of the opt out (i.e., both prospective and tail claims liability) as to each service area removed.

C. Criteria. In granting a waiver, the Executive Director may consider any or all of the following criteria: in consultation with the Office of State Planning and Budgeting (OSPB), the ability of remaining agencies to make the necessary budget adjustment; implications to risk management, contractual obligations; and any other factors the Executive Director deems relevant.

~~7~~1-3 If either a program waiver or a claims waiver is requested, an actuarial analysis of claim history, payments, and reserves is required.

A. The cost of the actuarial analysis will be shared equally between DPA and the institution of higher education seeking to be excluded from the Risk Management Program. Selection of the actuary is at the sole discretion of the Executive Director.

B. The Executive Director will determine the amount of excess allocations, if any, that may be due to the institution of higher education for the tail claims liability.

~~7~~1-4 A. The effective date of the exclusion from the Risk Management Program shall be July 1 following written notice as provided below. Written notice must be received by the Executive Director of the DPA not later than 12 months prior to the effective date, and must provide a copy of the governing board decision. In order to ensure an orderly process consistent with budgetary and appropriation requirements, the written notice shall include an explanation of how the higher education institution intends to assume responsibility for, or adequately provide for, liabilities; if not already provided, a copy of the written report required by C.R.S. 24-30-1503.5(2) that sets forth the analysis of the higher education institution's ability to provide worker's compensation services, estimated property and liability losses; insurance costs and administrative costs of risk management that they expect to incur.

B. Notice Waiver. At the discretion of the Executive Director of the DPA, the Executive Director may grant a waiver of the 12 months written notice requirement allowing any institution of higher education to provide less than 12 months written notice.

In granting a notice waiver, the Executive Director may consider any or all of the following criteria: in consultation with the Office of State Planning and Budgeting (OSBP), the ability of remaining agencies to make the necessary budget adjustments; implications to risk management; contractual obligations; and any other factors the Executive Director deems relevant.

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~~7-5~~ A copy of the report required by C.R.S. 24-30-1503.5(2) shall be provided to the Executive Director at the same time it is provided to the General Assembly.

(Effective December 1, 2004; Adopted September 21, 2004.)