



Adopted: March 5, 1993
Amended: October 2, 1998
Amended: October 6, 2006
Amended: March 6, 2009

MEMORANDUM OF UNDERSTANDING EXCESS LIABILITY PROGRAM

This Memorandum of Understanding is entered into by and between Public Risk Innovation, Solutions, and Management (hereinafter referred to as "PRISM") and the participating members who are signatories to this Memorandum.

1. **JOINT POWERS AGREEMENT.** Except as otherwise provided, all terms used herein shall be as defined in Article 1 of Joint Powers Agreement Creating PRISM (hereinafter referred to as "Agreement"), provisions of any applicable coverage agreement and all other provisions of the Agreement not in conflict with this Memorandum shall be applicable.

2. **ANNUAL PREMIUM.** The participating members, in accordance with the provisions of Article 14(b)(2) of the Agreement, shall be assessed an annual premium for the purpose of funding the Program. Annual premiums shall include the participating member's share of expected losses for the policy period, including Incurred But Not Reported (IBNR) losses, as well as margin for contingencies based upon a confidence level as determined by the Board of Directors of PRISM (hereinafter Board), and adjustments, if any, for a surplus or deficit from all program policy periods. In addition, the premium shall include program reinsurance costs and program administrative costs, plus PRISM's general expense allocated to the Program by the Board for the next policy period.

3. **COST ALLOCATION.** Each participating member's share of annual premium shall be determined pursuant to a cost allocation plan as described in Article 14(b)(2) of the Agreement. The Board approved cost allocation plan is attached hereto as Exhibit A and may be amended from time to time by an affirmative vote of the majority of the Board representing the members participating in the Program.

4. **DIVIDENDS AND ASSESSMENTS.** The Program shall be funded in accordance with paragraph 2 above. As a general rule, the annual premium, as determined by the Board, shall be established at a level which shall provide adequate overall funding without the need for adjustments to past policy period(s) in the form of dividends and assessments. Should the Program for any reason not be adequately funded, except as otherwise provided herein, pro-rata assessments to the participating members may be utilized to ensure the approved funding level for those policy periods individually or for a block of policy periods, in accordance with the provisions of Article 14(b)(3) of the Agreement. Pro-rata dividends shall be declared as provided herein. Dividends may also be declared as deemed appropriate by the Board.

5. **CLOSURE OF POLICY PERIODS.** Notwithstanding any other provision of this Memorandum, the following provisions are applicable:

- (a) Upon reaching ten (10) years of maturity after the end of a program period, that period shall be “closed” and there shall be no further dividends declared or assessments made with respect to those program periods, except as set forth in paragraph 6(a), below;
- (b) Notwithstanding subparagraph (a) above, the Board may take action to leave a policy period “open” even though it may otherwise qualify for closure. In addition, the last ten (10) policy periods shall always remain “open” unless the Board takes specific action to declare any of the last ten (10) policy periods closed.
- (c) Dividends and assessments, other than those set forth in paragraph 6(a) below, shall be administered to the participating members based upon the proportion of premiums paid to the Program in “open” periods only. For purposes of administering dividends and assessments pursuant to this subparagraph, all “open” policy periods shall be considered as one block. New members to the Program shall become eligible for dividends and assessments upon participating in the Program for three (3) consecutive policy periods (not less than twenty-four (24) months). Participating members who withdraw from the Program prior to the three (3) year policy period restriction are still eligible for any assessments that arose out of the policy years they participated in the Program.

6. **DECLARATION OF DIVIDENDS.** Dividends shall be payable from the Program to a participating member in accordance with its proportionate funding to the Program during all “open” policy periods except as follows:

- (a) A dividend shall be declared at the time a program period is closed on all amounts, which represent premium surcharge amounts assessed pursuant to Article 14(b)(3) of the Agreement where the funding exceeds the 80% confidence level. This dividend shall be distributed based upon each member’s proportionate share of assessment paid and accrued to the policy period being closed.

7. **MEMORANDUM OF COVERAGE.** A Memorandum of Coverage shall be issued by PRISM evidencing membership in the Program and setting forth terms and conditions of coverage.

8. **CLAIMS ADMINISTRATION.** Each participating member shall comply with PRISM’s Underwriting and Claims Administration Standards (including Addendum B - Liability Claims Administration Guidelines) as amended from time-to-time, and which are attached hereto as Exhibit B and incorporated herein.

9. **LATE PAYMENTS.** Notwithstanding any other provision to the contrary regarding late payment of invoices or cancellation from a Program, at the discretion of the Executive

Committee, any member that fails to pay an invoice when due may be given a ten (10) day written notice of cancellation.

10. **RESOLUTIONS OF DISPUTES.** Any question or dispute with respect to the rights and obligations of the parties to this Memorandum regarding coverage shall be determined in accordance with the Joint Powers Agreement Article 31, Dispute Resolution.

11. **AMENDMENT.** This Memorandum may be amended by a two-thirds vote of the Board and signature on the Memorandum by the member's designated representative who shall have authority to execute this Memorandum. Should a member of the Program fail to execute any amendment to this Memorandum within the time provided by the Board, the member shall be deemed to have withdrawn as of the end of the policy period.

12. **COMPLETE AGREEMENT.** Except as otherwise provided herein, this Memorandum constitutes the full and complete agreement of the members.

13. **SEVERABILITY.** Should any provision of this Memorandum be judicially determined to be void or unenforceable such determination shall not affect any remaining provision.

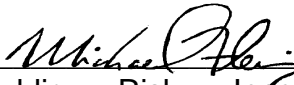
14. **EFFECTIVE DATE.** This Memorandum shall become effective on the effective date of coverage for the member and upon approval by the Board of any amendment, whichever is later.

15. **EXECUTION IN COUNTERPARTS.** This Memorandum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

In Witness Hereof, the undersigned have executed this Memorandum as of the date set forth below:

Dated: 3/6/2009

Management



Public Risk Innovation, Solutions, and

Dated: _____

Name

Member Entity: _____



EXHIBIT A

EXCESS LIABILITY PROGRAM COST ALLOCATION PLAN

As delegated by the Board of Directors, the Executive Committee will determine the specific allocation of all costs among the members subject to the following parameters:

Actuarial Analysis

An annual actuarial analysis will be performed using loss and exposure data collected from the members. The analysis will determine the necessary funding rates at various confidence levels and using various discount assumptions. Different rates may be developed for different groups or classes of business as is deemed necessary or appropriate by the Executive Committee. At the March Board meeting, the Board of Directors will select the funding level rates and discount factors to be used based upon the actuarial analysis and recommendations from the actuary, the Underwriting Committee, and the Executive Committee.

Pool Contributions

The total needed pool contribution will be determined by multiplying the rates described above by the exposure for all of the members participating in the Pool. For schools, the exposure base will be the reported Average Daily Attendance (ADA). For all other members, the exposure base will be estimated payroll for the year being funded. The Executive Committee may break the Pool into different layers for allocation purposes, and may apply a different loss experience modification for each layer as is deemed appropriate based on loss frequency. In general, the lower layers will be subject to greater experience modification and the higher layers will be subject to lower experience modification or no experience modification. Within the layers, the larger members will be subject to greater experience modification than the smaller members. After the experience modification has been applied for each layer, there will be a pro-rata adjustment back to the total needed pool contribution.

Reinsurance Premiums

The reinsurance premium will be determined through negotiations with the reinsurer(s) and approved by the Board upon recommendation of the Underwriting and Executive Committees. This premium will then be allocated among the members based upon their exposure (ADA or estimated payroll).

PRISM Administration Fees

The total PRISM Administration Fees will be determined through the annual budgeting process with an appropriate amount allocated to the Excess Liability Program. These fees will be allocated among the members as determined by

the Executive Committee. In general, the basis for this allocation will be each member's percentage of the total Pool contributions and reinsurance premium.

Deviation From the Standard

The Executive Committee may establish policies to deviate from the standard allocation methodology selected for each year on a case-by-case basis, if necessary. They may also elect to further delegate some or all of the decision making herein to the Underwriting Committee.



Adopted: December 6, 1985
Last Amended: July 1, 2019

EXHIBIT A

PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM) UNDERWRITING AND CLAIMS ADMINISTRATION STANDARDS

I. GENERAL

- A. Each Member shall appoint an official or employee of the Member to be responsible for the risk management function and to serve as a liaison between the Member and PRISM for all matters relating to risk management.
- B. Each Member shall maintain a loss prevention program and shall consider and act upon all recommendations of PRISM concerning the reduction of unsafe conditions.

II. EXCESS WORKERS' COMPENSATION PROGRAM

- A. Members of the Excess Workers' Compensation Program, except those members of the Primary Workers' Compensation Program whose responsibilities are outlined in Section IV below, shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member.
 - 1. The Member shall use only qualified personnel to administer its workers' compensation claims. At least one person in the claims office (whether in-house or outside administrator) shall be certified by the State of California as a qualified administrator of self-insured workers' compensation plans.
 - 2. Qualified defense counsel experienced in workers' compensation law and practice shall handle litigated claims. Members are encouraged to utilize attorneys who have the designation "Certified Workers' Compensation Specialist, the State Bar of California, Board of Legal Specialization".
 - 3. The Member shall use PRISM's Workers' Compensation Claims Administration Standards (Addendum A) and shall advise its claims administrator that these standards are utilized in PRISM's workers' compensation claims audits.
- B. The Member shall provide PRISM written notice of any potential excess workers' compensation claims in accordance with the requirements of PRISM's Bylaws. Updates on such claims shall be provided pursuant to the reporting provisions of PRISM's Workers'

Compensation Claims Administration Standards (Addendum A) or as requested by PRISM and/or PRISM's excess carrier.

- C. A claims administration audit utilizing PRISM's Workers' Compensation Claims Administration Standards (Addendum A) shall be performed once every two (2) years. In addition, an audit will be performed within twelve (12) months of any of the following events:
1. There is an unusual fluctuation in the Member's claim experience or number of large claims, or
 2. There is a change of workers' compensation claims administration firms, or
 3. The Member is a new member of the Excess Workers' Compensation Program.

The claims audit shall be performed by a firm selected by PRISM unless an exception is approved. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be provided to PRISM within sixty (60) days of receipt of the audit.

- D. Each Member shall maintain records of claims in each category of coverage (i.e. indemnity, medical, expense) or as defined by PRISM and shall provide such records to PRISM as directed by the Board of Directors, Claims Review Committee, Underwriting Committee, or Executive Committee. Such records shall include both open and closed claims, allocated expenses, and shall not be capped by the Member's self-insured retention.
- E. The Member shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Member should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.

III. GENERAL LIABILITY PROGRAMS

- A. Members of the General Liability 1 or General Liability 2 Programs, except those members of the Deductible Buy-Down Program whose responsibilities are outlined in Section V below, shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member.
1. The Member shall use only qualified personnel to administer its liability claims.

2. Qualified defense counsel experienced in tort liability law shall handle litigated claims. Members are encouraged to utilize defense counsel experienced in the subject at issue in the litigation.
 3. The Member shall use the Liability Claims Administration Standards (Addendum B) and shall advise its claims administrator that these standards are utilized in PRISM's liability claims audits.
- B. The Member shall provide PRISM written notice of any potential excess liability claim in accordance with the requirements of PRISM's Bylaws. Updates on such claims shall be provided pursuant to the reporting provisions of PRISM's Liability Claims Administration Standards (Addendum B) or as requested by PRISM and/or PRISM's excess carrier.
- C. A claims administration audit utilizing PRISM's Liability Claims Administration Standards (Addendum B) shall be performed once every two (2) years. In addition, an audit will be performed within twelve (12) months of any of the following events:
1. There is an unusual fluctuation in the Member's claims experience or number of large claims, or
 2. There is a change of liability claims administration firms, or
 3. The Member is a new member of the General Liability 1 or General Liability 2 Program.

The claims audit shall be performed by a firm selected by PRISM unless an exception is approved. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be provided to PRISM within sixty (60) days of receipt of the audit.

- D. Each Member shall maintain records of claims in each category of coverage (i.e. bodily injury, property damage, expense) or as defined by PRISM and shall provide such records to PRISM as directed by the Board of Directors or applicable committee. Such records shall include open and closed claims, allocated expenses, and shall not be capped by the Member's self-insured retention.
- E. The Member shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Member should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.

IV. PRIMARY WORKERS' COMPENSATION PROGRAM

- A. Members of the Primary Workers' Compensation Program shall provide the third party administrator written notice of any claim in accordance with the requirements of PRISM. Members must also cooperate with the third party administrator in providing all necessary information in order for claims to be administered appropriately.
- B. PRISM shall be responsible for ensuring qualified personnel administer claims in the Primary Workers' Compensation Program and that claims are administered in accordance with PRISM's Workers' Compensation Claims Administration Standards (Addendum A).
- C. PRISM shall be responsible for ensuring a claims administration audit utilizing PRISM's Workers' Compensation Claims Administration Standards (Addendum A) is performed once every two (2) years.
- D. PRISM shall be responsible for obtaining an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) annually.

V. DEDUCTIBLE BUY-DOWN PROGRAM

- A. Members of the Deductible Buy-Down Program shall provide the third party administrator written notice of any claim or incident in accordance with the requirements of PRISM. Members must also cooperate with the third party administrator in providing all necessary information in order for claims to be administered appropriately.
- B. PRISM shall be responsible for ensuring qualified personnel administer claims in the Deductible Buy-Down Program and that claims are administered in accordance with PRISM's Liability Claims Administration Standards (Addendum B).
- C. PRISM shall be responsible for ensuring a claims administration audit utilizing PRISM's Liability Claims Administration Standards (Addendum B) is performed once every two (2) years.
- D. PRISM shall be responsible for obtaining an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) annually.

VI. PROPERTY PROGRAM

- A. Members of the Property Program shall maintain appropriate records including a complete list of insured locations and schedule of values pertaining to all real property. Such records shall be provided to PRISM or its brokers as requested by the Executive or Property Committees.

- B. Each Member shall perform a real property replacement valuation for all locations over \$250,000. Valuations shall be equivalent to the Marshall Swift system and shall be performed at least once every five (5) years for all locations over \$1,000,000 and at least once every ten (10) years for all locations with a valuation between \$250,000 and \$1,000,000. New members shall have an appraisal or valuation performed within one year from entry into the Program.

VII. MEDICAL MALPRACTICE PROGRAM

A. Program I

1. Members of Medical Malpractice Program I (hereinafter Program I) shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member.
 - a. Members of Program I shall use only qualified personnel to administer its health facility claims.
 - b. Qualified defense counsel experienced in health facility law shall handle litigated claims.
 - c. Members of Program I shall use the "Claims Reporting and Handling Guidelines" in the PRISM Medical Malpractice Program Operating and Guidelines Manual (hereinafter Operating and Guidelines Manual), and shall advise its claims administrator that these claims handling guidelines are utilized in PRISM's medical malpractice claims audits.
2. Members of Program I shall provide PRISM written notice of any potential excess claim or "major incident" in accordance with the requirements of PRISM and of the excess carrier as stated in the Operating and Guidelines Manual. Updates on such claims or major incidents shall be provided as requested by PRISM.
3. A claims administration audit utilizing PRISM's Claims Reporting and Handling Guidelines in the Operating and Guidelines Manual shall be performed once every three (3) years. In addition, an audit will be performed within twelve (12) months of any of the following events:
 - a. There is an unusual fluctuation in the Member's claims experience or number of large claims, or
 - b. There is a change of health facility claims administration firms, or

- c. The Member is a new member of the Medical Malpractice Program, or
 - d. The Medical Malpractice Committee requests an audit. The claims audit shall be performed by a firm(s) selected by PRISM. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be provided to PRISM within sixty (60) days of receipt of the audit.
- 4. Each Member shall maintain records of claims in each category of coverage (i.e. bodily injury, property damage, expense) or as defined by PRISM and shall provide such records to PRISM as directed by the Board of Directors or applicable committee. Such records shall include open and closed claims, allocated expenses, and shall not be capped by the Member's self-insured retention.
 - 5. Members of Program I shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Member should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.
 - 6. The Member shall have an effective risk management program in accordance with the "Risk Management Guidelines" as stated in the Operating and Guidelines Manual.

B. Program II

- 1. For Medical Malpractice Program II (hereinafter Program II) Members, PRISM shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member. PRISM may contract with a third party administrator for handling of such claims.
- 2. PRISM shall be responsible for ensuring the third party administrator uses qualified personnel to administer Program II claims.
- 3. PRISM shall be responsible for ensuring qualified defense counsel experienced in health facility law shall handle litigated claims.
- 4. PRISM shall be responsible for ensuring a claims administration audit utilizing PRISM's Claims Reporting and Handling Guidelines in the Operating and Guidelines Manual shall be performed once every two (2) years.

The claims audit shall be performed by a firm(s) selected by PRISM. Recommendations made in the claims audit shall be addressed by the third party administrator and a written response outlining a program for corrective action shall be provided to PRISM within sixty (60) days of receipt of the audit.

5. PRISM shall be responsible for obtaining an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) annually.
6. The Member shall have an effective risk management program in accordance with the "Risk Management Guidelines" as stated in the Operating and Guidelines Manual.

VIII. SANCTIONS

- A. PRISM shall provide the Member written notification of the Member's failure to meet any of the above-mentioned standards or of other concerns, which affect or could affect PRISM.
- B. The Member shall provide a written response outlining a program for corrective action within sixty (60) days of receipt of PRISM's notification.
- C. After approval by the Executive or applicable Program Committee of the Member's corrective program, the Member shall implement the approved program within ninety (90) days. The Member may request an additional sixty (60) days from the Executive or applicable Program Committee. Further requests for extensions shall be referred to the Board of Directors.
- D. Failure to comply with subsections B or C may result in cancellation of the Member from the affected PRISM Program in accordance with the provisions in the Joint Powers Agreement.
- E. Notwithstanding any other provision herein, any Member may be canceled pursuant to the provision of the Joint Powers Agreement.



ADDENDUM B LIABILITY CLAIMS ADMINISTRATION STANDARDS

The following Standards have been adopted by Public Risk Innovation, Solutions, and Management (hereinafter PRISM) in accordance with Article 18(b) of the PRISM Joint Powers Agreement. It is the intent that these standards shall be followed by the Member and/or third party administrator.

I. CLAIMS INVESTIGATION

- A. Complete initial investigation answering questions such as who, what, where, when and why. Investigations shall be completed within forty-five (45) days of the Member's knowledge of claim, including statements from participants and witnesses, appropriate official reports, investigative reports, site inspections, relevant documents and photos/videos.
- B. Identify liability issues, including immunities, comparative negligence, joint tortfeasors and joint and several liability.
- C. Initiate the development of information on damages including, but not limited to:
 - 1. Property damage
 - 2. Nature and extent of injuries
 - 3. Medical costs (billed and paid)
 - 4. Lost wages (past and future)
 - 5. Other economic damages
 - 6. Non-economic damages
- D. Obtain and review relevant contracts and insurance documents, to determine whether there is any sharing or complete transfer of the risk.
 - 1. Hold-harmless and/or indemnity agreements
 - 2. Additional insured requirements
- E. Ensure proper preservation of evidence.
- F. Evaluate the need to utilize experts.
- G. Indexing.

1. All bodily injury claims shall be initially reported to the Index Bureau and re-indexed on an as needed basis thereafter.

PRISM maintains a membership with the Index Bureau that members can access.

- H. Secure estimates or appraisals for damaged property.
- I. All notices (pertaining to claim insufficiency, returning late claims, claims rejections, etc.) shall be done in accordance with the relevant Governmental Code provisions.

II. PRISM REPORTING REQUIREMENTS

A. First Report

The Member shall give PRISM immediate written notice for any claims or suits which the Member becomes aware of that include injury of the following types:

- a. Death
- b. Paralysis, paraplegia, quadriplegia
- c. Loss of eye(s), or limbs
- d. Spinal cord or brain injury
- e. Dismemberment or amputation
- f. Sensory organ or nerve injury or neurological deficit
- g. Serious burns
- h. Severe scarring
- i. Sexual assault or battery including but not limited to rape, molestation or sexual abuse
- j. Substantial disability or disfigurement
- k. Any class action
- l. Any claim or suit in which PRISM is named as a defendant; or
- m. Any injury caused by lead.

Additionally, the covered party must report to PRISM an occurrence, offense, or wrongful act as follows:

As respect to the General Liability 1 Program members, this includes any occurrence, offense, or wrongful act in which the amount incurred has reached fifty (50) percent or more of their individual self- insured retention or \$500,000, whichever is lower.

As respect to the General Liability 2 Program members, this includes any occurrence, offense, or wrongful act in which the amount incurred

has reached fifty (50) percent of their individual self-insured retention.

These reporting requirements are intended to be consistent with the requirements in the current year Memorandum of Coverage (MOC). Reporting requirements specific to a loss outside the current MOC year should be verified through the MOC effective for that loss year.

Utilize the current First Report Potential Excess Liability Claims form, available through PRISM's website, and transmit to PRISM by email to liabilityclaims@csac-eia.org.

First report forms shall, at a minimum, include the following:

- Entity name
- Entity's claim number
- Defense counsel's name and firm name
- Lead Claimant's first and last name
- Specific date of loss
- Brief description of the incident
- Established reserves for indemnity, litigation, and expense

B. Status Reports

After the First Report to PRISM, status reports, whether provided by the Member, third party administrator or defense counsel, shall be provided at a minimum of every ninety (90) days (more frequently if warranted). Status reports shall focus on changes in liability analysis, damages, and reserves.

C. Photos, diagrams, estimates, statements, contracts, medical, law enforcement and coroner's reports (where applicable), claim forms, lawsuits (including amended complaints), motions for summary judgment, demurrers, dismissals, appellate briefs and orders/rulings/judgments shall be in the claims file, and provided to PRISM, within ninety (90) days of receipt of the material.

D. Closure Reports

When a claim or suit that has been reported to PRISM is settled, dismissed or closed in any other fashion, PRISM shall be provided with the closing documents and an accounting of the final paid amounts on the exposure for indemnity, litigation, and expense within 90 days from the day the final defense bill is paid.

III. MEDICARE REPORTING

A. Proper verification of a claimant's status as to Medicare eligibility shall be

completed and documented in every file involving a bodily injury. In those cases where the claimant does meet the eligibility requirements, mandatory reporting to the Center for Medicare and Medicaid Services (CMS) must be completed directly or through a reporting agent in compliance with State Children's Health Insurance Program (SCHIP) Section 111 of the Medicare Medicaid and SCHIP Extension Act of 2007.

IV. RESERVING

Each claim should be reviewed and evaluated according to the merits of the claim and based upon the most current and reliable information received, starting with the initial report of claim and continuing through final resolution. Delays result in understated reserves and, possibly, missed opportunities to settle.

- A. An accurate and appropriate initial indemnity reserve shall be established on all reportable claims based on facts known, upon completion of the initial investigative report or when suit is filed, whichever occurs first. In addition, separate legal and adjusting reserves shall be established.

Indemnity reserves shall reflect the most probable outcome plus exposure to plaintiff attorney's fees and costs.

Most probable outcome is the potential total amount a plaintiff could expect to receive, either through settlement or verdict, after factoring in the Member's percentage of liability. (This approach is neither the best or worst case outcome).

Factors to consider for when evaluating the potential total settlement or verdict a plaintiff could expect to receive include but are not limited to:

- Extent of injuries and/or damages
- Medical expenses
- Loss of income
- Any other related expenses
- Future anticipated expenses
- Total of both gross and out-of-pocket expenses
- Permanent injury
- Disfigurement/scarring
- Pain and suffering
- Any other intangible factors which may result in a higher or lower claim value such as jurisdiction, credibility of parties/witnesses, etc.

Percentage of liability is determined by various factors that are discovered during an investigation. Reserves shall be adjusted accordingly, as facts are developed, to properly reflect the exposure. These factors include but are not limited to:

- a. Facts of loss
 - b. Applicable laws
 - c. Defense Counsel evaluations
 - d. Jury Verdict evaluation
 - e. The extent of plaintiff's liability (comparative negligence)
 - f. The number of co-defendants and their percentage of liability
 - g. The ability of the co-defendants to respond financially to any settlement or verdict.
 - h. On cases occurring after June 3, 1986, Proposition 51 allows defendants to limit their liability on non-economic damages to their percentage of fault.
 - i. On cases involving uninsured motorist claimants the recovery is limited to economic damages in accordance with California Code of Civil Procedures sections 3333.3 and 3333.4 (Prop 213).
 - j. Any other mitigating factors
2. Reserves shall be set at the most probable outcome even if it exceeds the Member's Self-Insured Retention. In all litigated Excess reportable cases, the Member shall set a meaningful indemnity reserve.
3. Reserves shall be evaluated for adequacy at least every ninety (90) days. All reserve changes shall be documented in a paper or electronic file providing explanation of the reason for the reserve change or notation that the current reserve is adequate and why. PRISM shall be notified of all reserve changes within thirty (30) days of the change being made.

V. DOCUMENTATION

- A. Each file shall contain information necessary to document the decisions made, including all demands, offers of settlement and settlement authority.

For those cases in which the (1) Bodily Injury claims reserved above twenty-five (25) percent of the S.I.R., (2) Property Damage claims reserved above twenty-five (25) percent of the S.I.R., and (3) All claims that meet PRISM's excess reporting requirements regardless of reserves, the following information shall be contained in each file:

- 1. Claimant(s) Information
- 2. Date of Loss
- 3. Claim Number
- 4. Facts of accident or occurrence
- 5. Witness/Participant Statement
- 6. Reserve rationale
- 7. Assessment of liability
- 8. Damages/injuries, including medical costs, lost wages, dependency,

- property damage estimates, total loss evaluations, loss of use claims, and other damages
- 9. Index Bureau reporting
- 10. Coverage questions
- 11. Excess potential
- 12. Structured Settlement possibilities (where applicable)
- 13. Alternative Dispute Resolution
- 14. Subrogation potential (where applicable)
- 12. Governmental Code compliance and immunities
- 13. Future course of action
- 14. Next diary date
- 15. If litigated, identify counsel on both sides
- 16. Offsets or liens that may need to be considered
- 17. Medicare eligibility and reporting
- 18. Risk and insurance transfer

VI. CASE SETTLEMENT FACTORS

- A. Settlement evaluation and authority by the Member shall be documented. On cases exceeding the S.I.R., prior written settlement authority must be obtained from PRISM.
- B. The settlement shall be reasonable in light of damages, injuries, liability, and any obligations to Medicare.
- C. Settlements shall be effected in a timely manner, with consideration given to structures, statutory offers (Rule 68 or 998) where applicable, and/or alternative dispute resolution.
- D. Contributions from joint tortfeasors shall be considered.
- E. Proper releases and dismissals shall be secured and copies provided to PRISM.

VII. LITIGATED FILES

- A. Defense litigation plan shall be in the file.
- B. Defense attorney's initial evaluation and budget shall be completed and in the file within sixty (60) days of assignment. If the billed amount of attorney's fees and costs exceeds seventy-five (75) percent of the total budget, then the defense attorney shall provide an updated budget.
- C. On litigated cases, defense counsel shall also include PRISM on their mailing lists for copies of correspondence, reports, evaluations, interrogatory summaries, deposition summaries and medical summaries. Actual

deposition transcripts, interrogatories, their answers to interrogatories and interim billings are not required.

Updated reports shall provide a summary of pertinent information based on the status of a case. Pertinent information includes, but is not limited to:

- Identified experts – what their analysis has concluded, their credibility as a witness (both plaintiff and defense), and how their testimony will/will not influence the case potential.
- Witness deposition summaries including an evaluation of their credibility as a witness and how their testimony will/will not influence the case potential.
- A summary of relevant documents disclosed or obtained through discovery and an analysis of their impact on the case.
- A summary of applicable case law and immunities.
- Updated evaluation of damages including, but not limited to, billed and paid medical bills, estimated future medical expenses, past and future wage loss estimates, and general damage estimates.
- Analysis of liability and potential settlement/verdict value as well as suggested next steps (MSJ, Demurrer, Mediation, etc.).

- D. The defense attorney shall make proper follow-up requests for investigation.
- E. There shall be timely recommendations from defense firms regarding expert retention, settlements, and trial preparation.
- F. Defense costs shall be controlled by the Member. Depositions, retention of experts, expert costs, and other defense costs shall be approved by the Member.
- G. Litigation outcome and total costs shall be documented.
- H. There shall be timely notification to relevant employees and other parties regarding pending litigation.

No less than forty-five (45) days prior to trial, counsel shall provide a pre-trial report that discusses the following:

1. Case Summary
 - Plaintiff and any individual Defendants including counsel's opinion as to how each will be viewed by a jury

- List of claims
 - Summary of Facts
 - Expected percipient witness testimony
 - Expected Liability Expert Testimony
 - Critical Liability Issues
 - Summary of Special and General Damages including expected damage expert testimony
 - Summary of Punitive Damages and non-monetary relief requested (if applicable)
 - Attorneys' fees and costs estimate for claims that involve the potential award of attorneys' fees
2. Evaluation
- Potential Verdict Value
 - Comparative Fault Analysis
 - Settlement Discussion summary
 - Probability of Defense Verdict

Throughout trial, a daily trial status update shall be provided to PRISM by defense counsel, the Member, or the Third-Party Administrator. This can be informal, such as an email or voicemail advising of the day's activities, impressions of witnesses, any impacting developments, and an update regarding the next day's schedule.

- I. Appropriate Dismissal Motions shall be made for failure to meet the applicable Code of Civil Procedure statutes for timely serving, conducting discovery or bringing a complaint to trial.

VIII. SUMMARY

The file shall be completely documented.

Audits conducted by the PRISM Auditor shall measure whether performance is consistent with these standards.

Following is the history of amendments to this document:

Adopted: December 6, 1985
 Amended: January 23, 1987
 Amended: October 6, 1995
 Amended: October 1, 1999
 Amended: March 2, 2007
 Amended: March 5, 2010
 Amended: March 2, 2012
 Amended: June 1, 2012
 Amended: July 1, 2019