

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-010 Preamble and authority. These rules governing local government and nonprofit self-insurance transactions are adopted by the state risk manager to implement chapter 48.62 RCW relating to the management and operations of both individual and joint local government (~~(health and welfare benefit and)~~) property and liability self-insurance programs and nonprofit property and liability self-insurance programs.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-020 Definitions. (1) "Actuary" means any person who is (~~qualified under WAC 284-05-060 to provide actuarial services~~) a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program.

(3) (~~"Beneficiary" means any individual entitled to payment of all or part of a covered claim under a local government health and welfare self-insurance program.~~

~~(4))~~ "Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

(4) "Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint and individual self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

(5) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

~~((+5))~~ (6) "Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event (~~such as:~~

~~(a) For health and welfare benefits, a covered service or services being delivered; or~~

~~(b) For property and liability, the destruction or damage of property or related deaths or injuries.~~

~~Unless specifically referenced, the term "claim" is used for~~

~~both health and welfare and property and liability programs.~~

~~(6)) that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.~~

~~(7) "Claims auditor" means a person who has the following qualifications:~~

~~(a) A minimum of five years in claims management and investigative experience;~~

~~(b) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;~~

~~(c) Proof of professional liability insurance; and~~

~~(d) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.~~

~~(8) "Competitive process" means a ((documented formal process providing a fair and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the party's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.~~

~~(7) "Contribution" means the amount paid or payable by the employee into a health and welfare self-insurance program.~~

~~(8)) formal sealed, electronic, or web-based bid procedure used for all nonclaims related purchases for goods and services over fifty thousand dollars. For purchases between five thousand dollars and fifty thousand dollars, competitive process means quotations obtained from at least three vendors by telephone or written quotations, or both, and supported by evidence of competition. Purchases up to five thousand dollars are exempt from competitive bids providing procurement is based on obtaining maximum quality at minimum cost.~~

~~(9) "Competitive solicitation" means a documented formal process requiring sealed bids, providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.~~

~~(10) "Consultant" means an independent individual or firm contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.~~

~~(11) "Foundation agreement" means the interlocal agreement binding local government members or the contract binding nonprofit members to a joint self-insurance program.~~

(12) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(13) "Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the self-insurance program as of the date of the financial statement. IBNR claims include (a) known loss events that are expected to be presented later as claims, (b) unknown loss events that are expected to become claims, and (c) ((expected)) future development on claims already reported.

((+9)) (14) "Individual self-insurance program" means a formal program established and maintained by a local government entity to provide advance funding to self-insure ((health and welfare benefits or)) for property and liability risks on its own behalf as opposed to risk assumption, which means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

((+10)) (15) "Interlocal agreement" means an agreement established under the Interlocal Cooperation Act defined in chapter 39.34 RCW.

(16) "Joint self-insurance program" means any two or more local government entities, two or more nonprofit corporations or a combination of local government entities and nonprofit corporations which have entered into a cooperative risk sharing foundation agreement ((pursuant to the provisions of the Interlocal Cooperation Act (chapter 39.34 RCW) and/or)) subject to regulation under chapter 48.62 RCW.

((+11) "Liability for unpaid claims" means the amount needed to provide for the estimated ultimate cost of settling claims which have occurred on or before a particular date. The estimated liability includes the amount of money that will be needed for future payments on both claims which have been reported and IBNR claims.

(12) "Liability for unpaid claim adjustment expenses" means the amount needed to provide for the estimated ultimate costs required to investigate and settle claims for covered events that have occurred on or before a particular date, whether or not reported to the government entity or nonprofit corporation at that date.

((+13)) (17) "Jury verdict value" means the claim value established on an individual case basis by the entity's analysis of the jury verdict results within a jurisdiction in addition to other factors including, but not limited to, severity of injury or damage, length of recovery, credibility of parties and witnesses, ability of attorney, sympathy factors, degree of negligence of the parties and contribution or recovery from other sources.

(18) "Member" means a local government entity or nonprofit corporation that:

(a) Is a signatory to a joint insurance program's foundation

agreement;

(b) Agrees to future assessments or reassessments as part of the program's joint self-insurance program; and

(c) Is a past or present participant in ((a joint self-insurance)) the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 48.62 RCW.

~~((14))~~ (19) "Nonprofit corporation," as defined in RCW 24.03.005(3), means a corporation of which no part of the income ((of which)) is distributable to its members, directors or officers.

~~((15))~~ (20) "Primary assets" means cash and investments (less any nonclaims liabilities).

(21) "Reassessment" means additional moneys paid by the members to a joint self-insurance program.

(22) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of insurance or reinsurance as a member of a joint self-insurance program formed under chapter 48.62 RCW.

(23) "Secondary assets" means insurance receivables, real estate or other assets (less any nonclaims liabilities) the value of which can be independently verified by the state risk manager.

(24) "Self-insurance program" means any individual or joint ((local government entity or nonprofit corporation)) self-insurance program required by chapter 48.62 RCW to comply with this chapter.

~~((16))~~ (25) "Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of the pools excess or self-insured insurance programs.

~~(26) "Stop-loss insurance" means ((insurance against the risk of economic loss assumed under a self-insurance program.~~

~~(17)) a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.~~

(27) "Third-party administrator" means (:

~~(a) An) a independent association, agency, entity or enterprise which, through a contractual agreement ((is responsible for the overall operational and financial management of the self-insurance program; or~~

~~(b) An independent association, agency, entity or enterprise which, through a contractual agreement, provides a professional service for the analysis, design, implementation, or termination of a self-insurance program; or~~

~~(c) An independent association, agency, entity or enterprise which, through a contractual agreement, administers the claim payment process on behalf of a self-insurance program. Such claim administration process includes, but is not limited to, receiving requests for claim payments, investigation, verification and adjustment of the claim. Claim payment disbursement is also~~

considered an administrative process)), provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

(28) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

(29) "Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss and adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

NEW SECTION

WAC 82-60-02001 Standards for operation and management--Rules for individual self-insurance programs. Each individual self-insurance program that self-insures is exempt from the rules applicable to joint self-insurance programs. Individual self-insurance programs shall meet the following standards:

(1) The individual self-insurance program must notify the state risk manager of its existence or termination.

(2) The program may contract for claims handling and investigation services, or the program may choose to provide these services internally. In either case, the person responsible for the program shall establish sufficient contract monitoring and internal control procedures to provide adequate oversight over the claims handling and investigation process.

(3) The program shall establish standards requiring each claim be reserved for settlement, legal and loss adjustment expense. Settlement (indemnity) reserves shall be established by a reserving process which may include estimates of jury verdict value.

(4) The program shall establish claims reserving processes that include a periodic review of case reserves.

(5) The individual self-insurance program may obtain the services of an independent claims auditor to evaluate the claims handling procedures of its contractor or internal staff.

(6) The program may use the services of an actuary to determine the funding levels necessary to fund reserves restricted for payment of claims and related claims expenses.

NEW SECTION

WAC 82-60-02003 Standards for operation and management--Rules for joint self-insurance programs. The following rules apply exclusively to joint self-insurance programs. Individual programs shall be exempt from these requirements.

NEW SECTION

WAC 82-60-02005 Standards for operation--Membership. Membership in a joint self-insurance program requires the execution of a foundation agreement. Only members may participate in risk-sharing. Only members may participate in the self-insured retention layer, and only members may participate in the joint purchase of insurance or reinsurance. Further, each member shall agree to the following:

(1) Each member shall pay assessments and reassessments when required by the governing body of the program.

(2) Each member shall obtain approval to join the program from the governing body of the respective member. The approval shall be by resolution or ordinance of the governing body as appropriate for the entity type.

(3) Each member shall become a signatory to the foundation agreement and subsequent amendments to the foundation agreement of the joint self-insurance program.

NEW SECTION

WAC 82-60-02007 Standards for operation--Providing services to nonmembers. (1) Nonmembers may purchase services through an interlocal agreement as authorized by chapter 39.34 RCW. Nonmembers shall not participate in any coverages of the joint self-insurance program including the self-insured retention layer and the excess insurance or reinsurance layer. This section is not intended to preclude nonmembers purchasing services from becoming members of the joint self-insurance program, provided the nonmember meets the requirements of WAC 82-60-020(18) and is eligible for membership as authorized by RCW 48.62.021(1).

(2) A program intending to provide services to nonmembers shall submit a written plan to the state risk manager for approval prior to providing services. The plan shall include, at a minimum, the services to be provided, the time frame for providing such services, the expected revenues and expenditures resulting from providing said services, and a written legal determination of all

potential federal and state tax liabilities created by providing services to nonmembers. The arrangement to provide such services shall be approved in writing by the state risk manager within sixty days of the joint self-insurance program's final plan submission.

(3) Every joint self-insurance program providing services as of the effective date of these regulations must submit a written plan meeting the requirements stated herein.

NEW SECTION

WAC 82-60-02009 Standards for operation--Communication with members--Annual membership report. The joint self-insurance program shall make available to each member a copy of the program's annual membership report. The annual membership report shall include, at a minimum, financial information which includes the comparative balance sheet and statement of revenues, expenses and net assets. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership report on the official web site of the program for a minimum of three years from the date of publication.

NEW SECTION

WAC 82-60-02011 Standards for operations--Meetings. All joint self-insurance programs are subject to the requirements of the Open Public Meetings Act as described in chapter 42.30 RCW.

NEW SECTION

WAC 82-60-02013 Standards for operation--Notice of regular meetings of the governing body. Every joint self-insurance program shall provide every member with a notice of the time and place of each regular meeting of the governing body at least ten days prior to the meeting. The notice shall be delivered in electronic or paper form, and the time and location of each meeting shall be included in such notice. The state risk manager shall be provided a copy of all meeting notifications to members in the same form, manner and time as provided to members. In addition to electronic or regular mail, programs shall publish notification of regular

meetings on the electronic web site of the program accessible to the public. Notice of regular meetings shall comply with the meeting notification requirements of chapter 42.30 RCW or be published at least ten days in advance of regular meetings, whichever notification time is greater.

NEW SECTION

WAC 82-60-02015 Standards for operation--Special meetings--
Notice to members. All joint self-insurance programs shall comply with the requirements of RCW 42.30.080 in providing notification of special meetings. In addition, programs shall provide notice by electronic mail to the state risk manager and every member of the joint self-insurance program twenty-four hours in advance of every special meeting.

NEW SECTION

WAC 82-60-02017 Standards for operations--Meeting agendas--
Meeting minutes. Every joint self-insurance program will provide the state risk manager and every member with a preliminary agenda in advance of each meeting of the governing body. The agenda shall be delivered by electronic mail and shall be posted on the web site of the program accessible to the public. Meeting minutes, after approval, shall be provided to the state risk manager and every member of the program by electronic mail and shall be posted on the web site of the program accessible to the public.

NEW SECTION

WAC 82-60-02019 Standards for operation--Notification of changes to bylaws or foundation agreement. Every joint self-insurance program shall provide notification of the intent to change the bylaws or foundation agreement to each member of the joint self-insurance program and the state risk manager by regular or electronic mail at least thirty days in advance of the meeting during which a vote on the proposed change will occur. Such notification shall include a copy of proposed changes.

NEW SECTION

WAC 82-60-02021 Standards for operation--Changes to foundation agreement. (1) Changes to any terms of the foundation agreement shall be approved by a majority of the members, or by a greater majority if provided for in the bylaws or foundation agreement of the joint self-insurance program. Changes to the foundation agreement shall be approved during a regular meeting of the governing body or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. Each ballot shall be read orally as to the member name and vote, either in the affirmative or negative, and recorded in the meeting minutes.

(2) Amendments to the foundation agreement shall be adopted by ordinance or resolution of the governing board or council of each member. The signed amendment and copy of the ordinance or resolution, as appropriate, shall be retained by the joint self-insurance program. The foundation agreement and subsequent amendments shall be published on the electronic web site of the joint self-insurance program.

(3) Changes to any terms of the foundation agreement shall require amendment using the approval and adoption process described above.

(4) The addition of new members to a joint self-insurance program and/or the subscription of the foundation agreement by said new members shall not be considered as amendments to the foundation agreement.

NEW SECTION

WAC 82-60-02023 Standards for operation--Elections of the governing body. The governing body of every joint self-insurance program shall be elected by a majority of the members. Elections may be conducted during a regular meeting of the governing body or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. Each ballot shall be read orally as to the member name and vote and recorded in the meeting minutes.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-030 Standards for management and operation-- Adoption of program. ~~((1) All self-insurance programs shall provide that the governing body of the local government entity or nonprofit corporation establishing or maintaining a program adopt the self-insurance program by resolution or ordinance.)) The foundation agreement of a joint self-insurance program shall be adopted by resolution or ordinance by each participating member's governing body. The resolution or ordinance shall include, but not be limited to, ~~((funding and expenditure mechanisms.~~~~

~~(2) The interlocal agreement of a joint self-insurance program shall be adopted by resolution or ordinance by each participating member's governing body)) an acknowledgement that the entity shall be subject to assessments and reassessments as required by the joint self-insurance program. Copies of each resolution or ordinance shall be retained by the joint self-insurance program and available for inspection by the state risk manager. The foundation agreement, along with a list of members participating in the program, shall be published on the public web site of each joint self-insurance program. The foundation agreement and subsequent amendments shall be filed in accordance with requirements of chapter 39.34 RCW.~~

NEW SECTION

WAC 82-60-03001 Standards for solvency--Actuarially determined liabilities, program funding and liquidity requirements.

(1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides estimates of the unpaid claims measured at the expected and the seventy percent confidence level.

(2) The governing body of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the requirement to maintain sufficient primary assets shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The governing body of the joint self-insurance program shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the

seventy percent confidence level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the reserve requirements to maintain sufficient primary and secondary assets shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission. Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include the service of a cease and desist order upon the program.

(4) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, member equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the governing body and requirements for corrective plans.

(5) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial evaluation to determine the adequacy of reserves. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-033 Standards for management and operations--Individual rate setting--Nondiscrimination in joint program assessments. (1) Joint self-insurance program assessment formulas shall include all costs including rating for insured and self-insured layers of coverage. Assessment formulas shall be consistent and nondiscriminatory among ((new and existing)) all members. ((Joint self-insurance programs shall not engage in practices that set standard assessment rates lower for new members than those established for existing members.))

(2) This provision shall not be construed to prohibit individual choice of coverage by members from several offered by the joint self-insurance program. The assessment formula, including the insured and self-insured components, shall be consistently applied to reflect the selection from among these choices.

(3) The assessment formula shall be available for review by

the state risk manager.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-034 Standards for operations--Disclosures. ~~((1))~~ All health and welfare self-insurance programs shall furnish each employee or retiree covered by the program a written description of the benefits allowable under the program, together with:

- ~~(a)~~ Applicable restrictions, limitations, and exclusions;
- ~~(b)~~ The procedure for filing a claim for benefits;
- ~~(c)~~ The procedure for requesting an adjudication of disputes or appeals arising from beneficiaries regarding the payment or denial of any claim for benefits; and
- ~~(d)~~ A schedule of any direct monetary contributions toward the program financing required by the employee.

~~Such benefits or procedures shall not be amended without written notice to the covered employees and retirees at least thirty days in advance of the effective date of the change unless exigent circumstances can be demonstrated.~~

~~(2))~~ All joint self-insurance programs shall furnish to each member of the program written statements which describe:

~~((a) All))~~ (1) Insurance coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;

~~((b))~~ (2) The method by which ((members pay assessments)) members' (re)assessments are determined;

~~((c))~~ (3) The procedure for filing a claim against the joint self-insurance program; ((and

~~(d))~~ (4) The procedure for a member to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, membership, and other issues((=

~~Such statements shall not be amended without written notice to the members at least thirty days in advance of the effective date of the change)); and~~

(5) General characteristics of the insurance coverage portion of the program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-036 Standards for operations--Standards for solvency--Termination provisions. (1) Program terminations. All ~~((individual and joint health and welfare self-insurance programs~~

~~and all)) joint ((property and liability)) self-insurance programs shall maintain a written plan that provides for the partial or complete termination of the program and for liquidation of its assets upon termination of the program. The termination procedure shall include, but not be limited to, a provision for the settling of all its liabilities for unpaid claims and claim adjustment expenses.~~

(2) Member terminations. All joint self-insurance programs shall maintain a written plan that provides for the termination of membership of a member.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-037 Standards for management and operations--
Financial plans. (1) All joint self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;

(b) An investment policy which conforms to RCW 48.62.111 governing the investments of the program; and

(c) The preparation and submission of accurate and timely annual financial ~~((statements))~~ reports of the program as prescribed by the state auditor's office.

(d) The submission of audited financial statements to the state risk manager within one year of the program's fiscal year end which meet the requirements of the state risk manager as described in 82.60.060(3).

(2) No financial plan of a joint self-insurance program shall permit ~~((interfund))~~ loans to any member from primary assets held ~~((against liabilities for unpaid claims and claim adjustment expenses except for those amounts which are clearly inactive or in excess of liabilities for unpaid claims and claim adjustment expenses.~~

(3) No financial plan of a ~~joint self-insurance program shall permit loans from assets held against liabilities for unpaid claims and claim adjustment expenses to any member))~~ for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-038 Standards for management--Standards for contracts--Third-party administrator contracts. (~~(1)~~) Before contracting for third-party administrator professional services, all joint self-insurance programs shall establish and maintain written (~~standards and~~) procedures for contracting with third-party administrators. Entering a contract for services shall not relieve the (~~entity~~) governing body of the joint self-insurance program of its ultimate governing, managerial and financial responsibilities. The procedures shall, as a minimum:

(~~(a)~~) (1) Provide a method of third-party administrator selection using a formal competitive solicitation process;

(~~(b)~~) (2) Require a complete written description of the services to be provided, remuneration levels, (~~and~~) contract period and expiration date providing for a contract term no greater than five years. The contract may include an additional one year extension to be exercised at the discretion of the joint self-insurance program;

(~~(c)~~) (3) Provide for the confidentiality (~~and ownership~~) of the program's information, data and other intellectual property developed or shared during the course of the contract;

(~~(d)~~) (4) Provide for the program's ownership of the information, data, and other intellectual property developed or shared during the course of the contract;

(5) Provide for the expressed authorization of the joint self-insurance program, consultants to the program, the state auditor, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program; (~~and~~

~~(e)) (6) Require the compliance with all applicable local, state and federal laws (~~-~~~~

~~(2) None of the above shall otherwise relieve the entity from other contracting requirements imposed on those entities);~~

(7) Establish a monitoring and acceptance procedure to determine compliance with third-party administrator contract requirements; and

(8) Establish indemnification provisions and set forth insurance requirements between the parties.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-039 Standards for management and operations--Preparation for incorporation of nonprofit corporation members. Joint property and liability self-insurance programs whose members

are local government entities that are preparing to include nonprofit corporations as members of the program shall, as a minimum, address the following in their plan of operation:

(1) Amount of capitalization each nonprofit corporation will pay to become a member of the joint self-insurance program and criteria used to determine the capitalization amount;

(2) Self-insured retention level for nonprofit corporation members;

(3) ~~((Flexibility in premium assessment rates with emphasis on rates for nonprofit corporations that recognize the potential and actual loss experience of the nonprofit corporation;))~~ Legal determination of federal and state tax liabilities resulting from the inclusion of nonprofit members;

(4) Procedures for reviewing the financial soundness of each nonprofit corporation being considered for membership in the self-insurance program; and

(5) Representation of nonprofit corporations on the governing board of directors but local government entities must retain control as required by RCW 48.62.121 (2) (a).

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-040 Standards for operation and management--Risk management. ~~((Individual and))~~ All joint ((property and liability)) self-insurance programs shall have a written risk management program which ((addresses risk finance, loss control, risk avoidance and risk transfer)) includes, but is not limited to, loss control, loss prevention, training and evaluation of risk based on loss experience.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-050 Standards for claims management--Claims administration. (1) ~~((a))~~ All joint self-insurance programs shall ((have)) adopt a written claims administration program ~~((that contains))~~ which includes, as a minimum, ((claim)) the following procedures:

(a) Claims filing procedures ~~((, internal financial control mechanisms, and claim and claim adjustment expense reports.~~

~~((b) All individual and joint health and welfare self-insurance programs and all joint property and liability self-insurance programs shall have a written claim appeal procedure that contains,~~

~~as a minimum, a time limit for filing an appeal, a time limit for response, and a provision for a second level of review.~~

~~(2)(a) All self-insurance programs may contract for claims administration services with a qualified third-party administrator, provided all the requirements under subsection (1) of this section are included in the contract.~~

~~(b) Individual and joint property and liability self-insurance programs may perform claims administration services on their own behalf. Individual and joint health and welfare self-insurance programs may perform claims administration services on their own behalf, provided the state risk manager is supplied with documentation and a detailed written explanation in support of the self-insurance program's proposed claims administration activities. The documentation and proposal shall include, as a minimum, the following:~~

~~(i) The nature, type and anticipated volume of claims to be administered.~~

~~(ii) The number of employment positions established or to be established which are required to perform the self-insurance program's claim administration functions, including an organizational chart showing reporting responsibilities.~~

~~(iii) Qualifications of personnel having claim reserving and settlement authority.~~

~~(iv) A projection of expected claim administration expenses.~~

~~(3) All self-insurance programs shall have conducted by an independent qualified professional not currently performing claims administration services to the program, a review of claim reserving, adjusting and payment procedures no less than every three years. Such review shall be in writing and retained for a period not less than three years.) and forms.~~

(b) Standards requiring each claim be reserved for settlement, legal and loss adjustment expense. Indemnity (settlement) reserves shall be established by a reserving process which estimates the jury verdict value.

(c) Standards requiring case reserves be reviewed every ninety days or when reasonably practicable and such review is documented in the claims diary.

(d) Standards requiring appropriate adjuster work loads.

(e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.

(f) Standards requiring file documentation be complete and up-to-date.

(g) Standards requiring timely and appropriate claim resolution practices.

(h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.

(i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099MISC regulations.

(j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations,

file documentation, settlements, litigation management and subrogation.

(2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall have a written member coverage appeal procedure that contains, as a minimum, procedures for a member filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.

(4) All joint self-insurance programs shall maintain a ~~((dedicated claim account from which only))~~ financial system that identifies claim and claim adjustment expenses ~~((can be paid))~~.

(5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the governing body of the joint self-insurance program, avoid further damage, injury, or loss of use to a member or third-party claimant.

(6) All joint self-insurance programs shall maintain ~~((written))~~ claim ~~((and claim adjustment))~~ expense reports for all claims made against the joint self-insurance program and ~~((~~7~~ separate written reports for each individual))~~ its members.

(7) All joint self-insurance programs shall obtain an independent review of claim reserving, adjusting and payment procedures every three years at a minimum. Said audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the governing body and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-060 ((Financial)) Standards for management and operations--State risk manager reports. (1) Every ((individual and joint health and welfare self-insurance program and every)) joint property and liability self-insurance program authorized to transact business in the state of Washington shall ((record and annually report its revenue, claim and claim expense experience, and other data as required by the state risk manager. Multistate programs shall report both its Washington state revenues, claim and claim expense experience and other data required by)) submit the annual report to the state risk manager ((and its overall income, claim and claim expense experience)).

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form:

(a) Unaudited annual financial statements, including attestation, as provided to the state auditors office;

(b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the unaudited financial statements are based;

(c) Copies of all insurance coverage documents;

(d) List of contracted consultants;

(e) Details of changes in articles of incorporation, bylaws or foundation agreement;

(f) Details of services provided by contract to nonmembers;

(g) List of members added or terminated.

Such reports shall be submitted to the state risk manager no later than one hundred fifty days following the completion of the joint program's fiscal year.

((~~(2) All joint self-insurance programs authorized to transact business in the state of Washington shall submit quarterly financial reports to the state risk manager. Such reports shall be submitted to the state risk manager no later than sixty days following the completion of each of the program's four quarters within its fiscal year.~~)) (3) Audited financial statements shall be provided to the state risk manager within one year of the program's fiscal year end and comply with requirements for submission of audited financial statements established by the state risk manager.

(4) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(5) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

(a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;

(b) On-site monitoring by the state risk manager;

(c) Service of a cease and desist order upon the program.

NEW SECTION

WAC 82-60-065 Standards for operations--Program changes--Notification to the state risk manager. (1) All joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

- (a) Any change in the terms of the foundation agreement;
- (b) Elimination or reduction of stop loss insurance;
- (c) Acceptance of any loans or lines of credit;
- (d) Provision of services to nonmembers;
- (e) Addition of members of other entity types than those included in original application approved by state risk manager.

(2) The following program changes require written notification to the state risk manager prior to implementing the following changes:

- (a) Increases in retention level;
- (b) Decrease or elimination of insurance limits;
- (c) Initial contract with a third-party administrator, or change in third-party administrator;
- (d) Any change to bylaws.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-080 Standards for management and operations--Conflict of interest. (1) Every joint self-insurance program shall require the claims auditor, the third-party administrator, the actuary, and the broker of record to contract separately with the joint self-insurance program. Each contract shall require that a written statement be submitted to the program on a form provided by the state risk manager providing assurance that no conflict of interest exists prior to acceptance of the contract by the joint self-insurance program.

(2) All joint self-insurance programs shall meet the following standards regarding restrictions on the financial interests of the program administrators:

~~((1))~~ (a) No member of the board of directors; trustee; administrator, including a third-party administrator; or any other person having responsibility for the management or administration of a joint self-insurance program or the investment or other handling of the program's money shall:

~~((a))~~ (i) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar

compensation regularly fixed and allowed for because of services regularly rendered to the program.

~~((b))~~ (ii) Receive compensation as a consultant to the program while also acting as a member of the board of directors, trustee, third-party administrator, or as an employee.

~~((c))~~ (iii) Have any direct or indirect pecuniary interest in any loan or investment of the program.

~~((2))~~ (b) No consultant (~~(, third-party administrator)~~) or legal counsel to the joint self-insurance program shall directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between the joint self-insurance program and any insurer (~~(, health care service contractor, or health care supply provider.~~ This provision shall not preclude licensed insurance brokers or agents from receiving compensation for insurance transactions performed within the scope of their licenses, provided such compensation is disclosed to the self-insurance program's governing body.

~~(3))~~ or consultant.

(c) Brokers of record for the joint self-insurance programs may receive compensation for insurance transactions performed within the scope of their licenses. The terms of compensation shall be provided for by contract between the broker of record and the governing body, and the amount or percentage of the compensation must be disclosed in writing. Contracts between brokers of record and the governing body shall include a provision that contingent commissions or other form of compensation not specified in the contract shall not be paid to the broker of record as a result of any joint self-insurance program insurance transactions. The joint self-insurance program shall establish a contract provision which requires the broker provide to the program a written annual report on a form provided by the state risk manager which discloses the actual financial compensation received. The report shall include verification that no undisclosed commission was received as a result of any such insurance transaction made on behalf of the program.

(d) No third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-100 Standards for operations--State risk manager--Expense and operating cost fees. (1) The state risk manager, with concurrence from the property and liability advisory board (~~and the health and welfare advisory board~~), shall fix (~~(assessments)~~) state risk manager fees to cover expenses and operating costs of the state risk manager's office in administering chapter 48.62 RCW. Such (~~(assessments)~~) fees shall be levied against each joint

property and liability self-insurance program (~~(and each individual and joint health and welfare benefit self-insurance program)~~) regulated by chapter 48.62 RCW. (~~(Examination fees shall be based upon actual time and expenses incurred for the review and investigation of every joint property and liability self-insurance program and every individual and joint health and welfare benefit self-insurance program by the state risk manager or designee.~~)

~~(2) The state risk manager, with concurrence from the two advisory boards, shall determine the assessment rate on a fiscal year basis and the review and investigation fees on a fiscal year basis.~~

~~(3)) Services covered by the state risk manager fees will include program reviews, monitoring and continuing oversight.~~

~~(2) The ((review and investigation)) state risk manager fees shall be paid by ((the)) each joint self-insurance program to the state of Washington, office of financial management within ((thirty)) sixty days of the date of invoice. Any joint self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.~~

~~((4)) (3) A joint self-insurance program that has voluntarily or involuntarily terminated shall continue to pay an administrative ((cost assessment and review and investigation fees)) fee until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the joint self-insurance program have been satisfied.~~

~~((5)) (4) The state risk manager shall assess each prospective joint self-insurance program(~~(, and each prospective individual health and welfare benefit self-insurance program,~~)) an initial investigation fee at a rate determined annually by the state risk manager, with the concurrence of the advisory boards. ((Such fee shall be sufficient to cover the costs for the initial review and approval of that self-insurance program.))~~

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-200 Standards for operations--Appeals of fees. (1) A joint self-insurance program which disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

(2) The state risk manager shall review any fee appealed by a joint self-insurance program, together with the reasons for the appeal. Within fourteen days of receipt of notification from the self-insurance program, the state risk manager shall respond in

writing to the self-insurance program, either reaffirming the fee or modifying it, and stating the reasons for the decision.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-210 Standards for operations--Appeals of cease and desist orders. Within ten days after a joint self-insurance program covering property or liability risks (~~(, or an individual or joint self-insurance program covering health and welfare benefits)~~) has been served with a cease and desist order under RCW 48.62.091(3), the entity may request an administrative hearing from the state risk manager. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapter 34.05 RCW and chapter 10-08 WAC.

NEW SECTION

WAC 82-60-215 Standards for contracts--Competitive solicitation standards for consultant contracts. Every joint self-insurance program shall use a formal competitive solicitation process in the selection of consultants. The process shall provide an equal and open opportunity to qualified parties and shall culminate in a selection based on preestablished criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts. Bid responses, solicitation documents and evidence of publication shall be retained in accordance with laws governing public records and shall be available for review by state risk manager and state auditor.

NEW SECTION

WAC 82-60-220 Standards for contracts--Standards for operation--Purchases of goods and services not related to claims. Joint self-insurance programs comprised of one common entity type must comply with bidding and purchasing requirements as prescribed

by law or regulation for that entity type. Joint self-insurance programs comprised of multiple entity types shall use a competitive process for the purchase of goods and services not described in WAC 82-60-215. Vendor selection shall be based on fees or costs, ability, capacity, experience, reputation, and responsiveness to time limitations. These regulations do not apply to the purchase of goods and services described in WAC 82-60-050(5).

REPEALER

The following sections of the Washington Administrative Code are repealed:

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| WAC 82-60-031 | Program financing. |
| WAC 82-60-032 | Nondiscrimination in contributions. |
| WAC 82-60-035 | Wellness programs. |
| WAC 82-60-070 | State risk manager may waive requirements. |