



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

## **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@prismrisk.gov](mailto:liabilityclaims@prismrisk.gov).

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  
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