

**WASHINGTON COUNTIES RISK POOL**  
**CLAIMS HANDLING POLICIES AND PROCEDURES**

- A. OBJECTIVES.** To assure proper coordination between the Member and the Pool in the timely reporting, investigation and resolution of claims and actions brought against a Member, these Claims Handling Policies and Procedures shall apply to incidents and situations in which Members may have coverage afforded by the Pool.
- B. DEFINITIONS.**
1. “Claim” means a demand for payment for monetary damages or policy benefit because of an occurrence as defined in the applicable JSILP.
  2. “Claim adjustment expense” means expenses, other than payments to and/or on behalf of the claimant(s), incurred in the course of investigating and settling claims.
  3. “Claim file” or “file” means the Pool’s electronic and paper record of a claim that includes a copy of the claim for damages and/or suit and other analyses, correspondence and documentation.
  4. “Claims Manager” means the Pool’s Claims Manager or her/his designee.
  5. “Claim reserve” means the jury verdict value estimate of a claim’s total cost, including associated claim adjustment expenses, without discount for time value of money. “Claims reserves” means the total of the estimates for all covered claims with claims adjustment expenses as of the date of the reported financial statement.
  6. “County Claims Administrator” means the official or employee designated by each Member County to administer the Member’s civil claims and to serve as its liaison with the Pool regarding the administration of its claims.
  7. “Interlocal agreement” means the agreement established under the Interlocal Cooperation Act in chapter 39.34 RCW that is the foundation for the Pool and that binds its Members to its joint self-insurance program(s).
  8. “Joint Self Insurance Liability Policy” or “JSILP” means the liability coverage provided by the Pool.
  9. “Jury verdict value” means the claim value established on an individual case basis by the Pool’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.
  10. “Member” means a county of the state of Washington that:
    - a. Is a signatory to the Pool’s interlocal agreement;
    - b. Agrees to future assessments or reassessments as part of the Pool’s joint self-insurance program; and
    - c. Is a past or present participant in the excess or self-insured retention portion of the Pool’s insurance program subject to regulation under chapter 48.62 RCW.
  11. “Washington Counties Risk Pool” or “Pool” means the joint self-insurance program authorized by RCW 48.62.031.

**C. REPORTING INCIDENTS.** Known traffic collisions and incidents involving county officials, employees, volunteers, invitees, automobiles or property which could or do subject members to claims for damages should be reported immediately to the designated person administering civil claims ("County Claims Administrator"). Statements shall not be made to, or in the presence of, third parties or witnesses to the traffic collision or incident. "Fault" shall not be acknowledged. "Fault" is a legal determination that will be made within the appropriate legal forum.

**D. TIMELY REPORTING TO THE POOL – CLAIMS, SUITS AND INCIDENTS.**

**1.** The Member shall submit copies of all claims and suits to the Pool as follows and within the specified timelines:

**a. CLAIMS.**

- i.** All claims where monetary damages will equal or exceed \$50,000 shall be submitted to the Pool within seven (7) days after receipt by the Member.
- ii.** All claims where monetary damages are less than \$50,000 shall be submitted to the Pool within thirty (30) days after receipt by the Member.

**b. SUITS.**

- i.** All suits shall be submitted immediately, but not later than five (5) days after the date of service.
- ii.** No county official, employee or volunteer including the County Claims Administrator or member of the Prosecuting Attorney's Office, may accept service of process of behalf of the Member, except as provided by statute.
- iii.** The Prosecuting Attorney, if the Pool-designated defense counsel has not yet been determined and assigned, will file a Notice of Appearance for the Member with the court. A copy of the Notice of Appearance will be submitted promptly to the Pool and the Pool shall coordinate the defense with the Member – see section G – *Legal Defense and Administration*.

**c. INCIDENTS.** The Member shall report the following incidents to the Pool within seven (7) days after receiving knowledge of the incident:

- i.** Ultimate liability may exceed \$50,000;
- ii.** Death;
- iii.** Brain injury or spinal cord damage, real or specific (quadriplegia or paraplegia);
- iv.** Impaired or loss of use of limbs (amputation of major members);
- v.** Injury significantly affecting the capacity of sight, taste, smell or hearing;
- vi.** Significant disfigurement;
- vii.** Injury to the reproductive organs;
- viii.** Significant highway design/maintenance liability;
- ix.** Significant law enforcement liability;
- x.** Probable errors and omissions liability;

- xi.** Extended disability (six months);
- xii.** Severe burns;
- xiii.** Multiple persons injured in a common occurrence;
- xiv.** Significant psycho-neurotic involvement; or
- xv.** Other incidents that may merit special notification.

- 2. UNTIMELY / TARDY REPORTING:** The failure to report any claim, suit or incident within the timelines prescribed in section D.1 shall be subject to the enforcement provisions in section H of this Claims Handling Policy and Procedures and/or Article 10 of the Pool's Bylaws.

**E. CLAIMS ADMINISTRATION.**

**1. COUNTY CLAIMS ADMINISTRATION:**

- a.** Each Member shall establish procedures for the prompt administration of every claim.
- b.** The Pool's claims staff will coordinate the administration of a Member's claims with the Member's designated County Claims Administrator.
- c.** Each Member shall establish an adequately funded claims reserve fund pursuant to Governmental Accounting Standards Board (GASB) Statement No. 10 for payment of its claims deductible amounts and costs as incurred.

- 2. DETERMINATION OF RESERVES.** Reserves shall be established and maintained by the Claims Manager on all open claim files using the jury verdict value process. Reserves shall be calculated to address the extent of the exposure for indemnity and defense costs. When a Member has or acquires knowledge regarding liability or damages that will affect the claim reserve determination, that information shall be conveyed promptly to the Pool.

- a. ADMINISTRATIVE REVIEW.** If a Member disagrees with a reserve determination, the Member shall discuss the matter initially with the Pool's staff assigned to that claim file, then with the Claims Manager. If these discussions do not resolve the disagreement, the Member may seek administrative review by the Executive Director of the reserve determination.
- b. REQUEST DEADLINE.** Administrative review of a reserve determination shall be requested no later than ten (10) days after the decision of the Claims Manager.
- c. FORM OF REQUEST.** Administrative review shall be initiated by submitting a written Request for Administrative Review to the Executive Director. The Request for Administrative Review shall include the following information:
  - i.** The name of the Member initiating the administrative review;
  - ii.** Identification of the claim (or suit);
  - iii.** A statement outlining the discussions with the claims staff and the Claims Manager demonstrating efforts to resolve the matter at the Pool's claims division level;
  - iv.** A statement of facts relevant to determination of the appropriate reserve and the reasons why the Member believes the Pool's reserve determination is incorrect; and
  - v.** A dated signature of the Member's authorized officer or employee.

d. **REVIEW PROCEDURES AND DECISION.** Within fifteen (15) days after receiving an administrative review request, the Executive Director shall review the information provided by the Member, review the claim file and, if deemed necessary by the Executive Director, confer with the Member and the Pool's staff to obtain additional information. The Executive Director shall issue a written decision within ten (10) days and may affirm or modify the reserve determination. The Executive Director's decision shall be sent to the Member and a copy to the Claims Manager.

3. **DIARIES, LOG NOTES AND OTHER CLAIM FILE ENTRIES.** Diaries are used to log or flag each claim's scheduled activities and events, deadlines and reminders. Every open claim file shall have at least one prospective diary date pending at all times and shall be reviewed on or before the next diary date for further handling determination(s). This is not a limitation on claim file review.

Log notes shall be under the control of the Pool. Inappropriate entries may be redacted by the Pool's database administrator when directed to do so by the Claims Manager or Executive Director.

A Member may post notes and comments and information in the comments section ("red notebook") of the Pool's Claims Database. Claims details asserted by the claimant shall be presented as "**alleged**" or "**allegations**" unless formally admitted in the course of litigation. Opinions and/or statements regarding claim value, settlement and "fault" shall NOT be included as log notes. "Fault" is a legal determination that will be made within the appropriate legal forum.

4. **COVERAGE DETERMINATION.** The Claims Manager makes decisions on coverage issues. See Article 8 – *Coverage Determination and Appeal* of the Pool's Bylaws for specifics including reservation of rights, appeals and Member requirements.

F. **CLAIMS MANAGEMENT AND RESOLUTION.** The Members' Interlocal Agreement has expressly transferred to the Pool the obligation to manage and resolve the Members' JSILP-covered claims. As such, the Pool is responsible for and will handle all reportable and JSILP-covered claims and related suits.

1. **DELEGATION OF AUTHORITY.** When specifically requested and permitted, a Member may manage and resolve a claim within the Member's deductible limit. However, permission must be obtained from the Claims Manager after discussions with the County Claims Administrator. This permission may be withdrawn at any time by the Claims Manager if, in the Claims Manager's opinion, the claim is not being managed properly by the Member pursuant to the Pool's Interlocal Agreement and Membership Compact, Bylaws, JSILP and/or these *Claims Handling Policies and Procedures*.

2. **REQUISITES FOR DELEGATION.** The Pool's delegation of "in-county" claim management authority to a Member will be predicated upon the qualifications and experience of the Member's "in-county" case handling personnel and the nature of the claim(s) involved. The Member shall have personnel with qualifications and experience commensurate with those possessed by the Pool's claims staff and/or deemed sufficient by the Claims Manager to address the complexities likely to be encountered with the claim.

3. **RECEIPT OF CLAIM.** Upon receipt of a claim for damages, the Pool shall determine after discussion with the Member whether the claim will be handled “in county” by the Member or assigned to an independent adjuster for investigation and evaluation. An acknowledgment form shall be sent to the Member identifying the Pool’s claim number, date of loss, the initial claim reserve (if determined), and who is assigned to handle the claim. The claim is entered into the Pool’s electronic claims database.
4. **ADMINISTRATIVE OVERSIGHT.** The Pool’s claims staff shall actively monitor all claims regardless of the party assigned (“in-county” or independent adjuster) to handle the claim for the Member.
5. **CLAIM ADJUSTMENT.** Even though a Member may be granted permission to manage a claim, the Pool’s claims staff will, without exception, be provided reasonable notice of any mediation or arbitration session(s) involving the claim and shall be allowed to attend and participate in all sessions.
6. **CLAIMS PAYMENTS.** If there are no actual or potential exposures for bodily injury, a Member may pay an adjusted claim directly. Notice of such payment(s) shall be provided promptly to the Pool for its claims accounting. However, **any claim for which bodily injury is a component or a potential component must be paid directly by the Pool** to assure maximum compliance with the mandatory reporting requirements of the Medicare Medicaid SCHIP Extension Act of 2007 (“MMSEA”). The Pool is the officially-recognized Responsible Reporting Entity (“RRE”) for JSILP-covered claims under the provisions of the MMSEA. The failure of a Member to properly report and submit payment requests for any claim involving bodily injury to the Pool for payment to the claimant will render that Member fully responsible for any fines or other fee or penalty that may result for not complying with the provisions of the MMSEA.
7. **WAIVER OF COVERAGE.** A Member shall have the right to waive the coverage afforded by the JSILP as to any particular claim or suit subject to the following:
  - a. The waiver submission must occur after the particular claim or suit is received by the Pool;
  - b. The waiver must be in a writing signed by the Member’s legislative authority on a form approved by the Pool and shall contain:
    - i. A complete release of any liability arising out of or relating to the underlying claim or suit on the part of the Pool, its directors and officers, employees, agents, attorneys, successors, or any other person serving on behalf the Pool, other past and present Members, or any reinsurer of the Pool; and
    - ii. Provisions in which the Member holds harmless, defends and indemnifies the Pool, its directors and officers, employees, agents, attorneys, successors, or any other person serving on behalf the Pool, other past and present Members, or any reinsurer of the Pool from any and all claims, demands, losses, and liabilities to or by third parties arising from, or connected with the underlying claim or suit.
  - c. Until such time as the coverage for a particular claim or suit is waived under this Section, expenses and costs incurred associated with that claim or suit shall be paid by the Pool in accordance with the terms and conditions of the applicable Joint Self-Insurance Liability Policy.

**G. LEGAL DEFENSE AND ADMINISTRATION.** The Members' Interlocal Agreement expressly transferred to the Pool the right to manage and resolve the Members' JSILP-covered claims. This right, within the coverage limits afforded by the applicable JSILP, includes providing for the defense and the indemnification of covered suits brought against the Members.

Claims management staff (Pool and "in-county") and defense counsel have obligations with any claim to protect the interests of the covered client(s), e.g. Member or Member's officials, employees, volunteers, agents, and to balance those interests with the interests of the Pool. For any and all reportable claims and suits covered and/or managed by the Pool, the Member and the Pool agree that Pool-designated defense counsel assigned by the Pool to defend the claim or suit, whether an attorney within the Member's prosecuting attorney's office ("in-county defense counsel") or a retained private attorney or firm ("outside defense counsel"), shall consider both the Member and the Pool as his or her clients, and unless such attorney reasonably believes he or she cannot provide competent and diligent representation to each affected client, the Member and the Pool mutually consent to such joint representation.

1. **RECEIPT OF SUIT.** Upon receipt of a Suit involving a covered claim, a copy of the suit papers served shall be immediately provided to the Claims Manager, but not later than five (5) days from the date of service.
2. **DESIGNATION OF DEFENSE COUNSEL.** After discussion with the County Claims Administrator to determine if defense counsel is required, the Pool's claims staff will formally designate and assign defense counsel for any JSILP-covered claim or suit.
3. **NOTICE OF APPEARANCE.** A Notice of Appearance shall be filed and served promptly by the Pool-designated defense counsel in order to protect the Member and other Insureds from entry of a default judgment. If circumstances delay the formal assignment of Pool-designated defense counsel, the Member's prosecuting attorney shall file and serve the Notice of Appearance. If "outside" defense counsel is assigned by the Pool, a Notice of Substitution and Withdrawal shall be filed and served. The Member's prosecuting attorney may, with the permission of the Claims Manager, continue to associate as co-counsel so long as any Pool-designated defense counsel is lead counsel.
4. **APPROVED DEFENSE COUNSEL.** The Pool maintains a list of private attorneys that are approved for designation as "outside" defense counsel. These attorneys have proven aggressive trial abilities, legal knowledge, and comply with the Pool's reporting requirements. Some attorneys are approved for only certain types of liability defense work.
5. **WITHDRAWAL OF POOL-DESIGNATED DEFENSE ASSIGNMENT.** The Pool retains the right to withdraw the defense counsel assignment should the assigned defense counsel fail to comply with the Pool's Defense Counsel Reporting Requirements in section G.6. When failure to comply with these requirements poses a risk to the Pool, Member or Insured, or there is a lack of confidence in the abilities of assigned defense counsel, the Claims Manager may withdraw the defense counsel assignment and replace defense counsel with a new Pool-designated defense counsel.
6. **DEFENSE COUNSEL REPORTING REQUIREMENTS.** The Pool has specific reporting requirements (refer to the Pool's website at [www.wcrp.info](http://www.wcrp.info) for format and instructions) which are required to be followed by Pool-designated defense counsel,

whether retained (“outside”) or a prosecuting attorney or deputy prosecuting attorney (“in-county”), unless this reporting requirement is expressly waived by the Pool’s Executive Director or Claims Manager. These requirements include:

- a. **CLIENT COMMUNICATION.** Defense counsel should keep the county and insured officials and employees informed of the status of the case throughout the litigation.
- b. **INITIAL CASE EVALUATION.** Defense counsel must submit an Initial Case Evaluation within 30 days after assignment. The Initial Case Evaluation should substantially conform to and provide the information in the WCRP suggested Initial Case Evaluation format.
- c. **LITIGATION PLAN.** Unless this requirement is expressly waived by the Pool’s Executive Director or Claims Manager, a Pool-designated defense attorney, whether “outside” or “in-county” assigned to defend a suit will be required to prepare a litigation plan (refer to the Pool’s website at [www.wcrp.info](http://www.wcrp.info) for format and instructions). Defense counsel must submit a Litigation Plan within sixty (60) days after assignment that provides the information required by the WCRP Litigation Plan form. Retained defense counsel should include estimates of hours and expenses for each category of activity. The Litigation Plan should substantially conform to and provide the information in the WCRP suggested Litigation Plan format. A sample(s) will be provided upon request.
- d. **LITIGATION REPORTS.** Defense counsel shall submit a Litigation Report every ninety (90) days that discusses significant events and activities occurring since the previous Litigation Report and, if applicable, an updated Litigation Plan. Each Litigation Report should substantially conform to and provide the information in the Pool’s suggested Litigation Report format.
- e. **INTERIM REPORTING.** Information received by defense counsel as the case progresses and alters the case evaluation or defense strategy should be promptly reported to the Pool.
- f. **PLEADINGS.** Copies of all significant pleadings should be submitted to the Pool promptly with a cover letter discussing the pleading and the impact of the pleading on the case evaluation or its defense strategy.
- g. **DISCOVERY.**
  - i. **INTERROGATORIES.** Copies of all answered Interrogatories should be submitted to the Pool promptly with a cover letter discussing the pleading and the impact of the pleading on case evaluation or defense strategy.
  - ii. **DEPOSITIONS.** The Pool’s claims staff will attend the depositions of Plaintiffs and key witnesses, as scheduling allows. Coordinate scheduling with the Pool’s claims staff and promptly notify the Pool of the date, time and location set. If the Pool’s claims staff is unable to attend a deposition, submit a brief report after the deposition that summarizes the deposition, any unexpected testimony, the strengths and credibility of the witness, and the impact of the deposition on case evaluation or defense strategy.
- h. **PRE-TRIAL REPORT.** Defense counsel must submit a Pre-Trial Report at least ninety (90) days before the trial date. The Pre-Trial Report should

substantially conform to and provide the information in the Pool's suggested Pre-Trial Report format.

- i. **POST-TRIAL REPORT.** Defense counsel must submit a Post-Trial Report within one (1) week after a jury verdict. The Post-Trial Report should substantially conform to and provide the information in the Pool's suggested Post-Trial Report format.
- j. **SETTLEMENT.** Settlement exceeding a Member's deductible or the Pool's self-insured retention (\$100,000) requires authority of the Pool and possibly the Pool's reinsurer(s). Obtaining authority from the Pool's reinsurers may require considerable time to process. [The county's deductible includes all defense costs.] Where the settlement authority sought exceeds the Member's deductible by more than \$50,000, the Pool's Executive Committee must review and authorize the settlement authority. Obtaining settlement authority from the Pool's Executive Committee requires as long as one (1) month to process.
- k. **ARBITRATION AND MEDIATION.** Selection of arbitrators and mediators requires review and approval of the Claims Manager. Submit the names and experience of candidates and consult with the Claims Manager prior to selection. The Pool's claims staff will attend arbitration and mediation. Coordinate scheduling with the Pool's claims staff and promptly notify the Pool of the date, time and location set. Defense counsel should review and follow the Pool's requirements for mediation.
- l. **BILLINGS (RETAINED COUNSEL ONLY).** Billings for professional services and expenses incurred shall be submitted to the Pool on not less than a monthly basis. Billings shall contain a chronological description of services rendered and shall clearly identify the person providing service by name and position (partner, associate, paralegal, legal assistant), the date the work was performed, the person's hourly billing rate, the time expended, and a brief description of the work sufficient to identify the purpose of the work. Expenses shall be detailed, including a description and when applicable, quantities and unit rates. Billing rates and expense reimbursement rates shall be consistent with the fee arrangement between the Pool and defense counsel.

## **H. COMPLIANCE AND ENFORCEMENT OF MEMBER OBLIGATIONS.**

1. **MEMBERS OBLIGED TO COMPLY.** Failure to comply with the specific terms and conditions of the Pool's Interlocal Agreement and Membership Compact, Bylaws, Joint Self-Insurance Liability Policy ("JSILP"), and these Claims Handling Policies and Procedures places the Pool and its member counties at the risk of increased costs and expenses, and may prejudice the Pool in obtaining payment from its reinsurers. At the discretion of the Executive Director and subject to the second level appeal provisions found in Article 8.B.2 of the Bylaws, one or more of the following actions may be imposed for non-compliance with any requirement of the Pool's Interlocal Agreement and Membership Compact, Bylaws, JSILP, or these Claims Handling Policies and Procedures:
  - a. **NOTICE OF INFRACTION.** A notice of infraction serves as a written warning of the failure to comply with specified requirements of the Pool's Interlocal

Agreement and Membership Compact, Bylaws, JSILP, or these Claims Handling Policies and Procedures. A notice of infraction may be issued when there is a low level of risk that the infraction will result in increased costs or effort, or where the infraction is the result of an unintended oversight and is not a pattern of careless administration.

- b. REVOCATION OF CLAIM MANAGEMENT AUTHORITY. Authority delegated by the Pool for a member county to utilize “in-county” resources to manage and resolve and/or defend pending or future claims may be revoked for repeated failures to comply with specified requirements of the Pool’s Interlocal Agreement and Membership Compact, Bylaws, JSILP, or these Claims Handling Policies and Procedures.
  - c. COVERAGE LIMITATION OR DENIAL. A failure to comply with the terms and conditions of the Pool’s Interlocal Agreement and Membership Compact, Bylaws, JSILP, or these Claims Handling Policies and Procedures which substantially prejudices the interests of the Pool may result in coverage limitation or denial of coverage.
  - d. CANCELLATION OF MEMBERSHIP. The repeated failure to comply with the terms and conditions of the Pool’s Interlocal Agreement and Membership Compact, Bylaws, JSILP, or these Claims Handling Policies and Procedures which continually puts the Pool’s entire membership at risk or which demonstrates a history of disregarding the terms and conditions of the Pool’s Interlocal Agreement and Membership Compact, Bylaws, JSILP, or these Claims Handling Policies and Procedures may result in cancellation of membership in the Pool under Article 16(a) of the Interlocal Agreement.
2. NON-WAIVER OF ENFORCEMENT AUTHORITY. The Pool’s failure to enforce member obligations in one situation does not waive the Pool’s rights to enforce member obligations in any later situation.

## **I. PRE-DEFENSE REVIEW AND INCIDENT INVESTIGATION PROGRAM.**

1. Pre-defense reviews are designed to assist Members by providing special legal advice to avoid claims or suits which would be covered by the Pool’s joint self-insurance policy. It may also assist in managing known incidents involving county officials, employees, volunteers, automobiles or property, including providing investigations of significant reportable incidents (listed in section B.3).
2. This program is administered by the Claims Manager. When assistance is needed, the Member’s designated risk manager or prosecuting attorney will contact the Claims Manager who will coordinate contact with a specialized attorney or investigation agency. The program will be monitored by the Claims Manager and reports on its use will be made available to the Board of Directors and the Executive Committee as requested.
3. The Pool retains the right to determine if a requested service may be covered by the Pool’s joint self-insurance policy and appropriate for this program. There is no limit on the number of times that a Member may access this program.
4. Legal advice from an attorney specializing in employment law is available to a Member contemplating employment action. A consultation may result in a written response or opinion.

5. Pre-defense review and incident investigations are designed as loss control efforts to avoid claims and suits. This program does not supplant, amend or alter existing insurance agreements, and the joint self-insuring policy remains controlling. Where an action has already occurred and a claim or a suit has been filed, the Claims Manager will coordinate the claims administration with the County Claims Administrator.
6. There may be situations where additional services are desired of the pre-defense review attorney. An example would be assistance in handling the administrative personnel action. Should additional services be desired by a Member that are not covered by the program or by the Pool, the Member would need to retain an attorney.
7. This program will be offered as long as the budgeted account has a positive balance. If an incident that involves pre-defense review or investigation services becomes a claim or suit, the amount spent by the Pool on pre-defense review or investigation will be charged to the claim file and the Member will be billed the cost as part of its deductible elected. Payment on that charge will replenish the revolving pre-defense review account and be available for other pre-defense reviews and/or incident investigations.