

Chapter 31. Risk Management Division¹

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¹ Chapter 31 was replaced by Travis County Commissioners Court on December 14, 2010, Item 20.A. Subchapter G was added to Chapter 31 on September 18, 2018, Item 12

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Subchapter A. General Interpretative Provisions for Chapter

31.001 Legal Authority

- (a) Travis County, Texas ("County") is exposed to certain risks of liability under the law while County is engaged in its function as a Texas political subdivision.
- (b) Pursuant to its authority under Texas Civil Practice and Remedies Code Annotated, chapter 102 (Vernon) and Texas Local Government Code Annotated, sections 157.901 and 157.9015 (Vernon Supp. 1998), County, by resolution, has established Travis County Code, Chapter 31, Subchapter C, the "Defense of and Payment of Claims Against Officers and Employees" by resolution.
- (c) Pursuant to its authority under Texas Revised Civil Statutes Annotated, article 715c (Vernon Supplement 1998) which has been codified as Texas Government Code Annotated, chapter 2259 entitled Self-Insurance by Governmental Units the County is permitted to insure itself against the various risks of liability and loss to which it is exposed and to finance losses,

either through commercial insurance providers or through a defined self-insurance program.

- (d) County is required by the Texas Worker's Compensation Act to provide workers' compensation benefits to its Employees by obtaining coverage from workers' compensation insurance providers or through self-insurance. Texas Labor Code Annotated 504 (Vernon 1996).
- (e) The Commissioners Court has found and determined that it is in the best interests of County and its taxpayers and citizens to establish and maintain a defined self-insurance and risk management program, to provide for contributions to the risk management fund in amounts that are based upon careful analyses of the possible claims that may be paid from the fund.

31.002 Definitions

In this chapter

- (1) "Administrative Expenses" means the direct expenses of administering the Program, including the following:
 - (A) The portion of the compensation paid to the HRMD Director and the Risk Manager that is directly related to risk management activities or to any risk management consultant;
 - (B) The compensation paid to any Claims Adjuster or any Professional Actuary;
 - (C) The expenses of defending any Claim, including the following:
 - (i) The compensation paid to expert witnesses,
 - (ii) Attorneys' fees and expenses, and
 - (iii) Investigation expenses;
 - (D) Any expenses incurred by County in the course of any financing undertaken to provide funding for the Fund;
 - (E) Any expenses incurred by County in the course of any financing to repay any obligation incurred by County; or
 - (F) The cost of Program Insurance, including any compensation paid to brokers.
- (2) "AED" means automated external defibrillators that are governed by the Public Access Defibrillator program but does not include automated external defibrillators that are registered in a first responder program.
- (3) "Annual Period" means the period of 12 consecutive calendar months beginning on the effective date of the Program and thereafter beginning on each successive anniversary of the effective date of the Program.

- (4) "Bodily Injury Claim" means a Program General Liability Claim in which the damages are asserted to the result of any physical injury or physical illness sustained by a natural person, including a resulting death.
- (5) "Claim" means any demand for payment or suit against County (whether in its capacity as a political subdivision of the State of Texas or as an insurer under the Texas Workers' Compensation Act) or any demand for payment or suit against any Employee for whose defense County is responsible for defending under the Claims Payment Policy, regardless of whether any Damages resulting from the demand for payment or suit are permitted to be paid from the Fund under this chapter.
- (6) "Claims Adjuster" means any person who provides services for the investigation, evaluation, and disposal of Claims.
- (7) "Claims Payment Policy" means Travis County Code, Chapter 31, Subchapter B, the Defense of and Payment of Claims Against Officers and Employees.
- (8) "Commissioners Court" means the Commissioners Court of Travis County.
- (9) "County" means the government of Travis County, Texas. U) "County Attorney" means the Travis County Attorney or his or her designee.
- (10) "Damages" includes compensatory damages and special damages that lawfully may be awarded against County or an Employee as a result of a Claim, but does not include punitive or exemplary damages.
- (11) "Employee" means
 - (A) any elected or appointed official, officer, volunteer, or employee, or
 - (B) former elected or appointed official, officer, volunteer, or employee; of County; or
 - (C) the estate of a former elected or appointed official, officer, volunteer, or employee of Travis County, Texas. Elected or appointed official includes all elected or appointed precinct, county, and district officials serving areas within the boundaries of Travis County.
- (12) "External Claim" means Program Claims made by any person against County or an Employee.
- (13) "Fund" means the Risk Management Fund created by 31.015.
- (14) "HRMD" means the Human Resources Management Department of the County.
- (15) "Internal Claim" means a claim in which the only potential parties are County and an Employee.
- (16) "Law" includes the United States and Texas constitutions and statutes, County regulations, resolutions, orders, and ordinances, any administrative

rules having the force and effect of law, and any controlling judicial decisions applicable to County.

- (17) "Nonpolitical Entity" means an individual, firm, corporation, association, or other private entity and does not include the State of Texas, a political subdivision of the state, a city, a special district, or other public entity.
- (18) "Occurrence" means an incident or series of related incidents, or an event or series of related events that result in compensable injury to or claim by one or more persons.
- (19) "Oversight Physician" means the Medical Director of the Travis County well ness clinics who oversees the Public Access Defibrillator program
- (20) "Person" includes any natural person, partnership, limited partnership, trust estate, other association, corporation, or company, or governmental entity or agency.
- (21) "Personal Injury" means any:
 - (A) Physical harm or physical illness sustained by natural person, including a resulting death;
 - (B) Mental harm, anguish, illness, or humiliation experienced by a natural person (regardless of whether accompanied by physical injury);
 - (C) Discrimination;
 - (D) Assault;
 - (E) False or improper service of process;
 - (F) False imprisonment;
 - (G) Damage to character, reputation, or integrity;
 - (H) Invasion of privacy;
 - (I) Violation of property rights; or
 - (J) Violation of civil rights.
- (22) "Personal Injury Claim" means any Program General Liability Claim in which the Damages are asserted to be the result of Personal Injury.
- (23) "Professional Actuary" means a specialist trained in mathematics, statistics, and accounting who is responsible for rate and reserve calculations and other statistical studies as they relate to insurance matters and who holds the professional designation of F.C.A.S. (Fellow of the Casualty Actuarial Society) or similar designation.
- (24) "Professional Appraiser" means a specialist trained in the evaluation of Damages that result from Property Damage Claims.
- (25) "Program" means the Travis County Self-Insurance Fund and Risk Management Program established by 31.006.

- (26) "Program Claim" means any:
- (A) Program General Liability Claim; or
 - (B) Workers' Compensation Claim.
- (27) "Program General Liability Claim" means
- (A) Any Claim covered by the Claims Payment Policy, in which County is a named party, or arising out of any condition of County premises for which County is liable in the judgment of the Risk Manager, or
 - (B) Any Damages together with the court costs, pre-judgment and post judgment interest, attorneys' fees, and any other expenses or costs for which County is liable in the judgment of the Risk Manager as a result of a Claim arising from any of the following:
 - (i) Any act, omission, or failure to act of an Employee that results in or constitutes an erroneous or improper discharge of that Employee's official duties for County (including the making of an incorrect statement), that causes:
 - (aa) Personal Injury;
 - (bb) Damage to, or destruction of, tangible property or the loss of use of tangible property; or
 - (cc) Any economic loss sustained by a Person as a result of the performance of its regulatory or property acquisition functions by County, but that does not constitute legally actionable fraud or an intentional or knowing breach of duty or gross negligence by the Employee;
 - (ii) Any conduct of the County or an Employee that causes:
 - (aa) Personal Injury,
 - (bb) Damage to or destruction of tangible property or the loss of use of tangible property, or
 - (cc) Any economic loss sustained by a person as a result of the performance by County of its regulatory or property acquisition functions that is not intended or expected by the Employee;
 - (iii) Any conduct of the County or an Employee that causes:
 - (aa) Personal Injury, or
 - (bb) Damage to, or destruction of, tangible property or the loss of use of tangible property (regardless of whether intended or expected by the Employee) that results from the use of reasonable force for the purpose of protecting person or property or from the discharge of the Employee's official duties for County but does not include a Workers' Compensation Claim.

- (28) "Program Insurance" means any insurance (other than the self-insurance provided by the Fund) that is obtained by County pursuant to 31.035.
- (29) "Program Risk" means any of the following risks:
 - (A) The Claims for which an Employee has a right to be reimbursed pursuant to the Claims Payment Policy, the Claims for which County itself is liable, or claims arising out of any condition of County premises;
 - (B) The risks for which County, as a political subdivision of the State of Texas, may be held liable by operation of law in the course of performing its governmental function, and
 - (C) Any risks for which County may be held liable under the Texas Workers' Compensation Act.
- (30) "Property Damage Claim" means a Program General Liability Claim in which the Damages are asserted to be the result of any damage to, destruction of, or the loss of use of tangible property.
- (31) "Regulatory Injury Claim" means a Program General Liability Claim in which the Damages are asserted to be the result of any economic loss sustained by a Person as a result of the performance by the County of its regulatory or property acquisition functions.
- (32) "Risk Manager" means the Person serving as the Risk Manager pursuant to 31.011 and 31.033.
- (33) "Scope of Employment" means the performance for County of the duties of the Employee's office or employment and includes being in or about the performance of a task lawfully assigned to an Employee by a competent authority.
- (34) "Texas Workers' Compensation Act" means Texas Labor Code Annotated, 504 (Vernon 1996), as amended.
- (35) "Workers' Compensation Payment" means any payment of compensation, benefits, expenses, or other charges for which County, in the judgment of the HRMD Director and Risk Manager, is liable as an insurer as a result of a Claim by an Employee of County or any other person pursuant to the Texas Workers' Compensation Act.

31.003 Construction, Precedents, and Interpretation

- (a) The Commissioners Court shall resolve any dispute regarding any interpretation of this chapter.
- (b) The singular and plural shall be construed to include the other number as required.
- (c) The masculine, feminine, and neuter genders shall be construed to include the other genders as required.

- (d) The table of contents and headings given to any article or section of this chapter are for convenience only and shall not be construed to modify or affect the meaning of the chapter.
- (e) This chapter shall be construed liberally to accomplish its purpose.

31.004 Conflicts with Other Resolutions and Chapters

This chapter shall not operate to repeal or affect any other resolution of the County. To the extent that the provisions of this chapter are inconsistent or conflicting with any other resolution, the Commissioners Court shall resolve the inconsistency or conflict.

31.005 Severability

If any provision of this chapter or the application of it is held to be invalid for any reason, the validity of the remainder of this chapter and the application of it to other persons and circumstances shall not be affected.

[31.006 – 31.010 Reserved for Expansion]

Subchapter B. Self-Insurance and Risk Management Program Resolution

31.011 Program Established

County hereby establishes the "Travis County Self-Insurance Fund and Risk Management Program" which shall consist of the policies and duties described in this chapter. The Program shall be implemented and administered as provided in this chapter.

31.012 Authority

This Program is adopted by Commissioners Court acting in its capacity as the governing body of County. County adopts this program under the authority of the Insurance of Bonds for Self-Insurance Fund; Risk Retention Groups Act; Texas Revised Civil Statutes, article 715c (Vernon Supplement 1988) which has been codified as Texas Government Code Annotated, chapter 2259 entitled Self-Insurance by Governmental Units.

31.013 Purpose

The purpose of the Program is solely to establish policies, procedures, and duties to assist Employees in the administration and processing of claims against County and of claims against Employees arising out of the Scope of Employment and in the administration of activities to better manage the Program Risks. County expressly disclaims any liability in excess of that created by law and asserts that no section or portion of this chapter is intended to, and does extend that liability in any way.

31.014 No Admission of Liability for Claims

By establishing and maintaining the Program, County is not admitting liability for any claim. County reserves the right to assert any defense that is lawfully available to it against the payment or collection of any claim.

31.015 Effective Date of Program and Duration

The Program is effective at 12:01 a.m. on October 1, 1992, and shall continue in effect until midnight on December 31, 2023, or any other date subsequently specified by resolution of the Commissioners Court.

31.016 Risk and Benefit Manager

- (a) The Program shall include the services of a Risk and Benefit Manager.
- (b) The Risk and Benefit Manager may be a natural person selected by the HRMD Director from among the County's administrative staff, or a natural person selected by the HRMD Director who is hired as a County employee, or a professional risk management service selected and retained by Commissioners Court.
- (c) The Risk and Benefit Manager shall perform the duties and functions prescribed by this chapter, subject to the superior authority of the HRMD Director and approval of the Commissioners Court.

31.017 Powers, Duties, and Functions of Risk and Benefit Manager Generally

- (a) The Risk and Benefit Manager may exercise the powers and shall perform the duties and functions prescribed by this chapter, and any other resolution of County relating to similar matters.
- (b) The Risk and Benefit Manager may take such actions as are necessary to enable it to exercise the powers and perform the duties and functions delegated to it under this chapter and any other resolution of County properly and effectively.

31.018 Risk and Benefit Manager to Administer Program

The Risk and Benefit Manager under the direction of the HRMD Director and the County Executive, Administrative Operations is responsible for the administration of the Program in accordance with this chapter, subject to the approval of Commissioners Court. In carrying out this responsibility, the HRMD Director and Risk and Benefit Manager shall interpret and apply the provisions of this chapter in consultation with the County Attorney.

31.019 Report to Commissioners Court on Program Status

The HRMD Director and the County Executive, Administrative Operations shall report to the Commissioners Court on the status and experience of the Program, including the financial status of the Fund at least quarterly.

31.020 Risk Management Fund Created

- (a) The "Risk Management Fund" is hereby created.
- (b) The Fund is a special trust fund of the County created to provide capital for the Program to be used as prescribed by this chapter.
- (c) No Person, including any Employee, other than County, has or is granted any right to any money in the Fund.
- (d) The Fund shall be maintained at the County's depository bank unless another County resolution or an agreement entered into by the County requires the Fund to be maintained elsewhere.

31.021 Capitalizing the Fund

The Fund may be funded with money:

- (1) Provided by contributions made from time to time by resolution of Commissioners Court, from budgeted, appropriated, and current revenues available to the County; or
- (2) Derived by County from time to time pursuant to agreements for funding entered into with any person.

31.022 Risk Retention Policy

Subject to budgetary and general economic conditions, County shall insure against Program Risks by depositing money into the Fund in amounts sufficient to provide for the defined self-insurance coverage prescribed by this chapter as determined by a Professional Actuary. In addition, County shall, under the appropriate conditions, obtain Program Insurance with premiums paid from the Self-Insurance Fund.

31.023 Alteration and Termination of Program

- (a) Subject to 31.023(b), the County, by resolution, may alter the Program from time to time or terminate the Program at any time subject to any notice required by law prior to actions of Commissioners Court.
- (b) County, by agreement approved by the Commissioners Court, may limit its right to alter or terminate the Program.

31.024 Authorized Withdrawal from Fund

- (a) Money may be withdrawn from the Fund only for the following purposes:

- (1) To pay any Program Claim;
 - (2) To reimburse County for Administrative Expenses;
 - (3) To retire any obligation County has incurred to provide funding for the Fund, whether by scheduled payments, pre-payment, defeasance, or otherwise; or
 - (4) To reimburse County for any payment made under any agreement to provide funding for the Fund if that payment may be re-paid to County pursuant to that agreement, or to cure a default in payment by County under the agreement to the extent and under the terms and conditions provided in the agreement.
 - (5) To deposit all or any portion of the Catastrophic Reserves established within the Fund, in the Employee Health Benefit Fund if the Commissioners Court determines that it is need to fund the Employee Health Benefit Fund in a manner that is actuarially sound.
- (b) With the approval of the Commissioners Court, funds may be advanced to an Employee to pay damages until recovery under an insurance contract is received. If funds are advanced, the Employee shall deposit all funds received from the insurance contract into the County treasury to the credit of the line item in the Self-Insurance Fund from which the advance was made.
- (c) Withdrawals may be made from the Fund only in accordance with the restriction and limitations established in this chapter.
- (d) Money may not be withdrawn from the Fund to make any of the following payments:
- (1) The payment of a Program Claim that is not made while the Program is in effect in accordance with applicable claims administration procedures;
 - (2) The payment of any Program Claim involving Damages that arise from the exercise by the County of its power of eminent domain;
 - (3) The payment of all or that portion of any Program Claim, or of any other item for which a withdrawal from the Fund is permitted by 31.024(a), that, in lieu of payment from the Fund, can be paid from:
 - (A) The proceeds of insurance carried by County, including casualty or liability insurance, workers' compensation insurance, or property insurance;
 - (B) The proceeds of any insurance carried under any health, accident, or similar plan of benefits provided by County; or
 - (C) Any fund, reserves, or other source of payment available to County that has been designated or otherwise set aside for that use;
 - (D) The payment of any Program General Liability Claim arising from an Injury that results from the distribution (whether by sale,

gift or otherwise) of an alcoholic beverage, other than a distribution at a activity or function that is incidental to County's business, and that

- (i) Is in violation of the law,
 - (ii) Is to a minor or to an individual who is under the influence of alcohol, or
 - (iii) Causes or contributes to the intoxication of any individual;
- (E) The payment of any Program Claim arising from an Injury that results from declared or undeclared war (including civil war, insurrection, rebellion, or similar hostility) or any act or condition incident to war; or
- (F) The payment of that portion of any Program Claim:
- (i) In which the County's liability exists by virtue of the Texas Tort Claims Act, (Texas Civil Practice and Remedies Code Annotated, chapter 101 (Vernon Supplement 1998)), regardless of whether County is a defendant, that exceeds the limits on liability applicable to the County under that statute;
 - (ii) In which County's liability exists by virtue of the Texas Workers' Compensation Act that exceeds the limits on liability applicable to County under that statute;
 - (iii) For which County has immunity from paying or is precluded by law from paying; or
 - (iv) That exceeds any limits prescribed by this chapter on the amounts of withdrawals that may be made from the Fund to pay Program Claims.
- (4) The payment of any County indirect administrative expense.

31.025 Control of Withdrawals from the Fund3

Except for payments required by the Texas Worker's Compensation Act for uncontroverted claims:

- (1) Subject to the restrictions and limitations provided by this chapter, the determination of whether money in the Fund is to be withdrawn or transferred is in the discretion of the Commissioners Court upon recommendation by the HRMD Director or Risk and Benefit Manager.
- (2) Upon recommendation by the HRMD Director or Risk and Benefit Manager, and with the approval of the Commissioners Court, an aggregate amount from \$0 to \$20,000 may be withdrawn or transferred from the Fund to pay Program Claims of any claimant that arise from the same Occurrence. Amounts in this size range shall be considered routine and shall be submitted to the Commissioners Court for

approval on its general agenda item for payment of all claims submitted weekly by the County Auditor. Claims which are denied will be submitted to Commissioners Court as a regular liability agenda item.

- (3) Upon recommendation of the HRMD Director or Risk and Benefit Manager and with the approval of the Commissioners Court, an aggregate amount from \$20,000.01 to \$35,000 may be withdrawn or transferred from the Fund to pay the Program Claims of any claimant that arise from the same Occurrence. Amounts in this size range shall be submitted to the Commissioners Court for approval on its regular liability agenda item.
- (4) After consideration of the details of any Claim and the advice of the HRMD Director or Risk and Benefit Manager and the County Attorney, the Commissioners Court may approve the withdrawal or transfer from the Fund of an aggregate amount exceeding \$35,000 to pay the Program Claims of any claimant that arise from the same Occurrence. Amounts above \$35,000 shall not be considered routine, shall be subject to review by the Commissioners Court, and shall not be submitted for its consent agenda.

31.026 Method of Withdrawal from the Fund

After approval of the Commissioners Court, withdrawal from the Fund may be made by check or draft drawn on the depository account in which the Fund is maintained. Settlement of Internal Claims may be made by a memorandum from the Risk and Benefit Manager to the Travis County Auditor requesting a transfer from the line item for the Self-Insurance Fund to the line item from which the office or department may pay for a replacement of the loss or payment for repairs.

31.027 Withdrawal of Fund Surplus

- (a) If such a declaration is, in the opinion of the Travis County Auditor, in accordance with a comprehensive basis of accounting consistent with state law, the Commissioners Court can declare any amount of money in the Fund that, in the opinion of a Professional Actuary, is in excess of the amount required to maintain the Fund on an actuarially sound basis for the period of time and for the risks of loss for which it is then funded to be a "Fund Surplus."
- (b) Any declared Fund Surplus may only be withdrawn from the Fund once during any annual period. Any withdrawal must be made within ninety days after the end of the County's fiscal year.

31.028 Limits on the Amount of Withdrawals for Program Claims

- (a) The maximum amount of withdrawals from the Fund for payment of any Program General Liability Claim Damages and expenses that arise out of any one Occurrence to a single Person may not exceed \$100,000.
- (b) The aggregate amount of withdrawals from the Fund to pay all Program General Liability Claim Damages and expenses that arise from any one Occurrence may not exceed the following amounts for the following classifications of County General Liability Damages and expenses:
 - (1) Personal Injury Claims \$300,000.00;
 - (2) Property Damage Claims \$100,000.00;
 - (3) Regulatory Injury Claims \$300,000.00;
 - (4) Bodily Injury Claims \$300,000.00.
- (c) The aggregate amount of withdrawals from the Fund to pay all Program General Liability Claims that arise from any one Occurrence may not exceed \$400,000.
- (d) The aggregate amount of withdrawals from the Fund in any one Annual Period to pay Program General Liability Claims may not exceed \$1,000,000 unless the Commissioners Court approves the excess aggregate withdrawal after consideration of the alternative funding mechanisms available that could be used in place of an excess aggregate withdrawal.
- (e) Subject to 31.028 (g), the aggregate amount of withdrawals from the Fund to pay Workers' Compensation Payments that arise from any one Occurrence may not exceed \$300,000 without the review and approval of the Commissioners Court.
- (f) Subject to 31.028(g), the aggregate amount of withdrawals from the Fund in any one Annual Period to pay Workers' Compensation Payments may not exceed \$300,000 without the review and approval of the Commissioners Court.
- (g) A withdrawal from the fund that exceeds the limit on aggregate withdrawals prescribed by 31.028(e) and (f) may be made if the withdrawal does not render the Fund actuarially unsound as determined by a Professional Actuary.
- (h) If the Commissioners Court authorizes payment of a claim, either voluntarily or involuntarily, that would render the Fund actuarially unsound as determined by a Professional Actuary, the Commissioners Court shall provide adequate additional funding in compliance with section 31.021 to restore the Fund to a level that is actuarially sound.

31.029 Investments of Fund

Upon recommendation of the Cash/Investment Manager of County, the Commissioners Court shall direct the investment of money in the Fund in investments that are lawful investments for public funds of County.

31.030 Administration of External Claims Generally

- (a) The HRMD Director and Risk and Benefit Manager are responsible for the administration of External Claims.
- (b) The Commissioners Court shall approve one or more Claims Adjusters to whom the Risk and Benefit Manager may assign external claims. The Risk and Benefit Manager may allow one or more Claims Adjusters to adjust or otherwise administer claims for the County. The Risk and Benefit Manager shall designate the Claims Adjuster for each particular claim. The Claims Adjuster may be selected from a list of Claims Adjusters approved by the Commissioners Court which may include the County's administrative staff and a professional claims handling or management service retained as a Claims Adjustor.
- (c) If a professional claims handling or management service is retained to serve as a Claims Adjuster, the contract shall be on a non-exclusive basis, and the contract under which the service is retained shall be made terminable by County upon the expiration of a reasonable term fixed by the Commissioners Court.
- (d) Each Claims Adjuster shall be directly responsible to the HRMD Director and Risk and Benefit Manager and shall follow any claims administration policies and procedures established by the Commissioners Court.

31.031 Defense of External Claims

- (a) The HRMD Director or Risk and Benefit Manager and the County Attorney shall direct the defense of the County in External Claims.
- (b) The HRMD Director, based upon the recommendation of the Risk and Benefit Manager and County Attorney, may retain attorneys, experts and investigators in connection with the defense of any External Claim.

31.032 Settlement of External Claims

Except for payments required by the Texas Workers' Compensation Act for undisputed claims:

- (1) The HRMD Director or Risk and Benefit Manager, in their discretion, may recommend settlement of External Claims, subject to the limitation prescribed by section 31.032.
- (2) The External Claims of any one claimant that arise from the same Occurrence may be tentatively settled by the Risk and Safety

Specialist Senior for an aggregate amount between \$0 and \$2,500. Amounts in this size range shall be considered routine and shall be submitted to the Commissioners Court for approval on its general agenda item for payment of all claims submitted weekly by the County Auditor. Claims which are denied will be submitted to Commissioners Court on its regular liability agenda item.

- (3) The External Claims of any one claimant that arise from the Occurrence may be tentatively settled by the HRMD Director or Risk and Benefit Manager for an aggregate amount between \$0 and \$20,000. Amounts in this size range shall be considered routine and shall be submitted to the Commissioners Court for approval on its general agenda item for payment of all claims submitted weekly by the County Auditor. Claims which are denied will be submitted to Commissioners Court on its regular liability agenda item.
- (4) The External Claims of any one claimant that arise from the same Occurrence may be settled for an aggregate amount between \$20,000.01 and \$35,000 upon the approval of the Commissioners Court after receipt of recommendations of the HRMD Director or Risk and Benefit Manager. Amounts in this size range shall be considered routine and shall be submitted to the Commissioners Court for approval on its regular liability agenda item if accompanied by the recommendation of the Risk and Benefit Manager.
- (5) The External Claims of any one claimant that arise from the same Occurrence may not be settled for an aggregate amount exceeding \$35,000 without the approval of the Commissioners Court after consideration of the details of the claim, the advice of the HRMD Director and Risk and Benefit Manager, and the advice of the County Attorney. Amounts above \$35,000 shall not be considered routine and shall be subject to review by the Commissioners Court and shall be submitted for approval either on the regular liability agenda item or during an executive session item.
- (6) Upon specific authorization by the Commissioners Court, the HRMD Director and Risk and Benefit Manager may authorize the Claims Adjustor to settle External Claims of any one claimant that arise from the same Occurrence for an aggregate amount not exceeding \$35,000 if the details of the Claim have been reviewed by the County Attorney and the County Attorney has provided advice on the claim to the HRMD Director or Risk and Benefit Manager but the payment of the Claim is subject to approval by Commissioners Court on the general agenda item for payment of claims.
- (7) When a Claim resulting from the rotor wash of the STAR Flight helicopter is received, the Risk and Benefit Manager will determine whether the damage claimed in fact resulted from rotor wash of the helicopter. If the damage was caused by the rotor wash, the Risk and

Benefit Manager will determine whether the value claimed for the damage is accurate by the standard means used to determine the value of claims of a similar nature and value. The Risk and Benefit Manager will then recommend the claim for payment at the accurate value of the damage using the method for Commissioners Court approval specified for the value of the claim by 31.032.

31.033 Payment of Non-Covered External Claims

Any External Claim that County is legally obligated to pay that is not a Program Claim or, if a Program Claim, that exceeds the amount permitted to be withdrawn from the Fund to pay that Program Claim under this chapter, may be paid by County only at such times and from such sources as are required by law.

31.034 Administration of Internal Claims Generally

The HRMD Director and Risk and Benefit Manager are responsible for the administration of Internal Claims.

31.035 Appraisal of Internal Claims

- (a) The Commissioners Court shall approve one or more appraisers to whom the Risk and Benefit Manager may assign Internal Claims. The Risk and Benefit Manager may allow one or more Professional Appraisers to appraise Internal Claims for the County.
- (b) Each Person that is to serve as a Professional Appraiser for a particular Internal Claim shall be designated by the HRMD Director or Risk and Benefit Manager.
- (c) Each Professional Appraiser shall be directly responsible to the HRMD Director and Risk and Benefit Manager and shall follow any appraisal administration policies and procedures established by the HRMD Director and Risk and Benefit Manager.

31.036 Settlement of Internal Claims

- (a) The HRMD Director and Risk and Benefit Manager, in their discretion, may recommend settlement of Internal Claims.
- (b) Internal Claims that arise from the same Occurrence may be settled for an aggregate amount between \$0 and \$2,500 without the approval of the Commissioners Court upon a recommendation by the Risk and Safety Specialist, Senior designated by the Risk and Benefit Manager. Amounts in this size range shall be considered routine and may be approved by the Risk and Safety Specialist, Senior designated by the Risk and Benefit Manager. Claims which are denied shall be submitted to Commissioners Court on its regular liability agenda item.

- (c) Internal Claims that arise from the same Occurrence may be settled for an aggregate amount between \$2,500.01 and \$20,000 without the approval of the Commissioners Court upon the recommendations by the HRMD Director and Risk and Benefit Manager. Amounts in this size range shall be considered routine and may be approved by the HRMD Director and Risk and Benefit Manager. Claims which are denied shall be submitted to Commissioners Court on its regular liability agenda item.
- (c) Internal Claims that arise from the same Occurrence may not be settled for an aggregate amount between \$20,000.01 and \$35,000 without the approval of the Commissioners Court after receipt of recommendations of a Professional Appraiser, HRMD Director and Risk and Benefit Manager. Amounts in this size range shall be considered routine and shall be submitted to the Commissioners Court for approval on its consent agenda if accompanied by an appraisal and recommendation of the HRMD Director and Risk and Benefit Manager.
- (d) Internal Claims that arise from the same Occurrence may not be settled for an aggregate amount exceeding \$35,000 without the approval of the Commissioners Court after consideration of the details of the Claims, an appraisal and the advice of the HRMD Director and Risk and Benefit Manager. Amounts above \$35,000 shall not be considered routine and shall be subject to review by the Commissioners Court and shall not be submitted for approval on its consent agenda.
- (e) All Internal Claims for crime coverage losses of theft, disappearance, or destruction of money or securities are submitted for review by the Commissioners Court on its regular liability agenda item. All these losses are reported to the County Auditor for Internal Audit consideration.

31.037 Claims by County against Non-County, Non-Employee Persons

Any money received by County for any Claim against any non-County, non-Employee person for which County has received any payment in settlement of the Claim shall be deposited in the Fund and the HRMD Director may authorize withdrawal from the Fund for any department or elected official of County in order to make capital replacements or repairs to capital equipment that are required due to the non-County, non-Employee Claim.

31.038 Risk Management Activities Generally

- (a) The HRMD Director and Risk and Benefit Manager shall engage in the following activities:
 - (1) Identify and quantify (to the extent practicable) the risks that have the potential to result in liability for the payment of Claims by County or by Employees due to the scope of their employment;

- (2) Devise and implement programs designed to reduce the exposure of County and the Employee to loss due to Program Risks, including risk assumption, risk reduction, (including Employee training and facilities rehabilitation planning), risk retention, and risk transfer (including the purchase of Program Insurance);
 - (3) Develop and maintain for the Commissioners Court an information system in coordination with any existing systems of County, for the efficient recording of Program information, including information concerning Claims, expenses covered by the Claims Payment Policy and County Damage expenses, Administrative Expenses, withdrawals from the Fund, and Program Insurance premiums;
 - (4) Analyze the data stored in the information system; and
 - (5) Perform such other services as may be specified by the Commissioners Court.
- (b) Subject to applicable budgetary restrictions and the consent of the Commissioners Court, the Risk and Benefit Manager may implement and supervise the safety and other risk management policies and procedures that are to be followed by County and Employees.

31.039 Cooperation with County Administration

To promote the efficient and effective administration of the Program especially the Risk Management Activities,

- (1) The various elected officials, and their employees are encouraged to cooperate with the HRMD Director and Risk and Benefit Manager.
- (2) The county executives, department heads, and other Employees having administrative responsibilities for County are directed to cooperate with the HRMD Director and Risk and Benefit Manager.

31.040 Program Insurance

- (a) Program Insurance may be obtained under the following circumstances:
 - (1) As excess coverage over that provided by the Fund, as reinsurance for the Fund, or as first-dollar coverage in lieu of that provided by the Fund (which may result in converting coverage provided by the Fund into excess coverage) if, in each case, the insurance is obtainable on a fiscally sound basis, giving consideration to the investment opportunities for the Fund and any shock-loss exposure of County due to the Program Risks;
 - (2) When services that are necessary to effectively administer the Program can be obtained only through purchasing insurance;
 - (3) When County is required by contract or law to obtain the insurance; or

- (4) When the limitations on coverage under the Fund do not result in long term economic advantage to County, and the insurance obtained either does not contain, or offsets or reduces, those limitations.
- (b) The procurement of Program Insurance shall be coordinated by the HRMD Director and Risk and Benefit Manager in compliance with Travis County Code, Chapter 32, Purchasing Policies and Procedures and approved by the Commissioners Court.
- (c) Program Insurance shall be obtained from the responsible provider determined by Commissioners Court in compliance with the County Purchasing Act. A financial quality rating is required, and the insurance provider must be in excellent financial condition as determined by the HRMD Director and Risk and Benefit Manager or an A.M. Best rating.
- (d) When practicable, the enumeration of agents or brokers providing insurance services to County pursuant to this chapter shall be on a fee basis.

[31.040 - 31.050 reserved for expansion]

Subchapter C. Defense and Payment of claims Against Officials and Employees

31.051 Purpose

The purpose of this subchapter is to provide officials and employees with the right to be defended or reimbursed for claims for damages, court costs, and costs of legal defense of suits in certain circumstances.

31.052 Legal Defense of Employees

The County Attorney shall represent an Employee who is sued by a Nonpolitical Entity for an action arising from the performance of a public duty unless the Employee chooses not to accept this legal counsel. If additional legal counsel is necessary or proper for an Employee under this section, or if it reasonably appears that the act complained of may form the basis for the filing of a criminal charge against the Employee; then the Commissioners Court shall employ and pay private counsel to represent the Employee unless the Employee chooses not to accept this legal counsel.

31.053 Settlement of Claims

With the approval of Commissioners Court, legal counsel provided pursuant to 31.052 may settle the portion of a suit that may result in payment of damages by County under this subchapter.

31.054 Payment of Certain Tort Claims

County shall pay actual damages awarded against an Employee if the following conditions are met:

- (1) The damages result from an act or omission of the Employee in the course and Scope of his or her Employment for Travis County;
- (2) The damages arise from a cause of action for negligence;
- (3) The Employee has accepted legal counsel provided pursuant to 31.052; and
- (4) The Employee has cooperated fully with the legal counsel provided pursuant to 31.052 in the preparation and trial or settlement of the case.

31.055 Payment of Court Costs and Attorney's Fees

County shall pay the court costs and attorney's fees awarded against an Employee for whom County must pay damages under 31.053 or 31.054.

31.056 Limit on Type of Damages

- (a) County shall not pay damages awarded against an Employee that are recoverable under an insurance contract or a self-insurance plan authorized by statute to the extent that the damages are recoverable from these sources.
- (b) With the approval of the Commissioners Court, funds may be advanced to an Employee to pay damages until recovery under an insurance contract is received. If funds are advanced, the Employee shall deposit the amount of the advance into the County treasury to the credit of the line item in the Self-Insurance Fund from which the advance was made.

31.057 Limit on Amount of Payments

County shall not pay more than \$100,000 to any one person or more than \$300,000 for a single Occurrence in the case of personal injury or death and shall not pay more than \$100,000 for a single Occurrence of property damage.

31.058 Security for Court Costs and Bond

Except for Federal Court cases, pursuant to Texas Civil Practice and Remedies Code 102.005; neither the defendant nor Travis County is required to advance security for costs or to give bond on appeal or writ of error.

31.059 Other Laws Not Affected

This subchapter does not affect the general law regarding sovereign immunity, the Texas Tort Claims Act or a defense, immunity, or jurisdictional bar available to County or an Employee.

31.060 Procedure for Invoking This Subchapter

- (a) In order to obtain the assistance provided by this subchapter, an Employee who is served with process in any action which is covered by this subchapter shall give a written request for representation, which includes a copy of the document served on the Employee to his or her department head or elected official no later than the first business day after the Employee is sued.
- (b) The department head or elected official shall forward copies of the request for representation, including enclosures, to the County Judge and the County Attorney and Risk and Benefit Manager no later than the second business day after receipt of the request.
- (c) The County Judge shall place an item on the agenda for the next meeting of the Commissioners Court that begins not less than 72 hours after receipt of the request.
- (d) At the meeting, with the advice of the County Attorney, the Commissioners Court shall decide whether this subchapter applies to the suit to which the request relates. If Commissioners Court decides that this subchapter applies, the Employee shall receive the benefits of this subchapter. If the Commissioners Court decides that this subchapter does not apply, the Employee shall not receive any benefits from this subchapter and the attorney-client relationship shall not be formed between the County Attorney and the Employee.
- (e) If this subchapter applies and, on the advice of the County Attorney, additional legal counsel is necessary and proper, or a conflict of interest exists, the Commissioners Court shall select private counsel or approve the Employee's selection of private counsel and approve a contract for professional services with that private counsel, subject to County billing practices and guidelines within one week after the date of selection or approval.
- (f) If this subchapter applies and in the opinion of the County Attorney a potential conflict of interest exists, the Commissioners Court and the Employee shall each decide whether to waive the potential conflict of interest. The Commissioners Court shall approve payment, not to exceed \$500 per hour, to private counsel of the Employee's choice, for the Employee to obtain independent legal advice about whether to waive the potential conflict of interest. If either the Commissioners Court or the Employee decides not to waive the potential conflict of interest, the Commissioners Court shall select private counsel or approve the Employee's selection of private counsel.
- (g) If the Employee chooses not to accept the legal counsel selected or approved by the Commissioners Court, pursuant to section 31.060(e) or (f), the Employee shall be responsible for all costs, fees, and expenses of the litigation.

31.061 Professional Liability Coverage for Judicial Service

- (a) In this section,
- (1) "Judicial Official" means any of the following elected officials: District Judge, County Court at Law Judge, Justice of the Peace, Probate Judge, Juvenile Judge, and any person appointed pursuant to law by any of these elected officials to deliberate on matters within that elected official's jurisdiction such as an Associate Judge, or a Master.
 - (2) "Judicial Service" means
 - (A) Performance of duties as a presiding judge in a court where decisions are rendered on legal cases submitted to and heard by it (whether or not an official court reporter is present at such proceedings) and
 - (B) Performance of administrative duties that are reasonably necessary or required or permitted as duties of judges under the laws of Texas or the United States; provided that acts or omissions of a judge are within the scope of the judge's authority to perform such duties.
 - (3) "Visiting Judicial Official" means a retired or former Judicial Official who has accepted an assignment as a visiting Judicial Official for which he or she is qualified pursuant to law, taken the oath of office required by the Texas Constitution, and filed the oath with the appropriate presiding judge as determined by the court to be visited and the applicable statute.
- (b) If a person is serving as a Judicial Official or Visiting Judicial Official or has served as a Judicial Official or Visiting Judicial Official within the last ten years, and has incurred professional liability, or claims of professional liability, while serving in these positions in courts administered or funded even in part by Travis County, that person has the right to be defended or reimbursed or both for claims for damages, court costs, and costs of legal defense of suits in the circumstances provided in this subchapter.

[31.062 - 31.069 Reserved for Expansion]

Subchapter D. Risk Management Internal Administrative Policy and Operating Procedure

31.070 Practices and Procedures

- (a) Purpose. This subchapter establishes uniform procedures for handling County workers' compensation, automobile, liability, property, and fidelity exposures.
- (b) Risk and Benefit Manager. The Risk and Benefit Manager has the responsibility for the County's risk and insurance management. He or she

shall identify and address all exposures which could result in financial loss to the County.

- (c) Budget. The Risk and Benefit Manager's budget shall be established as part of the County Human Resources Management Department and shall only be expended for payment for insurance premiums, self-insured claims and administrative costs, personnel costs, equipment purchases, and other expenses related to the Risk Management administrative function.
- (d) Self-Insurance and Insurance. The following policies shall be observed in determining amounts of risk retention and insurance.
 - (1) Worker's Compensation. It shall be the County's policy to self-insure the first \$300,000 of each Occurrence and purchase excess protection, claims handling, and other administrative services.
 - (2) Liability. General, automobile, law enforcement, public officials' errors and omissions liability, and automobile physical damage shall be totally self-insured. Claims shall be handled in accordance with this chapter.
 - (3) Property. It shall be the County's policy to insure with outside carriers property exposures (buildings, contents, boiler and machinery, crime, and automobile catastrophe coverage) on a blanket basis, with an agreed amount. Insurance values shall be determined by request of information from department heads relating to questions of insurance values of property under their jurisdiction.
 - (4) Catastrophe Contingency Plan. The County shall arrange for debt financing in the event of losses which exceed the capacity of the County's self-insured unallocated risk reserve.
 - (5) Employee Fidelity Bond. An employee fidelity bond or comparable protection shall be secured for selected County officials and employees as required by state law.
- (e) Responsibility. Department heads shall report to the Risk and Benefit Manager the following changes in property under their supervision:
 - (1) Changes in the Building Use. All changes in the use or occupancy of buildings shall be reported. Strict observance of this requirement is necessary since building use bears directly on insurance rates and public liability status.
 - (2) Razed Buildings. All razed buildings shall be reported immediately to the Risk and Benefit Manager so that insurance on such buildings can be canceled.
 - (3) Changes in Equipment. To provide a complete record for the insurance of equipment, department heads shall file a report with the Risk and Benefit Manager covering the disposal and procurement of all insurable equipment.

- (4) Property Losses. Property losses occurring from fire or other causes which may be recovered from the insurance company shall be immediately reported in writing to the Risk and Benefit Manager.
- (5) Duties of the Risk and Benefit Manager. Changes and adjustments in insurance policies necessitated by reports from the department heads shall be made by the Risk and Benefit Manager. The Risk and Benefit Manager shall be authorized to cancel insurance on razed buildings with approval of the Commissioners Court.

31.071 Responsibility and Authority for Loss Control, Loss Prevention, and Self-Insurance Programming

- (a) Purpose. The purpose of this procedural statement is to state the responsibilities and authority of the Risk and Benefit Manager and County departments with respect to implementing the County's program on property and liability loss control.
- (b) Responsibilities of the Risk and Benefit Manager. The Risk and Benefit Manager is expected to:
 - (1) Identify risk exposure areas and make recommendations to the Commissioners Court as to whether to insure, self-insure or budget for these risks, or to use some combination of these methods. It is also his or her responsibility to recommend changes in current County policy with respect to loss prevention, self-insurance, and insurance coverage when appropriate.
 - (2) Maintain perpetual inventories on the insurable values of all property, including buildings contents, equipment, vehicles, and supplies.
 - (3) Be informed of proposed changes in the tort liability status of counties in the State of Texas and provide loss control necessary to avoid any large liability losses.
 - (4) Review County policies, state statutes, and federal grant requirements to determine when insurance and bonds are required.
 - (5) Supervise and encourage all loss prevention activities and cooperate with department heads to establish a health and safety program.
 - (6) Make periodic reports to the Commissioners Court with respect to the current status of the self-insurance, insurance, and loss prevention programs.

31.072 Responsibilities of Other Personnel

- (a) Department heads shall notify the appropriate law enforcement agency if there is vandalism, theft, burglary, or other disappearance of County property within four hours of discovery of the loss. Department heads shall cooperate with the Risk and Benefit Manager in his or her investigation of loss

exposures and claims and in the operation of an effective safety and loss prevention program. They shall also review all contract forms with the Risk and Benefit Manager before signing them so that any increase or decrease in the County's contractual liability can be properly identified and controlled.

- (b) The County Attorney's Office shall review all contract forms entered into by the County with the Risk and Benefit Manager to identify and reduce any contractual liability being assumed by the County and attempt to transfer such liabilities.
- (c) The County Attorney's Office shall further notify the Risk and Benefit Manager of changes in state statutes which affect County liability.
- (d) The County Attorney's Office shall also provide assistance to the Risk and Benefit Manager in the investigation and settlement of claims against the County from both employees and the public.
- (e) The County Attorney's Office shall also provide legal assistance in the examination of insurance and bond contracts entered into by the County.

31.073 Safety and Loss Prevention Procedures

The Risk and Benefit Manager shall design and manage a workable health, safety, and loss prevention program with the cooperation of all County department heads and their designated safety directors.

The purpose of this program is to reduce accidents causing injuries to County employees and the public and to reduce the frequency and severity of all property losses.

The program will consist of making periodic inspection of facilities, investigating the causes of accidents and property losses, developing training programs for employees and communicating safety literature to all departments. Department heads will then be expected to have such literature posted.

The Risk and Benefit Manager shall make maximum use of the expert services of insurers, agents, and departmental safety directors whenever possible to develop better safety and loss prevention procedures.

Safety inspections and training to reduce or eliminate crime coverage losses are the responsibility of the Risk and Benefit Manager.

31.074 Accident and Claims Reporting

- (a) Prompt reporting of losses helps expedite claims handling, reduces loss of time for personnel, and results in cost savings through settlement of justifiable claims. Therefore, all accidents resulting in bodily injury to any person, whether or not employed by the County, and all incidents resulting in property damage, destruction or illegal taking of County property, shall be reported immediately to the Risk and Benefit Manager.

- (b) Claims against insurance companies or persons damaging County property will be filed by the Risk and Benefit Manager and the County Attorney's Office.

31.075 Procedures for Reporting Accidents and Losses

- (a) It is important that accidents and losses be reported promptly and in accordance with prescribed procedures. The maintenance of a favorable public image, the protection of the County's interests, the reduction in time lost for personnel and equipment, and the savings realized through prompt settlements, are significant benefits which may be realized. Supervisory personnel at all levels should require adherence to these principals.
- (b) Reports of general liability and automobile occurrences should be reported to the Risk and Benefit Manager on a report form made available by the Risk and Benefit Manager.
- (c) In preparing occurrence reports, special attention should be given to the following areas:
 - (1) Time, date and place of accident or event;
 - (2) Description of vehicle, equipment or property involved;
 - (3) Name of claimant;
 - (4) Nature of damage or loss and estimated cost;
 - (5) Description of circumstances;
 - (6) Names and addresses of witnesses;
 - (7) Diagram of events, when feasible; and
 - (8) Copy of signed statements of employee and supervisors.
- (d) The Risk and Benefit Manager will process all accident and loss notices and will notify the contract claim administration firm or insurance company concerned.
- (e) Accidents of a serious nature and occurring on weekends or holidays should be called in to the contract claims administration firm or insurance company and followed up with the proper accident report forms.

31.076 Contract and Lease Requirements

All contracts entered into by the County will have to meet the insurance and indemnification requirements for all County contracts. Short form contracts, professional agreements, and leases should be discussed on an individual basis with the Risk and Benefit Manager so appropriate insurance requirements may be added into these agreements.

31.077 Procedure for Securing Insurance

County shall maintain an insurance program specifically designed to meet the needs of the County and changed as needed.

- (1) All department heads are to make recommendations as to which coverage would best protect their particular operation.
- (2) All reports and records received from the different departments will be reviewed and the insurance program will be revised to meet the changing requirements.
- (3) The Risk and Benefit Manager will consult with the County Attorney's Office for their recommendations concerning the County's liabilities.
- (4) The Risk and Benefit Manager will make recommendations to the Commissioners Court as to proper and adequate insurance coverage.
- (5) After approval by the Commissioners Court of the acquisition of insurance, competitive bids will be taken for all County insurance coverage.

31.078 Allocation of Insurance Costs Pending Court Approval

- (a) Workers' compensation insurance costs will be charged to County departments.
- (b) If Commissioners Court directs the Risk and Benefit Manager to allocate insurance costs when premium breakdown is not determinable, workers' compensation, liability, and property insurance costs shall be allocated to each department based on payroll and loss experience and property insurance costs shall be allocated based on the specific properties used and operated by each department.

31.079 Reports to be Filed with the Risk and Benefit Manager

The following reports should be filed with the Risk and Benefit Manager:

- (1) All claim reports;
- (2) Copies of authorizations for the acquisition or disposal of property;
- (3) Minutes of all Commissioners Court meetings, safety meetings and all other meetings in which insurance or loss prevention is discussed;
- (4) Inspection reports when the building inspector or fire department inspects County premises; and
- (5) All other reports, proceedings, and memoranda which have to do with the County's risk management program.

31.080 Reports to be Kept by the Risk and Benefit Manager

The following reports should be kept by the Risk and Benefit Manager:

- (1) An inventory of current locations, descriptions, and insurance values of all property owned or leased by the County;
- (2) An insurance register, outlining all coverage in force and including premiums, policy numbers, servicing agents, terms of coverage, and expiration dates;
- (3) Premium payment and allocation records;
- (4) Claims filed and pending;
- (5) Loss records subdivided into workers' compensation, liability, and property, whether paid from self-insurance funds or under existing insurance policies; and
- (6) Subrogation recoveries received from third parties who have damaged County property or are reimbursing for workers' compensation benefits paid.

[31.081 - 31.099 Reserved for Expansion]

Subchapter E. County Minimum Standards for Service Providers

31.100 Liability Claims Handling Minimum Standards

- (a) County strives to contract for the best claims handling service possible. Controlling the file is the true key to effective claims handling. This includes prompt investigation, response to inquires, and staying abreast of the developing tort liability law. The following minimum standards detail in general the system of checks and balances which have been established; they are not meant to be static but continue to evolve to meet the demands of a changing environment.
- (b) County's philosophy on claims payment is to pay promptly what is owed. However, when facts develop that indicate a claim should not be paid based upon the law, then County resists payment, even for "nuisance value" claims which an insurance company might pay.

31.101 Prompt Contact

Once a claim is received, prompt contact should be made within 24 hours of the assignment to make an appointment to inspect or appraise the damage to the property or to take a statement from the injured person. This inspection or the taking of a statement, as appropriate, should be done within 72 hours of the assignment.

31.102 Contact with County

- (a) County should be contacted by telephone within 24 hours (one calendar day) of receipt of report of a claim.

- (b) County must be contacted at least every 90 days on all open files. This is done to keep the County abreast of the claims development.
- (c) County's designated contact person should be consulted prior to settlement of all claims. County maintains absolute control of all claims and all settlement negotiations. In the event of a disagreement on whether or not to settle a claim, the third party claims administrator should contact the HRMD Director.

31.103 Coverage

When in question, coverage should be confirmed with the County Attorney to ensure that the incident or damage is covered under Travis County's resolution for liability coverage.

31.104 Investigation

If possible, the proximate cause should be identified. Statements of all parties involved should be taken. Photographs, police reports, fire department reports, medical reports, and diagrams should be a part of the reporting file when possible. Follow-up contact with workers' compensation claimants should be done at least every 14 days for the duration of the claim.

31.105 Experts

Hiring of experts requires the approval of the County Attorney. Experts include, but are not limited to, lawyers, private investigators, doctors, and appraisers.

31.106 Salvage and Subrogation

- (a) The potential for salvage and/or subrogation should be recognized, protected, reported, and pursued by the third party claims administrator.
- (b) Quarterly reports on the cases in subrogation, the amounts recovered, and the status of the subrogation must be submitted to the County Attorney.

31.107 Lawsuits

- (a) County Attorney shall notify the Risk and Benefit Manager that they have been served with a lawsuit, and deliver a copy of the petition to the Risk and Benefit Manager. The Risk and Benefit Manager shall notify the administrative service provider to set reserves and enter the lawsuit in the Risk Information Management System.
- (b) Lawsuits shall be handled in accordance with County Litigation Management Policy and Procedures.

31.108 Reservation of Rights Letters

Reservation of rights letters will be needed from time to time on certain claims to protect the interests of County. These letters shall be written by the field adjuster of the third party claims administrator and approved by the County Attorney.

31.109 Reporting

- (a) The HRMD Director is to be notified immediately (within 24 hours of receipt of report of a claim) on:
 - (1) Fatal claims,
 - (2) Catastrophic occurrences with potential exposure of \$50,000 or more,
 - (3) Occurrences that may involve more than one coverage,
 - (4) Lawsuits, and
 - (5) Claims involving personal injury or professional liability.
- (b) Third party claims administrator shall submit a special report to the Risk and Benefit Manager and the County Attorney on every claim with losses in excess of \$5,000 for liability. Such special reports shall be made within 30 days of setting a reserve at or above \$5,000. Special reports shall include, but shall not be limited to:
 - (1) Coverage items,
 - (2) Background and basis of claims,
 - (3) Summary and update of litigation,
 - (4) Settlement attempts,
 - (5) Names of all parties and, if represented, the names of their attorneys,
 - (6) Recommendations and strategy,

31.110 Reserves

- (a) Reserves shall be set by the claims manager of the third party claims administrator.
- (b) Reserves for bodily injuries should be based on the nature of the injury, expected duration of treatment and any expected residual disability anticipated.
- (c) Reserves on property third party files are based on actual inspection.
- (d) Reserves on personal injury and professional liability claims should be set after consultation with the liability manager of the third party claims administrator and the Risk and Benefit Manager.

- (e) Because all the necessary facts may not be available at the outset of a claim, reserves should be adjusted when medical information or investigation indicates the existing reserve is high, low, or otherwise inadequate.
- (f) The adequacy of reserves must be reviewed at least monthly and documentation to the file should reflect this review and substantiate any adjustments in the total reserve. Reserve changes must be documented in the claim file and input to the data system within 24 hours of the change.

31.111 Proofs of Loss and Releases

Proofs of loss and releases are required on all claims and losses.

31.112 Contacting Reinsures

Whenever a field adjuster believes that a workers' compensation claim has the potential to penetrate the reinsurance layer, he or she will notify the Risk and Benefit Manager who in turn shall contact the workers' compensation reinsurer (if any).

31.113 Indexing

A Southwest Index Bureau request will be submitted to the Index Bureau on all bodily injury cases.

31.114 Settlement Authority

- (a) All settlement authority, whether for automobile, general, personal injury, or professional liability, lies with Travis County. It is intended that no settlement authority be granted to the third party claims administrator without express written consent of the Commissioners Court.
- (b) The third party claims administrator shall maintain accurate information in the file regarding efforts to conclude the claim, offers of settlement made, and responses received. Evidence of settlement authority granted by County and documentation of all attempts to settle shall be fully documented in the file.

31.115 Advance Payments

- (a) When both bodily injury and property damage arise out of an Occurrence, advance payment may be made only when County's liability is absolutely clear and then only if approved in writing by Commissioners Court.
- (b) No advance payment should be made on bodily injury claims without the express approval of the Risk and Benefit Manager and the County Attorney.

31.116 Contact Prior to Settlement

The Risk and Benefit Manager and the County Attorney should be consulted prior to settlement of all claims and losses. No claim shall be settled without the approval of Travis County Commissioners Court.

31.117 File Creation and Maintenance

- (a) A physical claim file shall be created within 24 hours of receipt of a claim. A notation in the file shall be made regarding diary, setting of reserves, supervision, and any other pertinent information. All files in litigation shall be marked.
- (b) All statements, contact with witnesses, claimants, insured, doctors and other investigations should be fully documented in written memoranda to the file.

31.118 Correspondence

- (a) Inbound correspondence shall be handled by the third party claims administrator in compliance with their contract with the County.
- (b) Outbound correspondence shall in all cases be in a typewritten or preprinted format and shall represent a prompt response to inbound correspondence or telephone calls.

31.119 Data Entry

All data entry shall be handled by the third party claims administrator in compliance with their contract with the County.

31.120 Quality Control and Supervision

Quality Control shall be handled by the third party claims administrator in compliance with their contract with the County.

31.121 Litigation Management Policies

It is the policy of County to assure itself of quality defense for liability cases. Consistent with the policy, and in no way jeopardizing the quality of defense, County seeks to minimize legal expenses by eliminating all unnecessary activity and ensuring the efficient handling of defense claims. The policies and practices set forth in this document describe the guidelines for all outside counsel, if any, retained by County. Through the establishment of long-term relationships between retained counsel and County, said counsel can better understand and be responsive to the needs and requirements of County.

[31.122 - 31.190 Reserved for Expansion]

Subchapter F. Public Access Defibrillator Program in County Facilities

31.191 Purpose

- (a) This subchapter establishes a lay Public Access Defibrillator program that is comprehensive, clinically appropriate, operationally feasible, legally compliant, and integrated into a response system.
- (b) The subchapter governs installation, use, training, and maintenance of automated external defibrillators in facilities operated or occupied by County offices and departments.

31.192 Implementation

- (a) Every County office and department is encouraged to participate in a needs assessment for AED in its facilities. Individual departments are responsible to identify individuals for AED training.
- (b) AED shall be used in compliance with the Texas Department of Health laws and regulations that govern the use of AED as prescription medical devices to be used under authority of a physician.
- (c) Use of AED by County lay persons shall comply with the procedures in this subchapter and users shall be properly trained so that use is protected by the Texas Good Samaritan Act.

31.193 Program Management

- (a) The Oversight Physician and Risk Management oversee the program.
- (b) The Oversight Physician establishes overall medical policies for the program including:
 - (1) Developing AED device specifications used by the County,
 - (2) Designating approved AED training curriculums,
 - (3) Promulgating County AED protocols which are the same as the protocols promulgated for the City of Austin,
 - (4) Coordinating medical review of incidents involving use of AED,
 - (5) Coordinating critical incident counseling following emergencies in which AED are used by County employees, or the lay public,
 - (6) Assuring that the program complies with all applicable local, state and federal laws and regulations,
 - (7) Reviewing overall program performance.

- (c) A program manager is a safety staff member of the Risk Management Division, HRMD who has the following responsibilities:
- (1) Assisting offices and departments in determining which facilities should be equipped with AED.
 - (2) Assisting offices and departments in identifying the best locations for AED within facilities and in placing locator signs.
 - (3) Working with the Purchasing Office to develop a County AED purchasing contract.
 - (4) Assisting offices and departments in determining who should receive AED training.
 - (5) Arranging and documenting AED training.
 - (6) Assisting offices and departments in developing policies that establish specific programs within the office or department to implement the AED protocol.
 - (7) Maintaining records on all AED in use by County offices and departments.
 - (8) Registering AED (including location and type) with Austin-Travis Co. EMS.
 - (9) Maintaining records of incidents in which County AED are used by County employees or the lay public.
 - (10) Conducting post-incident reviews with the Oversight Physician and County employees following incidents in which AED are used.
 - (11) Notifying the Oversight Physician of any application, use, or perceived malfunction of an AED.
 - (12) Working with the Oversight Physician in developing partnerships with other government, educational and private sector organizations in promoting and funding lay Public Access Defibrillation.
- (d) Each office and department appoints a liaison for the Public Access Defibrillator program. The liaison is responsible for coordinating the program for that office or department. The liaison is responsible for the following in consultation with the program manager:
- (1) Developing an Office or Department Policy that establishes the Public Access Defibrillator program within the office or department.
 - (2) Coordinating installation of AED with the program manager and Facilities Management
 - (3) Implementing the County AED protocols.
 - (4) Coordinating training and identifying personnel to be trained from the office or department.

- (5) Coordinating the AED maintenance program for the office or department including operability checks, maintenance, and documentation.
- (6) Assuring that appropriate notifications are made and that incident reports are completed when an AED is applied or used in an emergency.
- (7) Coordinating with the program manager and the Oversight Physician in arranging post-incident reviews following AED use in an emergency.
- (8) Coordinating post-incident debriefings and counseling, as needed, for personnel who use AED in an emergency.

31.194 Office or Department AED Program Protocol

Each Office or Department develops an internal AED protocol to implement this subchapter. These protocols must be reviewed and accepted by the Oversight Physician and the program manager and must address at least the following elements:

- (1) Identifying a liaison for the office or department who is responsible for managing the program within the office or department.
- (2) Describing the process for assessing and prioritizing AED locations within the office or department following the County template.
- (3) Identifying employees who will be trained to use the AED
- (4) Indicate compliance with program training requirements unless special needs exist.
- (5) Identifying any specific, unique circumstances that may exist which require special training or certification requirements different from program requirements.
- (6) Describing procedures for alerting AED-trained employees and for notifying Emergency Response when a medical emergency occurs.
- (7) Assigning responsibilities for checking, maintaining, and documenting maintenance of AED.
- (8) Describing protocol for conducting post-incident reviews and employee critical incident debriefings

31.195 Initial Program Setup

- (a) Every office or department works with the program manager to assess its facilities to determine the need for AED and to prioritize their placement based on the nature and size of the potential patient population, nature of work or recreational activities, and inherent time delay in being reached by the appropriate 911 emergency first response provider and Austin-Travis County EMS medical response units. Based on these criteria, some facilities are not appropriate candidates for installation of an AED.

- (b) All new AED must be in compliance with the specifications provided by the Oversight Physician and must be purchased in accordance with existing County purchase contracts.

31.196 Training

- (a) A County employee must receive approved training in order to use an AED. The Oversight Physician will work with the program manager to determine acceptable training curriculums that meet regulations of the Texas Department of Health. The minimum training curriculum is the American Heart Association Heartsaver AED curriculum. Training must be renewed every two years. Offices and departments should train personnel who are typically present in the facility most of the time during business hours.
- (b) HRMD, Risk Management Division; Austin Fire Department; and Austin Travis County EMS coordinate the training. There is no cost to an office or department for AED or training materials.

31.197 Maintenance

The program manager establishes a maintenance and testing schedule and checklist for use by liaisons that conforms to the manufacturer's guidelines for AED and the Texas Department of Health regulations. The program manager must be contacted immediately if an AED is damaged or missing or cannot be maintained in a state of readiness.

31.198 USE of AED at Medical Emergencies

- (a) EMS must be notified immediately any time an AED is applied to a patient or used. The program manager must be notified within 24 hours of a medical emergency in which a County owned AED is applied or used. The liaison assures that the appropriate County employees complete an AED Use Form, provided by the program manager.
- (b) The Oversight Physician reviews every incident in which an AED is attached to a patient or used to shock a patient. This review may include the County employees involved in the incident. The Oversight Physician determines if an expanded post-incident review involving the program manager, the Liaison and the first responders and EMS crews is warranted. The purpose of this review is to determine if application and use of the AED was appropriate, to answer questions employees may have about the incident, and to identify how the response could be improved. This review is not intended to place blame on County employees and shall not be the basis for disciplinary action.
- (c) The program manager assesses the need for critical incident debriefing for personnel involved in the incident. If indicated, the program manager contacts the Oversight Physician to arrange that or contact the County's Employee Assistance Program directly.

- (d) Employees involved in serious medical emergencies should be encouraged to do critical incident debriefings and may contact Workers Assistance Program directly.

31.199 Long-Range Development

The program manager should continue to develop the program with additional AED as funds permit and determination of installation needs in future buildings.

31.200 Funding

- (a) The budget for the Public Access Defibrillator Program is managed by HRMD, Risk Management Division. The funding includes the purchase of, maintenance of, and supplies for AED.
- (b) All expenditures associated with the Program shall comply with the County Purchasing Act and be based on the AED specifications selected by the Oversight Physician.

[31.201 – 31.220 Reserved for expansion.]

Subchapter G. Workers' Compensation Program²

31.221 Purpose

This subchapter implements policies and procedures that:

- (1) Promote a safe, accident-free workplace for all Employees;
- (2) Provide for workers' compensation benefits for Eligible Persons who do not receive them through the State Office of Risk Management as Employees of Adult Probation--Travis County; and
- (3) Encourages Eligible Persons with Compensable Injuries to return to work as soon as return to work is considered safe and appropriate by their treating physician.

31.222 Additional Authority for this Subchapter

- (a) The Travis County Commissioners Court adopts this subchapter pursuant to the Texas Labor Code, chapter 504 and Texas Government Code Annotated, section 418.116 related to providing compensation, including workers' compensation benefits, to volunteers and first responders providing emergency services such as firefighting, out-of-hospital medical services and law enforcement.

² Subchapter G was moved from Chapter 110 and amended on 9/18/2018, Item 12.

- (b) The Travis County Commissioners Court adopts this subchapter pursuant to the Texas Constitution, Article 3, section 52e related to providing salary continuation to Law Enforcement Officers.

31.223 Application of Policy

This subchapter applies to:

- (1) Eligible Persons as defined in section 31.226 (b)(3), and
- (2) Other individuals as otherwise defined in the Texas Department of Insurance Division of Workers' Compensation (DWC) Rules.

31.224 Coordination with Other Policies

(a) Family and Medical Leave.

- (1) All Eligible Persons with Compensable Injuries that require leave from work are evaluated for eligibility for Family and Medical Leave and the existence of a Qualifying Event. Not all Compensable Injuries qualify as Family and Medical Leave.
- (2) Workers' compensation leave and Family and Medical Leave run concurrently. All days away from work as a result of a Compensable Injury, including intermittent Lost Time, are counted against the Employee's Family and Medical Leave entitlement, if applicable, unless the Lost Time is less than three whole days or the intermittent Lost Time is less than a whole day.
- (3) The exhaustion of Family and Medical Leave entitlement does not terminate any remaining benefits under workers' compensation.

(b) Americans with Disabilities Act (ADA)

- (1) If the treating physician for a Compensable Injury of an Employee determines that the Employee is restricted from performing the essential functions of his or her position, the Employee may make a written request for a reasonable accommodation related to the restriction. The request must identify the major life function(s) affected by the restriction, the specific limitations resulting from the restriction, and the specific accommodations requested as required for an accommodation under the ADA.
- (2) If Risk Management determines that a major life function is affected by the restriction, the accommodation(s) requested meets the reasonableness standard and the requested accommodation(s) would allow the Employee to safely resume performing the essential functions of his or her position, Risk Management works with the Employee's department to determine whether the Employee can be accommodated in his or her current position.

- (3) The existence of a workers' compensation claim does not affect eligibility for a reasonable accommodation if appropriate under the ADA.
- (c) Grievance Policy. An Employee who is disciplined for not complying with this subchapter and is employed by the Commissioners Court or an elected or appointed official who has adopted Chapter 109 of the Travis County Code may exercise their privileges under the Grievance policy in Chapter 109 if the Grievance policy is applicable to the level and type of discipline imposed.

31.225 Interpretation

- (a) In this subchapter only, this section supersedes and replaces section 31.003 and (e) in subchapter A.
- (b) Any aspect of this subchapter that is governed by the DWC Rules shall be interpreted in full compliance with the DWC Rules.
- (c) Commissioners Court shall resolve any questions about any aspect of this subchapter not governed by the DWC Rules.

31.226 Definitions

- (a) The definition for "Scope of Employment" in section 31.002 governs the interpretation of this subchapter.
- (b) In this subchapter, the following words and phrases have the meaning adjacent to them below:
 - (1) "Benefits" means, as applicable in the specific circumstances:
 - (A) for Eligible Persons who are not volunteers who have sustained a Compensable Injury medical benefits, limited salary continuation, income and disability benefits and assistance in locating another job within the County, if available; and
 - (B) for Eligible Persons who are volunteers who have sustained a Compensable Injury resulting from providing reserve law enforcement services within Travis County, usually only medical benefits but may also include income benefits for any other employment.
 - (2) "Compensable Injury" means an injury or an occupational illness resulting from exposure to the illness or hazardous material or condition in the Scope of Employment with Travis County or in the course and scope of providing voluntary law enforcement services on behalf of Travis County as determined by Risk Management and the third party administrator, if any. However, under the Texas workers' compensation law, Compensable Injury does not include an injury or an illness or an aggravation of an injury or illness that occurs:
 - (A) While the Eligible Person is

- (i) Traveling between home and work;
- (ii) Under the influence of alcohol or drugs unless legally prescribed by a licensed medical provider; or
- (B) As a result of the Eligible Person's
 - (i) Willful intention and attempt to injure him or herself;
 - (ii) Willful intention and attempt to injure another person unlawfully; or
- (C) As a result of another person's willful intention and attempt to injure the Eligible Person for reasons unrelated to the course and scope of the Eligible Person's relationship to County; or
- (D) As a result of an act of God unless the course and Scope of Employment exposed the Eligible Person to a materially greater risk of injury from the act of God than experienced by the general public.

Claims from normal life activities with no contributing factors or due to willful neglect of safety rules, such as horseplay or roughhousing may be denied as compensable.

- (3) "Eligible Person" means any of the following persons:
 - (A) Any elected or appointed precinct, county or district official, officer, or person employed by Travis County and serving areas within the boundaries of Travis County, except for an appointed official, or person employed by Adult Probation—Travis County;
 - (B) The person, as determined by DWC Rules, who is eligible to receive Benefits on behalf of a deceased former elected or appointed precinct, county or district official, officer, or employee of Travis County who served areas within the boundaries of Travis County except for an appointed official or person employed by Adult Probation—Travis County; or
 - (C) Any volunteer providing reserve law enforcement services on behalf of Travis County.
- (4) "DWC" means the Texas Department of Insurance Division of Workers' Compensation.
- (5) "DWC Rules" means the Texas Workers' Compensation Act, (See Texas Labor Code 401.001, et seq. and related provisions including the Texas Administrative Code Title 28 Insurance Part 2: Texas Department of Insurance, Division of Workers' Compensation, and the decisions of administrative tribunals and courts related to them.
- (6) "Income Benefits" means income calculated in compliance with the DWC Rules that is payable for a period of disability, impairment or death. Income Benefits may be Temporary Income Benefits (TIBs), Impairment Income Benefits (IIBs), Supplemental Income Benefits (SIBs), Lifetime Income Benefits (LIBs), or Death Benefits.

- (7) “Law Enforcement Officer” means a sheriff, deputy sheriff, constable, deputy constable, park ranger, and other county and precinct law enforcement official, but only while employed in law enforcement and when acting in the course of performing his or her official Travis County law enforcement duties within the boundaries of Travis County unless:
- (A) drawn out of Travis County into another county in pursuit of a suspect or
 - (B) called into service outside of Travis County by a law enforcement authority in the applicable jurisdiction or
 - (C) a law enforcement officer ordered to perform work outside of Travis County.

This phrase does not include these individuals while acting as support staff or as security personnel unless a commissioned officer was ordered to do this duty. The interpretation of this phrase is governed by the construction of Article 3, section 52e of the Texas Constitution.

- (8) “Lost Time” means any time spent away from work at the direction of the treating physician, or if is impossible to accommodate the limitations, for a Compensable Injury, including time for medical appointments, treatment, and recovery which is recorded as the appropriate type of workers’ compensation leave in payroll timesheets.
- (8) “Risk Management” means the Risk Management Division of HRMD.
- (9) “TIBS” means Temporary Income Benefits under the DWC Rules.

[31.227 – 31.230 Reserved for Expansion]

31.231 Safety Procedure

- (a) Employees must:
- (1) Comply with County safety rules while working; and
 - (2) Report all safety hazards found on the job to a supervisor, HRMD or Risk Management immediately.
- (b) Each department or supervisor must:
- (1) Provide a safe work environment for all employees; and
 - (2) Analyze all accident reports; and
 - (3) Take appropriate corrective action to minimize the recurrence of a similar accident.
 - (4) Report all safety hazards and incidents immediately to Risk Management.

31.232 Prevention Strategies for Reducing Workers' Compensation Claims

(a) Communicable Disease Testing

- (1) In this section, "High-risk Employees" means Employees in job classifications in occupational areas that are considered to be at "high risk" for exposure to a variety of communicable diseases, including:
 - (A) Law Enforcement Officers;
 - (B) Non-clerical personnel working in corrections facilities; and
 - (C) Non-clerical personnel working in the medical examiner's office.
- (2) High-risk Employees should be immunized against the communicable diseases designated by the Texas Department of Health as high-risk diseases. For Regular Employees in a full or part-time position (not in a temporary, seasonal or volunteer position), County pays for these immunizations if the entire series is complete at the time of the initial request.

(b) Exposure Testing

- (1) All Employees, especially High-risk Employees, must submit to baseline testing for any communicable disease to which the Eligible Person has been exposed in the course and Scope of Employment.
- (2) If baseline testing is not completed within 10 days of exposure to a communicable disease, claims of illness as a result of that exposure are not compensable and are denied in accordance with the Workers' Compensation Act.

[31.233 – 31.240 Reserved for Expansion]

31.241 Order of Claim Process

The following is the order in which a claim is processed:

- (1) An employment related injury or illness occurs.
- (2) A person who is injured or becomes ill due to an employment related event files a First Report of Injury (DWC-1) form.
- (3) If the person does not seek any medical treatment or take any time off, only the first report of injury or illness and the employee statement need to be completed. However, if the person later seeks treatment, all forms must be prepared.
- (4) The person or the supervisor prepares all of the forms in section 31.243 about the injury or illness and preforms all of the duties in section 31.244 or 31.245 as applicable.
- (5) The forms are reviewed by the workers' compensation staff in Risk Management and are submitted to the County's third party administrator. The third party administrator determines whether the

Eligible Person's initial injury or illness is compensable in compliance with the DWC Rules.

- (6) As the Eligible Person recovers from the illness or injury and additional symptoms or changes in the condition arise, each additional symptom or change is reviewed by Risk Management and by the County's third party administrator to determine how much of these are also compensable in compliance with the DWC Rules.
- (7) As long as the illness or injury remains compensable, the Eligible Person and his or her supervisor must comply with sections 31.243 through 31.245.

31.242 Eligibility for Benefits

- (a) An Eligible Person is eligible for Benefits for a Compensable Injury.
- (b) County pays Benefits in compliance with the DWC Rules and this subchapter.
- (c) County is only liable for Benefits for a Compensable Injury as limited by the definition of Compensable Injury in 31.226(b)(2).
- (d) If an Eligible Person does not comply with all requirements of the DWC Rules and the procedures in this subchapter, the Eligible Person may forfeit his or her eligibility for Benefits.

31.243 Forms Related to Claiming Benefits for Compensable Injuries

- (a) Anyone who is aware of any injury or illness in the workplace should report it to a supervisor or Risk Management as soon as possible, even if the injury may not be compensable, because failure to report an injury timely could result in the County or the Eligible Person missing important deadlines and in inadequate investigation of claims that could result in loss of Benefits.
- (b) The supervisor must report any injury in the workplace within 24 hours of, or the first business day after, the date and time when the supervisor receives a notice of injury from the injured person or anyone who has knowledge of the injury. (Departments may elect to have HR Liaisons perform any responsibility that this places on supervisors.)
- (c) For claims submitted for reporting purposes only, only first two forms are required unless later there are medical costs or lost time. Travis County encourages Eligible Persons and requires departments to use the following forms prescribed by DWC in the manner stated in the following chart:

| Title, Number | Completed by | Submitted to | Requirements: |
|--|--|---|--|
| First Report of Injury or Illness, DWC-1 | Preferably by Eligible Person Acceptable from Supervisor or any other person. | Risk Management by supervisor or department | Deadline to submit is 24 hours, or on the first business day, after receiving knowledge of an injury or when the Eligible Person knew or should have known that an injury or illness was employment related. If this deadline is missed, report must be filed no later than 30 calendar days after date injury occurred or after date Eligible Person should have known injury was employment related. Supervisor completes form based on Eligible Person's Written Statement or all other available information. |
| Employee Statement | Preferably by Eligible Person Acceptable from Supervisor or any other person. | Supervisor or department for submission to Risk Management with DWC-1 | Statement must be completed upon reporting injury or occupational illness or as soon after that as possible. |
| Wage Statement, DWC-3 | Department for which the Eligible Person works | Risk Management by HR Liaison, Supervisor or department | Submit within 7 business days of the date of injury or illness. Form reports gross income of the Eligible Person with a Compensable Injury for the 13 weeks before date of injury which is used to determine Income Benefits (TIBs and IBs). |
| Supplemental Report of Injury, DWC-6 | Supervisor or department for which the Eligible Person works | Risk Management by supervisor, department or person preparing form | Form must be completed each time Lost Time begins and each time return to work occurs. Both can be reported on 1 form if the Lost Time period occurs within 3 business days. |

| Title, Number | Completed by | Submitted to | Requirements: |
|--|---|---|--|
| Work Status Report, DWC-73 | Medical provider (treating physician, physical therapist, or diagnostic facility) of the Eligible Person with a Compensable Injury BUT The Eligible Person must make sure it is completed. | Risk Management within 24 hours of the medical appointment or other change in work status by Eligible Person, supervisor or department. | Form must: Be completed for each determination of injury or treatment or release to return to work occurs. Confirm attendance at medical appointment and be signed by the medical provider State amount of time required for all periods of Lost Time and probable date or time of return. State whether the Eligible Person can return to a modified work assignment and what physical limitations apply to work. This form may also be used as medical certification for FMLA. |
| Description of Injured Employee's Employment, DWC-74 | Supervisor or department for which the Eligible Person works | Treating Physician | Form must be completed based on the job activities of an Eligible Person with a Compensable Injury when requested. The purpose of the form is to facilitate return to work. |
| Supervisor Statement | Supervisor | Risk Management within 48 hours of the injury or on the next business day, whichever is later. | Statement must be completed upon completion of investigation of events resulting in injury. And if investigation is not completed timely, submit draft and update when investigation is completed. |
| Witness Statement | Any Witness to Injury | Risk Management within 48 hours Copy to Supervisor or Department | Statement must describe details of events at time of injury. |
| Bona Fide Offer of Employment | Department for which Eligible Person works | Eligible Person who must sign and return it to the person who provided it | Offer form must be completed when placing an Eligible Person with a Compensable Injury in a modified work assignment. Provide within 24 hours of release to limited duty or on first business day after receiving release. |

31.244 Procedures for Eligible Person to File Claim

An Eligible Person, or any other person acting on his or her behalf, must:

- (1) Complete an Employee Statement or DWC-1,
 - (A) within 30 days after the date of injury, report verbally and in writing all injuries to his or her supervisor; and
 - (B) within 30 days after the Eligible Person knew or should have known the illness was employment related, report verbally and in writing all occupational illnesses that may be related to employment; OR
 - (C) if only reported verbally, the supervisor must write the verbal report or Employee Statement in a DWC-1 form.
- (2) File a claim for compensation with DWC
 - (A) for an injury, within one (1) year after the injury occurs or
 - (B) for an occupational illness, within one (1) year after the Eligible Person knew or should have known that the illness was employment related.
- (3) Provide all requested information to his or her supervisor and Risk Management in a timely manner.
- (4) When off work for more than one week, contact his or her supervisor at least once a week.
- (5) When off work, pay insurance premiums, credit union loans, all other voluntary deductions, and court directed deductions if these exceed the amount of the payment due to the Compensable Employee for salary continuation or TIBs as applicable.

31.245 Departmental Procedures Related to Workers' Compensation Claims

- (a) Each department or supervisor who supervises an Eligible Person must:
 - (1) Ensure that all injuries or occupational illnesses incurred in the Scope of Employment are reported to Risk Management as soon as possible upon becoming aware and no later than 24 hours after receiving a DWC-1 from the Eligible Person or any person acting on behalf of that person.
 - (2) Notify Risk Management immediately if any Eligible Person is seriously injured or dies.
 - (3) Maintain regular personal contact with any Eligible Person who has a Compensable Injury that results in Lost Time.
 - (4) Ensure that Eligible Persons with Compensable Injuries report time so that it reflects Lost Time due to a Compensable Injury as the appropriate type of workers' compensation leave.

- (5) Complete, or have the Eligible Person with a Compensable Injury complete, First Report of Injury or Occupational Illness (DWC-1) and forward to Risk Management, within 24 hours of receiving notice of any injury.
 - (6) Complete all back-up documentation and forward to Risk Management within 3 days after submitting the DWC-1.
 - (7) Complete all documentation necessary to begin Family and Medical Leave within 3 days after submitting the DWC-1, if applicable.
 - (8) Complete Supplementary Injury Report (DWC-6) each time an Eligible Person with a Compensable Injury begins Lost Time and each time he or she returns to work.
 - (9) Complete the Wage Statement (DWC-3) when a Eligible Person with a Compensable Injury becomes eligible for salary continuation or TIBs.
- (b) If a supervisor does not report an injury or illness within 24 hours after notified of the incident, the supervisor may be subject to disciplinary action, including termination.
- (c) If the department does not submit the Wage Statement (DWC-3) and Supplementary Injury Reports (DWC-6) within the required time, the department may be liable for any fines levied by DWC. (Minimum fine could be \$5,000/day; Maximum fine is \$25,000/day.)

[31.245 – 31.250 Reserved for Expansion]

31.251 Return to Work and Light Duty

- (a) County attempts to return Eligible Persons with Compensable Injuries to work as soon as medically possible after a Compensable Injury and to assist them, as much as practical by doing the following:
- (1) Returning the Eligible Person to his or her pre-injury position and pay as soon as released to work without any limitations by the treating physician or a designated doctor assigned by DWC;
 - (2) Temporarily placing the Eligible Person at the same rate of pay in his or her department or another department that can provide a position with modified or light duties that meet the treating physician's limitations in the release to work; or
 - (3) Providing skills assessment, if requested, to the Eligible Persons if not able to return to the previous positions due to physical or mental limitations that are permanent or due to reaching Maximum Medical Improvement.
- (b) The Eligible Person's treating physician must provide a release to work that includes the specific date the Eligible Person with a Compensable Injury may

resume his or her duties and any physical limitations on the duties that may be performed:

- (1) each time that an Eligible Person with a Compensable Injury experiences additional Lost Time after a return to work and
 - (2) each time that an Eligible Person with a Compensable Injury becomes physically able to work in any capacity again.
- (c) If a modified or light duty assignment is available, it is a temporary assignment that is initially offered for a specific period of time that is typically no longer than 24 weeks.
- (1) The department must periodically monitor and re-evaluate the duration of the assignment as the medical prognosis and physical ability of the Eligible Person improves during the assignment or until he or she becomes able to perform full or regular duties.
 - (2) No later than the 23rd week of the assignment, the department evaluates the continuation of modified or light duty.
 - (3) If appropriate, the department may extend the assignment on a case by case basis. The Eligible Person's pre-injury department will track this and communicate all extensions to Risk Management.

If at any time after an injury, a treating physician or personal physician provides a medical opinion that an Eligible Person has permanent restrictions pertaining to essential job functions of the Eligible Person's pre-injury job, regardless of whether those restrictions were caused by work injuries, a pre-existing conditions or a combination of both, then the department will end the light duty assignment, notify Risk Management and start the interactive process under the American's with Disabilities Act. [See 31.253 (d)].

- (d) An Eligible Person with a Compensable Injury who is not released to return to work in any capacity may have their work status evaluated by the department every 30 days. At the end of 36 weeks, if the employee has not been released to return to work in any capacity, then the department notifies Risk Management and may start the interactive process under the American's with Disabilities Act.

31.252 Procedures for Return to Work

- (a) An Eligible Person with a Compensable Injury, including a Law Enforcement Officer, must:
- (1) Provide any release to return to work to his or her supervisor within one business day after it is provided by his or her treating physician;
 - (2) Return to work after Lost Time as soon as released for work in any capacity, modified or light duty or full or regular duty, by his or her treating physician;

- (3) Sign the Bona Fide Offer of Employment within 24 hours and start work as soon as it is signed or lose income benefits;
 - (4) Provide a completed Work Status Report (DWC-73) from his or her treating physician for each change in work or medical status that the Eligible Person with a Compensable Injury experiences; and
 - (5) Return to his or her pre-injury position if the Eligible Person's treating physician determines that the Eligible Person is able to return to full or regular duty.
- (b) If an Eligible Person with a Compensable Injury does not provide the release to return to work within one business day after his or her treating physician provides it to him or her, the Eligible Person may not be allowed to return to work and may only be compensated from his or her accumulated leave balances and may also be subject to disciplinary action, up to and including termination.
- (c) An Eligible Person with a Compensable Injury, including a Law Enforcement Officer, who rejects any Bona Fide Offer of Employment that complies with all limitations in the treating physician's release to return to work provided, whether offered by his or her department or another department, is not eligible for any additional salary continuation or any Income Benefits after the rejection.
- (d) An Eligible Person with a Compensable Injury, including a Law Enforcement Officer, who does not return to work as soon as released for work in any capacity, modified or light duty or full or regular duty, may be subject to disciplinary action, up to and including termination.

31.253 Departmental Procedures Related to Return to Work

- (a) Each department or supervisor who supervises an Eligible Person with a Compensable Injury, including a Law Enforcement Officer, must:
- (1) To the extent possible, identify as soon as possible positions and job duties for a modified or light duty assignment. These duties must comply with the limitations in the Eligible Person's release for work by the treating physician.
 - (2) If the department operates in multiple locations, identify positions and job duties that can provide modified or light duty assignments in each location, to the extent possible.
 - (3) If it is not possible to provide a position with modified or light duty assignments in the Eligible Person's department, notify Risk Management immediately and assist Risk Management in obtaining a position with modified or light duty assignments from another department. This provides the opportunity for the Eligible Person to return to work as soon as possible after being released for work by the treating physician.

- (4) If the Eligible Person's department, or another department, can accommodate modified or light duty assignments, notify the Eligible Person and provide him or her with a written Bona Fide Offer of Employment that complies with any limitations in the release to work as soon as a position that complies with the limitations is identified.
 - (5) Request that the Eligible Person sign the Bona Fide Offer of Employment within 24 hours after the treating physician releases him or her to return to work for modified or light duty.
 - (6) Complete a Supplementary Injury Report (DWC-6) each time an Eligible Person with a Compensable Injury returns to work or is taken off of work by the treating physician.
 - (7) Return an Eligible Person to his or her pre-injury position as soon as his or her treating physician determines that he or she is able to return to full duty.
- (b) If the department does not provide a Bona Fide Offer of Employment in a timely manner, the department reimburses the Risk Fund for wage replacement benefits paid to the Eligible Person during any delay, except for the portion of any delay caused while a Bona Fide Offer is provided to the treating physician for approval to obtain a modified or light duty release from the treating physician.
 - (c) If an Eligible Person with a Compensable Injury is placed in another department to accommodate the limitations in his or her release to work, the department that hired the Eligible Person must continue to pay the Eligible Person based on the hours actually worked at the hourly rate the Eligible Person was paid in his or her pre-injury job before the Compensable Injury.
 - (d) If an Eligible Person is permanently unable to return to full duty and perform the essential functions of their pre-injury job, the department is responsible for determining, through the interactive process under Chapter 113, ADA Grievance Procedures, whether there is an accommodation that allows the employee to resume the essential functions of the pre-injury job. If not, the department must determine whether to retain the employee in the pre-injury job or notify him or her that he or she must locate alternative employment, either inside or outside the County, within 60 days after the close of the ADA interactive process. Unless the Eligible Person has accepted alternate employment within the County before the end of the 60 days or unless employment is extended by an accommodation under the ADA, the department must terminate the Eligible Person from his or her pre-injury job at the end of 60 days. HRMD may assist in this process as set forth below.

31.254 Assistance of HRMD in Job Placement.

If an Eligible Person with a Compensable Injury requests assistance, HRMD staff attempt to:

- (1) Assist in locating a position within the County for which the Eligible Person is qualified, or
- (2) Refer the Eligible Person to the Texas Rehabilitation Commission or private vocational counseling for skills assessment, or
- (3) Support and counsel the Eligible Person about job search and placement services; or
- (4) Refer the Eligible Person to the Texas Workforce Commission for employment re-training.

[31.255 – 31.260 Reserved for Expansion]

31.261 Risk Management Procedures Related to Workers' Compensation Claims

- (a) Risk Management manages the workers' compensation program described in this subchapter and assists Eligible Persons with Compensable Injuries, supervisors, and departments to comply with the DWC Rules and the procedures in this subchapter.
- (b) Risk Management initiates and participates in the solicitation for a third party administrator (TPA) for the program described in this subchapter. The TPA reviews workers' compensation claims, recommends whether the injury or occupational illness should be considered compensable, and approves claim payments for medical treatment, salary continuation, TIBs, and indemnification. Risk Management provides oversight of the TPA.
- (c) Risk Management asks supervisors and managers if they have information that supports or refutes a claim before a decision is made. Risk Management is responsible for coordinating administrative issues with DWC.

[31.262 – 31.270 Reserved for Expansion]

31.271 Medical Benefits

- (a) Medical Benefits are the reasonable and necessary medical treatment that is causally related to a Compensable Injury from or as prescribed by the Eligible Person's choice of medical provider:
 - (1) who is a treating physician on the network list for a network in which County is enrolled; or
 - (2) if County is not enrolled in any network, any treating physician who:
 - (A) accepts workers' compensation claimants as patients, and
 - (B) has not been enjoined from treating workers' compensation claimants by DWC.

- (b) An Eligible Person with a Compensable Injury is entitled to medical benefits for the shorter of the duration of his or her Compensable Injury or his or her life.

31.272 Lost Time

- (a) To the extent possible, an Eligible Person with a Compensable Injury must schedule medical appointments for the Compensable Injury when he or she is not scheduled to work.
- (b) If an Eligible Person with a Compensable Injury works flexible hours, he or she must schedule all medical appointments when he or she is not scheduled to work unless the medical provider is not available during those times. In that case, before workers' compensation leave time is approved, the Eligible Person with a Compensable Injury must provide a document from his or her medical provider confirming the need to schedule the medical appointment during work hours.
- (c) If a medical appointment cannot be scheduled outside of the Eligible Person's scheduled work hours, to the extent possible, the appointment should be scheduled at the beginning or end of the scheduled work time. This minimizes both workers' compensation leave used and the impact on the department's operations.
- (d) These requirements also apply to multiple medical appointments on a single day without regard to where the appointments occur.
- (e) An Eligible Person with a Compensable Injury is allowed a maximum of two hours of workers' compensation leave in a day for medical appointments, unless the appointment is for a procedure and the medical provider documents the type of procedure, the time it is scheduled to begin and the time it is actually completed and the Eligible Person provides the document to his or her supervisor.
 - (1) Transportation to and from medical appointments must be completed within these two hours, without regard to where the appointments occur.
 - (2) Non-medically documented hours in excess of two hours must be covered by other appropriate leave accruals.
- (f) An Eligible Person with a Compensable Injury must provide a DWC-73 or similar document from the medical provider (the treating physician, physical therapist, or diagnostic facility) completed in compliance with the chart in section 31.242(c) that confirms attendance at the appointment before any workers' compensation leave for any medical appointment is approved.
- (g) If an Eligible Person with a Compensable Injury does not submit a DWC-73 or similar document for each medical appointment and incident of Lost Time, he or she must use accrued leave balances for time away from work related to

the Compensable Injury or placed on leave without pay until the appropriate DWC-73 or similar document is submitted.

- (h) An Eligible Person with a Compensable Injury is responsible for coordinating all activities related to medical appointments, medical treatments or procedures, including transportation

31.273 Salary Continuation Benefits

- (a) All Eligible Persons with Compensable Injuries are eligible for salary continuation if they:
 - (1) Work in a regular full or part-time position (not in a temporary or seasonal position);
Are eligible for Temporary Income Benefits (“TIBs”); and
Are not able to perform their regular or modified duties as determined by their treating physician.
- (b) All salary continuation is payment to an Eligible Person with a Compensable Injury of his or her regular salary at the time of the injury, including additional pay or “add” pay as described in section 114.081 in Chapter 114 but does not include overtime pay.
- (c) An Eligible Person with a Compensable Injury stops being eligible for salary continuation immediately after one or more of the following occur:
 - (1) It is determined that the injury sustained by the Eligible Person does not comply with the requirements for a Compensable Injury in the Workers’ Compensation Act; or
 - (2) The Eligible Person with a Compensable Injury:
 - (A) fails to provide all pertinent medical information; or
 - (B) becomes ineligible for TIBs; or
 - (C) resigns, is discharged from employment for any reason, retires, or dies.

31.274 County Salary Continuation

- (a) Law Enforcement Officers are not eligible for county salary continuation described in this section. If the Law Enforcement Officer is an Eligible Person with a Compensable Injury, he or she is entitled to constitutional salary continuation which is described in subsection 31.275.
- (b) Salary continuation is paid for time missed from work during no more than the six calendar months immediately after the original date of the Compensable Injury or immediately after the date on which the Eligible Person knew or should have known that the injury or illness was employment related. It stops when the Eligible Person has recovered from the Compensable Injury even if it is less than 6 months.

- (c) After salary continuation ceases for a Eligible Person with a Compensable Injury who is not a Law Enforcement Officer, he or she may be entitled to be paid TIBs.

31.275 Constitutional Salary Continuation for Law Enforcement Officers

- (a) Constitutional salary continuation is only available to Law Enforcement Officers who have been hospitalized or incapacitated by a Compensable Injury that occurred in the course of their official duties in law enforcement.
- (b) Constitutional salary continuation is paid for time missed from work from the date of the original Compensable Injury until:
 - (1) the end of the Law Enforcement Officer's incapacity, or
 - (2) the end of the Term of the elected or appointed official who holds the Law Enforcement Officer's commission.
- (c) "Term" in 31.275(b)(2) means the last term of the elected or appointed official
 - (1) during which or after the Compensable Injury occurs, and
 - (2) during which the elected or appointed official:
 - (A) has hired or rehired the Law Enforcement Officer, or
 - (B) renewed his or her commission as a peace officer.
- (d) County salary continuation and constitutional salary continuation run concurrently. County salary continuation under section 31.274 is not payable in addition to constitutional salary continuation under this section.
- (e) When a Law Enforcement Officer who is receiving constitutional salary continuation meets the criteria in the DWC Rules for suspension of TIBs, the amount of TIBs is calculated and reimbursed to the elected or appointed official from whose payroll line item the Law Enforcement Officer is paid.

31.276 Supplementing TIBs

- (a) Even though an Eligible Person with a Compensable Injury who is receiving TIBs does not receive a payroll check, he or she remains responsible for funding all voluntary deductions and any Court ordered deductions that were deducted from his or her regular payroll check before the Compensable Injury. To assist him or her, the County allows the Eligible Person with a Compensable Injury to receive a payroll check while receiving TIBS by using accrued leave (sick, vacation, personal holidays, compensatory time). This allows him or her to fund these deductions without using TIBs for them.
- (b) The County continues to fund its portion of the contribution for the Compensable Employee's healthcare coverage while he or she is off work but still employed by the County.

31.277 Income Benefits

An Eligible Person with a Compensable Injury is entitled to one or more of the following Income Benefits as determined by his or her treating physician:

| Type of Benefit | | When? | How long? | Comments |
|------------------------------|------|---|---|--|
| Temporary Income Benefits | TIBs | During periods of temporary total disability | A maximum of 104 weeks from the original date of injury | Usually paid in full before an Eligible Person with a Compensable Injury is eligible for any other Income Benefits |
| Impairment Income Benefits | IIBs | Impairment rating resulting from a Compensable Injury that is permanent | | Paid at the rate of 3 weeks for each 1% of impairment rating |
| Supplemental Income Benefits | SIBs | (A) Permanent impairment rating is 15% or greater; and (B) Not able to earn 80% of his or her former salary due to the impairment. | A maximum of 401 weeks from the original date of injury | |
| Lifetime Income Benefits | LIBs | Permanently and totally disabled | Until death | |

[31.278 – 31.280 Reserved for Expansion]

31.281 Violation of the Workers’ Compensation Act

(a) Any person commits a violation if he or she fraudulently obtains any workers’ compensation Benefits by knowingly or intentionally:

- (1) Making a false or misleading statement;
- (2) Misrepresenting or concealing material facts;
- (3) Fabricating, altering, concealing, or destroying a document; or
- (4) Conspiring to commit one or more of these actions.

(b) This violation is a Class A misdemeanor or felony under Chapter 418 of the Texas Labor Code. A person may be subject to one or more of the following for this violation:

- (1) County disciplinary actions up to and including termination;
- (2) Administrative penalties through the Texas Department of Insurance;
- (3) Criminal prosecution; or
- (4) Other consequences as provided by DWC Rules and implemented by DWC.