



Adopted: May 8, 1997
Amended: December 14, 1998
Amended: June 6, 2002
Amended: June 5, 2003
Amended: December 28, 2006

MEMORANDUM OF UNDERSTANDING PRIMARY WORKERS' COMPENSATION PROGRAM

This Memorandum of Understanding (hereinafter "Memorandum") is entered into by and between Public Risk Innovation, Solutions, and Management (hereafter "PRISM") and the participating members of the Primary Workers' Compensation Program (hereinafter "PWC"), consisting of counties and other public entities (hereinafter "Public Entity") who are signatories to this Memorandum.

1. **Joint Powers Agreement.** Except as otherwise provided herein, all terms used herein shall be as defined in Article 1 of the Joint Powers Agreement Creating Public Risk Innovation, Solutions, and Management (hereafter "Agreement"). Provisions of any applicable coverage agreement and all other provisions of the Agreement not in conflict with this Memorandum shall be applicable.

2. **Program Committee.** There is hereby established a PWC Committee (hereinafter referred to as "Committee") comprised of nine (9) members. Except as otherwise provided herein, said Committee shall have full authority to determine all matters, except for assessments, affecting the PWC and its members, including, but not limited to, approval of new members, premium/rate setting and review of claims. The Committee has authority to settle all claims affecting the PWC; however, the Committee may delegate any or all of this authority as it deems appropriate.

The Executive Committee of PRISM shall appoint the Committee members, to be selected from members in the Program. One seat on the Committee shall be designated for a Public Entity representative appointed by the Executive Committee. If there are no Public Entity nominees from the Program membership for the Public Entity seat, the Executive Committee shall appoint the Committee member from counties participating in the PWC.

If, at any time, there are less than nine (9) members in the Program, the Executive Committee shall appoint from members in the Excess Workers' Compensation Program sufficient Committee members to constitute the Committee.

The terms of the members of the Committee shall be for two (2) years, except for the Public Entity representative whose term shall be for one (1) year. The expiration dates of the two-year appointments shall be staggered, so that terms of no more than four (4) members will expire at any one time. The Committee will annually, at its first meeting of the calendar year, select its officers, consisting of a Chair and Vice Chair.

The Committee, when necessary to fulfill the purposes of this Memorandum, shall meet on the call of the Chair of the Committee as provided in Article 12 of the Agreement and Article VI of the Bylaws of PRISM (hereinafter referred to as the "Bylaws").

A majority of the members of the Committee shall constitute a quorum for the transaction of business. Except as otherwise provided herein, all actions of the PWC Committee shall require the affirmative vote of a majority of the members of the Committee. Any meeting of the PWC Committee shall be subject to the applicable provisions of Government Code § 54950 et seq., commonly known as the "Brown Act."

3. **Premiums.** The participating members, in accordance with the provisions of Article 14 of the Agreement, shall be assessed an annual premium for the purpose of funding the PWC Program. Annual premium contributions, including administrative costs associated with the PWC shall be established by the PWC Committee.

4. **Cost Allocation.** Each member's share of annual premium shall be determined based on a rate established in accordance with the methodology outlined in the "Primary Workers' Compensation Program Methodology for Premium Rate Adjustments," attached as Exhibit A, which is incorporated herein.

5. **Dividends and Assessments.** It is the intent of this Memorandum to provide for a fully funded Program by pooling risk, purchasing aggregate stop loss coverage, and use of PRISM's Excess Workers' Compensation Program for specific stop loss coverage. It is not the expectation of the PWC that there will be pro-rata assessments to the members; however, any assessments, which are deemed necessary to ensure approved funding levels, shall be made in accordance with Article 14(b)(3) of the Agreement, upon the recommendation of the Committee and approval by the participating members of the Board of Directors.

6. **Closure of Policy Periods.** Workers' compensation claims for all program years, rather than individual years, shall be pooled, including portfolio of outstanding claims. Notwithstanding any other provision of this MOU, provisions of the Excess Workers' Compensation Program Memorandum of Understanding regarding closure of policy periods is incorporated herein and shall apply to this MOU.

7. **Certificate of Coverage.** PRISM shall issue a Certificate of Coverage to the members. The form of the certificate shall follow the coverage of PRISM's Excess Workers' Compensation Program Memorandum of Coverage.

8. **Claims Administration.** PRISM will be responsible for the handling of all claims affecting the PWC. The Committee will authorize the retention of the services of a claims administrator or claims administrators to provide claims services for the PWC. Members may select the claims administrator they will utilize from those authorized by the Committee. The agreements with the Third Party Administrators (TPAs) to provide claims administration services may grant rights or impose duties and obligations on the members. Copies of agreements currently in effect or subsequently entered into by PRISM will be provided to members.

The agreements between PRISM and the TPA referenced above state that the TPA is required to pay fines, penalties, and/or assessments arising out of their failure to comply with various provisions of the Labor Code. Notwithstanding those agreements, members also have obligations imposed upon them by the Labor Code. A member's failure to comply with those provisions may result in the imposition of fines, penalties, and/or assessments against the member by the Division of Workers' Compensation. In the event PRISM pays for any such fine, penalty and/or assessment on behalf of the member, the member shall reimburse PRISM for such payment.

9. **Application to the Program.** All applications to join the PWC will be evaluated and subject to approval by the PWC Committee and the underwriter for the aggregate stop loss coverage. Any entity, which makes application to become a participating member of the PWC Program, who is not already a participating member in PRISM must also be approved in accordance with the provisions of Article 19 of the Agreement.

Members joining the PWC shall be required to agree to a commitment to remain in the PWC for a period of at least three (3) years if the member does not transfer its portfolio of outstanding self-insured claims to the PWC; or five (5) years if the member transfers its portfolio of outstanding self-insured claims to the PWC.

However, any member may be released from such commitment if any of the following occur: 1) there are any changes in the terms of the aggregate stop loss reinsurance agreement; 2) the Committee approves an actuarial investment assumption less than 5.5% per annum; 3) the PWC cancels the agreement with the member's third party claims administrator; or 4) there are other structural changes to the PWC deemed significant by the Committee.

If a member joins the PWC within six (6) months of the date of inception of a policy period, that period shall be counted as one (1) full year toward the member's commitment. If a member joins the PWC six (6) months after the inception of a policy period, that period shall not be counted toward the member's commitment.

10. **Authority Responsibility.** PRISM shall be responsible for the following:
- a. obtain a Master Certificate of Consent to Self-Insure
 - b. any assessments as determined by the Division of Industrial Relations including but not limited to user funding and fraud assessments
11. **Member's Responsibility.** Members of the PWC shall be responsible for the following:
- a. obtain an Affiliate Certificate to PRISM's Certificate of Consent to Self-Insure,
 - b. maintain membership in PRISM's Excess Workers' Compensation Program, unless otherwise authorized by the Committee,
 - c. maintain staff to act as a liaison with PRISM and the claims administrator,
 - d. maintain an effective safety program, as set forth in the attached Exhibit B, which is incorporated herein, or as otherwise determined from time to time by the Committee.

12. **Withdrawal and/or Cancellation from the Program.** Withdrawal of a member from the PWC shall be in accordance with the provisions of Article 20 or 21 of the Agreement.

13. **Late Payments.** Notwithstanding any other provision to the contrary regarding late payment of invoices or cancellation from a Program, at the discretion of the Executive Committee, any member that fails to pay an invoice when due may be given a ten (10) day written notice of cancellation.

14. **Resolution of Disputes.** Any question or dispute with respect to the rights and obligations of the parties to this Memorandum shall be determined in accordance with Article 31 of the Agreement, Dispute Resolution.

15. **Amendment.** This Memorandum may be amended by a majority vote of the PWC Committee and signature on the Memorandum by the member's designated representative who shall have authority to execute this Memorandum. Should a member of the PWC fail to execute any amendment to this Memorandum within the time provided by the PWC Committee, the member will be deemed to have withdrawn from the PWC on the next annual renewal date, which is beyond any applicable commitment period.

16. **Complete Agreement.** Except as otherwise provided herein, this Memorandum constitutes the full and complete agreement of the members.

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

18. **Effective Date.** This Memorandum shall become effective on the date of coverage for the member or upon approval by the PWC Committee of any amendment, whichever is later.

19. **Execution in Counterparts.** This Memorandum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed the Memorandum as of the date set forth below.

Dated: 12/28/06


Public Risk Innovation, Solutions, and Management

Dated: _____

Member Entity