

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION - RISK MANAGEMENT DIVISION

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

Section

- R2-10-101. Definitions
- R2-10-102. Reporting Procedures
- R2-10-103. Liability Claim Procedures
- R2-10-106. State-owned Property Coverage and Limitations
- R2-10-107. Liability Coverage and Limitations
- R2-10-110. Cyber Breach Coverage and Limitations

ARTICLE 3. INSURANCE: PURCHASE AND CONTRACTS

Section

- R2-10-301. Insurance: Purchase and Contracts

ARTICLE 4. PROVIDER INDEMNITY PROGRAM (PIP)

Section

- R2-10-401. Coverages and Limitations

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

R2-10-101. Definitions

The following definitions apply in this Chapter unless the context otherwise requires:

1. “Agency” means a state department, board, or commission.
2. “Agency loss prevention committee” means a panel of individuals established by the head of an agency to develop and oversee the agency’s loss prevention program.
3. “Agency loss prevention coordinator” means an individual chosen by the head of an agency to implement the agency’s loss prevention program and who is the agency’s liaison with Risk Management.
4. “Attorney General’s Office” means the Liability Management Section of the Attorney General’s Office assigned to defend claims covered by A.R.S. § 41-621.
5. “Client” means an individual in custodial care of a provider through contract or court order with a state agency through programs listed in A.R.S. § 41-621(B).
6. “Confined space” has the meaning of 29 CFR 1910.146(b) Occupational Safety and Health Standards for General Industry, The Industrial Commission of Arizona, Division of Occupational Safety and Health, February 1, 1998, which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporation by reference are available for inspection at the Industrial Commission of Arizona, 800 West Washington, Phoenix, Arizona and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
7. “Contaminant” means a substance that is radioactive, infectious, carcinogenic, toxic, irritant, corrosive, sensitizer or an agent that damages the lungs, skin, eyes, mucous membranes, and other body organs.
8. “Data Breach” means any theft, loss, or unauthorized acquisition, unauthorized access to, or unauthorized disclosure of nonpublic data or information or hardware containing nonpublic data or information, in the insured’s care, custody, or control, that does or may compromise the privacy, security, confidentiality, or integrity of such data or information.
- ~~8.~~ 9. “Deductible” means the amount of a loss that the agency will pay before Risk Management is obligated to pay anything.
- ~~9.~~ 10. “Department” means the Department of Administration, an agency of the State of Arizona.
- ~~10.~~ 11. “Emergency” means an immediate health threat.
- ~~11.~~ 12. “Environment” means navigable waters, surface waters, groundwater, drinking water supply, land surface or subsurface strata, and ambient air, within or bordering on this state.
- ~~12.~~ 13. “Environmental Contractor” means a company hired by the state to conduct environmental site investigations and remediation work.
- ~~13.~~ 14. “Environmental property claim” means a demand or payment resulting from chemical or biological damage to the environment.
- ~~14.~~ 15. “Ergonomics” means a science of the relationship between human capability and the work environment, which the Department uses to design a job, task, equipment, or tool to conform comfortably within the limits of human capability.

15. 16. “Feasibility study” means a remediation plan based upon a site investigation to clean up a contaminated site by an environmental contractor.
16. 17. “Geophysical survey” means a radar, magnetic, electric, gravity, thermal, or seismic survey.
17. 18. “Groundwater” means water beneath the ground in sediments or permeable bedrock.
18. 19. “Hazardous substance or waste” means hazardous waste as defined in A.R.S. § 49-921(5).
19. 20. “Health threat” means evidence that exposure to a specific type and concentration of contaminant is harmful to human health. This evidence shall be based on at least 1 study conducted by the National Institute of Occupational Safety and Health or the Environmental Protection Agency in accordance with established scientific principles.
20. 21. “Incident” means an event involving an agency employee, facility, or equipment that results in an occupational injury or illness, personal injury, or loss of or damage to state property, or an event involving the public that exposes the state to a liability loss.
21. 22. “Loss prevention” means any action or plan intended to reduce the frequency and severity of property, liability, or workers’ compensation losses.
22. 23. “Occurrence” means an accident, incident or a series of accidents or incidents arising out of a single event or originating cause and includes all resultant or concomitant insured losses.
23. 24. “Passenger van” means any motor vehicle designed, modified, or otherwise capable of being configured to carry not less than 8 passengers and no more than 15 passengers.
24. 25. “Personal protective equipment” means any clothing, material, device, or equipment worn to protect a person from exposure to, or contact with, any harmful material or force.
25. 26. “Provider” means an individual or entity ~~licensed~~ authorized to provide services to state clients as outlined in A.R.S. § 41-621(B) that is not contractually required to indemnify and hold the state harmless.
26. 27. “Remedial action” or “remediation” means the process of cleaning up a hazardous substance or waste site by an environmental contractor.
27. 28. “Risk Manager” means the Administrator for the State Risk Management Program.
28. 29. “Risk Management” or “RM” means the State Risk Management Program.
30. 30. “Security Incident” means an event that creates a reasonable suspicion that nonpublic data or information, or hardware containing nonpublic data or information, in the insured’s care, custody, or control, may have been compromised, or that measures put in place to protect such data or information may have failed.
31. 31. “Security System Breach” means any unauthorized access to, unauthorized use or misuse of, damage, deletion, or modification to, or denial of authorized access to, a computer system within the care, custody, or control of the insured, by cyber-attacks, through any electronic means, including malware, viruses, worms, and Trojan horses, spyware and adware, zero-day attacks, hacker attacks, and denial of service attacks.
29. 32. “Self-insurance” means state-provided loss protection for an agency, ~~or employee,~~ or other person or entity who is insured ~~funded~~ through RM’s ~~revolving~~ funds.
30. 33. “Site assessment” means the process of completing and assessing a site investigation and a feasibility study.
31. 34. “Site investigation” means a detailed examination by an environmental contractor of an area of a building or ground suspected of being contaminated with a hazardous substance or waste.

R2-10-102. Reporting Procedures

- A. ~~An~~ Any agency, ~~or provider, or other person or entity insured pursuant to A.R.S. § 41-621~~ shall report a property loss, liability claim, or incident that may give rise to a claim under A.R.S. § 41-621 to RM as follows:
1. A physical injury within 1 day of the incident orally, in writing, or by electronic means.
 2. Property damage expected to exceed \$10,000 within 1 day of the incident orally, in writing, or by electronic means.
 3. Property loss expected to exceed \$10,000 within 1 day of the incident orally, in writing, or by electronic means.
 4. Except for the Board of Regents and State Universities, a data breach, security system breach or security incident orally or in writing to the ADOA Chief Information Officer within 72 hours of the incident or when the agency should have reasonably known of the incident. For the Board of Regents and State Universities, a data breach, security system breach or security incident orally or in writing to the ADOA Risk Manager within 72 hours of the incident or when the agency should have reasonably known of the incident.
 4. 5. All other claims or incidents within 10 days of the incident in writing or by electronic means.
- B. ~~An~~ Any agency, officer, ~~agent, or employee of the state receiving,~~ or other person or entity insured pursuant to A.R.S. § 41-621, who receives a claim, notice, summons, complaint or other process by any claimant or representative shall immediately forward the claim to RM. This applies to all claims for injuries or damages whether the reporting party believes there to be a factual basis for the claim, but excludes contract lawsuits or other matters not covered under A.R.S. § 41-621.
- C. ~~An agency officer, agent, or employee~~ Anyone who is insured pursuant to A.R.S. § 41-621 shall cooperate ~~under in accordance with A.R.S. § 41-621(M)~~ 41-621(N) with RM; ~~and the Attorney General's office and their representatives and shall provide~~ or other counsel appointed by the Attorney General to represent the insured, including providing all information and materials RM requests requested to investigate and resolve a claim.
- D. An agency shall submit a report of a loss on the following RM forms:
1. A loss involving a state-owned vehicle or a state driver on the "Automobile Loss Report". Information required includes: the agency involved, facts of the incident, the vehicles involved, description of injuries to individuals, names of witnesses, and the police agency that investigated the incident.
 2. A loss involving private property damage, or injury to a member of the public as a result of alleged ~~negligence acts or omissions~~ of a state officer, ~~agent or employee, or other person insured pursuant to A.R.S. § 41-621~~, other than a loss arising out of use of a motor vehicle, on a "General Liability Report". Information including the agency and employees involved, facts of the incident, name of the claimant, and description of the claimant's injuries, witnesses to the incident, and the name of the police agency that investigated the incident.
 3. A loss to state property, whether personal property (other than motor vehicles) or real property, on the "Property Loss Report". Information includes the agency and employees involved, facts of the incident, description of the damaged property, the party responsible for the loss, names of witnesses, and the police agency investigating the loss.
 4. A loss to employee-owned property covered under A.R.S. § 41-621(A)(4) on the "Property Loss Report". Information necessary to document the loss and calculate the actual dollar value of the claim is required. In addition, the employee shall submit a copy of any written agreement between the employee and the employing state agency

authorizing the use of the employee-owned property on the job, and a copy of the Personal Property Inventory form (PROPINV) maintained by the employing state agency.

R2-10-103. Liability Claim Procedures

- A. RM shall investigate all reported liability claims to determine coverage. RM shall notify the appropriate insurance carrier, if applicable, and evaluate the merits of self-insured claims and coordinate defense and settlements under A.R.S. § 41-621.
- B. State employees shall direct all contacts concerning any liability claim against the state, its agencies, officers, agents, or employees by a third party to RM, the Attorney General's office, or an independent contractor representing either of those offices.
- C. Unless authorized by law, an agency, officer, or employee shall obtain prior approval from the Risk Manager; ~~or~~ Attorney General's office before ~~disclosure of~~ disclosing oral discussions, written reports of claims, or lawsuits to anyone other than state-authorized personnel. Prior permission for each discussion or report is necessary to comply with this subsection.

R2-10-106. State-owned Property Coverage and Limitations

- A. The Department provides property loss coverage for state-owned buildings on a replacement-cost basis for items actually replaced or repaired. Property loss coverage for state-owned personal property is replacement cost less depreciation. For agencies with a total appropriated and non-appropriated budget of less than \$1 million, property claims will be subject to a \$100 per occurrence deductible. A property deductible of \$2,500 per occurrence shall apply to all other agencies.
 - a. Subrogation collections shall reimburse the fund from which a deductible was paid up to the amount of the deductible and on a primary basis.
 - b. No deductible shall apply to property loss coverage afforded in accordance with A.R.S. § 41-621(B).
- B. RM shall not include the cost of labor in property loss reimbursement if state employee labor cost for repair or replacement is allocated from appropriated funds. RM shall determine whether to use state employees or contractors for repair work based upon availability.
- C. Property loss coverage includes all state-owned property except: roads, bridges, tunnels, dams, dikes, and retaining walls.
- D. Property loss coverage includes coverage for necessary business interruption losses resulting from an insured direct physical loss or damage to property that is self-insured pursuant to A.R.S. § 41-621.

R2-10-107. Liability Coverage and Limitations

- A. The following coverage and limitations apply in this Chapter:
 - 1. The Department provides liability coverage within the limitations of A.R.S. § 41-621 for ~~an a state officer, agent, or~~ employee while driving a state-owned or other vehicle in the course and scope of employment.
 - a. Coverage shall be on a primary basis for a state-owned, leased, or rented vehicle and on an excess basis for any other vehicle.
 - b. The state shall not provide coverage for damage or loss of a personal vehicle.

2. ~~An A state~~ officer, ~~agent~~, or employee operates a state-owned vehicle within the course and scope of employment if driving:
 - a. On authorized state business,
 - b. To and from work,
 - c. To and from lunch on a working day,
 - d. To and from meals while on out-of-town travel.
 3. ~~An A state~~ officer, ~~agent~~, or employee does not operate a personal vehicle within the course and scope of employment when driving:
 - a. To and from work,
 - b. To and from lunch in the area of employment and not on authorized state business,
 - c. On other than state-authorized business.
- B.** A volunteer acting at the direction of a state official, within the course and scope of state-authorized activities, is covered under A.R.S. § 41-621.
- C.** A claim alleging a civil rights violation is covered through RM, unless otherwise excluded, except there is no coverage for payment of that portion of a settlement or judgment for position status adjustments.
- D.** The state shall cover ~~an agent, a state~~ officer, ~~or employee, or other person self-insured pursuant to A.R.S. § 41-621~~, for liability on an excess basis while using ~~the agent, officer, or employee's~~ such insured's personal aircraft within the course and scope of employment with the state ~~under~~ subject to the following ~~guidelines~~ conditions:
1. ~~An agent, A state~~ officer, ~~or employee, or other person self-insured pursuant to A.R.S. § 41-621~~ shall carry a minimum of \$1,000,000 in aircraft liability coverage.
 2. ~~RM shall approve an agent, Any state~~ officer, ~~or employee pilot, or other pilot self-insured pursuant to A.R.S. § 41-621, must obtain approval~~ prior to flying on state business. To obtain this approval, ~~an agent, officer, or employee such insured pilot~~ shall complete an RM pilot application form that requests the pilot's name, airman's certificate number, driver's license number, aircraft description, rating, and flying hours, and submit it to RM for review with a certificate of insurance evidencing the required limits of coverage on a personal aircraft. To maintain RM approval, ~~an agent, officer, or employee such insured~~ pilot shall submit an updated pilot application form and certificate of insurance annually.
 3. RM shall send a letter to ~~an agent, officer, or employee the pilot self-insured pursuant to A.R.S. § 41-621~~ approving or rejecting an application to fly a personal aircraft on state business. The approval letter shall be presented to the appropriate department head and a copy sent to the agency's loss prevention coordinator.
 4. ~~An agent, officer, or employee Every pilot self-insured pursuant to A.R.S. § 41-621~~ shall maintain a current FAA pilot certification.
 5. ~~An agent, officer, or employee Every pilot self-insured pursuant to A.R.S. § 41-621~~ shall meet the pilot warranties in the aircraft insurance policy owned by the state.
 6. ~~An agent, officer, or employee Every pilot self-insured pursuant to A.R.S. § 41-621~~ shall hold all licenses, certificates, endorsements, and other qualifications, including proficiency checks and recent experience, required by

the FAA or other federal, state, or local statutes and rules to act as pilot-in-command or as a required crew member for the aircraft being flown. The pilot-in-command shall meet current requirements for carrying passengers.

7. Course and scope of employment with the state does not include:
 - a. Personal use of an aircraft;
 - b. An aircraft for hire, reward or commercial use;
 - c. Agricultural operations;
 - d. Carrying external loads;
 - e. Performing aerial acrobatics.
8. ~~An agent, officer, or employee~~ No pilot self-insured pursuant to A.R.S. § 41-621 shall carry ~~no~~ more passengers on an aircraft than the number defined in the aircraft insurance policy purchased by RM.
9. The Department shall not cover damage or loss of the agent, officer, or employee-owned aircraft.
10. The ~~guidelines~~ requirements in this Section apply to a non-state employee pilot flying on behalf of an agent, officer, or employee on authorized state business.
11. All aircraft used for state business shall comply with all statutes and rules of the FAA and other federal, state, and local jurisdictions for flight.

R2-10-110. Cyber Breach Coverage and Limitations

- A.** To meet the requirement of A.R.S. § 41-621(A), the Arizona Department of Administration shall provide insurance for all the following:
1. Investigation, response and crisis management for data breaches, security system breaches or security incidents.
 2. Data restoration.
 3. Business interruption and extra expense.
 4. Network security liability.
 5. Privacy liability.
 6. Regulatory defense and associated fines and penalties if not prohibited by law.
 7. Media content liability.
 8. Payment Card Industry Data Security Standards defense and associated fines and penalties if not prohibited by law.
 9. Investigation of a security incident.
 10. Other exposures where insurance may be required to protect this state and its departments, agencies, boards and commissions to the extent it is determined necessary and in the best interest of the state.
- B.** The Director of the Department of Administration shall determine which agencies will be afforded coverage or limited coverage as prescribed in A.R.S. § 41-621(A). The Director may consider any of the following circumstances in denying or limiting coverage to selected agencies, boards, commissions and any such other insured:
1. An agency, board, or commission specifically requests exclusion from coverage. If the Director of the Department of Administration grants such an exclusion from coverage, then this exclusion shall include an exclusion from any self-insurance provided by ADOA Risk Management and any excess insurance that ADOA Risk Management may have purchased.
 2. Securing coverage for a specific agency, board, or commission will prejudice the Department's ability to secure coverage for other state agencies, boards and commissions.
- C.** Notwithstanding R2-10-106, a deductible shall be applied for each occurrence covered by the Department as provided for in A.R.S. § 41-621(F). For agencies with a total appropriated and non-appropriated budget of less than \$2 million, a per occurrence deductible of 5% of the total appropriated and non-appropriated budget shall apply. A deductible of \$100,000 per occurrence shall apply to all other agencies. If the Director determines that an agency, board, or commission has one or more of the following circumstances, the deductible as calculated in this section shall be double:
1. For failure to timely report as prescribed in A.A.C. R2-10-102 A.4,
 2. For failure to produce timely underwriting information when requested by the Department,
 3. For failure to act timely on a known security issue,
 4. For failure to cooperate with the Arizona Department of Administration information technology security team,
 5. For failure to seek Risk Management approval to indemnify or limit a contractor's liability for losses as prescribed in A.A.C. R2-10-301B, or
 6. For any other action or non-action that prejudiced the Department in securing insurance, increased insurance costs, limited insurance coverage, or exposed the state to increased exposure as provided for in A.R.S. § 41-621(F).

ARTICLE 3. INSURANCE: PURCHASE AND CONTRACTS

R2-10-301. Insurance: Purchase and Contracts

- A. An agency seeking to purchase property, liability, or workers' compensation insurance shall request RM's approval in writing at least 90 days before the desired effective date of coverage. RM shall not reimburse an agency for the purchase of property, liability, or workers' compensation insurance that has not been approved by RM.
- B. An agency shall submit a written request for approval to RM before the agency does one or more of the following:
1. Names ~~a non-state~~ or agrees to name any person or entity as an additional insured ~~in a contract under the state's self-insurance or any other insurance obtained by or with RM's approval;~~
 2. Provides or agrees to provide a Certificate of Insurance;
 3. ~~Indemnifies~~ Agrees to indemnify, ~~holds hold~~ harmless, or ~~limits limit~~ the liability of any party to a contract, lease, or other written agreement; or
 4. Waives or agrees to waive the state's or the agency's right to subrogate with regard to any party to a contract, lease, or other written agreement.
- C. The written request prescribed in subsection (B) shall be signed by the agency director and include all of the following:
1. The circumstances of the request;
 2. Whether the party to the contract, lease, or written agreement is a sole source for the state;
 3. The level or additional risk of loss to the state resulting from the requested action;
 4. Whether the requested action helps the agency accomplish the agency's mission; and
 5. An explanation of why the action to be approved is in the best interest of the state.
- D. If a contract requires the state to be named as an additional insured, the contracting agency shall ~~place~~ ensure that the name of the contracting agency and the state are included on the applicable additional insured endorsement(s).

ARTICLE 4. PROVIDER INDEMNITY PROGRAM (PIP)

R2-10-401. Coverages and Limitations

- A. The Department of Administration shall purchase insurance or self-insure the parties and programs as set forth in A.R.S. § 41-621(B) for losses caused by an occurrence or wrongful act which is the result of either the actions of a state client or ~~the actions of an individual provider while providing direct or incidental care of~~ within the course and scope of activities as a state client or individual provider.
- B. Coverages which shall apply under this program are as follows:
1. Liability coverage for providers and clients for damages resulting from acts and omissions within the course and scope of activities as a provider or client is provided pursuant to A.R.S. § ~~41-621(A)~~ 41-621(B). The amount that the Department will pay on behalf of an insured provider or client is limited as described in R2-10-401(C).
 2. Coverage is provided on a replacement-cost-less-depreciation basis for the loss of or damage to real or personal property owned by a provider as a result of the actions of a client.
- C. Limits of Liability Coverage:

1. The maximum amount of liability coverage that will be paid on behalf of an insured provider or client is \$1,000,000 per claim, including related claims, and \$2,000,000 in the aggregate for all claims first made against that provider or client during a single fiscal year of the State, July 1 through June 30, regardless of the number of:
 - a. Claims made; or
 - b. Persons making such claims or on whose behalf such claims are made; or
 - c. Causes of action asserted.
2. If more than one provider or client in a custodial-care facility or home is a PIP insured, the liability of all providers and clients combined in such home or facility shall be subject to a single per-claim limit.
3. For purposes of R2-10-401(C), a claim is “made” on the date that it was sent to the insured provider or client or, if a lawsuit, the date that the lawsuit was filed against the insured provider or client.
4. As used in R2-10-401(C), “related claims” means all claims based upon, arising from, or resulting from the same or related acts, omissions, facts, circumstances or events or the same or related series of acts, omissions, facts, circumstances or events, regardless of when such acts, omissions, facts, circumstances or events occur.
5. If two or more related claims are made against an insured provider or client in different state fiscal years, all such related claims shall be deemed to have been made when the first such related claim was made.
6. The payment of defense costs will not affect the per-claim or annual aggregate limit. However, once the annual aggregate limit has been paid, whether based upon settlement or a judgment, there will be no duty to defend that insured against any other claim to which that particular annual aggregate limit would apply.

~~C. D.~~ Coverages that The following are excluded from this program include the Provider Indemnity Program coverage:

1. Mysterious disappearance of property;
- ~~2. Intentional, unlawful or illegal acts except claims pursuant to A.R.S. § 12-661;~~
- ~~3. 2.~~ Automobile physical damage resulting from permissive use by a client;
- ~~4. 3.~~ Benefits covered under any workers’ compensation, unemployment compensation, or disability benefits law; and
- ~~5. 4.~~ All claims or lawsuits, including defense costs, which result , injuries, and damages that A.R.S. §41-621 excludes from coverage, including, without limitation, injury or damage that is expected or intended from the standpoint of the insured, including any such expected or intended injury or damage resulting from physical abuse, sexual abuse or sexual molestation except claims pursuant to A.R.S. § 12-661.