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HOUSE BILL 674

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Lisa L. Lutz

AN ACT

RELATING TO RISK MANAGEMENT; AMENDING THE POWERS AND DUTIES OF THE RISK MANAGEMENT DIVISION; REPEALING LIABILITY COVERAGE FOR CLAIMS MADE PURSUANT TO 42 U.S.C. SECTION 1983 AGAINST CONTRACTORS AND LICENSEES OF THE DEPARTMENT OF HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 15-7-3 NMSA 1978 (being Laws 1978, Chapter 166, Section 8, as amended) is amended to read:

"15-7-3. ADDITIONAL POWERS AND DUTIES OF THE RISK MANAGEMENT DIVISION. --

A. The risk management division of the general services department may:

(1) enter into contracts;

(2) procure insurance, reinsurance or

employee group benefits; provided that any proposal or

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1 contract for the procurement of any group health care benefits
2 shall be subject to the provisions of the Health Care
3 Purchasing Act; and provided further that reinsurance or
4 excess coverage insurance may be placed by private
5 negotiation, notwithstanding the provisions of the Procurement
6 Code, if the insurance or reinsurance has a restricted number
7 of interested carriers, the board determines that the coverage
8 is in the interest of the state and cannot otherwise be
9 procured for a reasonable cost and the director seeks the
10 advice and review of the board in the placement and in
11 designing private negotiation procedures;

12 (3) in the manner prescribed by Subsection E
13 of Section 9-17-5 NMSA 1978, after a notice and a public
14 hearing, prescribe by regulation reasonable and objective
15 underwriting and safety standards for governmental entities
16 and reasonable standards for municipal self-insurance pooling
17 agreements covering liability under the Tort Claims Act and
18 adopt such other regulations as may be deemed necessary;

19 (4) compromise, adjust, settle and pay
20 claims;

21 (5) pay expenses and costs;

22 (6) in the manner prescribed by Subsection E
23 of Section 9-17-5 NMSA 1978, prescribe by rule or regulation
24 the rating bases, assessments, penalties and risks to be
25 covered by the public liability fund, the workers'

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1 compensation retention fund and the public property reserve
2 fund and the extent such risks are to be covered;

3 (7) issue certificates of coverage in
4 accordance with Paragraph (6) of this subsection:

5 (a) to any governmental entity for any
6 tort liability risk covered by the public liability fund;

7 (b) to any governmental entity for any
8 personal injury liability risk or for the defense of any
9 errors or act or omission or neglect or breach of duty,
10 including the risks set forth in Paragraph (2) of Subsection B
11 and Paragraph (2) of Subsection D of Section 41-4-4 NMSA 1978;
12 and

13 (c) to any governmental entity for any
14 part of risk covered by the workers' compensation retention
15 fund, the surety bond fund or the public property reserve
16 fund;

17 (8) study the risks of all governmental
18 entities;

19 (9) initiate the establishment of safety
20 programs and adopt regulations to carry out such programs in
21 the manner prescribed by Subsection E of Section 9-17-5 NMSA
22 1978;

23 (10) hire a safety program director who shall
24 coordinate all safety programs of all state agencies;

25 (11) consult with and advise local public

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1 bodies on their risk management problems; and

2 (12) employ full-time legal counsel who shall
3 be under the exclusive control and supervision of the director
4 and the secretary of general services.

5 ~~[B. The risk management division of the general~~
6 ~~services department shall provide liability coverage for the~~
7 ~~following risks:~~

8 (1) ~~a claim made pursuant to the provisions~~
9 ~~of 42 U. S. C. Section 1983 against a nonprofit corporation,~~
10 ~~members of its board of directors or its employees when the~~
11 ~~claim is based upon action taken pursuant to the provisions of~~
12 ~~a contract between the corporation and the department of~~
13 ~~health under which the corporation provides developmental~~
14 ~~disability services to clients of the department and the claim~~
15 ~~is made by or on behalf of a client; and~~

16 (2) ~~a claim made pursuant to the provisions~~
17 ~~of 42 U. S. C. Section 1983 against a nonprofit corporation,~~
18 ~~members of its board of directors or its employees when the~~
19 ~~corporation operates a facility licensed by the department of~~
20 ~~health as an intermediate care facility for the mentally~~
21 ~~retarded and the claim is based upon action taken pursuant to~~
22 ~~the provisions of the license and is made by or on behalf of a~~
23 ~~resident of the licensed facility.~~

24 ~~C.]~~ B. The director shall report his findings and
25 recommendations, if any, for the consideration of each

1 legislature. The report shall include the amount and name of
2 any person receiving payment from the public liability fund of
3 any claim paid during the previous fiscal year exceeding one
4 thousand dollars (\$1,000). The report shall be made available
5 to the legislature on or before December 15 preceding each
6 regular legislative session. "

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