



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 17-0129, Version: 1

- a. Approve the request to separate the accounting and actuarial General Liability (GL) Claims into Recoverable vs Non- Recoverable and
- b. Approve authorizing the Auditor Controller to implement the addition of the Sub-Fund "RISK" for Non-Recoverable claims for FY 2017-18.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve the request to separate the accounting and actuarial General Liability (GL) Claims into Recoverable vs Non- Recoverable and
- b. Approve authorizing the Auditor Controller to implement the addition of the Sub-Fund "RISK for Non-Recoverable claims for FY 2017-18.

SUMMARY

Risk Management is requesting the separation of the GL Claims into two separate sub-funds within the GL Internal Service Fund (ISF) to designate the Claims as Recoverable (Sub-Fund - CLM) or Non-Recoverable (Sub-Fund - RISK).

DISCUSSION:

The General Liability (GL) program is a self-insured program for the purpose of defending and settling liability claims against County and is maintained in a separate Internal Service Fund (ISF) separate from the County's General Fund. An outside actuarial firm is utilized to evaluate the County's claim history for current and future liability exposure of the program for the purpose of allocating the costs to departments on an annual basis.

As reported in October/November 2016, concerning the FY 2015-16 year-end report, the GL claims should be split out separately to perform actuarial reports for allocation purposes between Recoverable and Non-Recoverable. Expenditures for Non-Recoverable claims cannot be passed through to State or Federal level for funding purposes. Damages and settlements resulting from violations or alleged violations of Federal or State laws and regulations are unallowable (Non-Recoverable).

In Summary, GL Self-Insured program cannot pass on claim costs to County departments that were violating or allegedly violating any Federal or State statute, as noted in the following State and Federal regulations:

Specifically, the Self-Insured (Cost Plan) programs (e.g. GL) are developed and maintained through the use of the State of California's *Cost Plan Procedures for California Counties* at the following site:

http://www.sco.ca.gov/Files-ARD-Local/manual_costplanhandbook.pdf

"Section 1100: Responsibility of Cost Plans: The current Federal Office of Management and Budget Circular Title 2 Code of Federal Regulations (2 CFR Part 200) [formerly known as 2 CFR Part 225 and OMB A-87] is titled *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. This part establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery and efficiency, as well as better relationships

between governmental units and the federal government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of federal and governmental-unit participation in the financing of a particular federal award. Provision for profit or other increment above cost is outside the scope of this part. All federal agencies apply the principles in 2 CFR Part 200 in determining reimbursable costs incurred by non-federal entities under federal awards and sub-awards. 2 CFR Part 200 is available at Policy Statements, The White House-(<http://www.ecfr.gov>).”

State section above noted Federal Regulation that speak towards costs that would be deemed Non-Recoverable in nature are as follows:

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

“**S200.441 Fines, penalties, damages and other settlements:** Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also §200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.”

“**S200.31 Disallowed costs:** Means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.”

“**S200.84 Questioned cost:** (a) Cost which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds.”

Identification of Recoverable versus Non-Recoverable Claims:

Intercare Holdings (GL Third-Party Administrator) will review each new claim as received and designate it as Recoverable unless the claim falls under one or more of the following areas which will cause the claim to be coded as Non-Recoverable:

1. Violations of Civil Rights under 42. U.S.C §1983
2. Violations of Civil Rights under California Civil Code and specifically § 51.7, §52 & §52.1.
3. Violations of Constitutional Rights:
4. Claims involving Allegations of Fraud
5. Claims involving alleged constitutional or statutory breach and non-monetary damages or injunctive equitable relief i.e. Writ of Mandate
6. Alleged deprivation of Substantive Due Process
7. Alleged Statutory Violation and Failure to Protect from Harm
8. Claims alleging Wrongful Death due to violations of the California Civil Code or Violations of Civil or Constitutional Rights.
9. Claims alleging False Arrest, False Imprisonment and Excessive Force
10. And any other damages and settlements resulting from violations or alleged violations of Federal or State laws and regulations are unallowable and must be coded Non-Recoverable.

If a claim or lawsuit does not specifically fall under defined criteria such as described above and requires additional exercise of judgment, Intercare Holdings will make a recommendation regarding whether the claim or lawsuit is Recoverable or Non-Recoverable. The Risk Management staff will review and provide the

recommendation to the Auditor-controller's Office. The Auditor-Controller's Office will consult with the County Counsel's Office if further legal interpretation is needed. A final determination will be made by the Auditor-Controller upon consultation with the State Controller's Office as required under the Federal Guidance, 2 CFR Part 200, and as further provided by the State Controller's Office under section 2450 of the Cost Plan Procedures for California Counties.

OTHER AGENCY INVOLVEMENT:

The Auditor-Controller's Office supports and has been involved with regards to separating the Recoverable vs Non-Recoverable into two sub-funds within the GL ISF. Supported by the Budget Committee on January 25, 2017.

FINANCING:

Supporting the separation of the GL Claims has no funding impact to FY 2016-17. However, to bring the program into compliance, the effect of the separation may effect some departments who seek to recover the departments' program costs from State and Federal funding.

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