

RUTGERS

THE STATE UNIVERSITY OF NEW JERSEY

RUTGERS BIOMEDICAL HEALTH SCIENCES PROFESSIONAL LIABILITY PROGRAM OF SELF-INSURANCE

Blanket Information Policy Statement for University:

**Physicians
Surgeons
Dentists
Nursing Staff
Midwives
Teaching/Research Faculty Staff
Non-Physician Professional Staff
Graduate Medical Students
Public Health Students**

**Medical Residents
Dental Residents
Medical Technologists
Pharmacists
Physician Assistants
Nursing Students
Dental Students
Medical Students
Pharmacy Students**

NOTE: THIS INFORMATION STATEMENT IS NOT INTENDED FOR USE AS A CERTIFICATE OF INSURANCE AND/OR CONFIRMATION TO ANY THIRD PARTY AS PROOF OF COVERAGE; ANY SUCH USE BY ANY AUTHORITY WITHOUT EXPRESS, WRITTEN APPROVAL OF RUTGERS-OFFICE OF RISK MANAGEMENT AND INSURANCE AND THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY WILL BE CONSIDERED NULL AND VOID. ANY LIABILITY AND/OR LEGAL ACTION ARISING AS A RESULT OF ANY SUCH MISREPRESENTATION WILL BE THE SOLE RESPONSIBILITY OF THE INDIVIDUAL(S) SO MISREPRESENTING. CONFIRMATION OF COVERAGE, FOR THE INFORMATION OF THIRD PARTIES, CAN BE OBTAINED FROM RUTGERS-OFFICE OF RISK MANAGEMENT AND INSURANCE, 30 BERGEN STREET, ADMINISTRATIVE COMPLEX 1313, NEWARK, NEW JERSEY 07101-1709, (973) 972-6277.

GENERAL POLICY STATEMENT

A member of the Faculty, Staff, or Enrolled Student protected by the Rutgers Biomedical Health Sciences (RBHS) Professional Liability Program of Self-Insurance (the Program) will be represented and indemnified for claims of personal injury and property damage which arise out of professional negligence (alleged or actual acts or omissions) by the Protected Faculty, Staff, or Student member within the scope of employment or enrollment at RBHS.

Representation and indemnification will be provided by Rutgers Self Insurance Trust Fund under the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Program shall have the right and duty to defend any such claim, subject to the terms and provisions of the New Jersey Tort Claims Act, even if any of the allegations of the claim are groundless, false or fraudulent, and may make such investigation and settlement of any claim as it deems expedient.

The Program will pay the cost of duly authorized settlement or indemnification of claims. The cost of authorized legal counsel, court costs, investigation, etc., including authorized costs of appeal, if any, will be paid by the Program with respect to claims brought against covered employees. The Program will not pay for punitive or exemplary damages or damages resulting from the commission of a crime. (See Exclusions).

The program described herein is intended to function in accordance with the terms and provisions of the New Jersey Tort Claims Act for Faculty, Staff and Student members of RBHS and does not amend, supersede or supplement the provisions of the Act.

This information Policy Statement is intended to clarify the governing terms and provisions of coverage in light of special circumstances inherent in a health science university environment.

DEFINITIONS:

The following definitions are provided as a guide and do not amend, supplement or supersede any of the definitions or requirements of the New Jersey Tort Claims Act.

When used in reference to the Program:

"Affiliated Institution": an institution which has an agreement with the University approved in accord with RBHS policy for participation of Faculty, Staff or Students in health care, teaching, research or related activities.

"Claim": a demand, written or verbal, made against a Protected Person for money, services or other compensation arising as a result of Professional Negligence, alleged or actual, occurring within the scope of RBHS employment or enrollment. Service of Suit, including summons and complaint or other formal legal demand, is included within this definition. This does not include any investigation by a government agency, the purpose of which is to consider licensure, sanctions, or criminal investigation.

"Coterminous Faculty": an RBHS Faculty member whose salary is funded in whole or in part by an Affiliated Institution and whose appointment by RBHS is coterminous with the Faculty member's funding by the affiliated institution.

"Protected Person": any Faculty, Staff, or Enrolled Student acting within either the scope of their employment or within the scope of their authorized association with RBHS.

"Enrolled Students": shall mean that the Student is enrolled in a RBHS school. The scope of coverage for students shall apply to covered professional liability claims for damages arising as a result of the student's performance and participation in RBHS and school's educational program, leading to matriculation or certification, provided that such performance and participation is under the direction and control of the Schools and RBHS.

"Scope of Rutgers Biomedical Health Sciences Employment": all activities performed by a Faculty or Staff member on behalf of, authorized by, and under the direction of RBHS. This shall include activities performed pursuant to a Faculty Practice Plan approved by the Board of Trustees provided such work is billed according to terms of the Plan, approved activities at Affiliated Institutions and, also, work billed for directly by RBHS. Good Samaritan Emergency Care provided by full time Faculty is included within the scope of employment. Only full time Faculty are covered under this program for Good Samaritan Activities. Charity care (uncompensated care provided for free or at reduced prices to low income patients pursuant to State of N.J. law) performed at Rutgers owned and operated health care facilities is eligible for coverage.

Faculty and Staff eligible for coverage are:

"Full Time and Salaried Faculty and Staff: individuals salaried solely on RBHS payroll who are paid 50% or more of full salary based on RBHS salary ranges (for Faculty with base academic salary as described in the appropriate collective bargaining agreement) and who do not participate in the delivery of health care outside the scope of RBHS employment.

"Part Time Salaried Faculty - and Staff: individuals salaried on RBHS payroll on less than full time status while performing within the scope of employment. Coverage is provided only for work for which they do not bill and for which third party coverage is not available, the sole exceptions to this rule being activities performed pursuant to and billed in compliance with a duly authorized RBHS Faculty Practice Plan and/or billed directly for by RBHS.

"Volunteers": individuals who are performing activities within the scope of RBHS relationship for which they are not remunerated from any source except for activities performed pursuant to and billed in compliance with a duly authorized RBHS Faculty Practice Plan and/or billed directly by RBHS. Other than with respect to the preceding exceptions, coverage is provided only for work for which they do not bill and for which third party coverage is not available.

"Coterminous Faculty": individuals who hold Coterminous Appointments as set forth in the Rutgers Bylaws are covered when by written contract, approved by the Office of General Counsel/Risk Management and Insurance, RBHS has agreed to provide professional liability coverage for the individual. Coverage will be provided as set forth in said contract.

"Good Samaritan Emergency Care": (see N.J.S.A. 2A:62A-1 et seq.) shall mean the rendering of care, in good faith and without thought of consideration of financial remuneration, at the scene of an accident or while transporting the victim for further treatment and, also, in a health care facility if one's actual duty, including on call duty, does not require response to a patient emergency situation.

"Independent Contractor": a person performing services for RBHS, but not on RBHS's payroll. Example: a physician paid on a fee for service basis. This term shall have its usual and customary meaning as intended under the New Jersey Tort Claims Act.

"Personal Injury": including, but not limited to, bodily injury, sickness disease, disability, shock, mental anguish or mental injury.

"Professional Negligence": any negligent act or omission in the furnishing of professional health care services, including the furnishing of food, medications or appliances in connection with such services, service as a member of a health care delivery committee (e.g., a peer review committee), and the postmortem handling of human bodies.

"Program": shall mean the Rutgers University Professional Liability Program of Self Insurance.

"Property Damage": injury, destruction or damage to tangible property and the resulting loss of use of that property.

"Punitive and Exemplary Damages": compensation awarded by judicial decision in excess of actual damages, awarded as a form of punishment against the wrongdoer.

"Ultimate Net Loss": all authorized costs and damages which a Protected Person becomes legally obligated to pay because of Personal Injury or Property Damage, excepting Punitive and Exemplary Damages, but including the costs of authorized investigation and loss adjustment expenses. Example: the cost of authorized legal counsel, court costs and authorized costs of appeal, if any.

LIMITS OF LIABILITY:

Coverage under the Program is governed by the New Jersey Tort Claims Act and funded through a combination of the Rutgers Self Insurance Trust Fund, commercial excess insurance policies, and the good faith of the state legislature to pay liabilities of the state accepted under the New Jersey Tort Claims Act. There are, therefore, no maximum monetary limits to coverage. RBHS is prepared to represent to other institutions coverage of \$1 million per claim but limited to \$3 million annual aggregate through the Rutgers Self Insurance Trust Fund. Subject to the terms and conditions of the New Jersey Tort Claims Act, RBHS will provide coverage for the Ultimate Net Loss.

This document is not a policy or certificate of insurance. Most hospitals require physicians to submit a certificate of malpractice insurance coverage as part of their credentialing process. For these and other situations for which proof of coverage is required, please contact Risk Management and Insurance at RBHS.

SCOPE OF COVERAGE:

The Program of Self Insurance shall, upon the request of a Protected Person or former Protected Person, provide for defense and indemnification of any claim alleging professional negligence against such Protected Person or former Protected Person resulting from an act or omission performed either in the scope of their RBHS employment or within the scope of their authorized association with RBHS. However, the Program may refuse to provide for such defense action if it is determined that:

- a. the act or omission was not within the scope of employment

- b. the act or omission constitutes willful misconduct, actual fraud, actual malice, crime; or
- c. the Protected Person fails to cooperate with the Program before or after a claim is brought.

If the defense of the action or proceeding by the Attorney General would create a conflict of interest between the State and the Protected Person or former Protected Person entitled to representation, outside counsel (not by an attorney who is an employee of the State of New Jersey) can be provided and appointed by the Program.

As a matter of policy, RBHS encourages its Faculty to respond in emergency situations and provide Good Samaritan Emergency Care. Therefore, the Program will provide for defense and indemnification for Full Time Salaried Faculty who participate in a Faculty Practice Plan approved by the University Board of Governors, or who maintain no other practice of medicine outside the Scope of Employment, for claims arising from the rendering of Good Samaritan Emergency Care. Please note that this coverage does not extend to all Protected Persons.

It is understood that faculty may occasionally be called upon to render incidental medical advice to individuals outside the hospital or professional office environment, where no formal doctor-patient relationship exists and where there is not regular or continued course of treatment. Doctors are cautioned to exercise good judgment in rendering such advice as they may be held liable for damages resulting not only from advice which deviates from established standards or practice but also from advice which deviates from lack of thoroughness. Understanding, however, that such incidental practice may occasionally occur, the Program will provide a defense and indemnification for full time Faculty members who participate in a RBHS approved Faculty Practice Plan, or who maintain no other practice of medicine outside the scope of RBHS employment, for claims arising from the care rendered by such faculty members without anticipation of compensation in such situations. Please note that this coverage does not extend to all Protected Persons.

The Program's responsibility to defend shall extend to a cross-action, counterclaim, cross-complaint or third party action against a Protected Person or former Protected Person.

Coverage applies only to activities performed within the scope of RBHS employment or enrollment regardless of whether they are performed at Rutgers-owned facilities or Affiliated Institutions.

PERIOD OF COVERAGE:

A Protected Person is entitled to the application of this policy statement regardless of whether a claim is brought during or subsequent to the person's course of employment or enrollment with RBHS. Coverage shall not apply to any services or activities rendered before the inception of RBHS employment or enrollment, or after the termination of employment or enrollment.

CHANGES:

Coverage under the Program is governed by the New Jersey Tort Claims Act and shall not be changed or abridged except by Legislative Act. This Policy Statement will be reviewed prospectively on an annual basis, at which time any necessary revisions will be circulated. In addition, this policy Statement may be reviewed, updated and reissued as necessary, in order to provide maximum continuity and mutual understanding regarding the terms and provisions of coverage.

SPECIAL PROVISIONS:

Limitations on Judgments: Under the N.J. Tort Claims Act. N.J.S.A. 59-9-2, no judgment shall be granted against a public entity or public employee on the basis of strict liability, implied warranty or products liability. For the purpose of this section, a RBHS Faculty, Staff or Student member is a public employee.

Coverage is not limited or abridged as a result of medical specialty classification, specific medical practice or specific medical procedures engaged in while acting within the scope of RBHS employment or enrollment.

EXCLUSIONS:

The following activities are specifically excluded from coverage:

Moonlighting: Acts or omissions arising from conduct or activities by an individual while in the employ of some entity or individual other than Rutgers. Example: outside employment.

Employer's Liability for Non-Protected Staff: Any and all Liability which arises out of activities performed by a person not covered by the Program or by an agent for which the otherwise Protected Person may be held legally liable. Example: Rutgers Faculty maintaining an authorized private Faculty practice office, and employing nursing and secretarial staff who are not employed by RBHS. Said individuals are Non-Protected Persons and are not covered by the Program.

Crimes, Actual Malice, Actual Fraud, or Willful Misconduct: Liability resulting from the performance of a criminal act by the employee and/or arising in conjunction with conduct constituting actual fraud, actual malice or willful misconduct.

Punitive and Exemplary Damages: Coverage for Punitive and Exemplary Damages is subject to the discretion of the Attorney General. The Attorney General may provide coverage if it is determined that a Protected Person's actions or conduct do not constitute an intentional wrong, willful misconduct, actual fraud, actual malice, a crime, or conduct arising outside the scope of employment. The Attorney General will not make a determination in this regard until the relevant litigation is concluded and the entire record of the matter is complete. If an award of Punitive or

Exemplary Damages is entered against a Protected Person and, thereafter, the Attorney General determines not to indemnify the employee, those damages will be payable by the protected person personally.

Partnership, Association or Corporation Professional Liability: Liability for partnerships, associations or corporations not authorized by RBHS or not consisting solely of individuals acting within the scope of their employment with RBHS, Full-time Faculty and Staff, having written approval from an authorized RBHS officer who has consulted with Risk Management and insurance, associated with a corporation, partnership or professional associate shall be a Protected Person, but only to the extent of any liability which arises solely or substantially from his individual activities. Where said RBHS Faculty or Staff member is engaged in duly authorized association and is subject to liability solely because of his or her association with any corporation, partnership or professional association, said Faculty or Staff shall not be covered by this Program with respect to such liability.

Liability for the operation of any hospital, sanitarium, clinic with bed and board facilities, laboratory or business enterprise, except those operated by RBHS.

PERSONAL MALPRACTICE INSURANCE:

Under New Jersey law, whenever a Protected Person is also covered by a policy of insurance, that policy will be deemed primary coverage. Pursuant to N.J.S.A. 59-10-9, nothing contained herein shall inure to the benefit of any insurance company which has issued a policy of liability insurance and is thereby obligated to defend and indemnify a public employee. The coverage provided by RBHS's Program shall apply only as excess coverage over any other valid and collectible insurance when the limits of coverage provided by all other valid and collectible insurance have been fully exhausted. RBHS's role as provider of excess coverage is contingent upon the Protected Person providing notification to the University in accordance with the terms and provisions of this Program. In addition, in order not to jeopardize eligibility for Program coverage, the Protected Person is obligated to provide Risk Management and Insurance with continuing information regarding the status of the claim, including basic circumstances (description) of claim, current and updated reserves and any settlement demands and, also, any other information specifically requested by RBHS and/or the Attorney General. Any questions in this regard should be directed to Risk Management and Insurance at RBHS.

COMPLIANCE WITH THE LAWS OF THE STATE OF NEW JERSEY:

This information policy statement shall not be construed to affect, alter or repeal any provision of the New Jersey Workers' Compensation Act or the military and veterans laws existing in New Jersey, or the New Jersey Tort Claims Act.

CONDITIONS:

Reporting of Claims:

A Protected Person may not be entitled to indemnification pursuant to the Program herein absent compliance with the following requirements:

- (1) A Protected Person shall give written notification to the Department of Risk Management and Insurance at their office located at, 30 Bergen Street, Administrative Complex 1313, Newark, N.J. 07101-1709 as soon as practical, and in no event later than ten days following the Protected Person's receipt or knowledge of any claim, summons and complaint, letter of intent to pursue litigation, process, notice, demand or pleading.
- (2) A Protected Person shall give timely verbal notification to the Department of Risk Management and Insurance, Telephone: (973) 972-6277, of any covered act or omission which might give rise to a claim, whether occurring on RBHS premises or at an affiliated or other approved facility; notification must be given as soon as practical. (Note: all Protected Persons are to report Medical Incidents which might give rise to a claim to Risk Management and Insurance BEFORE discussing or writing to administrative representatives, hospital committee representatives, quality assurance or patient representatives, etc. of ANY facility at which they might be rendering services.
- (3) Verbal notification shall, to the extent practicable under the circumstances, include the following elements: time, place and circumstances on injury and/or circumstances giving rise to claim, names and addresses of the patient or other claimant, names of witnesses (if known), and an overview of the estimated extent (severity) of the type of claim anticipated. In addition, notification shall include an indication as to all malpractice insurance carried by the Protected Person (carrier, Policy number, policy period, limits of coverage). The Protected Person shall immediately forward to Risk Management and Insurance every demand, notice, summons or other process they receive with respect to any Claim.
- (4) Upon notification of a Claim, exclusive control of the Protected Person's representation, defense and indemnification is assumed by the Attorney General and the authorized designee for claims management, Risk Management and Insurance. A Protected Person must fully cooperate with Risk Management and Insurance and the Attorney General's staff counsel and/or designated outside legal counsel appointed to represent their interests. Failure to cooperate may nullify the program's obligations to the Protected Person. Any alteration of medical records or intentional misrepresentation or concealment of material facts by the Faculty, Staff or Students may constitute a violation of this provision.

- (5) Methods of providing defense: The Attorney General has the right to appoint defense counsel. In some cases primary liability may be contractually transferred to another institution or an insurance carrier. The prerogative to select legal counsel does not rest with the Protected Person; however, as a matter of business practice RBHS and the Attorney General may give consideration to a Protected Person's preferred choice of legal representative from the group of law firms designated by the Attorney General as authorized providers of service to the defense of malpractice litigation brought against RBHS and its Faculty, Staff and Students. Many other considerations are taken into account prior to the assignment of appropriate legal counsel; therefore, the final selection prerogative shall not be delegated to any Protected Person.
- (6) In the event of litigation, the Protected Person shall complete and sign a Formal Request for Legal Representation addressed to the Attorney General. Request forms are available **from Risk Management and Insurance** at RBHS.
- (7) Protected Persons shall provide full cooperation with RBHS and the Attorney General by attending depositions, hearings and trials and, also, by assisting in the securing of evidence and information as part of the claims investigation process when requested. This requirement applies whether or not the Protected Person is a named party in the claim, potential claim or litigation.

RISK MANAGEMENT PROGRAM PARTICIPATION:

Protected Persons may be required to attend Risk Management and Loss Control Programs designated by RBHS to be a mandatory part of this program.

AUTHORITY TO SETTLE CLAIMS:

Authority to settle claims lies with the Attorney General's Office and RBHS.

A Protected Person, who is provided a defense under this self-insurance program does not have the right or authority to approve settlement, to assume any obligation, or to voluntarily make any payment.

SUBROGATION:

In the event of any payment under this Program, the legal right to recover against any and all persons or organizations responsible for the loss becomes the sole prerogative of the Attorney General and RBHS. The Protected Person shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights. The Protected Person shall do nothing before or after a loss to prejudice such rights.

RBHS and the Program under N.J.S.A. 59:9-2(e) are immune to any subrogation claims.

INTEREST OF PROTECTED PERSON IN EVENT OF DEATH, NON ASSIGNABILITY:

The interest of any Protected Person is not assignable. Upon the death of a Protected Person coverage as afforded under this Program shall apply to the Protected Person's legal representative.

COVERAGE TERRITORY:

Not limited or restricted due to personal Injury or Property Damages arising out of authorized scope of employment, being brought within the United States of America. All claims and suits will be governed and indemnified under the laws of the State of New Jersey. Upon request to Risk Management and Insurance arrangement can be made for coverage of authorized activities outside the U.S.A. prior to commencement of said activity.

USE OF THIS DOCUMENT:

This is an important information document. Please keep it in a safe place. However, **THIS DOCUMENT IS NOT A POLICY OR CERTIFICATE OF INSURANCE.** Most hospitals require physicians to submit a certificate of malpractice insurance coverage as part of their credentialing process. For these and other circumstances for which proof of coverage is required, please contact Risk Management and Insurance (973-972-6277) which, in conjunction with the Attorney General, is the sole authorized provider of confirmation of self-insurance program coverage with respect to both an individual Protected Person and RBHS-wide entity.