

Chapter 200-120 WAC

AFFORDABLE HOUSING ENTITY JOINT SELF-INSURANCE PROPERTY AND LIABILITY PROGRAM REQUIREMENTS

WAC

200-120-010	Preamble and authority.
200-120-020	Definitions.
200-120-030	Standards for operation—Participation.
200-120-050	Standards for operation—Communication with participants—Annual membership report.
200-120-060	Standards for operations—Meetings.
200-120-070	Standards for operation—Notice of regular meetings of the board of directors or owners.
200-120-080	Standards for operation—Notice of special meetings of the board of directors or owners.
200-120-090	Standards for operations—Meeting agendas—Meeting minutes.
200-120-100	Standards for operation—Notification of amendments to ownership agreement.
200-120-110	Standards for operation—Amendments to ownership agreement.
200-120-120	Standards for operation—Elections of the board of directors.
200-120-130	Standards for management and operation—Adoption of program.
200-120-140	Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements.
200-120-150	Standards for management and operations—Individual rate setting—Nondiscrimination in joint program contributions.
200-120-160	Standards for operations—Disclosures.
200-120-170	Standards for operations—Standards for solvency—Termination provisions.
200-120-180	Standards for management and operations—Financial plans.
200-120-190	Standards for management—Standards for contracts—Third-party administrator contracts.
200-120-210	Standards for operation and management—Risk management.
200-120-220	Standards for claims management—Claims administration.
200-120-230	Standards for management and operations—State risk manager reports.
200-120-240	Standards for operations—Program changes—Notification to the state risk manager.
200-120-250	Standards for management and operations—Conflict of interest.
200-120-260	Standards for operations—State risk manager—Expense and operating cost fees.
200-120-270	Standards for operations—Appeals of fees.
200-120-280	Standards for operations—Appeals of cease and desist orders.
200-120-290	Standards for contracts—Competitive procurement standards for consultant contracts.

WAC 200-120-010 Preamble and authority. These rules governing affordable housing self-insurance transactions are adopted by the state risk manager to implement chapter 48.64 RCW relating to the management and operations of a joint affordable housing entity property and liability self-insurance program.

[Statutory Authority: 2011 c 43, 11-23-093, recodified as WAC 200-120-010, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-010, filed 2/16/11, effective 3/19/11.]

WAC 200-120-020 Definitions. "Actuary" means any person who is a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

(11/17/11)

"Affordable housing" means housing projects in which some of the dwelling units may be purchased or rented on a basis that is affordable to households with an income of eighty percent or less of the county median family income, adjusted for family size.

"Affordable housing entity" means any of the following:

(a) A housing authority created under the laws of this state or another state and any agency or instrumentality of a housing authority including, but not limited to, a legal entity created to conduct a joint self-insurance program for housing authorities that is operating in accordance with chapter 48.62 RCW; a nonprofit corporation shall be considered an "agency" of a housing authority if the nonprofit corporation is fulfilling one or more purposes of a housing authority and is affiliated with a housing authority that:

(i) Has, or has the right to acquire a membership interest in the nonprofit corporation;

(ii) Has provided financing to the nonprofit corporation;

(iii) Has entered into a contract with a nonprofit corporation to provide staff, management services or property management services; or

(iv) Has transferred or leased affordable housing to the nonprofit corporation or is leasing affordable housing from the nonprofit corporation; a nonprofit corporation shall be considered an "instrumentality" of a housing authority if the nonprofit corporation is fulfilling one or more functions of a housing authority and whose assets, operations or management are subject to control by the housing authority by reason of contracts, affiliation, legal structure or otherwise including, but not limited to:

(A) The housing authority organizing the nonprofit corporation;

(B) Directors or employees of the housing authority serving as directors of the nonprofit corporation;

(C) The nonprofit corporation utilizing housing authority funds or assets to carry out housing functions; or

(D) The housing authority possessing the power to direct the management or policies of the nonprofit corporation or being under common control with the nonprofit corporation;

(b) A nonprofit corporation that is engaged in providing affordable housing and is necessary for the completion, management, or operation of a project because of its access to funding sources that are not available to a housing authority; or

(c) A general or limited partnership or limited liability company, whether organized under the laws of this state or another state, that is engaged in providing affordable housing; a partnership or limited liability company may only be considered an affordable housing entity if a housing authority (including any agency or instrumentality of a housing authority) or nonprofit corporation, as described above, satisfies any one of the following conditions:

(i) It has, or has the right to, acquire a financial or ownership interest in the partnership or limited liability company;

(ii) It possesses the power to direct management or policies of the partnership or limited liability company; or

(iii) It has entered into a contract to lease, manage, or operate the affordable housing owned by the partnership or limited liability company.

"Board of directors" means the individuals vested with overall management of the joint self-insurance program; management of the joint self-insurance program shall be exercised by or under the authority of the board of directors, and the affairs of the joint self-insurance program shall be managed under the direction of the board of directors.

"Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

"Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

"Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

"Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

"Claims auditor" means a person who has the following qualifications:

(a) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(b) Proof of professional liability insurance; and

(c) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

"Competitive process" means a documented procurement process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

"Consultant" means an independent individual or private business contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, and rendering an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

"Contribution" means the moneys paid by the participants to a joint self-insurance program.

"Governing body" means the multimember board, commission, committee, council, or other policy or rule-making

body of an owner of a joint self-insurance program formed under this chapter.

"Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the joint self-insurance program as of the date of the financial statement. IBNR claims include:

(a) Known loss events that are expected to be presented later as claims;

(b) Unknown loss events that are expected to become claims; and

(c) Future development on claims already reported.

"Joint self-insurance program" means any two or more affordable housing entities which have entered into a cooperative risk sharing agreement subject to regulation under chapter 48.64 RCW.

"Nonowner participant" means an affordable housing entity that:

(a) Obtains coverage in the excess or self-insured retention portion of the joint self-insurance program subject to regulation under chapter 48.64 RCW;

(b) Is an affordable housing entity authorized to participate in a joint self-insurance program authorized by chapter 48.64 RCW; and

(c) Has no ownership interest in the joint self-insurance program.

"Nonprofit corporation" means a nonprofit corporation organized under the laws of this state or the laws of any other state, of which no part of the income of the nonprofit corporation is distributable to its members, directors or officers.

"Owner" means an affordable housing entity that has the rights and obligations of ownership in the joint self-insurance program and satisfies the requirements in either (a) or (b) of this definition:

(a) The affordable housing entity acquires an ownership interest in the joint self-insurance program by making a financial contribution; and

(i) Is a signatory to a joint self-insurance program's ownership agreement;

(ii) Obtains approval to join the joint self-insurance program from the governing body of the owner, which approval shall be by resolution or ordinance of the governing body as appropriate for the entity type;

(iii) Obtains coverage in the excess or self-insured retention portion of the joint self-insurance program subject to regulation under chapter 48.64 RCW;

(iv) Is an affordable housing entity authorized to participate in a joint self-insurance program authorized by chapter 48.64 RCW; or

(b) The affordable housing entity acquires an ownership interest in the joint self-insurance program by reason of its membership or ownership of another joint self-insurance program authorized by chapter 48.62 RCW or chapter 48.64 RCW without making a financial contribution and:

(i) Obtains coverage in the excess or self-insured retention portion of the joint self-insurance program subject to regulation under chapter 48.64 RCW; and

(ii) Is an affordable housing entity authorized to participate in a joint self-insurance program authorized by chapter 48.64 RCW.

"Ownership agreement" means the written agreement that sets forth the rights and obligations of the owners in a joint self-insurance program authorized by chapter 48.64 RCW.

"Participant" means either an owner or nonowner participant or both in a joint self-insurance program authorized by chapter 48.64 RCW.

"Primary assets" means cash and investments (less any nonclaims liabilities).

"Risk sharing" means that the participant of a joint self-insurance program jointly absorbs certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated loss; and/or jointly purchase insurance or reinsurance through a joint self-insurance program formed under chapter 48.64 RCW.

"Secondary assets" means insurance receivables, real estate or other assets (less any nonclaims liabilities) the value of which can be independently verified by the state risk manager.

"Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of coverage in the excess or self-insured retention portion of the joint self-insurance programs.

"Stop-loss insurance" means a promise by an insurance company or other insurance provider that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

"Third-party administrator" means an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

"Unallocated loss adjustment expense" or "ULAE" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

"Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss, loss adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-020, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-020, filed 2/16/11, effective 3/19/11.]

WAC 200-120-030 Standards for operation—Participation. Only participants may participate in risk-sharing in a joint self-insurance program.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-030, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-030, filed 2/16/11, effective 3/19/11.]

WAC 200-120-050 Standards for operation—Communication with participants—Annual membership

(11/17/11)

report. The joint self-insurance program shall make available to each participant an annual membership report which includes a copy of the program's annual audited financial statements. The annual report may also include other information as determined by the board of directors. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership report on the official web site of the program for a minimum of three years from the date of publication.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-050, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-050, filed 2/16/11, effective 3/19/11.]

WAC 200-120-060 Standards for operations—Meetings. All joint self-insurance programs authorized by chapter 48.64 RCW are subject to the requirements of the Open Public Meetings Act as described in chapter 42.30 RCW.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-060, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-060, filed 2/16/11, effective 3/19/11.]

WAC 200-120-070 Standards for operation—Notice of regular meetings of the board of directors or owners. Every joint self-insurance program shall provide every participant with a notice of the time and place of each regular meeting of the board of directors or owners at least ten days prior to the meeting. The notice shall be delivered in electronic or paper form, and the time and location of each meeting shall be included in such notice. The state risk manager shall be provided a copy of all meeting notifications to participants in the same form, manner and time as provided to participants. In addition to electronic or regular mail, programs shall publish notification of regular meetings on the electronic web site of the program accessible to the public. Notice of regular meetings shall comply with the meeting notification requirements of chapter 42.30 RCW or be published at least ten days in advance of regular meetings, whichever notification time is greater.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-070, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-070, filed 2/16/11, effective 3/19/11.]

WAC 200-120-080 Standards for operation—Notice of special meetings of the board or directors or owners. All joint self-insurance programs shall comply with the requirements of RCW 42.30.080 in providing notification of special meetings of the board of directors or owners. In addition, programs shall provide notice by electronic mail to the state risk manager and every participant of the joint self-insurance program twenty-four hours in advance of every special meeting.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-080, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-080, filed 2/16/11, effective 3/19/11.]

WAC 200-120-090 Standards for operations—Meeting agendas—Meeting minutes. Every joint self-insurance

[Ch. 200-120 WAC—p. 3]

program will provide the state risk manager and every participant with a preliminary agenda in advance of each meeting of the board of directors or owners. The agenda shall be delivered by electronic mail and shall be posted on the web site of the program accessible to the public. Meeting minutes, after approval, shall be posted on the web site of the program accessible to the public.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-090, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-090, filed 2/16/11, effective 3/19/11.]

WAC 200-120-100 Standards for operation—Notification of amendments to ownership agreement. Every joint self-insurance program shall provide notification of the intent to amend the ownership agreement to each owner and the state risk manager by regular or electronic mail at least thirty days in advance of the meeting during which a vote on the proposed amendment will occur. Such notification shall include a copy of proposed amendments.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-100, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-100, filed 2/16/11, effective 3/19/11.]

WAC 200-120-110 Standards for operation—Amendments to ownership agreement. (1) Any amendments to ownership agreement shall be approved by the board of directors before being submitted to the owners for approval. Each owner shall be notified that one of the purposes of the meeting of the owners is to consider the proposed amendments to the ownership agreement, accompanied by a copy of the proposed amendments. Any amendments to the ownership agreement shall be approved by a majority in interest of the owners, or by a greater vote if provided for in the ownership agreement. Amendment to the ownership agreement shall be approved by the vote of the owners during a regular or special meeting of the owners or by the submission of written mail-in ballots. Voting by proxy shall be permitted in the manner set forth in the ownership agreement. If written mail-in ballots are used, the ballots are to be secured and remain unopened until the next meeting of the board of directors. The opening and counting of the written mail-in ballots shall be conducted by the board of directors during its next meeting and retained in compliance with public records retention laws. Each proxy or written mail-in ballot shall be read orally as to the owner name and vote, either in the affirmative or negative, and recorded in the meeting minutes.

(2) The ownership agreement and subsequent amendments shall be published on the electronic web site of the joint self-insurance program.

(3) The addition or termination of owners or nonowner participants in the joint self-insurance program shall not be considered an amendment to the ownership agreement.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-110, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-110, filed 2/16/11, effective 3/19/11.]

WAC 200-120-120 Standards for operation—Elections of the board of directors. (1) All or a majority of the

board of directors of every joint self-insurance program shall be elected by the owners. Unless otherwise provided in the ownership agreement, the directors shall be elected by a plurality of the votes cast by the owners at a regular meeting of the owners at which at least one-third of the owners are represented in person or by proxy. Voting by proxy shall be permitted in the manner set forth in the ownership agreement. Each proxy shall be read orally as to the owner name and vote and recorded in the meeting minutes. Voting for directors by written mail-in ballot shall not be permitted.

(2) The board of directors shall also include two or more individuals who are affiliated with the nonowner participants. These directors shall be elected by either the owners or the nonowner participants or both or shall be appointed by the directors elected by the owners in accordance with subsection (1) of this section.

(3) The ownership agreement may provide for staggering the terms of the directors by dividing the total number of directors into two or three groups, with each group to be as nearly equal in number as possible.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-120, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-120, filed 2/16/11, effective 3/19/11.]

WAC 200-120-130 Standards for management and operation—Adoption of program. The ownership agreement of a joint self-insurance program shall be adopted by resolution or ordinance by the governing body of each owner, unless the owner acquires an ownership interest in the joint self-insurance program by reason of its membership or ownership in another joint self-insurance program authorized by chapter 48.62 RCW or chapter 48.64 RCW without making a financial contribution. Any such resolution or ordinance shall include, but not be limited to, an acknowledgment that the entity shall be subject to contributions as required by the joint self-insurance program. Copies of each such resolution or ordinance shall be retained by the joint self-insurance program and available for inspection by the state risk manager. The ownership agreement, along with a list of the owners of the joint self-insurance program, shall be published on the public web site of each joint self-insurance program.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-130, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-130, filed 2/16/11, effective 3/19/11.]

WAC 200-120-140 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements. (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides estimates of the unpaid claims measured at the expected and the seventy percent confidence level.

(2) The board of directors of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the requirement to maintain sufficient primary assets as of fiscal year end shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective

action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The board of directors of the joint self-insurance program shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the seventy percent confidence level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the reserve requirements to maintain sufficient primary and secondary assets shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission. Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include the service of a cease and desist order upon the program.

(4) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, owner equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the board of directors and requirements for corrective plans.

(5) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial evaluation to determine the adequacy of reserves. Costs of these services shall be the responsibility of the joint self-insurance program.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-140, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-140, filed 2/16/11, effective 3/19/11.]

WAC 200-120-150 Standards for management and operations—Individual rate setting—Nondiscrimination in joint program contributions. (1) Joint self-insurance program contribution formulas shall include all costs including rating for insured and self-insured layers of coverage. Contribution formulas shall be consistent and shall not unfairly discriminate among the participants relative to the risks covered and the coverage benefits provided under the joint self-insurance program. Contribution formulas shall prohibit public entity participants from subsidizing rates for nonprofit and/or privately owned affordable housing entities.

(2) This provision shall not be construed to prohibit individual choice of coverage by participants from several offered by the joint self-insurance program. The contribution formula, including the insured and self-insured components, shall be consistently applied to reflect the selection from among these choices.

(11/17/11)

(3) The contribution formula shall be available for review by the state risk manager.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-150, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-150, filed 2/16/11, effective 3/19/11.]

WAC 200-120-160 Standards for operations—Disclosures. All joint self-insurance programs shall furnish to every participant of the program written statements which describe:

(1) Insurance coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;

(2) The procedure for filing a claim against the joint self-insurance program;

(3) The procedure for a participant to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, and other issues; and

(4) General characteristics of the insurance coverage portion of the program.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-160, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-160, filed 2/16/11, effective 3/19/11.]

WAC 200-120-170 Standards for operations—Standards for solvency—Termination provisions. (1) Program terminations. All joint self-insurance programs shall maintain a written plan that provides for the partial or complete termination of the program and for liquidation of its assets upon termination of the program. The termination procedure shall include, but not be limited to, a provision for the settling of all its liabilities for unpaid claims and claim adjustment expenses.

(2) Participation terminations. All joint self-insurance programs shall maintain a written plan that provides for the termination of owners and nonowner participants.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-170, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-170, filed 2/16/11, effective 3/19/11.]

WAC 200-120-180 Standards for management and operations—Financial plans. (1) All joint self-insurance programs shall maintain a written plan or policy approved by the board of directors for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;

(b) An investment policy which conforms to those laws and regulations applicable to the joint self-insurance program and to the investment guidelines stated in the program's original application approved by the state risk manager; and

(c) The preparation and submission of audited financial statements to the state risk manager within one hundred twenty days after the program's fiscal year end.

(2) No financial plan of a joint self-insurance program shall permit loans to any participant from primary assets held for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

[Ch. 200-120 WAC—p. 5]

[Statutory Authority: 2011 c 43, 11-23-093, recodified as WAC 200-120-180, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-180, filed 2/16/11, effective 3/19/11.]

WAC 200-120-190 Standards for management—Standards for contracts—Third-party administrator contracts. Before contracting with private businesses for third-party administrator professional services, all joint self-insurance programs shall establish and maintain written procedures approved by the board of directors for contracting with privately owned third-party administrators. Entering a contract for services shall not relieve the board of directors of the joint self-insurance program of its ultimate oversight, managerial and financial responsibilities. The procedures shall, as a minimum:

- (1) Provide a method of privately owned third-party administrator selection using a competitive process;
- (2) Require a complete written description of the services to be provided, remuneration levels, contract period and expiration date providing for a contract term no greater than five years. The contract may include an additional one year extension to be exercised at the discretion of the joint self-insurance program;
- (3) Provide for the confidentiality of the program's information, data and other intellectual property developed or shared during the course of the contract;
- (4) Provide for the program's ownership of the information, data, and other intellectual property developed or shared during the course of the contract;
- (5) Provide for the expressed authorization of the joint self-insurance program, consultants to the program, the state auditor, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program and to obtain such records electronically when audit travel costs can be eliminated or reduced;
- (6) Require the compliance with all applicable local, state and federal laws; and
- (7) Establish indemnification provisions and set forth insurance requirements between the parties.

[Statutory Authority: 2011 c 43, 11-23-093, recodified as WAC 200-120-190, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-190, filed 2/16/11, effective 3/19/11.]

WAC 200-120-210 Standards for operation and management—Risk management. All joint self-insurance programs formed under this chapter shall have a written risk management program which includes, but is not limited to, loss control, loss prevention, training and evaluation of risk based on loss experience.

[Statutory Authority: 2011 c 43, 11-23-093, recodified as WAC 200-120-210, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-210, filed 2/16/11, effective 3/19/11.]

WAC 200-120-220 Standards for claims management—Claims administration. (1) All joint self-insurance programs shall adopt a written claims administration program which includes, as a minimum, the following procedures:

- (a) Claims filing procedures and forms.
 - (b) Standards requiring case reserves for each claim be established in the amount of the undiscounted jury verdict value.
 - (c) Standards requiring case reserves be reviewed every ninety days or when reasonably practicable and such review is documented in the claims diary.
 - (d) Standards requiring appropriate adjuster workloads.
 - (e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.
 - (f) Standards requiring file documentation be complete and up-to-date.
 - (g) Standards requiring timely and appropriate claim resolution practices.
 - (h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.
 - (i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099 MISC reporting.
 - (j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.
- (2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.
- (3) All joint self-insurance programs shall have a written coverage appeal procedure that contains, as a minimum, procedures for a participant filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.
- (4) All joint self-insurance programs shall maintain a financial system that identifies claim and claim adjustment expenses.
- (5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the board of directors of the joint self-insurance program, avoid further damage, injury, or loss of use to a participant or third-party claimant.
- (6) All joint self-insurance programs shall maintain claim expense reports for all claims made against the joint self-insurance program and its participants.
- (7) All joint self-insurance programs shall obtain an independent review of claim reserving, adjusting and payment procedures every three years at a minimum. Said audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the board of directors and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

[Statutory Authority: 2011 c 43, 11-23-093, recodified as WAC 200-120-220, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020, 11-06-001, § 82-70-220, filed 2/16/11, effective 3/19/11.]

WAC 200-120-230 Standards for management and operations—State risk manager reports. (1) Every joint property and liability self-insurance program authorized to transact business in the state of Washington shall submit the annual report to the state risk manager.

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form within one hundred twenty days of fiscal year end:

- (a) Audited annual financial statements, including signed, as provided to the financial auditors;
- (b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the audited financial statements are based;
- (c) Copies of all insurance coverage documents;
- (d) List of contracted consultants;
- (e) Details of changes in the ownership agreement; and
- (f) Details of services provided by contract to nonmember participants.

(3) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(4) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

- (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
- (b) On-site monitoring by the state risk manager;
- (c) Service of a cease and desist order upon the program.

[Statutory Authority: 2011 c 43, 11-23-093, recodified as WAC 200-120-230, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020, 11-06-001, § 82-70-230, filed 2/16/11, effective 3/19/11.]

WAC 200-120-240 Standards for operations—Program changes—Notification to the state risk manager. (1) All joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

- (a) Any change in the terms of the ownership agreement;
- (b) Elimination or reduction of stop-loss insurance;
- (c) Acceptance of any loans or lines of credit;
- (d) Provision of services to nonparticipants;

(e) Addition of participants of other entity types than those included in original application approved by state risk manager;

(f) Any change in the program's investment guidelines.

(2) The following program changes require written notification to the state risk manager prior to implementing the following changes:

- (a) Increases in retention level;
- (b) Decrease or increase insurance limits;
- (c) Initial contract with a third-party administrator, or change in third-party administrator;
- (d) Any change to ownership agreement.

[Statutory Authority: 2011 c 43, 11-23-093, recodified as WAC 200-120-240, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020, 11-06-001, § 82-70-240, filed 2/16/11, effective 3/19/11.]

WAC 200-120-250 Standards for management and operations—Conflict of interest. (1) Every joint self-insurance program formed under this chapter shall require the claims auditor, the private third-party administrator, the actuary, and the broker of record to contract separately with the joint self-insurance program. Each contract shall require that a written statement be submitted to the program on a form provided by the state risk manager providing assurance that no conflict of interest exists prior to acceptance of the contract by the joint self-insurance program.

(2) All joint self-insurance programs shall meet the following standards regarding restrictions on the financial interests of the program administrators:

(a) No member of the board of directors, private business, including a third-party administrator, or any other person having responsibility for the management or administration of a joint self-insurance program or the investment or other handling of the program's money shall:

(i) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(ii) Receive compensation as a consultant to the program while also acting as a member of the board of directors, private third-party administrator, or as an employee.

(iii) Have any direct or indirect pecuniary interest in any loan or investment of the program.

(b) No consultant or legal counsel to the joint self-insurance program shall directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between the joint self-insurance program and any insurer or consultant except for salary and other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(c) Brokers of record for the joint self-insurance programs may receive compensation for insurance transactions performed within the scope of their licenses. The amount and other terms of compensation of a broker of record shall be provided for in a written contract approved by the board of directors. Any such contract shall include a provision that contingent commissions or other forms of compensation not

specified in the contract shall not be paid to the broker of record as a result of any joint self-insurance program insurance transactions. The joint self-insurance program shall establish a contract provision which requires the broker provide to the board of directors of the joint self-insurance program a written annual report on a form provided by the state risk manager which discloses the actual financial compensation received. The report shall include verification that no undisclosed commission was received as a result of any such insurance transaction made on behalf of the program.

(d) No employee or other representative of a broker of record, insurer or private third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-250, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-250, filed 2/16/11, effective 3/19/11.]

WAC 200-120-260 Standards for operations—State risk manager—Expense and operating cost fees. (1) The state risk manager shall fix state risk manager assessment fees to cover expenses and operating costs of the state risk manager's office in administering chapter 48.64 RCW. Such fees shall be levied against each joint property and liability self-insurance program regulated by chapter 48.64 RCW. Services covered by the state risk manager fees will include program reviews, monitoring and continuing oversight.

(2) The state risk manager fees shall be paid by each joint self-insurance program formed under this chapter to the state of Washington, office of financial management within sixty days of the date of invoice. Any joint self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

(3) A joint self-insurance program that has voluntarily or involuntarily terminated shall continue to pay an administrative fee until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the joint self-insurance program have been satisfied.

(4) The state risk manager shall assess each prospective joint self-insurance program an initial investigation fee at a rate determined annually by the state risk manager. Such fee shall be sufficient to cover the costs for the initial review and approval of that self-insurance program.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-260, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-260, filed 2/16/11, effective 3/19/11.]

WAC 200-120-270 Standards for operations—Appeals of fees. (1) A joint self-insurance program which disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

(2) The state risk manager shall review any fee appealed by a joint self-insurance program, together with the reasons for the appeal. Within fourteen days of receipt of notification

from the self-insurance program, the state risk manager shall respond in writing to the self-insurance program, either reaffirming the fee or modifying it, and stating the reasons for the decision.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-270, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-270, filed 2/16/11, effective 3/19/11.]

WAC 200-120-280 Standards for operations—Appeals of cease and desist orders. Within ten days after a joint self-insurance program covering property or liability risks formed under this chapter has been served with a cease and desist order under RCW 48.64.080(3), the entity may request an administrative hearing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapters 34.05 RCW and 10-08 WAC.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-280, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-280, filed 2/16/11, effective 3/19/11.]

WAC 200-120-290 Standards for contracts—Competitive procurement standards for consultant contracts. Every joint self-insurance program formed under this chapter shall use a competitive process in the selection of consultants. The process shall provide an equal and open opportunity to qualified parties and shall culminate in a selection based on pre-established criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts. Bid responses, solicitation documents and evidence of publication shall be retained in accordance with laws governing public records and shall be available for review by the state risk manager and financial auditors. The requirements of this section shall not pertain to consultants of a joint self-insurance program that is wholly owned by another self-insurance program that is operating in compliance with chapter 48.64 or 48.62 RCW if the consultant performs the same type of services for such other joint self-insurance programs.

[Statutory Authority: 2011 c 43. 11-23-093, recodified as WAC 200-120-290, filed 11/17/11, effective 11/17/11. Statutory Authority: Chapter 48.64 RCW, RCW 48.64.015, and 42.64.020. 11-06-001, § 82-70-290, filed 2/16/11, effective 3/19/11.]