

Updates or Changes to the 2022 Public Entity Liability (PEL) Coverage Document

Please note, this document is provided as information for Members and Brokers. This summary cannot bind or change coverage – the form governs all coverage provisions. Please refer to the form itself and carefully review it to understand coverage.

1. Changes to coverage or Member renewal

Additional Coverage A (Sexual Molestation or Misconduct, or Tortious Physical or Sexual Contact) is amended to implement changes in Colorado law (Senate Bill 21-088), expanding liability for public (and private) entities that manage youth-related activities or programs when a child is the victim of sexual misconduct. The aggregate limit per **Named Member** is not changed; a limit for all **Named Members** of \$5,000,000 is added. The coverage provision, as well as the related exclusion (**Exclusion X**) are likewise updated to reflect the new statutory tort.

VII. EXCLUSIONS – AF. adds an express exclusion for covenant enforcement unless specific information is provided on the **Named Member's** Declaration, as follows:

Any liability for Damages arising out of, caused by, contributing to, resulting from, or arising directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, or otherwise in connection with the administration or enforcement of the Covenants, Conditions and Restrictions of a Homeowners' Association, unless the Named Member has declared on its General Liability Schedule the number of homes for which it has authority for the enforcement of the covenants.

2. Changes made to provide necessary clarifications

Additional Coverage F (No-Fault Water Intrusion and/or Sewer Back-up) is amended by the addition of "intrusion" after water to clarify the cause of the covered loss.

Additional Coverage H (Fiduciary Liability) is modified to delete confusing language pertaining to ERISA and to provide the same coverage by clear reference to fiduciary duties and breaches. Harmonizing changes are provided, including moving the related exclusion (**Exclusion Y**) into the coverage provision, deleting an unnecessary exclusion (prior **Exclusion W**, ERISA) and updating the definition of **Administration**. As used in this Additional Coverage H, **Administration** means choosing, changing, terminating, or eliminating an **Employee Benefits Program**, including amending benefits, requiring employee contributions, or changing the level of employee contributions exclusively in a fiduciary capacity provided all such acts are authorized by the **Named Member**.

Additional Coverage I (Data Compromise Including E-Commerce Cyber Liability): the public relations expense provision, new coverage grant in 2020, is amended clarify the limit, to correct the entity pre-approving payment (Claims Administrator, rather than Pool Administrator), and making other updates.

VII. EXCLUSIONS – 0. (Absence of Legal Authority) is modified to clarify that the general exclusion for liability for **Damages** arising out of any act or omission outside the scope of a **Member**'s powers and duties as defined by law expressly includes the following:

This exclusion applies to any direct or indirect liability for **Damages** or defense costs, including any duty to defend, arising out of or related to a law enforcement activity. For purposes of this exclusion, law enforcement activity is defined as any official or unofficial action by a **Member** to enforce laws for which authority has not been expressly delegated under Colorado statutes.

VII. EXCLUSIONS – Z. (Uninsured/Underinsured) is modified to clarify that coverage is excluded for **Bodily Injury** sustained by the **Member** when benefits have been provided under workers' compensation.

3. New or Updated Definitions

Administration means:

1. ~~Advising, counseling, or failing to provide proper or timely notice to~~ employees, including their dependents and beneficiaries with respect to an **Employee Benefits Program**;
2. Handling of records, ~~effecting enrollment, terminating or cancelling the enrollment of participants~~ in connection with the **Employee Benefits Program**;
3. ~~Providing interpretations with respect to an Employee Benefits Program; and~~
4. ~~Choosing, changing, terminating, or eliminating an Employee Benefits Program, including amending benefits, requiring employee contributions, or changing the level of employee contributions exclusively in a fiduciary capacity provided all such acts are authorized by the Named Member.~~

Deleted: Providing information

Deleted: and

Deleted: Effecting, continuing or terminating any employee participation in any benefit included in the **Employee Benefits Program**, but this does not include the actual effecting, continuing or terminating of such **Employee Benefits Program** which shall be deemed to be a fiduciary act provided all such acts are authorized by the **Named Member**.