

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 6 RISK MANAGEMENT
PART 4 STATE LOSS PREVENTION AND CONTROL PROGRAM

1.6.4.1 ISSUING AGENCY: General Services Department (GSD) Risk Management Division.
[1.6.4.1 NMAC - Rp, 1.6.4.1 NMAC, 12/11/2018]

1.6.4.2 SCOPE: Unless otherwise provided by law, this rule applies to all state agencies, including elected officials and institutions of higher learning. This rule supersedes and replaces all rules and directives for conflicting loss prevention and control programs. State agencies must comply with this rule; no exemptions will be granted.
[1.6.4.2 NMAC - Rp, 1.6.4.2 NMAC, 12/11/2018]

1.6.4.3 STATUTORY AUTHORITY: This rule is adopted pursuant to Paragraph (9) of Subsection A of Section 15-7-3 NMSA 1978 which empowers the risk management division to initiate safety program establishment and to adopt regulations for effective implementation of safety programs and Subsection E of Section 9-17-5 NMSA 1978 which empowers the secretary of the general services department to adopt regulations to accomplish the duties of the department and its divisions.
[1.6.4.3 NMAC - Rp, 1.6.4.3 NMAC, 12/11/2018]

1.6.4.4 DURATION: Permanent.
[1.6.4.4 NMAC - Rp, 1.6.4.4 NMAC, 12/11/2018]

1.6.4.5 EFFECTIVE DATE: December 11, 2018 unless a later date is cited at the end of a section or paragraph.
[1.6.4.5 NMAC - Rp, 1.6.4.5 NMAC, 12/11/2018]

1.6.4.6 OBJECTIVE: The objectives of this rule 1.6.4 NMAC are to:

- A.** prevent and control insurable losses in state government;
- B.** integrate loss prevention and control activities into state agency operations and culture;
- C.** establish systematic safety and loss prevention and control mechanisms within state agencies;
- D.** develop uniform loss control reporting procedures for state agencies; and
- E.** assure compliance with this rule by reporting non-compliant agencies to the appropriate oversight bodies and by adjusting risk premium rates of non-compliant agencies.

[1.6.4.6 NMAC - Rp, 1.6.4.6 NMAC, 12/11/2018]

1.6.4.7 DEFINITIONS: The following definitions apply in this rule:

- A. Agency or state agency:** Any department, agency, branch, board, instrumentality, or institution of New Mexico state government.
- B. Committee:** An agency loss prevention and control committee.
- C. Loss prevention and control:** Any managerial system or systems intended to identify potential or actual loss situations and the implementation of a strategy or strategies to prevent or manage losses.
- D. Loss prevention and control coordinator:** The agency loss prevention and control coordinator.
- E. RMD:** The risk management division of the general services department.
- F. State loss control manager:** The state loss control manager at RMD (*see* Paragraph (10) of Subsection A of Section 15-7-3 NMSA 1978).

[1.6.4.7 NMAC - Rp, 1.6.4.7 NMAC, 12/11/2018]

1.6.4.8 LOSS PREVENTION AND CONTROL PROGRAM:

- A.** The state loss prevention and control program is created. The program includes coordination of all agency loss prevention and control activities and any loss prevention and control services administered by RMD.
- B.** Each agency shall develop an annual loss prevention and control plan using a method approved by RMD, submit a copy of its loss prevention and control plan to the state loss control manager within 60 days of adoption of the state loss prevention and control plan, and must inform the state loss control manager of any program change.

C. The state loss control manager shall report any agency that fails to adopt an agency loss prevention and control plan to the agency head, to the secretary of the general services department, and to the director of the risk management division.

D. If the RMD director determines that an agency has failed to substantially comply with this rule, the director shall notify the agency head. The Agency shall have 30 days to cure any deficiencies. If after such 30 day period, the director determines that the agency has still failed to substantially comply with this provision, the director may, after consultation with the secretary of the general services department, adjust the coverage premiums paid by non-compliant entities for the following plan year to reflect the increased risk profile of the entity. Non-compliant entities may appeal any rate adjustment to the risk management advisory board.

[1.6.4.8 NMAC - Rp, 1.6.4.8 NMAC, 12/11/2018]

1.6.4.9 LOSS PREVENTION AND CONTROL COORDINATOR:

A. Each agency shall appoint a loss prevention and control coordinator no later than 60 days after the effective date of this rule. Each agency shall submit this individual's name to RMD and inform the state loss control manager of any appointment changes.

B. Each agency head shall appoint one of the following persons as loss prevention and control coordinator:

- (1) the deputy agency head;
- (2) the agency chief financial officer;
- (3) the agency general counsel;
- (4) a division director; or
- (5) a senior supervisory employee approved by RMD.

C. The loss prevention and control coordinator shall:

- (1) report to the agency head on matters pertaining to the loss prevention and control program, safety, employment-related civil rights issues, and other potential or actual exposures;
- (2) liaise with the state loss control manager and RMD;
- (3) establish, interpret, and apply loss prevention and control procedures;
- (4) monitor loss prevention and control training, incident investigations, and program progress;
- (5) chair the agency safety committee; and
- (6) chair the agency loss prevention and control committee.

[1.6.4.9 NMAC - Rp, 1.6.4.9 NMAC, 12/11/2018]

1.6.4.10 LOSS PREVENTION AND CONTROL COMMITTEE:

A. Each state agency shall establish a loss prevention and control committee.

B. Committee members may be appointed by the agency head or by the loss prevention and control coordinator. The appointing authority shall appoint division directors, bureau chiefs, section or unit heads, and other senior supervisory employees. All major components of an agency's organizational structure shall be represented on the agency committee.

C. Each committee should hold meetings at least quarterly. The agency head or chairperson may convene special meetings. Committee meetings may be incorporated into regular agency staff meetings and should address issues at all operational levels within the agency.

D. The loss prevention and control committee shall:

- (1) define an annual agency loss prevention and control plan;
- (2) meet quarterly to assess the implementation of the loss prevention and control plan;
- (3) report the status of the annual loss prevention and control program; and
- (4) perform any other functions the chairperson considers useful and appropriate.

[1.6.4.10 NMAC - Rp, 1.6.4.10 NMAC, 12/11/2018]

1.6.4.11 INCIDENT AND LOSS INVESTIGATION:

A. Each state agency shall establish and implement procedures for investigation, analysis, and evaluation of incidents and losses. The procedures shall provide that incidents and losses be thoroughly investigated by the supervisory person most immediately responsible for the operation in which the loss occurred, by an individual who has been trained to perform this type of work, or both.

B. Investigations pertinent to an alleged job-related injury or illness and all necessary and supplemental documentation generated during an investigation will become a part of the injury or illness claim record.

C. Any investigations and reports prepared pursuant to this section are supplementary to and do not replace reports required to comply with state and federal laws, insurance and other reporting requirements. [1.6.4.11 NMAC - Rp, 1.6.4.11 NMAC, 12/11/2018]

1.6.4.12 LOSS PREVENTION AND CONTROL TRAINING:

A. Each agency shall provide position-appropriate safety training, loss prevention and control training, worker's compensation training, and employment-related civil rights training to all employees.

B. Supervisors shall discuss loss prevention and control policies, procedures, and strategies with employees, individually and at group training sessions.

C. All employees shall be trained in the safe and correct way to perform their job functions as needed.

D. Agencies shall provide training on occupational health and safety laws and regulations to all employees as appropriate to job function.

E. Agencies shall provide training on employment-related civil right to supervisors and managers.

F. Training on Federal and state civil rights laws, including Title VII of the Civil Rights Act and the New Mexico Human Rights Act (Sections 28-1-1 and following NMSA 1978), shall occur on a continuing basis. [1.6.4.12 NMAC - Rp, 1.6.4.13 NMAC, 12/11/2018]

1.6.4.13 JOB-RELATED INJURY OR ILLNESS CLAIMS MANAGEMENT:

A. Each agency shall adopt a workers' compensation claims management procedure approved by RMD that complies with all relevant laws, regulations, policies, directives, guidance, and other requirements.

B. Each agency shall have written procedures for:

(1) workers' compensation claims management;

(2) early return to work for workers with job-related injuries or illnesses; and

(3) new employee orientation programs that include job safety and workers' compensation

training.

C. Each agency shall have written policies providing for the following items, as they apply to job-related injury or illness claims:

(1) training, appropriate to each supervisor, on the supervisor's and responsibilities regarding job-related injuries and workers' compensation claims;

(2) methods for record keeping and filing job-related injury and illness claims;

D. Claims records retained by agencies and submitted to the RMD shall contain the following:

(1) Mandatory documents:

(a) notice of accident (WCA form NOA-1, as may be amended);

(b) employer's first report of injury or illness (WCA form E1.2, as may be

amended);

(c) Authorization to release medical information (WCA mandatory form, per Subparagraph (c) of Paragraph (2) of Subsection R of 11.4.4.9 NMAC, as may be amended);

(2) Other records, documents, statements, and evidence appropriate to the claim.

E. The policies required by this rule shall address:

(1) injured employee responsibilities - At a minimum, injury reporting procedures, administration and documentation details, and compliance with the medical treatment plan;

(2) employer responsibilities - At minimum, job-related injury or illness reactive procedures, contact protocol, employer involvement in all phases of job-related injury or illness claim management, and accountability measures;

(3) identifying job roles and modifying job functions to accommodate a worker placed on restricted or modified work status and procedures and authorities to implement this program;

(4) implementing controls to reduce the likelihood of job-related injuries or illnesses reoccurring.

F. Every effort shall be made to implement an early return to work program that includes, at a minimum, the requirements of Section 52-1-25.1 NMSA 1978. No state employee shall be terminated from employment because of a job-related injury or illness or because of physical circumstances resulting from a job-related injury or illness unless the state agency has provided advance notice to RMD.

G. Vacant positions resulting from job related injuries or illnesses shall not be filled, except by temporary employment, unless provided for elsewhere by law.

(1) A position may be permanently filled if there is documented medical diagnosis or evidence that an employee with a job-related injury or illness has reached maximum medical improvement or that the employee's impairment or condition is permanent and that the employee cannot perform the essential functions of the particular job.

(2) A position may be permanently filled if there is a critical need and that need cannot be satisfied with temporary employment, and the agency has made a "good faith" effort to do so, and the other provisions of this rule have been satisfied.

[1.6.4.13 NMAC - Rp, 1.6.4.14 NMAC, 12/11/2018]

1.6.4.15 and 1.6.4.16 [RESERVED]

HISTORY OF 1.6.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

GSD 84-703 State Loss Control Program, 4/4/1984;

GSD 86-703 State Loss Control Program, 6/30/1986; and

GSD 91-703 State Loss Control Program, 11/14/1991.

History of Repealed Material: 1.6.4 NMAC, State Loss Control Program (filed 9/01/2004) repealed 7/1/2007.

1.6.4 NMAC, State Loss Prevention and Control Program (filed 5/15/2007) repealed 12/11/2018.

Other History:

GSD 91-703 State Loss Control Program (filed 11/14/1991) was reformatted and renumbered to 1.6.4 NMAC, State Loss Control Program, to comply with the current NMAC requirements, effective 9/15/2004.

1.6.4 NMAC, State Loss Control Program (filed 9/1/2004) was replaced by 1.6.4 NMAC, State Loss Prevention and Control Program, effective 7/1/2007.

1.6.4 NMAC, State Loss Control Program (filed 5/15/2007) was replaced by 1.6.4 NMAC, State Loss Prevention and Control Program, effective 12/11/2018.