

Policy Title:	Tort and Foster Parent Liability – Policy		
Policy Number:	III-A.2.2		Effective Date: 07-01-2001

Approved By: *on file*

Date Approved:

Policy

Procedures

Forms, etc.

Definitions

References

Contact

Reference(s):

- Department of Administrative Services Policy Manual #125-7-201
- ORS 30.260 - 30.330
- FL 1, "Liability Coverage Resulting from Damages Caused by Foster Children"

Form(s) that apply:

- CF 3, "Notice of Claim and Statement of Loss"
<http://dhsforms.hr.state.or.us/Forms/Served/CE0003.pdf>

Policy:

Purpose

(1) Under Oregon Law, the state is liable for its *torts* and those of its officers, employees and *agents* acting within the scope of their employment or duties. The Risk Management Division, Department of Administrative Services, administers the *liability* fund insurance program to cover this *liability*. The scope of the *liability* coverage is limited to that authorized under ORS 30.265. The maximum amount of *liability* coverage provided is that authorized under ORS 30.270.

(2) Defense of a State Office for Services to Children and Families (SOSCF) employee, official or *agent* is the responsibility of the Attorney General's Office. The Attorney General will reject defense of the claim if, after investigation, it is found that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office, or willful or wanton neglect of duty. The provisions related to *tort* claims are prescribed in ORS 30.260 - 30.300.

(3) The purpose of this policy is to describe the agency's responsibilities in reporting claims against the state *tort liability* insurance fund and/or suits against the agency, employees or *agents* when acting in their official capacity.

Definitions

(1) **"Agent"**: Any person or organization appointed by or contracting with a state agency to perform the state agency's functions on its behalf and subject to the agency's direction and control. *Agents* may include certified foster parents, registered volunteers, advisory committee members and contractors performing services on behalf of the state. (Whether someone is an *agent* of the state for purposes of *tort liability* coverage is a legal question which ultimately is determined by the Attorney General and Risk Management Division.)

(2) **"Liability"**: Legal responsibility or accountability for actions or results.

(3) **"Tort"**: An intentional or negligent breach of duty which results in damages for which civil action may be brought.

(4) **"Tort Complaint"**: A legal document, filed in a court including a complaint and a summon to appear, and stating a claim against the state, and or its officers, employees or *agents*.

Procedure

(1) The State Office for Services to Children and Families (SOSCF) is responsible to notify the Department of Administrative Services in writing of any accident, occurrence or loss which has resulted in or could reasonably be assumed to result in a *liability* claim or law suit under ORS 30.260 - 30.300.

(2) When a *tort* complaint is filed against the state concerning the State Office for Services to Children and Families, an SOSCF officer, employee or *agent*, after consulting with the Risk Management Division, may file a written request for counsel with the Trial Division, Department of Justice.

(3) SOSCF is required to cooperate with the Risk Management Division in notice, investigation, settlement and defense of claims which may include attendance at hearings and trials, securing and giving evidence, and obtaining the attendance of witnesses and disclosing all pertinent records and files.

(4) SOSCF shall not voluntarily make any payment, assume any obligation, or incur any expenses concerning claims under ORS 30.260 - 30.300 except with the approval of the Risk Management Division.

Potential *Tort Liability* Claims

(1) If there is a reason to believe that an occurrence, accident, act by a state employee or loss, could produce a *liability* claim, the local office/section will develop a written statement presenting the facts of the situation and send the statement to the appropriate Assistant Administrator or designee within 24 hours. This statement shall include, where available: (1) time, place, and circumstances giving rise to the claim or occurrence; (2) identity, address, and phone number of persons involved and any witnesses; (3) statements of circumstances from employees involved in or witness to the accident, occurrence, or act; and (4) name and phone number of individual who will be available for further contact.

(2) Upon receipt of this written notification, the Assistant Administrator or designee will determine whether notification to the Risk Management Division is appropriate and, if so, forward the information to Claims Section, Risk Management Division, 155 Cottage NE, Salem, Oregon 97310 within ten days of the occurrence. A copy will also be forwarded to the Risk Management Coordinator in Central Office when the notification is sent to the Risk Management Division.

(3) If an employee is contacted by an individual inquiring about claims filing procedures or intending to give oral notice of a claim, the individual will be directed to the Claims Section, Risk Management Division.

Tort Liability Claims

Upon receipt of written notice of a claim, whether in person or by mail (usually a "demand letter" or "notice of intent to sue"), the local office shall accept the written notice and forward it immediately to the appropriate Assistant Administrator or designee designating: (1) the person upon whom notice was served; (2) if personally presented, by whom and date received; and (3) if by mail, date received. If not already submitted, the local office/section will also develop the written statement described in Section (1) (above) within five days and forward to the Assistant Administrator or designee. The Assistant Administrator or designee will send all pertinent information to the Claims Section, Risk Management Division as soon as possible with a copy to the Risk Management Coordinator in Central Office. The written statement must be forwarded no later than ten days after the occurrence.

Tort Complaints

(1) Whenever an agency officer, employee, or *agent* is served with a summons and complaint, he/she will immediately notify the appropriate regional administrator by phone and send the original copy of the summons and complaint papers along with a written notation of the exact date, time, and manner in which the complaint was served to the Risk Management Coordinator in Central Office.

(2) The Risk Management Coordinator will assure that proper notification is made to the Department of Justice, Trial Division, and the Risk Management Division. All summons and complaint papers will be forwarded by the Risk Management Coordinator to Chief Counsel, Trial Division, Department of Justice, State Office Building, Salem, Oregon 97310.

Claims for Willful Damages by Foster Children

When a foster parent or others believe that they have a claim resulting from willful, malicious, or intentional damage caused by a foster child, the foster parents or service worker shall complete "Notice of Claim and Statement of Loss" (Form CF 3) and submit it to the Department of Administrative Services, Claims Section, Risk Management Division for each covered occurrence. "*Liability Coverage Resulting From Damages Caused by Foster Children*" (FL 1) may be used as a guide in completing the claim.

Provider Claims for Non-Willful Damages by Foster Children

When foster parents believe that they have a claim resulting from damage caused by a foster care child which was not willful, malicious, or intentional, they may file a claim (CF 3) with the Department of Administrative Services, Claims Section, Risk Management Division. If it is determined by the Claims Section that the claim is valid, a foster parent is entitled to

reimbursement up to \$5,000 for each occurrence. However, reimbursement may not exceed the fair market value of the property immediately before its damage or destruction. "*Liability Coverage Resulting From Damages Caused by Foster Children*" (FL 1) may be used as a guide in completing the claim.

Contact(s):

- **Name:** CAF Reception; **Phone:** 503-945-5600