

Administrative Policy No. 13.13

Subject:	Insurance Requirements for Contracts
Information Contact:	Central Contracts and Legal Services Facilities, Finance and Analytics Administration MS 45811
Authorizing Source:	RCW 43.19.760 , RCW 43.19.763 , RCW 43.19.766 Administrative Policy 13.10, Central Contracts and Legal Services Administrative Policy 13.11, Monitoring Contract Performance
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Approved By:	Original signed by Lori Melchiori Senior Director, Office of Policy and Rules

Purpose

This policy establishes the types and amount of insurance coverage required in Department of Social and Health Services (the department) contracts; the process for determining and monitoring contractor insurance requirements; and the process for review and approval of requests to waive contract insurance requirements.

This policy, and any procedures or guidelines referenced, are intended for internal use only. The policy is not intended, nor can it be relied upon, to create any substantive or procedural rights enforceable by any party involved in matters with the department.

Scope

This policy applies to each department program that issues goods and service contracts, client service contracts, or inter-local contracts.

Additional Guidance

- [Administrative Policy 13.10, Central Contracts and Legal Services](#)
- [Administrative Policy 13.11, Monitoring Contractor Performance](#)
- [Administrative Policy 13.12, Competitive Solicitations and Procurements](#)

Definitions

Additional insured means a person or entity that is added to the coverage under an insurance policy at the request of the named insured who initially purchased the policy.

Category 3 data means data that is specifically protected by law. It includes personal information about individual clients, regardless of how that information is obtained; information concerning employee payroll and personnel records; and source code of certain applications programs that could jeopardize the integrity of department data or result in fraud or unauthorized disclosure of information if unauthorized modification occurred.

Category 4 data means data that is confidential and requires special handling due to statutes or regulations that require especially strict protection of the data and from which especially serious consequences may arise in the event of any compromise of such data. Data classified as category 4 includes but is not limited to data protected by: the Health Insurance Portability and Accountability Act (HIPAA), [Pub. L. 104-191](#) as amended by the [Health Information Technology for Economic and Clinical Health Act of 2009](#) (HITECH), [45 CFR Part 160](#) and [Part 164](#); the Family Educational Rights and Privacy Act (FERPA), [20 U.S.C. §1232g](#); [34 CFR Part 99](#); [Internal Revenue Service Publication 1075](#); Substance Abuse and Mental Health Services Administration regulations on Confidentiality of Alcohol and Drug Abuse Patient Records, [42 CFR Part 2](#); and Criminal Justice Information Services, [28 CFR Part 20](#).

Central contracts and legal services (CCLS) means the contracting authority for the Department of Social and Health Services. Organizationally, it is in the facilities, finance and analytics administration. [AP 13.10](#) charges CCLS with responsibility for establishing and maintaining statewide department policies and procedures governing all contracts for the department.

Confidential information means information or data that is exempt from disclosure to the public or other unauthorized persons under [RCW 42.56](#) or other federal or state laws. Confidential information includes, but is not limited to, Category 3 and Category 4 data.

Contract means a legally binding written agreement between the department and another entity, public or private, for the provision of goods or services.

Contract manager means the individual primarily responsible for the day-to-day management activities related to contracting out services, including contractor screening, contractor selection, contract preparation, and monitoring contractor performance. See [AP 13.10](#).

Individual provider means a person under contract with the department to deliver personal or health care services to a department client where the department client lives in their own home; and the contractor takes their direction exclusively from the department client.

Insurance contract or insurance policy means a written agreement binding one party to cover a second party against specified losses in return for payment called a premium.

Insured means the entity or person(s) protected under insurance purchased by the contractor.

Insurer means the insurance company, or other entity, legally obligated by written agreement to compensate an insured for a covered injury, loss or damage they have sustained.

Key contract coordinator means the individual(s) designated by the division director responsible for contracting in a given administration to be the liaison between the administration and CCLS. The key contract coordinator has specific, direct responsibilities for department contracting processes that are identified in [AP 13.10](#) (central contracts and legal services).

Liability insurance means insurance that pays or renders service on behalf of an insured for loss arising out of legal liability to others. Most typical examples include: Commercial general liability; professional liability; and business auto policy.

Waiver means a document issued by an assistant secretary or designee that establishes an exclusion or exception from required insurance coverage for an individual contract or class of contracts or contractors. An exception waiver applies to a specific contract and relieves the contractor from some or all of the insurance requirements identified in this policy. An exclusion waiver relieves a group or class of contractors from some or all of the insurance requirements identified in this policy.

Policy

- A. Department goods or service, client service, and inter-local contracts must not be signed by a department representative or executed unless:
 1. The contract identifies the necessary and appropriate types and amounts of general liability, professional liability, automobile liability, (if applicable) and other insurance coverage required by this policy; and
 2. The department is included by endorsement as an “additional insured” on the contractor’s general liability and business auto insurance policies; or
 3. A waiver of some or all of the insurance requirements has been reviewed and approved under procedures established in this policy.
- B. The contract manager must monitor contractor compliance with department insurance requirements throughout the term of each contract.
- C. The contract manager must contact a contractor as soon as it is discovered through routine monitoring, audit, or an insurer’s notification that the contractor is not in compliance with the contract’s stated insurance requirements or does not have an approved waiver.
 1. Contractors are expected to comply with the department’s insurance requirements

or request a waiver from the contract manager no later than 30 calendar days of the contractor being notified of the deficiency.

2. If the contractor fails to comply within the 30 calendar days, the contract should be terminated for non-compliance with the terms of the contract.

D. Required insurance: The following are the minimum liability insurance requirements that a contractor must hold, unless waived, in whole or in part, by an approved waiver.

1. All contracts must have general liability insurance as provided below:
 - a. Commercial general liability (CGL), business, or general liability policies are acceptable types of liability insurance for any contract.
 - b. Supplemental, workplace, and premises liability are acceptable types of liability insurance, but only when they are specifically attached to a professional liability policy (see below Section D (2)).
 - c. The minimum monetary limits of CGL, business, general liability, supplemental, workplace or premises liability insurance coverage required of all department contractors is: one million dollars per occurrence; and two million dollars aggregate.
2. Professional liability insurance is required whenever a contractor is expected to provide a professional service. The minimum monetary limits for professional liability insurance coverage is: one million dollars per occurrence; and two million dollars aggregate.
3. Business auto policy insurance is required when the contract involves the transportation of department clients. The minimum monetary limits for business auto insurance is: one million dollars combined single limit.

E. Recommended additional insurance: Certain contracts may pose a higher level of risk and exposure to potential liability due to the subject matter, complexity, size, or scope of the contract. Higher risk contracts include but are not limited to:

1. Contracts for large or complex information technology projects or purchases;
2. Contracts involving the creation, use, or disclosure of confidential information;
3. Contracts with consideration greater than \$2 million for the initial term of the contract

Please note that CGL, business, or general liability insurance policies may not cover certain types of damages, for example, costs related to data breaches. It may be advisable to require a higher level or an additional type of insurance coverage in order to protect the department from loss due to the actions of the contractor that may not be covered under the above mentioned policies.

The department must be listed as an “additional insured” on any additional insurance policy requirements under the contract in addition to the required coverage in section D

above.

Appendix A will aid the contract manager in determining whether or not additional insurance coverage should be considered. Potential risks to consider include:

1. Property damage;
2. Injuries to staff or third parties;
3. The cost of repairing or replacing the contractor's work;
4. The costs of losing the use of a system;
5. Fines or penalties for violations of laws or regulations; and
6. Legal fees and costs.

Refer to Appendix A of this policy to determine whether the risk and the amount of potential damages justifies additional insurance coverage requirements to be placed in the contract. Contact CCLS contracts counsel if you have any questions or need assistance with the risk analysis and insurance requirements.

Procedures

- A. Process for managing and monitoring contract liability insurance.
 1. CCLS contracts counsel responsibilities include:
 - a. Serving as the centralized source of information for contractual insurance issues related to the department's contractors.
 - b. Developing insurance contract terms and conditions, as needed.
 - c. Reviewing waiver requests and requested changes or alterations to the standard insurance language.
 - d. Maintaining an informational SharePoint site to assist program contract managers with issues related to insurance.
 - e. Establishing and maintaining a list of department-wide exclusion waivers.
 - f. Conducting training on this policy in conjunction with the CCLS contracts academy or upon individual administration request.
 2. Administration contract manager responsibilities include:
 - a. Ensuring the correct insurance requirements are included in the contract prior to its execution, including a risk analysis to determine the need for any additional insurance beyond that required by this Policy.
 - b. Complying with the requirements of [AP 13.11, Contract Monitoring](#), and ensuring that risk and monitoring plans are developed and in place that consider the risks, mitigation strategies, and monitoring activities related to a contractor's ability to comply with department contract insurance requirements.
 - c. When deemed appropriate, when a contractor cannot meet the minimum insurance requirements set out in this policy, ensure that the contractor obtains a waiver of the insurance requirements.
 - d. Monitor and enforce contractor compliance with the minimum insurance

coverage or waiver requirements established by this policy as deemed necessary by the program's contracting risk assessment and monitoring plans.

B. The waiver process.

1. A contractor or group or class of contractors may be granted an exception or exclusion waiver from all or part of the department insurance requirements specified in this policy.
2. Exception waivers are:
 - a. Initially approved on behalf of the program by its assistant secretary or designee; and
 - b. For a specific contract;
 - c. A one-time approval and will expire at the end of the contract term; and
 - d. Re-reviewed by the responsible assistant secretary or designee when the contract is extended or renewed.
3. Exclusion waivers are:
 - a. Initially approved on behalf of the program by its assistant secretary or designee;
 - b. For a group or class of contractors or contracts related to a specific service; and
 - c. Re-reviewed every two years by the responsible assistant secretary or designee.
4. Procedures for requesting and granting a waiver:
 - a. A contractor or group or class of contractors submits a formal written request for a waiver to the contract manager; or the contract managers themselves create the written waiver requests. A written waiver request should consider:
 - i. The risks associated with the type of services required by the contract;
 - ii. The potential benefits of insurance to mitigate the risk to the department and its clients;
 - iii. The general availability of appropriate insurance;
 - iv. Industry and economic factors that may limit the contractor's access to insurance; and
 - v. The impact of the waiver on other administrations and programs who may have contracts with the same contractor.
 - b. The CCLS contracts counsel will, upon request, review and provide advice regarding waiver requests and written waiver documents.
 - c. The assistant secretary or designee approves or disapproves the request in writing.
 - d. All approved waivers are forwarded to CCLS. CCLS will maintain and post on its SharePoint site a list of all approved insurance waivers. (the waiver list is available at <http://dshsapoly1512q:207/FS/OSS/CCS/Pages/Insurance.aspx>) Approved waivers and disapproved exception waiver requests must also be retained in the contract file.

- e. On a case-by-case basis, CCLS may waive some or all of the insurance requirements of this policy for contracts for low risk activities with a very low dollar amount. The waiver must be made in writing and placed in the contract file.

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APPENDIX A: Additional Insurance Decision Tree

Should this contract require the contractor to purchase additional insurance? A “yes” answer to any of the questions below indicates that you should consider adding an additional insurance:

Yes	No	Question
<input type="checkbox"/>	<input type="checkbox"/>	Will the vendor be acting in a professional capacity to work on or modify a department information technology hardware or software system? Will the vendor have personnel working within a department system? If yes to either, consider adding the coverage in Section 1 paragraphs a and b below.
<input type="checkbox"/>	<input type="checkbox"/>	Could negligence, errors, omissions, or other malpractice by the vendor result in damage, data loss, data breach, loss of use of technological systems, personal injury or death to the department or its employees either directly or indirectly? If yes, consider adding the coverage in Section 1 paragraphs a and b below.
<input type="checkbox"/>	<input type="checkbox"/>	Will the vendor have access to or have possession of government property, technology, or securities? If yes, consider adding the coverage in Section 1 paragraph c below.
<input type="checkbox"/>	<input type="checkbox"/>	<p>Will the vendor create, receive, maintain, or transmit department confidential information? (Category 3 or 4 data.) If Category 4 data is implicated please complete the checklist provided in AP 13.23 Identifying Business Associates and Business Associate Agreements, to determine whether or not you are required to include a Business Associates Agreement to your Contract for HIPAA compliance.</p> <p>See OCIO Data Category Information Standard 141.10 (see page 8 for category descriptions)</p> <p>If yes, consider adding the coverage in Section 1 paragraphs b –d, below</p>
<input type="checkbox"/>	<input type="checkbox"/>	Will the vendor need to conform to or adhere to OCIO 141.10 Securing Information Technology Assets or other OCIO policy in furtherance of their contractual duties? If yes, consider adding the coverage in Section 1 paragraphs b –d, below.
<input type="checkbox"/>	<input type="checkbox"/>	Will the vendor process payments, have funds pass through their system/software, or work with government funds in any capacity? If yes, consider adding the coverage in Section 1 paragraphs b –d, below.

1. Additional Insurance.

Based on the answers to the questions above, you should consider requiring one or more of the additional insurance coverage types listed below in the contract beyond the minimum requirements of this policy.

- a. *Professional liability (errors & omissions) insurance* of at least \$2,000,000 per occurrence, \$4,000,000 general annual aggregate for malpractice or errors and omissions coverage against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use, and damages because of negligent acts, errors, and omissions in any way related to this contract.
- b. *Technology professional liability (errors and omissions)*. Technology errors and omissions insurance, to include coverage of claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, network security, regulatory defense (including fines and penalties), and notification costs. The coverage limits must be at least \$1,000,000 per covered claim without sublimit, and \$2,000,000 annual aggregate.
- c. *Crime and employee dishonesty*. Employee dishonesty and (when applicable) Inside/Outside Money and Securities coverages for property owned by the state of Washington in the care, custody, and control of contractor, to include electronic theft and fraud protection. Coverage limits should not be less than \$1,000,000 per covered claim without sublimit, \$2,000,000 annual aggregate
- d. *Cyber risk liability insurance*. This coverage must include information theft, computer and data loss replacement or restoration, release of private information, alteration of electronic information, notification costs, credit monitoring, forensic investigation, cyber extortion, regulatory defense (including fines and penalties), network security, and liability to third parties from failure(s) of contractor to handle, manage, store, and control personally identifiable information belonging to others. The policy must include full prior acts coverage. Limits should be \$1,000,000 per covered claim without sublimit, \$2,000,000 annual aggregate.

2. Insurance policy limits – how much coverage to require:

The limit of liability is the maximum amount of money that an insurer has agreed to pay on behalf of a policyholder (including an Additional Insured) in any one year, for claims made against them. When selecting the limit of liability, take into account that every contract is different. In general terms, larger, more sophisticated procurements, especially those that are key systems, will subject the department to a higher degree of risk and may warrant higher insurance limits.

3. What are per claim and annual aggregate limits?

Many insurance policies have what is called an aggregate limit. The aggregate limit of liability is the total amount in dollars that you will be paid by your insurance policy. It may be definitive, as in a general lifetime maximum for claims, or it may be set annually. Because it is a total amount, aggregate insurance can cover more than one claim.

In addition to aggregate limits, there are usually limits on amount of money that can be paid per claim, also known as per occurrence. That refers to the maximum amount of money the insurance will cover for any one incident. For example, you may have a per claim limit of \$25,000. In that case, if you were to incur damages of say \$30,000 in legal fees, your insurance would pay \$25,000, and you would have to cover the remaining \$5,000.

4. What limits should I require?

A range of factors specific to the contract could affect the prudent amount of coverage. CCLS can help you tailor the limits of the insurance policies based upon the potential risk to DSHS and the tolerance for risk of the program.

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