

RIVERPORT INSURANCE COMPANY

PROFESSIONAL LIABILITY ERRORS AND OMISSIONS FOR SOCIAL SERVICE AGENCIES COVERAGE FORM

Various provisions in this Coverage Form restrict coverage. Please read the entire Coverage Form carefully to determine rights, duties, and what is and is not covered.

Throughout this Coverage Form, the words “you” and “your” refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this Coverage Form. The words “we,” “us,” and “our” refer to the company providing this insurance.

The word “Insured” means any person or organization qualifying as such under **Section II, “Who Is An Insured.”**

Other words and phrases that appear in quotation marks have special meaning. Refer to **Section VI, “Definitions.”**

Section I – Coverages

1. Insuring Agreement

We will pay those sums that you become legally obligated to pay as “damages” because of any of your acts, errors or omissions, or of any acts, errors or omissions of another person for whom you are legally responsible, and arising out of your performance of professional services for others in your capacity as a “Social Service Agency.” However, this insurance is limited by the Exclusions in part 3 of this Section 1.

Any one act, error or omission, together with all related acts, errors or omissions in the furnishing of such services to any one person, shall be considered a single act, error or omission, and the date of occurrence of such single act, error or omission shall be the date upon which the first act, error or omission occurred.

We will have the right and duty to defend any “suit” seeking those “damages.” We may at our discretion investigate any “occurrence” and settle any claim or “suit” that may result, even if any of the allegations of the claim or “suit” are groundless, false, or fraudulent. But:

- a. The amount we will pay for “damages” is limited as described in **Section III, “Limits of Insurance”**; and
- b. Our right and duty to defend will end when we have used up the applicable limit of insurance in the payment of “damages.”

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Part 4 of this **Section I, “Supplementary Payments.”**

2. Occurrence Coverage

This insurance applies only to your acts or omissions that take place in the “coverage territory” and that occur during the policy period. See **Section IV, “Coverage Territory.”**

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3. Exclusions. This insurance does not apply to:

- a. Any dishonest, fraudulent criminal or malicious act or omission by you, by any other Insured, or by any person for whose acts or omissions you are legally liable.
- b. Any "claim" by any person or organization arising out of or caused by (1) an act that is intentionally done by you or any other Insured for the purpose of injuring such person or organization, or (2) any omission that is intentionally omitted by you or any other Insured for the purpose of injuring such person or organization.
- c. Infringement of copyright, title, slogan patent, trademark, trade dress, trade name, service mark or service name.
- d. Unfair competition or violation of antitrust laws.
- e. "Personal injury," except when directly resulting from a professional service performed by you or any other Insured.
- f. The conduct of any organization or enterprise not named in the Declarations, or any Insured's status or activities as a partner, officer, director, stockholder, or employee of any company, partnership, corporation or other entity not named in the Declarations.
- g. (1) Any "claim" made by any organization or enterprise in which any Insured owns an interest, is a partner, or which is a parent, affiliate, subsidiary or sister company of any Insured;
(2) Any "claim" made by any organization or enterprise directly or indirectly controlled, operated or managed by an organization or enterprise described in Exclusion g.(1) above;
(3) Any "claim" made by a present, former, or prospective partner, officer, director, stockholder, or employee of any Insured; or
(4) Any "claim" by any Insured against any other Insured.
- h. The breach of any express warranty, guarantee or contract, or a dispute over fees or charges for services or over any gain or personal profit or advantage to which an Insured is not legally entitled.
- i. Liability of a person or entity other than the Named Insured that is assumed by an Insured pursuant to a contract or agreement; but this exclusion does not apply to any contract or agreement under the terms of which an Insured agrees to hold an indemnitee harmless solely with respect to liability arising out of the conduct of the Insured and such indemnitee is specifically designated as an Insured in the Declarations or in an endorsement to this Coverage Form.
- j. Any Insured's activities as:
 - (1) An officer, director, partner, trustee, or employee of a pension, welfare, profit sharing, mutual or investment fund or trust, or any related financial concerns;
 - (2) A public official, an employee of a governmental body, subdivision or agency, or an arbitrator; or
 - (3) A fiduciary under the Employee Retirement Income Security Act of 1974 and any amendments thereof or any regulations or orders issued pursuant thereto.
- k. Any violation of the Securities Act of 1933 as amended or the Securities Exchange 1934 as amended or any state Blue Sky or securities laws or similar state or federal statutes, and any

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order or regulation issued pursuant to any of the foregoing statutes.

- l. The insolvency or bankruptcy of any Insured or any other person organization in which such Insured has a financial interest.
- m. The discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.
- n. Nuclear reaction, nuclear radiation or radioactive contamination, or to any act or condition incident to foregoing.
- o. Circumstances for which any Insured or the Insured's insurer may be held liable under any workers' compensation or disability benefits law, or under any similar law.
- p. Any claim by an employee of any Insured in connection with or arising out of his or her employment by the Insured, or any person claiming by, through or under such employee.
- q. "Bodily injury" and/or "property damage" which is covered under the ISO Commercial General Liability Coverage Form whether or not you maintain such coverage.
- r. Services performed in the capacity of:
 - (1) A licensed architect or engineer;
 - (2) A licensed attorney;
 - (3) A certified public accountant;
 - (4) A licensed medical practitioner;
 - (5) An actuary;
 - (6) An insurance agent or insurance broker;
 - (7) A financial management consultant;or services which normally require performance or certification in such a professional capacity.
- s. The ownership, maintenance, use or entrustment to others of any motor vehicle, aircraft, or watercraft.
- t. Any "claim" made by an employer against an Insured who is a salaried employee of such employer.
- u. Acts or omissions of any Insured as proprietor, superintendent, or executive officer of any hospital, sanatorium, medical clinic with bed and board facilities, or laboratory.
- v. Medical, surgical, dental, x-ray or nursing services or treatments, or the furnishing of food or beverages in connection therewith, or any cosmetic or tonsorial services or treatments, or the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances. However, this exclusion shall not be construed to include "Incidental Medical Services" and "Human Services." (See **Section VI-Definitions.**)
- w. Acts or omissions of any Insured as a member of a formal accreditation or similar professional board or committee of a hospital.

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- x. Acts or omissions of any Insured while acting in the capacity of a foster parent, a physician or psychiatrist. (See paragraph 3 of **Section II – Who Is An Insured.**)

4. Supplemental Payments

We will pay, with respect to any “claim” or “suit” we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- c. All reasonable expenses incurred by the Insured at our request to assist us in the investigation or defense of the “claim” or “suit,” including actual loss of earnings up to \$100 a day because of time off from work.
- d. All costs taxed against the Insured in the “suit.” (Attorneys fees, when specifically awarded by a court, shall not be deemed to be a cost taxed against the Insured, but shall be a part of “damages” as defined under **Section VI, “Definitions.”**)
- e. Prejudgment interest awarded against the Insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- f. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance, but we will have no duty or obligation to make these payments after we have used up the applicable limit of insurance in the payment of “damages.”

Section II – Who Is An Insured

- 1. Each of the following is an Insured under this Coverage Form to the extent set forth below:
 - a. The Named Insured stated in the Declarations;
 - b. Any principal, partner, officer, director, stockholder, trustee, employee, or volunteer worker of the Named Insured, past present or future, while acting within the scope of his or her duties as such; and
 - c. In the event of death, incompetency, insolvency or bankruptcy of any Insured, such Insured’s legal representative(s) while acting within the scope of his or her duties as such.
- 2. No person or organization is an Insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.
- 3. **An Insured** shall **NOT** include any person, whether or not such person is a principal, partner, officer, director, stockholder, trustee, employee, volunteer worker, or independent contractor of the Named Insured, while acting in the capacity of a foster parent, a physician or a psychiatrist.

Section III – Limits of Insurance – Deductible

1. Limits of Liability

Regardless of the number of (1) Insureds under this Coverage Form, (2) persons or parties who

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sustain “damages,” or (3) “claims” made on account of alleged acts or omissions by an Insured, our liability is limited as follows:

- a. The limit of liability in the Declarations as applicable to “each claim” is the total limit of our liability for all “damages,” because of an act or omission for which a “claim” is made under the provisions of this Coverage Form.
- b. The limit of liability stated in the Declarations as “aggregate” is, subject to the above provision respecting “each claim,” the total limit of our liability for all “damages” because of all “claims” to which this Coverage Form applies, for each policy period, as indicated in the Declarations.
- c. We shall not be obligated to pay any “damages” or Supplementary Payments (under Part 4 of **Section I**) or defend any suit after the applicable limit of our liability has been exhausted by payment of damages.

2. Deductible

With respect to each individual “claim” by a person or organization, our obligation to pay on your behalf applies only to the amount of “damages” in excess of the deductible amount stated in the Declarations.

We may pay, but under no condition are we obligated to pay, any or all of the deductible amount as “damages” and, upon our notification to you that we have paid such deductible amount, you shall promptly reimburse us such part of the deductible amount as has been paid by us.

Section IV – Coverage Territory

This insurance applies to a “claim” caused by an act, error or omission occurring anywhere in the world and for which an Insured is held to be legally responsible, provided the original “claim” is brought within the United States of America, its territories or possessions, Puerto Rico or Canada.

Section V – General Conditions

1. Bankruptcy

Bankruptcy or insolvency of an Insured or of an Insured’s estate will not relieve us of our obligations under this Coverage Form.

2. Duties in the Event of an Occurrence, Claim, or Suit

- a. You must see to it that we are notified as soon as practicable of an “occurrence” of an act, error, or omission, which may result in a “claim.” To the extent possible, notice should include:
 - (1) How, when and where the “occurrence” took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the “occurrence.”
- b. If a “claim” is made or a “suit” is brought against any Insured, you must:
 - (1) Immediately record the specifics of the “claim” or “suit” and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the “claim” or “suit” as soon as practicable.

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c. You and any other involved Insured must:

- (1) Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the "claim" or "suit,"
- (2) Authorize us to obtain records and other information,
- (3) Cooperate with us in the investigation, settlement or defense of the "claim" or "suit," and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the Insured because of injury or damage to which this Coverage Form may also apply.

d. No Insured will, except at its cost and expense, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for "damages" from an Insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an Insured obtained after an actual trial, but we will not be liable for "damages" that are not payable under the terms of this Coverage Form or that are in excess of the applicable Limits of Insurance shown in the Declarations of this Coverage Form. An agreed settlement means a settlement and release of a liability signed by us, the Insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to an Insured for a loss we cover under this Coverage Form, our obligations are limited as follows:

a. Primary Insurance.

This insurance is primary except when 4.b, below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in 4.c, below.

b. Excess Insurance.

This insurance is excess over any other valid and collectible insurance available to an Insured except insurance specifically arranged by you to apply in excess of this Coverage Form.

When this insurance is excess, we will have no duty to defend any "claim" or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the Insured's rights against those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

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(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provisions and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Form.

c. **Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable Limits of Insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limits of Insurance to the total applicable Limits of Insurance of all insurers.

5. Representations

By accepting this Coverage Form, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this Coverage Form in reliance upon your representations.

6. Separations of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Form to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each Insured against whom a "claim" is made or a "suit" is brought.

7. Transfer of Rights of Recovery Against Others to Us

If an Insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The Insured must do nothing after a loss to impair those rights. At our request, the Insured will bring "suit" or transfer those rights to us and help us to enforce them.

8. When We Do Not Renew

If we decide not to renew this Coverage Form, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

Section VI – Definitions

When used in this Coverage Form (including endorsements forming a part thereof):

1. "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time.

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2. "Claim" means a demand or assertion of a right.
3. "Counseling services" means consultations or communications between a psychiatrist, psychologist, licensed social worker, pastor, priest, rabbi or similar professional counselor and another person wherein the counselor provides advice or guidance to the other person with regard to conduct or proposed conduct. Note: a psychiatrist is not an insured. (See paragraph 3 of **Section II – Who Is An Insured.**)
4. "Damages" means a monetary judgment, award, or settlement, including attorneys' fees when specifically awarded by a court, except those for which insurance is prohibited by the law applicable to the construction of this Coverage Form. "Damages" does not include fines, penalties, punitive damages, exemplary damages, disputes over fees, deposits, commissions, or charges for goods or services.
5. "Educational or teaching services" means the provision of teaching services by a faculty member or teaching staff member of a pre-school, school, college or university.
6. "Incidental Medical Services" means:
 - (a) The performance of psychiatric services, including evaluation, therapy and counseling, within the premises of the Named Insured by or at the direction of a licensed psychiatrist, **but only if** the Named Insured has **not** agreed to indemnify or hold harmless the psychiatrist against any loss, cost, claim or cause of action arising out of or as a result of the provision of such services;
 - (b) The performance of medical or dental services within the premises of the Named Insured by a licensed medical or dental provider, **but only if** the Named Insured has **not** agreed to indemnify or hold harmless the licensed medical or dental provider against any loss, cost, claim or cause of action arising out of or as a result of the provision of such medical or dental services;
 - (c) The furnishing of shelter, nursing services, food and beverages, and the furnishing or dispensing of drugs in connection with (a) or (b) above;
 - (d) The hiring, supervision or retention of a physician, psychiatrist, psychologist, nurse or other medical service provider, whether or not such person is an employee or independent contractor of the Named Insured; and
 - (e) Service by any principal, partner, officer, director, stockholder, trustee, employee or volunteer worker of the Named Insured as a member of a formal accreditation, standards review, or similar professional board or committee of the Named Insured, and service by any such person in the capacity of executing the directives, orders, policies and procedures adopted by such board or committee.
 - (f) Under no circumstances shall "Incidental Medical Services" include the following:
 - (1) Medical care and treatment provided by a "hospital." A "hospital" means a medical facility or clinic which provides acute medical care.
 - (2) Surgical services, including but not limited to pre-operative testing and preparation, diagnostic procedures, anesthesia, obstetric delivery, and post-operative recovery and treatment
 - (3) X-ray, MRI, ultra sound and similar services, including the interpretation of resulting images.
 - (4) Cosmetic or tonsorial services or treatments.
 - (5) Furnishing or dispensing of surgical supplies or appliances.

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- (6) Furnishing of food, beverages or drugs in connection with items (1) through (5) above of this subparagraph (f).
7. "Human Services" means those services provided by the Named Insured that are (a) customary and usual to the Named Insured's operations as a "Social Service Agency" and (b) performed at the direction of a licensed physician. "Human Services" shall include the furnishing of shelter, food, and beverages, and the dispensing or administration of drugs.
8. "Occurrence" means the happening of an act, error, or omission on the part of an Insured which may give rise to a "claim" by another person or party to which this insurance applies.
9. "Personal injury" means injury, other than "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention, or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies by or on behalf of its owner, landlord, or lessor;
 - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services;
 - e. Oral or written publication of material that violates a person's right of privacy; or
 - f. Any other act for which coverage is provided under the ISO Commercial General Liability Coverage Form whether or not any Insured carries such insurance.
10. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property, or
 - b. Loss of use of tangible property that is not physically injured.
11. "Social Service Agency" means an entity providing professional services to individuals and shall include "educational or teaching services" and "counseling services." The Named Insured shall be conclusively deemed to be a "Social Service Agency."
12. "Suit" means a civil proceeding in which damage because of an act or omission to which this insurance applies is alleged. "Suit" includes:
- a. An arbitration proceeding in which such damage is alleged and to which an Insured must submit or does submit with our consent; and
 - b. Any other alternative dispute resolution proceeding in which such damage is alleged and to which an Insured submits with our consent.