



Item: AF: A-3

Wednesday, May 18, 2011

SUBJECT: REQUEST FOR APPROVAL OF THE SCHMIDT COLLEGE OF MEDICINE SELF-INSURANCE PROGRAM.

PROPOSED BOARD ACTION

1. Provide approval to obtain general and professional liability insurance coverage through the Florida Atlantic University College of Medicine Self-Insurance Program (the "SIP"), to be created by the Florida Board of Governors ("BOG") pursuant to Florida Statutes Section 1004.24.
2. Authorize University administration and the SIP Council (defined below) to (i) take such actions as are permitted or required under BOG Regulation 10.001 and Florida Statutes Section 1004.24, and (ii) enter into such contracts to obtain liability coverage as it and the Council deem appropriate, including, but not limited to, purchasing claims bill coverage and contracting with other self-insurance program councils for administrative, claims and risk management services.

BACKGROUND INFORMATION

Under Florida Statutes Section 284.34, the State Division of Risk Management does not provide for professional medical liability insurance for university boards of trustees or their physicians, officers, employees or agents. As a result, the College of Medicine intends to obtain general and professional liability protection for the BOG, the FAU Board of Trustees, the College of Medicine, its medical students, and FAU Clinical Practice Organization, Inc. ("FAU CPO") through the SIP. Employees and agents of the College of Medicine who participate in the faculty practice group should, in the ordinary course, have personal immunity under Florida Statutes Section 768.28(9) for activities conducted within the scope of their University employment.

The SIP will function as a legally separate operating unit of the BOG, and its assets will be the property of the BOG pursuant to Florida Statutes Section 1004.24. The SIP will be managed and administered by the SIP council (the "Council"), a governing body to be created by the BOG to operate the SIP, pursuant to BOG Regulation 10.001. Each university in the State

University System (the "SUS") with a faculty practice plan has formed a similar SIP with a council created by the BOG.

The Council's membership will consist of the following officers of FAU: the Dean of the College of Medicine, who will serve as the Chair; two faculty members from the College of Medicine, appointed by the Dean of the College of Medicine; the Self-Insurance Program Administrator; the Provost or designee; the General Counsel or designee; the Dean of the College of Nursing or designee; the Director of Student Health Services or designee; the FAU Chief Financial Officer or designee; and such other persons as from time to time may be appointed to the Council by the Dean of the College of Medicine or by the President of FAU.

Although the State Division of Risk Management has provided coverage to date for various healthcare activities on campus (e.g., Student Health Services and the College of Nursing), it has informed the SUS that effective July 1, 2010, it will no longer provide professional medical liability insurance coverage to universities that have SIPs or are covered in part by a SIP. These universities include UF, FSU, USF, UCF, and FIU. The Division of Risk Management will refer all claims for medical malpractice that are filed under Florida Statutes Section 766 (i.e., against healthcare practitioners and hospitals), or claims that should appropriately be filed under that section, to the appropriate SIP associated with such claims. The consequence of this decision by the Division of Risk Management is that the newly created FAU SIP will provide coverage not only for the College of Medicine, its students and FAU CPO but also for physician and nursing activities conducted within the College of Nursing and Student Health Services at FAU.

Therefore, the FAU SIP will be created to provide general and healthcare professional liability protection on an occurrence basis (which coverage may vary over time and which will be described in greater detail in a Memorandum of Protection to be adopted by the Council at its initial meeting) as follows:

- **BOG, FAU Board of Trustees, College of Medicine, College of Nursing, Student Health Services, Counseling & Psychological Services, and FAU CPO:** \$100,000 per claim and \$200,000 in the aggregate. These are the current limits of the waiver of sovereign immunity under Florida Statutes Section 768.28. These statutory limits will increase to \$200,000 per claim and \$300,000 in the aggregate effective October 1, 2011, at which point the insurance coverage will likewise increase. Employees and agents of the College of Nursing, Student Health Services and the College of Medicine who participate in the faculty practice group should, in the ordinary course, have personal immunity under Florida Statutes Section 768.28(9) for activities conducted within the scope of their University employment.

- **College of Medicine students and College of Nursing students:** \$100,000 per claim and \$200,000 in the aggregate or such level of protection required by an affiliated hospital or institution, not to exceed \$1,000,000 per claim.
- **Faculty and staff who perform within their University function but are not subject to personal immunity described in Florida Statutes Section 768.28(9) (e.g., individuals assigned outside the state of Florida):** \$250,000 per claim.
- **Good Samaritan and approved Community Service:** \$250,000 per claim for University employees.
- **Claims Bill:** \$5,000,000 (in excess of a \$1,000,000 retention to be borne by the Council) per claim and in the aggregate, on a claims-made basis. This excess coverage will be underwritten by the UF Healthcare Education Insurance Company ("HEIC"), a captive insurance company that is wholly-owned by the BOG.

Insurance coverage for students from other schools and colleges at FAU (e.g., social work, exercise science, communication disorders, etc.), who are required to purchase insurance as part of their internships or practicums, may be obtained through the SIP more affordably than through the private sector. We will continue to explore this option for these students as the assets and reserves in the SIP accumulate. If such coverage is purchased through the SIP in the future, those schools and/or colleges will be assessed premiums accordingly so that the SIP remains solvent under standard insurance practices.

The SIP will be funded with initial capital contributions paid by the College of Medicine and annual premiums paid by the College of Medicine, the College of Nursing and Student Health Services, in proportion to their activities and exposures. Each of the foregoing will have representation on the Council. No funds will be appropriated to the SIP. Its funds will be deposited outside the State Treasury in a separate bank account that will belong to the BOG, per BOG regulations 1.001 and 10.001 and Florida Statutes Section 1004.24. The assets of the SIP, including any interest earned on the reserves, will be used only to pay the administrative expenses of the SIP and any claim, judgment, or claims bill arising out of the activities for which the SIP was created. While in reserve, the SIP assets will be invested in accordance with an investment policy, to be adopted by the Council and approved by the BOG, and an expenditure policy which will be followed to ensure fiscal responsibility and accountability under standard insurance practices. The UF, FSU and UCF councils have adopted the HEIC investment policy, which has been approved by the BOG and which will be presented to the FAU Council for review and approval as well. The SIP may not be sued, and its claims files are privileged and confidential per Florida Statutes Section 1004.24(4).

The Council intends to engage the services of the UF SIP council (led by Martin Smith and his team from the University of Florida Health Science Center) for the FAU SIP's day-to-day administration, training, set-up and claims and risk management services. The Council will enter into a management agreement with the UF SIP council for these services. The UF SIP will charge an administrative expense that will be allocated proportionately to the FAU participants in the SIP (see projections below). The UF SIP council provides similar administrative services to the councils at FIU, UCF, FSU and UF (and in the case of UF, has been doing so for close to 40 years). The FAU Council intends to purchase claims bill protection and other insurance riders for claims or judgments that extend beyond the waiver of immunity under Florida Statutes Section 768.28. The Council will establish such committees as permitted or required under BOG Regulation 10.001 to assist in the performance of its duties, including, but not limited to, claims and risk management.

This item was reviewed and approved by the BOT Audit and Finance Committee on April 20, 2011.

IMPLEMENTATION PLAN/DATE

Effective immediately upon approval by the Board of Trustees and the Florida Board of Governors, with an initial FY July 1, 2011.

FISCAL IMPLICATIONS

The FAU SIP will be initially capitalized at \$3,000,000, payable in three annual installments of \$1,000,000 each from the College of Medicine. This amount is recommended by the UF SIP council and is intended to ensure fiscal solvency for the program, under the assumption that by the end of three years, there will be claims activity for which an adequate reserve will be necessary. After the initial three years, the actuary will annually comment on SIP solvency and will advise the Council accordingly. The FSU SIP capitalized at \$3,000,000 (paid in three annual installments) and both the UCF and FIU SIPs have been initially capitalized at \$1,000,000. We understand that UCF will contribute an additional \$1,000,000 this year with the goal of reaching \$3,000,000 in unencumbered capital.

Until such time as the FAU SIP has an exposure base and loss history with which to create a meaningful actuarial analysis of its specific funding needs, the UF SIP council has recommended, based on a recommendation from Towers Watson, that the FAU SIP Council adopt the UF SIP Jacksonville actuarial analysis, adjusted for a territorial differential for Palm Beach County. The FSU, UCF and FIU SIP councils also adopted the UF Jacksonville analysis until such time as their exposure size and loss histories justify analyses specific to each SIP. As such, the following are projected FY 2011-2012 initial capitalization amounts, annual premium expenses, and annual administrative expenses assessed to FAU for its participation in the SIP:

College of Medicine: Initial Capitalization \$1,000,000 per year over 3 years; Total \$3,000,000
Premium \$35,481.13; Admin \$28,113.47; Total \$63,594.60

College of Nursing: Premium \$12,151.58; Admin \$9,627.57; Total \$21,779.15

Student Health Services: Premium \$20,535.36; Admin \$16,271.19; Total \$36,806.56

Counseling and Psychological Services: Premium \$3,340.38; Admin \$2,646.75; Total \$5,987.13

FAU Total: Premium \$71,508.45; Admin \$56,658.99; Total \$128,167.44

Claims Bill/Excess Coverage: Total \$7500-\$10,000. This is a separate annual premium that will be allocated proportionately to the FAU participants in the SIP.

These projected expenses and capitalization requirements are for FY 2011-2012 only and will vary over time, depending on experience, loss history, clinical/exposure growth, program solvency, ratio of losses to unencumbered capital, investment income, and other factors common to the insurance industry.

Although legally separate from the University, the SIP will be reflected, for financial reporting purposes, as a blended component unit of the University, because its sole purpose is to assist in providing liability protection for the University and its affiliated individuals and entities.

Supporting Documentation: None

Presented by: David L. Kian, General Counsel

Phone: 561-297-3007