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Approved by Medical Malpractice Committee: September 11, 2003  
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Approved by Underwriting Committee: June 4, 2003

**COORDINATION OF COVERAGE  
MEDICAL MALPRACTICE AND GENERAL LIABILITY  
STATEMENT OF INTENT  
EFFECTIVE OCTOBER 1, 2003**

The purpose of this policy statement is to express the intent of coverage for situations potentially involving coverage under PRISM's Medical Malpractice (MM) Program and Excess Liability (GL1) or General Liability II (GL2) programs (and by extension, to the Primary General Liability Program). This expression of intent by all parties is intended to give guidance to the appropriate PRISM Committees in determining how to coordinate potential coverage between PRISM's MM coverage and GL1 and GL2 programs. Nothing herein shall in any way alter the terms and conditions of the memoranda of coverage, excess insurance policies, or reinsurance agreements applicable to any of the programs.

**I. General Statement of Intent**

**A. Potential Coverage under Multiple Programs**

Coverage under the MM Program is intended to follow the operation of established healthcare facilities. Covered claims arising out of the operation of an established healthcare facility will be covered by the MM Program and the member's MM SIR or deductible will apply. If coverage is also available for the same damages under one of PRISM's GL programs, then the GL coverage shall be excess of the available MM limits and the member's GL SIR shall be satisfied by payment of policy limits under the MM program. If separate damages arise out of a single incident in which certain damages are covered under one PRISM program and other damages are covered under another PRISM program, then the member must satisfy both SIRs and/or deductibles for each program independently before program coverage is applicable.

**B. Defense Costs, Coverage Determination in Retrospect, and Duty to Defend**

There is no "duty to defend" provision in programs in which members maintain an SIR including MM1, GL1 and GL2. Primary General Liability and MM2 are deductible programs and do include a duty to defend. Generally, for SIR programs, a final coverage determination will be made at the conclusion of a claim, and if deemed not covered, then the associated defense costs will not be covered. As respects deductible programs, so long as there is a potential for coverage, then defense costs are covered. Defense costs incurred after it has been determined that there is no longer a potential for coverage, will not be covered.

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**C. Healthcare Facilities**

Medical malpractice coverage is intended to broadly follow the operations of established healthcare facilities. MM coverage may therefore be provided for the actions of persons not directly employed by the healthcare facility but acting on behalf of the facility or under the direction of the facility. What constitutes most established healthcare facilities is obvious including hospitals, public health, mental health, and jail clinics.

It is the intent of PRISM members that the actions of correctional officers and others performing duties directly related to inmates under the care of physicians are considered to arise out of the jail clinic. The actions of correctional officers related to inmates not under a physician's care are not to be considered as arising out of the operations of a healthcare facility.

**II. Potential Loss Scenarios**

The following scenarios are for illustrative purposes only. Coverage for each claim will be decided on the facts and merits of each individual claim. These scenarios are presented only to illustrate the intent of this policy statement and should only be used as a guide to determining coverage. The following loss scenarios do not represent all possible scenarios.

- 1. Inmate in jail, not on a suicide watch, commits suicide. Allegation is correctional officers ignored inmate's warning that he wanted to kill himself and did not take reasonable steps to prevent the suicide.**

Coverage is limited to the GL programs since there is no allegation of wrongdoing by anyone connected to an established healthcare facility even though the allegation may be that the correctional staff failed to secure proper medical attention.

- 2. Inmate in jail, on a suicide watch, not under care of the jail clinic. Allegation is correctional officer failed to properly perform duties related to department suicide watch procedures.**

Coverage is limited to the GL programs since there is no allegation of wrongdoing by anyone connected to an established healthcare facility.

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- 3. Inmate in jail under the care of the jail clinic for potential suicide, commits suicide. Allegation is correctional officer failed to properly perform duties related to department suicide watch.**

Coverage is potentially available under both MM and GL programs. The MM coverage is primary and GL coverage is excess. The actions of the correctional staff are considered an extension of the jail clinic since the inmate was under the care of a physician at an established healthcare facility.

- 4. Inmate in jail under the care of the jail clinic for potential suicide, commits suicide. Allegation is correctional officer failed to properly perform duties related to department suicide watch, and physician failed to prescribe the proper medication that would have prevented the suicide.**

Coverage is potentially available under both MM and GL programs. The MM coverage is primary and GL coverage is excess. The actions of the correctional staff are considered an extension of the jail clinic since the inmate was under the care of a physician at an established healthcare facility.

- 5. Slip and fall in an established healthcare facility.**

Coverage is potentially available under both MM and GL programs. The MM coverage is primary and GL coverage is excess.

- 6. Combative patient is injured by law enforcement attempting to restrain a patient in an established healthcare facility.**

Coverage is potentially available under both MM and GL programs. The MM coverage is primary and GL coverage is excess. The actions of law enforcement personnel are considered an extension of the healthcare facility.

- 7. Combative patient is injured by law enforcement attempting to restrain a patient in an established healthcare facility. Law enforcement officer is injured in the process.**

As respects injury to the patient, coverage is potentially available under both MM and GL programs. The MM coverage is primary and GL coverage is excess. The actions of law enforcement are considered an extension of the healthcare facility.

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As respects injury to the law enforcement officer, this is a case of separate damages, covered by W.C., and excluded under both MM and GL (WC exclusion). The member's W.C. SIR would need to be satisfied in addition to the MM SIR/deductible.

- 8. A suspect is arrested by sheriff deputies. During the course of the arrest, the suspect's civil rights are violated resulting in bodily injury requiring medical treatment. The suspect is treated at a county health facility resulting in additional bodily injury due to negligent medical care.**

Coverage for the civil rights violation/bodily injury caused by the sheriff deputy is limited to the GL program. Coverage for the bodily injury resulting from the medical treatment is limited to the MM Program. Both SIRs/deductibles apply.