

**THE TEXAS TECH UNIVERSITY SYSTEM
MEDICAL LIABILITY SELF-INSURANCE PLAN**

Original Plan Effective September 1, 1985 and Modified December 15, 2007,
May 16, 2014, August 10, 2018 and August 8, 2019

Article I
PURPOSE

The purpose of this Medical Liability Self-Insurance Plan is to provide eligible health care professional staff members and students of the Texas Tech University System with professional liability indemnity from and against health care liability claims pursuant to the authority granted to the Board of Regents of the Texas Tech University System by Texas Education Code Section 59.01 et seq.

Article II
DEFINITIONS

The Medical Liability Self-Insurance Plan is hereinafter referred to as the "Plan." Unless otherwise required by the context, the following terms shall control:

- (a) "Eligible health care professional staff members or students" means: (A) physicians, dentists, podiatrists, physician assistants, nurses, pharmacists, and other health care providers who are appointed to the faculty or employed by or volunteer for an institution of the Texas Tech University System and either (1) are appointed or employed on a fulltime basis or (2) are appointed or volunteer on a part-time basis and who devote their total professional service to providing health services and provide services to patients by assignment from the department chair and are specifically approved for enrollment into the Plan by the General Counsel; and (B) interns, residents, fellows, medical students and dental students participating in a patient-care program in a school of the Texas Tech University System. The System Board of Regents will from time to time identify those institutions and schools eligible for participation in this Plan and those institutions and schools will be identified in the endorsement to this Plan.
- (b) "Participant" means: (1) any health care professional staff member qualifying for participation and enrolled in this Plan as set forth in Article IV of this Plan; and (2) the Texas Tech University System when a health care liability claim is made against it or any of its component institutions.
- (c) "Health care liability claim" means a cause of action (arising within the Plan territory) for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a patient, whether the claim or cause of action sounds in tort or contract. This definition is consistent with the Texas Civil Practices and Remedies Code §74.001.

- (d) "System" means the Texas Tech University System and any of its component institutions.
- (e) "Board" means the Board of Regents of the Texas Tech University System.
- (f) "Fund or Plan" means the Texas Tech University System Medical Liability Self-Insurance Plan established by the Board.
- (g) "Administrator" means the Chancellor of the Texas Tech University System.
- (h) "General Counsel" means the Vice Chancellor General Counsel of the Texas Tech University System.
- (i) "Damages" mean all damages, including damages for death, which are payable because of injury to which the Plan applies, but does not include exemplary or punitive damages.
- (j) "Coverage" means the health care liability indemnity and legal representation afforded participants by this Plan.
- (k) "Plan territory" means the United States of America, its territories or possessions.
- (l) "Annual period" or "annual enrollment period" means from September 1 to August 31 of each year.
- (m) "Covered activity" means any activity not excluded by the Plan.

Article III
APPLICABILITY OF PLAN PROVISION

The coverage afforded by this Plan is subject to the particulars, terms, conditions and limitations (including, but not limited to limits of liability) of this Plan and the interpretations by the Plan Administrator or his/her authorized representative.

Article IV
CONDITIONS FOR PARTICIPATION

Section 1. Application for Participation. Each person who is a health care professional staff member on the effective date of the Plan, and each person who becomes a health care professional staff member thereafter, shall be required to participate in the Plan and shall be given a copy of the Plan. As a condition of participation, each Participant shall complete and sign an application in such form as is prescribed by the Office of General Counsel evidencing the fact such person accepts and agrees to all the provisions of the Plan.

Section 2. Part-Time Health Care Professional Staff Members. Special authorization and enrollment into the Plan of part-time health care professional staff members paying a partial

premium must be specifically made by the General Counsel upon recommendation of a Dean of a School through the Office of General Counsel. This special authorization for less than 100% premium is to be made on a limited basis with a special need shown for such authorization and in no case will anyone be authorized to pay less than a 50% premium.

Section 3. Student Participation Fee. Each medical and dental student, as an additional condition of participation, must pay into the Fund a fee in such amount or amounts, and at such time or times, as set by the Board.

Article V
COVERAGE OF PARTICIPANTS

Section 1. Payments on Behalf of Participants. The Plan will pay on behalf of each participant, from monies in the Fund, all sums up to the limits of liability coverage which the participant shall become legally obligated to pay as damages because of a health care liability claim arising from the exercise of the participant's employment, duties or training with a System institution, his or her profession, including service by the participant as a member of a formal accreditation or similar professional board or committee of a hospital or professional society provided any funds generated from the service are deposited into a System Medical Practice Income Plan. A student is in the exercise of training at such time or times when participating (with prior approval of the school where registered as a student) in a patient-care program of a duly accredited school under the direct supervision of a faculty member of the school conducting such program, but only during such time or times.

Section 2. Defense of Lawsuits. The System shall have the right and duty to defend any suit seeking damages (as described in Section 1 of this Article V) against a participant even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems necessary or expedient, but it shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the System's liability has been exhausted by payment of judgments or settlements, or monies in the Fund have been exhausted.

Section 3. Supplementary Payments. The System will pay from the Fund, in addition to the applicable limit of liability:

- (a) all expenses incurred by the System, all costs taxed against the participant in any suit defended by the System, and all interest on the entire amount of any judgment which accrues after entry of the judgment and before the System has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the System's liability;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this Plan, but the System shall have no obligation to apply for or furnish any such bonds;
- (c) coverage for Plan Participants for Disciplinary and Licensing Actions which is limited to legal representation of the Plan Participant by an attorney in a proceeding brought against

the Plan Participant by the participant's licensing agency that arises from a covered activity, for costs and legal expenses in the amount of \$25,000 per single proceeding (and up to \$35,000 if the proceeding goes to the ISC – Informal Settlement Conference or other administrative hearing level and beyond) and \$100,000 per participant per annual enrollment period. This coverage is subject to the exclusions set forth in Section 4.

Section 4. Exclusions.

The System will not defend or indemnify a Participant for:

- (a) injury arising out of the performance by the Participant of any illegal, fraudulent, criminal or malicious act or omission;
- (b) any liability or indemnity obligation assumed by the Participant under a contract or agreement;
- (c) any claims or lawsuits alleging violation of state or federal laws relating to antitrust, fraud and abuse, anti-kickback, and illegal remuneration;
- (d) injury arising out of any sexual conduct of the Participant, including sexual harassment and sexual relations, including when intentionally or negligently done in connection with any professional service, act or omission, and regardless of whether such conduct is alleged to constitute negligence;
- (e) any injury caused while Participant is acting under the influence of alcohol or controlled substances or as a result of excessive use of therapeutic drugs;
- (f) any use, administration or prescription of any drug or pharmaceutical disapproved or not yet approved by the U.S. Food and Drug Administration for treatment of human beings unless such has been approved by the Institutional Review Board of the institution where used, administered or prescribed;
- (g) any liability arising out of any professional or licensed service, act or omission outside the scope of Participant's employment within the System, including professional services performed for fees, salaries or other compensation not part of the Participant's employment within the System;
- (h) injury to any employee or applicant for employment or patient based upon actual or alleged discrimination based on race, religion, color, sex, national origin, age, veteran status, or disability;
- (i) any fines, penalties or costs assessed against a Participant by the Participant's licensing board as a result of a Disciplinary and Licensing Action;

- (j) any costs associated with Participant's licensing application or renewal that does not arise from the provision of health care.

Article VI
LIMITS OF LIABILITY

The limit of liability stated in the schedule below as applicable to "each claim" is the limit of the System's liability for all damages because of each claim or suit covered by the Plan. The limit of liability stated in the schedule below as "annual aggregate per participant" is, subject to the above provision respecting "each claim", the total limit of the System's liability under this Plan for all damages because of all health care liability claims against any one participant in any one annual period.

Limits of liability schedule:

Staff Physicians and Dentists	\$400,000 each claim \$1,200,000 annual aggregate per participant
Other Licensed Healthcare Professionals	\$200,000 each claim \$600,000 annual aggregate per participant
Resident, Intern, or Fellow	\$100,000 each claim \$300,000 annual aggregate per participant
Students	\$25,000 each claim \$75,000 annual aggregate per participant
System Institutions	\$250,000 liability set by Texas Tort Claims Act

The above limits apply unless lower liability limits are set by law in the Texas Tort Claims Act, in which case the lower liability limits set by law apply.

Per Incident Limitation:

Liability shall be limited to \$1,000,000 per incident, regardless of the number of claimants or participants involved in an incident for claims filed prior to September 1, 2003, or \$300,000 per incident for claims filed after September 1, 2003.

Article VII
OTHER INSURANCE

Section 1. Coverage. When the participant has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the System's liability under this policy shall not be reduced by the existence of such other insurance.

Section 2. Other Insurance. When both this Plan and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the System shall not be liable under this Plan for a

greater proportion of the loss than that stated in the applicable contribution provision below:

- (a) Contribution by Equal Shares. If all of such other valid and collectible insurance provides for contribution by equal shares, the System shall not be liable for a greater proportion of such loss than would be payable if such insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of loss is paid, and with respect to any amount of loss not so paid, the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.
- (b) Contribution by Limits. If any of such other insurance does not provide for contribution by equal shares, the System shall not be liable for a greater proportion of such loss than the applicable limit of liability under this Plan for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

Article VIII
PARTICIPANT'S DUTIES IN THE
EVENT OF OCCURRENCE, CLAIM, OR SUIT

Section 1. Notice of Occurrence. Upon the participant's becoming aware of an occurrence or incident involving an injury or death, or an alleged injury or death, to which this Plan applies, or may apply, written notice containing particulars sufficient to identify the participant and also obtainable information with respect to the time, place and circumstances, and the names and addresses of the patient and of available witnesses, shall be given by or for the participant to the Office of General Counsel as soon as practicable.

Section 2. Notice of Claim or Suit. If claim is made or suit is brought against the participant, the participant shall immediately forward to the Office of General Counsel/Professional Liability Division every demand, notice, summons, or other process received, in accordance with any administrative regulations for the Plan prescribed or approved by the Administrator.

Section 3. Cooperation by Participant. The participant shall cooperate with the System and upon the System's request, assist in making settlements in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the System because of injury with respect to which coverage is afforded under this Plan; and the participant shall attend hearings, depositions, mediations and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The participant shall not, except at participant's own costs, voluntarily make any payment, assume any obligation or incur any expense.

Article IX
MODIFICATION AND TERMINATION

Section 1. Rights of Participants. The Board may terminate the Plan at any time, or at any time or from time to time, may amend, alter or suspend the Plan in whole or in part, as to all persons eligible

to participate hereunder, or any class or group of such persons, provided such action shall not impair any rights accrued prior to the effective date of such termination, amendments, modifications, alterations or suspension. Any such termination, amendment, alteration or suspension shall be effective at such date as the Board may determine, but not earlier than sixty (60) days prior to the date on which the Board shall have given notice of such termination, amendment, alteration or suspension to the Administrator. The Administrator shall promptly give notice of any such termination, alteration or suspension to all participants affected.

Section 2. Termination in Event of Mandatory Participation in Other Indemnity or Insurance Programs. It is an express condition of the Plan that if the System is required by law, or by a collective bargaining or other agreement, to contribute toward another malpractice insurance plan or program providing professional liability insurance or indemnity benefits for a class or group of health care professional staff members, this Plan will terminate as to such class or group of health care professional staff members.

Section 3. Termination Upon Cessation of Health Care Professional Staff Employment. This Plan shall apply to a participant only so long as such participant remains qualified to participate in this Plan, provided that cessation of such participation shall not impair any rights accrued under this Plan prior to the effective date of such cessation of qualification.

Section 4. Benefits Terminable. All coverage of a participant under this Plan shall cease at once if the participant engages in any business or performs any act which, in the sole judgment of the Plan Administrator, is prejudicial to the interest of the System.

Article X ACTION AGAINST UNIVERSITY

Section 1. Conditions precedent. No action shall lie against the System unless, as a condition precedent, there shall have been full compliance with all terms of this Plan, nor until the amount of the participant's obligation to pay shall have been finally determined either by judgment against the participant after actual trial, or by written agreement of the claimant and the Administrator.

Section 2. Third-party actions. Any person or organization who has secured such judgment or written agreement shall be entitled to recover under this Plan to the extent of the coverage afforded by this Plan. No person or organization shall have any right under this Plan to join the System as a party to any action against the participant to determine the participant's liability, nor shall the System be impleaded by the participant or his or her legal representative. Bankruptcy or insolvency of the participant or the participant's estate shall not relieve the System of any of its obligations.

Article XI ADMINISTRATION OF PLAN

Section 1. Administration. The Plan shall be administered by the Administrator under the direction of the Board.

Section 2. Administrative Regulations. The Administrator may from time to time prescribe regulations for the administration of this Plan provided that such regulations shall, in the opinion of the General Counsel, be consistent with the provisions of this Plan as it may be amended from time to time pursuant to Article IX of this Plan.

Section 3. Legal Interpretation. The text of this Plan shall control and the headings to the Articles, Sections, and paragraphs are for reference purposes only, and do not limit or extend the meaning of any of the Plan's provisions. The Plan shall be governed by and construed in accordance with the laws of the State of Texas. Any interpretation of the Plan by the General Counsel shall be conclusive as between the System and its member institution's employees and students, participating health care professional staff members, and retired or otherwise terminated participants, employees and students, and may be relied upon by the System and all parties in interest.

Section 4. Counsel and Settlement-Authority. Authority to employ counsel, approve attorney fees and expenses, and approve settlement of all claims, including litigation, shall rest with the General Counsel as required by any administrative regulations for the Plan.

Article XII GENERAL PROVISIONS

Section 1. Subrogation. In the event of any payment under this Plan, the System shall be subrogated to all of the participant's rights of recovery thereof against any person or organization and the participant shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The participant shall do nothing after loss to prejudice such rights.

Section 2. Changes. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Plan, or prohibit the System from asserting any right under the terms of this Plan; nor shall the terms of this Plan be waived or changed, except by written waiver or amendment duly approved by the Board.

Section 3. Declaration. By enrolling in this Plan, the participant agrees that the statements in participant's application to participate are agreements and representations, that the application has been accepted by the System in reliance upon the truth of such representations and that this Plan, and the application to participate, embody all agreements existing between participant and the System or any of its agents relating to this Plan and the coverage provided.

Section 4. Assignment. It is a condition of this Plan that no right or interest of any participant under this Plan shall be assignable in whole or in part.

Section 5. Employment Non-Contractual. The System's member institutions may terminate the employment, internship, residency, fellowship, or student-school relationship of any participant as freely and with the same effect as if this Plan were not in operation.

Section 6. Actions Against Participant. This Plan or its operation shall not in any way affect any claim or cause of action by the System against a participant for indemnity or contribution arising out

of or incident to any health care liability claim.

Section 7. Concealment or Misrepresentation. This Plan shall be void as to any participant, if, whether before or after a claim or cause of action is asserted, such participant has willfully concealed or misrepresented any material fact or circumstance concerning any claim or cause of action covered by this Plan, or concerning this Plan or the interest of the participant, or in case of any fraud or false swearing by the participant relating to the Plan.

Section 8. Communications. All notices, reports and statements given, made, delivered or transmitted to a participant shall be deemed given, made, delivered or transmitted when: 1) delivered in person; 2) when mailed by first-class mail, postage prepaid, and addressed to the address last appearing on the books of the System's member institution; or 3) when sent to participant's known email address. A participant who changes address shall give written notice to the System of such change. Written directions, notices and other communications from participants to the System shall be mailed by first-class mail, postage prepaid, or delivered as follows:

Office of General Counsel/Self-Insurance Division
Texas Tech University Health Sciences Center
3601 4th Street, Stop 6237
Lubbock, Texas 79430

Section 9. Effective Date. This revised Plan shall be effective August 8, 2019.

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Self-Insurance Plan Revisions - 2019

AMENDMENT #1 TO
THE TEXAS TECH UNIVERSITY SYSTEM
MEDICAL LIABILITY SELF-INSURANCE PLAN

Effective 09/01/2019, THE TEXAS TECH UNIVERSITY SYSTEM MEDICAL LIABILITY SELF-INSURANCE PLAN is amended as follows:

Qualified Participant means:

- 1) medical doctors, doctors of osteopathy, dentists and podiatrists employed by an institution of the Texas Tech University System and professional medical staff employed for student health services at and by a general academic institution of the System;
- 2) interns, residents, fellows and medical students participating in a patient-care program in a medical school of the Texas Tech University System;
- 3) employees of a medical or dental school in an institution of the Texas Tech University System who are anesthesiology assistants, nurse practitioners, physician assistants, certified registered nurse anesthetists, certified nurse mid-wives, registered nurses, licensed vocational nurses, optometrists, registered pharmacists, medical psychologists, licensed professional counselors, registered dental hygienists, licensed social workers, licensed physical therapists, certified surgical assistants, certified surgical technicians, certified first assistants, licensed dieticians and other licensed healthcare providers upon written request of a department chair and approval by Vice Chancellor/General Counsel.

All other terms and conditions remain unchanged.