

(Revised – March 3, 2014)

Client Instructions –Medical Malpractice Claims

ORM Internal Authority Designation

Nancy Daigle will be the primary contact person on all Medical Malpractice, MM Future Medical Claims and Future Medical Care Fund Claims. She will be responsible for handling the RSA process, approval of payments in excess of \$25,000, request for an attorney appointment, request for a contract amendment, and request for reserve increases. If the requested matter is above her authority level, Nancy will route it to the appropriate person within ORM. Please copy Jimmy Meaux on all emails to Nancy Daigle. If Nancy is out of the office, Jimmy Meaux will handle your requests. Contact information is as follows:

Nancy Daigle – (225) 342-0868- nancy.daigle@la.gov

Jimmy Meaux (225) 342-8433 jimmy.meaux@la.gov

April Williams (225) 342-8509 april.williams@la.gov Medical Review Panel

Cynthia Troxclair (225) 342-8442 Cynthia.troxclair@la.gov Credentials for doctors

GENERAL

Types of Claims

Incident – An occurrence at a hospital or medical facility reported to FARA by Quality Management/Quality Assurance Department. It can be escalated to a claim depending on the severity of injury and potential liability.

Amicable Demand- Correspondence from a patient or his/her attorney or representative requesting investigation of alleged malpractice. FARA will set up claim and handle accordingly. No defense attorney is assigned. This is a non-litigated claim.

Medical Review Panel – This is a formal legal action. Panel requests are filed with the Medical Review Panel Office in the Division of Administration. ORM will request a claim number from FARA. Upon notification from the Panel Office that payment of the medical review panel filing fee has been received, ORM will request the appointment of defense counsel from the Attorney General. FARA will handle the claim accordingly.

Pre-Panel Suit – A lawsuit filed prior to filing a Medical Review Panel is considered premature. ORM will request an attorney to obtain dismissal of the suit through the judicial district court.

EMAIL COMMUNICATION BETWEEN FARA AND ORM Always include the FARA claim number and the name of the claimant in the subject line. If there is a critical date or some urgency, flag as high importance and add in subject line such as “Trial date___ or Follow-up to RSA or Contract Amendment.

MEDICAL REVIEW PANEL OR PRE-PANEL LAWSUIT INSTRUCTIONS

Medical Malpractice Liability for State Services is governed by Revised Statute 40:1299.39. This statute must be pled in the request for a panel. The State Medical Review Panel statute is R.S. 40:1299.39.1

A request for review of a malpractice claim or malpractice complaint shall contain, at a minimum, all of the following:

1. A request for the formation of a medical review panel.
2. The name of the patient.
3. The name of the claimants.
4. The names of the defendant state health care providers.
5. The dates of the alleged malpractice.
6. A brief description of the alleged malpractice as to each named defendant state health care provider.
7. A brief description of alleged injuries.

ORM will receive the panel request from the Medical Review Panel Office. After review for possible open claim in iCE, ORM supervisor will email the panel request to ormnewclaims@fara.com and request FARA claim number, providing any special instructions. Claim is set up in iCE. If the filing fee was not received with the panel request, diary claim for 45 days for follow-up. A closing notice will be sent from the Panel Office due to non-payment of fee. Claim is then closed.

After the FARA claim number and name of the FARA adjuster is received, ORM will complete a transmittal to the Attorney General requesting assignment of defense counsel upon receipt of the filing fee. A filing fee of \$100.00 is required for each named defendant medical provider or medical facility. The fee must be received by the panel office within 45 days of filing panel request to become a valid claim.

iCE claim coding ORM Claim Number: The date of loss alleged in the panel request determines the ORM claim number. Two digit fiscal year (07/01/12-06/0/13) is 13, the number would be 13X two digit month and day of loss, first two letters of injured party’s last name and 4 numbers assigned at random.

RESERVES:

Initial reserves must be established within seven (7) calendar days of the receipt of the claim. Initial reserves are to be reviewed within 60 days after receipt of the claim as more is known about the claim.

ORM reserve authority is needed to increase reserves with a total incurred reserve of \$100,000 or greater. Subsequent reserve increases shall require approval by ORM. Email requests for reserve approval should reference “**reserves**” in the subject line.

Reserve requests shall be sent to Nancy Daigle and Jimmy Meaux for action. If the reserve request is above their authority, they will route it to the appropriate person within ORM for approval. Reserve requests shall include reasons for the increase. Reasons for changes to reserves shall be placed in the claim management system.

ORM reserve authority is not required for the following reserve changes nor should these be included on the monthly reserve report:

- **A decrease in the reserve where the total incurred is over \$100,000.**
- **Funds are shifted from one reserve category to another, but the total incurred amount is unchanged.**
- **Reserve adjustments/reallocations that occur within the same month that results in no change to the total incurred amount.**

RETROSPECTIVE RESERVE AUTHORITY

There will be instances when it will be necessary for FARA’s ICE system to automatically generate reserve increases to accommodate certain transactions. This includes system generated and/or la ORM operator reserve changes. It will be necessary for FARA to obtain retrospective reserve authority in these situations.

At the end of each month, FARA will prepare a Generalized Claim Export for Reserves. No later than the 10th day of the month following the month of the increase, FARA will seek retrospective approval for reserve changes they have identified where the total incurred amount exceeds \$100,000 and ORM approval was not obtained. See exceptions noted above in bold. Individual requests noting justification for the increase must be submitted to ORM and should include the date the reserve was changed, and should request retrospective approved by ORM.

For System Generated Reserve changes on claims that are “closed”, the adjuster shall reopen the claim, review the claim documentation and appropriateness of reserves, and submit a separate email requesting reserve authority if the total incurred is over

\$100,000. Note, when the file was closed reserves were reduced to the total paid. Therefore, when the claim is reopened, new reserves must be established.

For System Generated Reserve changes on “open” claims, ORM will grant blanket retrospective authority for those claims listed on the respective monthly report. This retrospective authority shall be noted by FARA in each of the retrospective claim files identified. Additionally, it is expected that the assigned adjuster will review the claim to determine appropriate reserves and request updated authority to avoid future deficiencies.

The claim is set up in the name of the injured party, coded as self, deceased, minor, other which could be parent, trustee, etc. Note should be made of the name of the filing party and the relation to injured party.

Location code should be the four numbers at the lowest level of the facility named in the petition. Use the L number that corresponds to the facility, not the S number.

MEDICAL RECORDS

The FARA adjuster will request two (2) certified copies of all pertinent medical records upon receipt of the claim. The claimant’s date of birth and Social Security Number or patient number are required to obtain the records. A request for this information should be made to the claimant or the claimant’s representative. The FARA adjuster will evaluate the medical records or request a review/timeline from a medical professional. There should be no charge for records from state facilities. A copy of a sample letter requesting medical records is in the packet as well as contact information for the medical facilities. If there was treatment at a private facility then the defense attorney must request certified copies of these records. He will file a petition with the court to institute discovery and subpoena all pertinent records.

FARA will utilize an economic expert when necessary to evaluate the exposure to economic damages. The State will contract with the expert identified by FARA and/or the assigned defense counsel when the case is in litigation. Economic damages are included in the \$500,000 cap in Medical Malpractice cases. This differs from the liability lines of insurance where economic damages are paid in addition to a general damage award limit of \$500,000.00

FARA will note their file of any non state defendants and or facilities. A Patient’s Compensation Fund Panel may be invoked for the private care providers. Also, it is possible a joint panel may be requested.

MEDICAL REVIEW PANEL TIME LINE

Date of filing.

45 days after date of filing, filing fee is due.

90 days before the one year anniversary of the filing date a notice to remind claimant's counsel is mailed to inform all parties that the anniversary date is approaching and the attorney chairman must be appointed by that date or the file will be closed.

1 year after the appointment of the attorney chairman's appointment, if claim is not resolved, an extension to the life of the panel should be obtained by defense counsel from the court and a copy sent to the Medical Review Panel Office as well as to the adjuster. Each court ordered extension to life of a medical review panel must be forwarded to the MRP Office.

The Medical Review Panel Office will also require notification of all dismissals and settlements.

Copies of sample letters will be in the packet.

MEDICAL REVIEW PANEL

FEE NOT PAID:

- 1) Set up claim.
- 2) Call plaintiff attorney and obtain date of birth and social security number.
- 3) Request medical records (2 copies: one for adjuster and one for defense counsel).
- 4) Diary for payment of fee (45 days).
- 5) Receive closing notice from MRP due to non-payment of fee.
- 6) Close file.

FEE PAID:

- 1) Set up claim.
- 2) Call plaintiff attorney and obtain date of birth and social security number.
- 3) Request medical records (2 copies: one for adjuster and one for defense counsel).
- 4) ORM supervisor will prepare transmittal request to Attorney General's office for assignment of defense counsel which will include the attorney assignment sheet, all MRP documents and the request for medical records.
- 5) Diary 30 days for receipt of defense attorney assignment confirmation notice.
- 6) Diary for one year for appointment of attorney chairperson.
- 7) Defense and plaintiff will agree on selection of attorney chair and will notify the MRP.
- 8) MRP will notify that individual as to his/her selection as attorney chair. Panel prescribes one year from MRP's official panel chair notification.
- 9) Defense and plaintiff will each make a selection of their physician panel member.

- 10) Those two physicians will select the third physician panel member.
- 11) Medical Review Panel meets and panel decision is mailed to all parties.
- 12) Pay panel fees (attorney chair and 3 physician members) if defendant wins the panel. Attorney chair fees cannot exceed \$3,000.00 and each panel member is paid \$300.00. A decision of MFI (Material Issue of Fact): panel costs are split with the plaintiff.
Joint panel: pro-rated amount paid by each defendant.
- 13) Diary for potential post-panel suit. The statute allows a ninety (90) day period in which to file a post-panel suit. This number can be increased by adding the number of days which remained in the initial prescriptive period when the panel request was filed.

INFORMED CONSENT Statute R.S. 40:1299.40 has been repealed by the 2012 Legislative session. Act 600 and Act 759 will be provided in the packet. These acts create the Louisiana Medical Disclosure Panel within the Department of Health and Hospitals to determine which risks and hazards related to medical care must be disclosed by the health care provider to the patient or his representative.

DUTY TO WARN: R.S. 9:2800.2 psychologist, psychiatrist, therapists, and social workers limitation of liability when a patient has communicated a threat of physical violence, which is deemed to be significant against a clearly identified victim coupled with the intent and ability to carry out such threat.

JOINT PANEL R.S. 40:1299.39.2 establishes one medical review panel for state and private health care providers for the same injury or death. The panel shall be governed by the law applicable under both Parts of the statute unless a procedural conflict exists and the provisions of the private panel R.S. 40:1299.47 shall govern.

DISASTER PANEL During a declared state of emergency, disaster or public health emergency, the provisions of R.S. 40:1299.39.3 shall be followed. The statute became effective in 2008. It has not been used to date.

PRODUCTS LIABILITY If the malpractice allegations include references to the malfunction of a product, such as a bovie, or broken catheter tip, consider advising our attorney to file a products liability claim. **The damaged article must be preserved by the facility in order to pursue such a claim.**

CREDENTIALS FOR DOCTORS (ABILITY TO SEARCH BY NAMED DEFENDANT)

Requests are to be forwarded to Cindi Troxclair <cynthia.troxclair@la.gov> As healthcare providers leave the employment of the State by graduation, completion of residencies/fellowships, or conclusion of contracts, it may become necessary for the

Office of Risk Management to provide data to hospitals, clinics, medical groups, insurance companies, LSU Health Sciences Center, LSU Healthcare Network, etc. regarding claims in which these healthcare providers have been named in medical review panel requests or lawsuits. It is important to document the file with the date when the medical care provider has been dismissed, prior to the actual settlement of a claim.

This is done for consideration of hospital privileges, coverage by an insurance companies, future employment opportunities, etc. In order to provide this information, it is necessary for FARA to be able to track the names of these healthcare providers and associate them with the claim in which they are named. ORM will need the ability to search over all claims for an individual named physician. A report is then prepared for response to the non-LSU Health Sciences Center requests and a different report is prepared if the request is made by LSU Health Sciences Center facilities. (Copies of these reports are attached).

REPORTS TO DATA BANK

The National Practitioner Data Bank (NPDB) was established through Title IV of the Public Law 99-660, the Health Care Quality Improvement Act of 1986. It allows licensing boards, hospitals, and other health care entities to identify healthcare providers who engage in unprofessional behavior and to restrict incompetent healthcare providers to move from state to state without disclosure of previous medical malpractice payments. It has been determined that FARA will be assuming the duty to report such healthcare providers for whom a settlement or judgment has been paid on their behalf. A copy of the reporting form is attached. FARA will be responsible for establishing an account with the NPDB in order to report healthcare providers that remain as defendants when settlement or judgment is paid.

CONSTITUTIONAL CHALLENGES TO STATE AND PRIVATE STATUTE

Lawsuits that include a challenge to the constitutionality of the PCF or State Medical Malpractice Statute will be handled by the General Liability Claims section.

SETTLEMENTS

A release and receipt must be secured on all bodily injury claims and third party damage claims upon settlement – Regardless of the amount of settlement.

- Releases should be obtained on all injury claims and property damage claims where liability has been disputed.
- All settlement requests over \$25,000 must be approved by ORM and the AG.
- Settlement requests above \$250,000 require approval by ORM, the Attorney General and the Commissioner of Administration.
- Settlement Requests of \$500,000 and above require the approval of ORM, The Attorney General, the Commissioner of Administration and the Joint Legislative Subcommittee on the Budget.

CHECK REQUESTS FOR SETTLEMENTS AND JUDGMENTS

- The file should be documented with the amount of each settlement check requested and the payee information.
- Each Client Authority Request should include the settlement/judgment payment authority documentation.
- Client Authority Requests shall be sent to Nancy Daigle for action. Please copy Jimmy Meaux on all client Authority Requests.

SETTLEMENTS

Non-Litigated Claims

FARA will have the authority to settle all claims up to and including twenty-five thousand (\$25,000) per claimant without the approval of the State (ORM or DOJ).

For settlements over twenty-five thousand (\$25,000) per claimant, FARA must submit a Settlement Evaluation Request to ORM for approval. Once ORM approval is obtained, the Settlement Evaluation Form from FARA and the ORM approval, either by email or by claims council must be forwarded to the Attorney General for concurrence. Copies of the forms were provided in the initial training. The Attorney General Settlement Concurrence Form for Non-Litigated Claims must be approved by the AG and attached in the file before a settlement check request can be approved by ORM.

LITIGATED CLAIMS

All litigated claims require the submission of an RSA and ORM approval. FARA will be notified in writing of the decision on the requested authority. Settlements over \$25,000 must be approved by ORM and the AG, above \$250,000 approval from the Commissioner of Administration, and if settlement authority is \$500,000 and above, the Joint Legislative Subcommittee on the Budget must approve.

CLAIMS COUNCIL:

- A “Settlement Evaluation/Claims Council Review Form” is required on all cases presented to ORM Claims Council.
- Settlement requests over \$200,000 require the approval of Claims Council at ORM. The FARA adjuster may present the case in person or by telephone.

- The following items require Claim Counsel approval with participation by Joe Roussel and written concurrence of the DOJ Senior Counsel to the Attorney General:
 - Requests for stipulation to liability
 - Requests to waive a jury trial
 - Authority to proceed to trial without any monetary authority
 - Request to forego an appeal/writ.
 - Request to remove or remand a suit from one jurisdiction to another.
- If the settlement amount requires approval from the Attorney General or other parties, ORM will coordinate that approval process and notify FARA of the final settlement authority.

Medical Malpractice Claims have a General Damage Cap of \$500,000 which includes economic damages as well as general damages and past medicals. Future medicals and payment of medicals that occurred after the final resolution of the claim may be awarded in excess of the general damage cap.

RSA Process

Upon receipt of an RSA the FARA adjuster will closely review the RSA to ensure that all important elements of the claim and the defense are thoroughly covered, as well as to ensure that all sections of the RSA are properly completed. Please ensure that the current version of the RSA is being used by the defense attorney. Should the information in the RSA be incomplete, incorrect or lacking certain elements of defense preparation, the FARA adjuster will communicate directly with the assigned defense counsel to seek additional information. A copy of this query will be sent to LitigationRSA@Ag.State.La.Us and Nancy Daigle and Jimmy Meaux. A completed Claims Council Review Form with recommendations and the RSA shall be submitted to ORM within 10 calendar days of FARA's receipt of an RSA.

Should a critical date be looming soon after receipt of an RSA needing either correction or supplementation, the adjuster is to send the deficient RSA on to ORM with a label indicating that further information has been requested. This will allow ORM to commence its review in light of the critical date.

All assigned defense counsel (AAG staff attorneys and contract attorneys) shall submit a RSA in accordance with the guidelines established by the Litigation Program of the Department of Justice and ORM. RSA should be reviewed and submitted to ORM within 10 calendar days of receipt. In the event of exigent circumstances, the RSA must be submitted to ORM in sufficient time for ORM to evaluate and take action on the request.

RSA's prepared by an AAG should include comments from the section chief and then routed to the FARA adjuster. The FARA adjuster will review the RSA; provide an email which includes their comments regarding the proposed settlement, a "FARA Claims Council Review Form"(Exhibit12), then forward to the Nancy Daigle for disposition. After the ORM review process, ORM's comments/recommendations and RSA and Claims Council Decision form, where required, will be emailed to the AG via Wanda Hebert at

LitigationRSA@Ag.State.La.Us for the AG approval process. Upon approval by the AG, they will notify FARA and ORM as to the approved authority. Settlements \$500,000 and above are not final until approval has been granted by the Commissioner of Administration and the Joint Legislative Subcommittee on the Budget. ORM will coordinate these approvals. No further action for settlement will be taken by FARA until all required approvals have been obtained.

RSA's prepared by contract counsel will be sent to the assigned FARA adjuster. The FARA adjuster will review the RSA; provide settlement evaluation forms that include their comments regarding the proposed settlement, then forward to Nancy Daigle for disposition. After the ORM review process, ORM's comments/recommendations and RSA and Claims Council Decision form, where required, will be emailed to the AG via Wanda Hebert at LitigationRSA@Ag.State.La.Us for the AG approval process. Wanda Hebert will notify FARA and ORM as to the approved authority. Settlements \$500,000 and above are contingent upon the approval of the Commissioner of Administration and the Joint Legislative Committee on the Budget. Attendance by a FARA representative is mandatory. ORM will coordinate these approvals and notify FARA accordingly. No action for settlement will be taken by FARA until all required approvals have been obtained. Upon final approval by all required parties it will be FARA's responsibility to notify contract counsel of the approved action.

NEGOTIATION TRACKING:

Once settlement authority has been approved at all appropriate levels, the adjuster shall send a copy of the "Mediation-Negotiation Summary"(Exhibit #13) to defense counsel along with a written request that all offers, counter-offers and settlements be recorded on the "Mediation-Negotiation Summary" form and that the form be updated with each offer and counter-offer. Defense counsel should inform the adjuster of each offer and counter and the latest information should be posted in ICE by the FARA adjuster. If a claim is settled or negotiations end, the defense counsel shall send a completed copy of the "Mediation-Negotiation Summary" to the FARA adjuster. The FARA adjuster will review the form, update the Litigation Offer Section in ICE and attach the completed

form in ICE. Throughout, this process, the FARA adjuster should maintain a diary for follow-up.

PETITIONS RECEIVED ON EXISTING NON-LITIGATED CLAIM

When a Petition for Damages is received on an existing non-litigated claim, it must be promptly referred to ORM for processing with the AG. The agencies will be instructed to send lawsuits directly to ORM. If FARA receives a lawsuit from an agency, it should be forwarded by electronic attachment directly to Nancy Daigle. ORM will complete the required Appointment and Contract Approval Form and submit it to the AG for appointment of counsel. If the AG appoints an in-house AAG, no concurrence from ORM is required. A copy of the Appointment will be sent via email to the FARA adjuster. If the AG appoints contract counsel, the Appointment is returned to ORM for the concurrence of the Assistant Director for Litigation Management and the State Risk Director. Afterwards, a copy is returned to the AG for their records and ORM contracts will issue a professional services contract to the appointed counsel. Expense reserves should reflect at least the amount of the legal contract. The FARA adjuster will receive a copy of the Appointment from ORM Contracts for their records.

Upon notification of the assigned defense counsel, the FARA adjuster should contact counsel within seven (7) working days to discuss the case and develop a plan of action for defending the allegations contained in the petition.

DIARY

Litigated claims must be maintained on a continuous diary to obtain reports from the defense counsel defining the status of the litigation and the plan for resolution of the litigation. At a minimum, the FARA adjusters should establish diary dates for the following:

- Initial Case Assessment – 60 days from date of counsel acceptance/assignment
- Six Month Case Assessment – 180 days from date of counsel assignment
- Ninety Days Prior to Trial – RSA due from assigned counsel

MEDICAID LIENS:

- The adjuster or defense counsel (if case is in litigation) must obtain information as to whether or not the claimant is a Medicaid recipient.

- Obtain the claimant's date of birth and social security number. The MRP requests and/or petition need to be attached to this request.
- When DHH asserts a claim for reimbursement as the result of Medicaid payments, DHH will negotiate directly with ORM when seeking reimbursement.
- ORM may delegate the negotiation of Medicaid reimbursement claims to defense attorney.
- DHH will not negotiate with the plaintiff or plaintiff's counsel.
- ORM Supervisor, Nancy Daigle will handle the negotiations with DHH after the amount claimed has been determined. Nancy's email address is: Nancy.Daigle@la.gov. Her direct telephone number is (225) 342-0868. Notify Nancy Daigle of Medicaid payments as soon as possible to allow enough time for a thorough review of the pertinent records to identify related charges relative to the claim.
- Communicate Medicaid payment amounts to defense counsel and make certain it is included in the RSA. Medicaid lien amounts must be indicated on all FARA Settlement Evaluation Forms.
- ORM will negotiate the final amount of the Medicaid reimbursement claim and this amount will be included in settlement authority granted.

MEDICARE LIENS:

- Medicare's interests must be protected as they are considered a Secondary Payor.
- Medical bills paid by Medicare must be considered for reimbursement in any settlement.
- When the claim is first received the adjuster should request the claimant's date of birth and Social Security Number or HICN from the plaintiff attorney or pro se' plaintiff.

If the needed information is not voluntarily provided, the information should be obtained by counsel through discovery.

FUTURE MEDICAL CARE FUND:

- Settlements and judgments on bodily injury claims may include an award for future medical care. R.S. 39:1533.2 authorizes that the funds be paid directly to the medical provider as the expenses are incurred pursuant to R.S. 13:5106(B) (3) (c). Specific language should be included in all settlements and judgments that reference amount allocated for future medicals.
- Once the agreement is reached or there is a final judgment, the FARA adjuster handling the claim will send a letter to the plaintiff attorney with instructions as to the handling of future medicals that are payable from the date of settlement forward.
- FARA has copies of the standard letter regarding payment from the Future Medical Care Fund.

- Sandy Pittman at FARA handles all future medical payments. A copy of the settlement/judgment and information regarding the injuries involved should be sent to her at Sandy.Pittman@fara.com telephone number is (225) 448-0367.

Medical Malpractice Future Medical Expenses

Once future medical and related benefits are awarded to a medical malpractice claimant by way of settlement or judgment, a separate file must be set up for payment of these medical expenses. A copy of the settlement documents or judgment should be included in the future medical claim file in iCE in order to verify the amount awarded which should be the set reserve. If the judgment/settlement awarded states that all future medical expenses are to be paid as incurred for any and all related expenses through the life of the claimant then reserves will be adjusted periodically. There should be contact with the claimant or family member to discuss the benefits and the procedures for submitting invoices.

Future Medical Care Fund

This **does not** apply to Medical Malpractice. Settlements and judgments for bodily injury may include an award for future medical care. R.S. 39:1533.2 authorizes that the funds be paid directly to the medical provider as the expenses are incurred pursuant to R.S. 13:5106(B) (3)(c). Specific language should be included in all settlements and judgments that include future medicals. Once the agreement is reached, a letter is to be sent to the plaintiff attorney with instructions as to the handling of future medicals that are payable from the date of settlement forward. Instructions for this process are attached.

Future Medical Care Fund payments are made on liability claims, not medical malpractice. Payments were processed by the Medical Malpractice Claim Unit on behalf of General Liability, Auto/Transportation, and Road Hazard Claim Units at ORM. (FARA may handle this task differently.)

HANDLING OF DPS&C – CORRECTIONS CASES

DOC PRISONER CASES MEDICAL MALPRACTICE

Non-litigated prisoner claims are received directly from the DPS&C – Corrections, referred to herein as DOC.

Any claim received directly from a prisoner shall be returned to DOC for processing.

A copy of the Administrative Remedy Procedure (ARP) file must be obtained from DOC along with any investigative material for claims filed by prisoners. The ARP file should be reviewed by the FARA adjuster for completeness of cited medical records, statements of witnesses, guards, etc. The record may be supplemented during the investigation at the ARP level. Once the ARP is submitted to the Court, it cannot be supplemented. Court decisions on prisoner claims are made based on the ARP record as submitted. No outside evidence may be added.

Prisoner claims that allege medical malpractice are usually styled as medical indifference claims if the only named defendants are medical employees of the prison. In that case, the claim is handled as a General Liability claim. Defendant may be the prison facility and or medical providers employed by DOC. A claim alleging improper medical treatment at a state hospital facility would be considered Medical Malpractice and handled by the FARA MM unit.

All settlements of prisoner claims, whether or not in litigation, must be submitted to ORM with a Request for Settlement. FARA shall solicit input from representatives of the DOC prior to submitting their requests to ORM. ORM will notify FARA in writing of the authorized settlement amount. If the settlement amount requires approval from the Attorney General or other parties, ORM will coordinate that approval process and notify FARA of the final settlement authority.

STAFFINGS

Concurrence must be obtained from ORM before the FARA adjuster requests a staffing with the Attorney General's office to discuss a plan of action on a case. The FARA adjuster should attend the staffing and be prepared to participate and assist in controlling the staffing in the direction of a plan of action. The FARA adjuster will document the names of those who attended and the outcome of the staffing. A plan of action documented in the ICE file should state the subsequent steps in the defense of the case that were decided in the staffing.

NOTIFICATIONS AND ATTENDANCE of TRIALS and MEDIATIONS

FARA must maintain a calendar of all scheduled mediations and trials. Notification must be made to the ORM supervisor and to Jessica Brown Jessica.brown@la.gov on behalf of Joe Roussel, Assistant Director for Litigation Management, thirty (30) days prior to all trials.

FARA adjusters must attend trials and mediations as well as meeting of the Joint Legislature Subcommittee on the Budget. The adjuster may have to sit at the defense table with our attorney as the representative of the State in the event that a representative of the named agency is not available.

MEDIATION SUMMARY

A mediation summary documenting the offers and demands, initial settlement authority and final settlement amount along with an evaluation of defense counsel should be attached to the file. A copy of the format will be provided to FARA.

MEDIATION AUTHORITY

No “tentative” mediations are to be scheduled prior to the disposition of an RSA submission specifically seeking authority to mediate. Mediations shall be scheduled only after ORM approval of, and Attorney General concurrence on, a properly submitted RSA requesting authority to mediate and corresponding monetary authority.

LITIGATION MANAGEMENT:

Adjusters should be thoroughly engaged in the management of litigation and should work closely with defense counsel to bring about a prompt resolution of the claim.

- Adjusters should make certain that written discovery (interrogatories, requests for production of documents, and requests for admissions) are propounded (sent) to plaintiff counsel very early in the life of a case. They should monitor this aspect of the defense and communicate directly with counsel to make certain it is done.
- Discovery propounded by defense counsel is to be promptly answered. If plaintiff does not respond promptly, the adjuster should discuss the possibility of filing a motion to compel with defense counsel. Defense counsel is to provide a copy of the discovery responses to the adjuster.
- As a general rule, written discovery should be propounded and answered by the plaintiff prior to plaintiff being deposed. Receipt of this information beforehand will assist defense counsel in preparing for the deposition.
- The timing of a deposition is important. Plaintiff should not be deposed too early, because we want to obtain as much information as possible regarding alleged injuries. It is often desirable for the injuries to mature to a degree (time for plaintiff to receive a diagnosis, treatment and, hopefully, a prognosis) before he is deposed. In most cases, a deposition should be taken from 8 to 12 months from filing suit; if not earlier (depending on how long after the incident suit is filed).

- Suggest discussing the need for, and the scheduling of, plaintiff's deposition with defense counsel. Confirm that written discovery has been sent to and answered by plaintiff. When appropriate, *ask (rather than direct or instruct)* defense counsel to take plaintiff's deposition. Document your requests. If there is disagreement or delay on the part of our defense counsel, please notify your FARA management team, as well as Nancy Daigle, Jimmy Meaux , Ann Wax and Joe Roussel. The matter will be addressed accordingly.
- It is FARA's responsibility to move and manage these cases. Confirm conversations through a follow up email.

Abandonment of Litigated Cases

- *A new policy will be implemented on all cases that abandon **after October 1, 2013**. When a case is believed to have abandoned, defense counsel will consult with the adjuster to review relevant dates and to confirm that the delay for abandonment has indeed lapsed. If there is agreement that the case has abandoned, defense counsel will file a "Motion to Declare Case Abandoned " or "Motion to Dismiss on the Basis of Abandonment", or similar pleading between 15 and 45 days from the alleged date of abandonment. In the event the motion is granted, defense counsel will immediately inform the adjuster of all costs associated with a dismissal of the case, and will provide the adjuster with an itemization of such costs from the Clerk of Court.*
- *Please note that La. C.C.P. Art. 5188 provides that, in the event a judgment is rendered against a party who has been permitted to litigate without the prior payment of costs (i.e., an indigent party who has prosecuted the action "in forma pauperis" pursuant to La. C.C.P. Art. 5181 et seq.), said party should be cast with all costs. This article further provides that failure of the indigent party to pay such costs shall not prevent the entry of a judgment in favor of another party. This article should be referenced within the Motion and Order/Judgment of Dismissal in the appropriate circumstance.*
- *Cases that are currently in the possession of the Litigation Division and that have been administratively closed due to abandonment (i.e., cases that have allegedly abandoned **before October 1, 2013**) shall be reviewed by defense counsel and the corresponding Section/Office Chief to confirm (1) the date it allegedly abandoned, and (2) that there has been no waiver of abandonment. If there is agreement that the case has abandoned, defense counsel shall file a "Motion to Declare Case Abandoned " or "Motion to Dismiss on the Basis of Abandonment", or similar pleading on such cases **prior to December 31, 2013**.*

CATASTROPHIC CLAIMS

Immediate notification by telephone to the ORM Claims Administrator shall be made in all cases involving catastrophic injuries or damages.

RESERVATION OF RIGHTS LETTER

Reservation of Rights letters must be discussed and approved by ORM prior to sending. When it has been determined that there are allegations in a lawsuit that are not covered under the policy, a reservation of rights letter must be sent to the following persons advising them as to the reason for non-coverage:

- The “head” of the insured state entity, agency or department named as a defendant in the petition or complaint
- Also, any individual state employee named as a defendant in the petition or complaint
- A courtesy copy should be sent to the general counsel of the state entity, agency or department named as a defendant in the petition or complaint.
- Finally, a copy should be sent to the assigned defense counsel.

The reservation of rights letter should be sent out no more than thirty (30) days from receipt of the new lawsuit. The FARA adjuster will draft the reservation of rights letter and submit it to ORM for approval prior to it being sent to the involved party. **The reservation of rights letter must be sent by certified mail, return receipt requested.**

Following are the two forms for the reservation of rights letters that should be utilized:

FORM A

This form is to be used when the primary claims asserted in the petition/complaint sound in tort. This letter provides the option of the defendant allowing the AG/ORM appointed counsel to defend all claims asserted (in this instance, the non-tort allegations are incidental to the tort demands).

Date:

(Agency/employee)

RE:

Dear _____ :

FARA Insurance Services is the third party administrator for the State of Louisiana, Office of Risk Management. We are in receipt of the above-referenced lawsuit, in which you are a named defendant. In review of same, please be advised that the Office of Risk Management provides a policy of liability coverage that was in force at the time of the alleged incident. While there are certain allegations contained in the petition/complaint that obligate ORM to defend and potentially indemnify you, other allegations contained in this pleading, and claims asserted therein, are not covered by any liability policy provided by ORM.

ORM provides coverage (defense and potential indemnification) for tort claims only. It does not provide coverage for claims of declaratory, injunctive or other equitable relief, claims for back pay, front pay, loss of overtime or employment benefits, punitive or exemplary damages, civil penalties, contractual or quasi-contractual claims and other matters. Any money judgment rendered against you on the basis of such claims would be your sole responsibility.

The Attorney General, with ORM's concurrence, will appoint legal counsel to defend the asserted tort claims.

With respect to claims in tort, ORM does not provide coverage for intentional acts, or for acts resulting in injury that is expected or intended from the standpoint of the insured. Additionally, coverage is not provided in the event any alleged tortious conduct is found to have been outside the course and scope of employment with the state. The Office of Risk Management will defend you with respect to such tort claims. However, in the event any alleged wrongful conduct is found to be intentional, or found to be outside the course and scope of employment with the state, you may receive no indemnification pursuant to the terms of the policy. Thus, any money judgment rendered against you under these circumstances would be your sole responsibility.

You may wish to retain your own counsel, at your expense, to represent your interests in connection with the non-covered claims. Alternatively, you may choose to have such claims defended by the attorney designated by the Attorney General's Office and ORM to represent you in connection with covered claims. However, the Office of Risk Management will not be responsible for the payment of any judgment, or of any amount awarded to the plaintiff, which is based on non-tort claims.

Please be advised, however, that the State of Louisiana through ORM is defending this litigation with full reservation of all rights which are now, or which may become, available to it under applicable law, the insuring agreement, or otherwise, with regard to the payment of any sums, including settlement, in this matter. No action on the part of the

state, or on the part of any of its engaged agents in investigating, inquiring into, corresponding about, or otherwise defending this claim should be construed as a waiver of those reserved rights. Again, ORM will not be responsible for any judgment, or other monetary award, which may be rendered on the basis of any non-insured claim; the funding of such a judgment or award would be solely your responsibility.

A copy of the suit is enclosed for your review.

Please advise if you have any questions or concerns.

Sincerely,

FORM B

*This form is to be used when the primary claims asserted in the petition/complaint **do not** sound in tort. This letter **does not** provide the option of the defendant allowing the AG/ORM appointed counsel to defend all claims asserted (in this instance, the tort allegations are incidental to the non-tort demands; for example ,as when the primary allegations sound in contract, etc..). **Here, the defendant must retain its own attorney to defend the non-tort allegations.***

Date:

(Agency/employee)

RE:

Dear _____ :

FARA Insurance Services is the third party administrator for the State of Louisiana, Office of Risk Management. We are in receipt of the above-referenced lawsuit, in which you are a named defendant. In review of same, please be advised that the Office of Risk Management provides a policy of liability coverage that was in force at the time of the alleged incident. While there are certain allegations contained in the petition/complaint that obligate ORM to defend and potentially indemnify you, other allegations contained in this pleading, and claims asserted therein, are not covered by any liability policy provided by ORM.

ORM provides coverage (defense and potential indemnification) for tort claims only. It does not provide coverage for claims of declaratory, injunctive or other equitable relief,

claims for back pay, front pay, loss of overtime or employment benefits, punitive or exemplary damages, civil penalties, contractual or quasi-contractual claims and other matters. Any money judgment rendered against you on the basis of such claims would be your sole responsibility.

The Attorney General, with ORM's concurrence, will appoint legal counsel to defend the asserted tort claims.

With respect to claims in tort, ORM does not provide coverage for intentional acts, or for acts resulting in injury that is expected or intended from the standpoint of the insured. Additionally, coverage is not provided in the event any alleged tortious conduct is found to have been outside the course and scope of employment with the state. The Office of Risk Management will defend you with respect to such tort claims. However, in the event any alleged wrongful conduct is found to be intentional, or found to be outside the course and scope of employment with the state, you may receive no indemnification pursuant to the terms of the policy. Thus, any money judgment rendered against you under these circumstances would be your sole responsibility.

As the primary allegations of the petition/complaint do not sound in tort, it is your responsibility to retain your own legal counsel, at your expense, to defend your interests in connection with those non-covered claims. Legal counsel appointed by the Attorney General, and concurred upon by the Office of Risk Management, will only defend the claims asserted in tort, and will coordinate with the attorney you elect to retain. The Office of Risk Management will not be responsible for the payment of any judgment, or of any amount awarded to the plaintiff, which is based on non-tort claims.

Please be advised, however, that the State of Louisiana through ORM is defending this litigation with full reservation of all rights which are now, or which may become, available to it under applicable law, the insuring agreement, or otherwise, with regard to the payment of any sums, including settlement, in this matter. No action on the part of the state, or on the part of any of its engaged agents in investigating, inquiring into, corresponding about, or otherwise defending this claim should be construed as a waiver of those reserved rights. Again, ORM will not be responsible for any judgment, or other monetary award, which may be rendered on the basis of any non-insured claim; the funding of such a judgment or award would be solely your responsibility.

A copy of the suit is enclosed for your review.

Please advise if you have any questions or concerns.

Sincerely,

DENIAL OF CLAIMS

When it is determined that the State has no liability for a loss, FARA will issue a letter of denial to the claimant after the letter is reviewed and approved by the ORM supervisor . In the event that a denial is appealed, the FARA supervisor on the case will review all applicable documentation and issue a supplemental letter to the claimant advising them of the final decision. FARA shall submit the denial letter to ORM for approval prior to sending it to the claimant.

CLOSURE OF FILES

Upon conclusion of a claim, it is necessary to track the final actions and insure that information needed by auditors will be entered. A copy of the ORM Closing Procedures Checklist is attached as a convenience. As a requirement of the Joint Commission for the Accreditation of Hospitals (JCAH), we are required to send notices of file closures to the named medical facility which includes the final disposition information, date of closure and whether any named healthcare provider was reported to the National Practitioner Data Bank. Example of a closure cover letter and report are attached. The notices are sent to the hospital administrator and, in some cases, the Risk Management or Quality Assurance Departments. A file will be considered as closed when the Release and Receipt from the court in settlements or the final Judgment is received and all billing is complete.

SUBROGATION

FARA must ensure that they protect the State's subrogation interest on all claims.

Filing of suit to interrupt prescription or filing of suit to recover the State's interest should be requested by the FARA adjuster at least ninety (90) days prior to prescription.

All requests for the appointment of an AAG staff attorney to handle a subrogation matter will be submitted to ORM to the attention of Farrel Hebert along with a Subrogation Summary. ORM will prepare the Appointment and Contract Approval Form and submit it to the AG for assignment. AG will notify FARA and ORM as to the name of the appointed attorney/law firm.

For medical malpractice claims, authorization to waive less than 50% of our subrogation interest can be obtained from the designated medical malpractice staff member as noted in the above section titled ORM Internal Authority Designation. **Authorization to waive more than 50%** of our interests will require an RSA and submission to ORM claims council which shall be directed to Farrel Hebert at farrel.hebert@la.gov. A request for the

appointment of an attorney to pursue/protect our subrogation lien should be directed to Farrel Hebert at the email address noted previously.

CONTRACT AMENDMENTS (Revised 11/20/12)

DOJ/Office of the Attorney General Staff: The Office of Risk Management has an Interagency Agreement between ORM/DOJ for the legal services provided by the Office of the Attorney General. It will not be necessary for FARA to request any amendments for legal services performed by DOJ/Office of the Attorney General/Litigation Program. FARA adjusters do need to monitor billings for excessive charges and make sure that they have proper documentation in their files.

Contract Counsel – Contract counsel is appointed by the AG and concurred upon by ORM. A Contract for Professional Services is executed between ORM and the respective law firm/attorney. Amendments will be necessary when the initial contract has been exhausted or when it is expected to exceed the initial amount. The initial contracts to defense counsel are normally issued in the amount of \$20,000. So, it isn't uncommon to receive an amendment request along with the initial case assessment. Contract counsel must submit a budget in Acuity that will need to be approved by the FARA adjuster. Approval of a budget in Acuity DOES NOT eliminate the need for the adjuster to submit a written request for a contract amendment. Contract counsel should provide an email or letter stating reasons that the amendment is required.

Since contracts are issued by ORM, we will need **written email requests for amendment requests up to \$199,999.99** in the following format along with a copy of the budget and a current case assessment.

RE: Request for Contract Amendment
Contract Number:
Claimant:
ORM Claim Number:
FARA Claim Number:
Contractor:
Current Contract Amount:
Requested Contract Amount:

The first paragraph should be a brief description of the loss and what legal action has been accomplished.

Second paragraph should include additional action required as well as note critical dates (hearings, trial date, etc.).

Third paragraph should include the amount of monies paid by ORM towards the defense of this claim on the current contract, the total amount of outstanding invoices, and a

statement recommending that the contract be increased from \$_____ to \$_____.

The adjuster will route this email to the respective ORM supervisor/manager for approval. If in order, the ORM supervisor/manager will approve it and forward the approved request to the ORM Contract's Unit for processing with a copy to FARA.

For contract amendment requests **\$200,000 and above, a Memorandum is required** which will be a Microsoft Word document that can be revised. The format will be as follows:

FARA Letterhead

Font will be Verdana 12 point

Modified Block style

Justified

MEMORANDUM is uppercase, bold, underscored and centered

Justified paragraphs

TO: J. S. "Bud" Thompson, Jr
State Risk Director

FROM:

DATE:

RE: Request for Contract Amendment
Contract Number:
Claimant:
ORM Claim Number:
FARA Claim Number:
Contractor:
Current Contract Amount:
Requested Contract Amount:

The first paragraph should be a brief description of the loss and what legal action has been accomplished.

Second paragraph should include additional action required as well as note critical dates (hearings, trial date, etc.).

Third paragraph should include the amount of monies paid by ORM towards the defense of this claim on the current contract, the total amount of outstanding invoices, and a statement recommending that the contract be increased from \$_____ to \$_____.

APPROVED BY:

J. S. "Bud" Thompson, Jr.
State Risk Director

Date

Joseph M. Roussel
Assistant Director for Litigation Management

Date

Ann D. Wax
State Risk Administrator - Claims

Date

Please try to keep the memorandum to two pages. A copy of the Acuity budget and a current case assessment should be included along with the amendment request.

This memorandum should be directed to Nancy Daigle for review. If in order, she will obtain the required signatory approvals and route to the ORM Contract's Unit for processing.

Approval Levels for Contracts:

<u>Amount of Contract</u>	<u>Approval Required</u>
\$ 0 - \$100,000	Claims Supervisor
\$100,000.01 - \$199,999.99	Claims Manager
\$200,000 and above	State Risk Administrator – Claims, Assistant Director for Litigation Management, State Risk Director, and Commissioner of Administration

CONTRACTS FOR EXPERTS:

When the assigned defense counsel and/or an adjuster requests an expert, the adjuster shall have the request for “Contract Expert/Consulting Services” form (See exhibit 11) completed (signed by the adjuster, FARA supervisor and defense counsel) and returned to the ORM Contract Reviewer, Deborah Grand at Deborah.Grand@la.gov. Ensure that the Curriculum Vitae, Fee Schedule and W-9 are attached. ORM Contracts will prepare the contract, obtain approval, and then route a copy to the FARA adjuster. When the contractor has concluded his assigned tasks and their services or no longer needed, or upon expiration of the contract, the adjuster shall complete a Contract Performance Evaluation Form and submit it to Deborah.Grand@la.gov.

The FARA adjuster will provide:

- Expert’s W-9
- Expert’s name and company name
- Expert’s address, city, state, and zip code
- Expert’s phone and fax numbers
- Expert’s Curriculum Vitae
- Expert’s Social Security Number or TIN #
- Expert’s Fee Schedule
- Amount of contract, and effective date
- Scope of Services
- If a potential expert is employed by a college or university, a PM 11 form is required, which grants permission from the college or university for the expert to handle private work.

EXPERT CONTRACT PAYMENT REQUESTS (Contract Pre 8/1/12)

The adjuster will verify all necessary information and contract balances prior to submitting an invoice to Nancy Daigle for payment.

1. List vendor/defense attorney name
2. List contract number, balance on contract prior to payment of invoice and contract dates
3. Invoice number, dates of service range and approved amount of invoice
4. If any invoice amount is reduced include an explanation of why it was reduced.

Example:

Please place the attached invoice in line for payment. I have reviewed and audited the invoice and the charges are in line for payment as follows.

CONTRACT PERFORMANCE EVALUATION FORM:

Contract Performance Evaluations (CPE's) must contain all information required by the Louisiana Administrative Code, Title 34, Part V, Appendix F and Louisiana Revised Statute Title 39:1500. Adherence to these laws and guidelines are addressed in the agency's audits. Completion of this form is required at the conclusion of the case or upon expiration of the contract. This form shall be completed on all cases wherein defense counsel was assigned and where an expert was obtained under contract. CPE's must be signed by the handling adjuster and supervisor. Use this form to request contract renewals before the expiration of the 3 year attorney contract and to close out a contract upon the conclusion of the case. This includes AAG in-house attorneys. When outside defense counsel has been assigned, Acuity will send the assigned adjuster a notice of contract expiration 90/60/30 days prior to the expiration date of the contract.

Actual Amount Paid – the total amount paid under this contract.

Contract Amount – current amount of contract

Hourly Rate of Pay – note rates per contract – i.e., regular rates or increased rates

Actual Begin and End Dates – date of the first and last billing entries

Number of Contract Amendments and Reasons: information will be input by ORM Contracts Unit.

Description of Services: Check off appropriate box

Deliverable Products: Monthly and Quarterly Reports

Remaining questions on form are self-explanatory.

CPE's completed on cases handled by contract defense counsel should be emailed to Lucille Gautreaux at Lucille.gautreaux@la.gov with a copy to Ann Wax at ann.wax@la.gov.

When a renewal is needed on a case being defended by contract counsel, the FARA adjuster will complete the CPE checking off the "Case Ongoing - Renewal Needed" box and attach a copy of the most recent case assessment or status update form (must not be more than six months old) and submit them to Lucille Gautreaux. If the last case assessment/status update report is more than six months old, then it will be the responsibility of the FARA adjuster to obtain a current status update to submit along with the CPE to Lucille Gautreaux (Lucille.gautreaux@la.gov) in our Contracts Unit so she can handle the renewal process. Lucille will not be able to process the renewal request unless she has received both documents. A copy of the CPE only should be emailed to Ann Wax at ann.wax@la.gov.

ORM has an Interagency Agreement with DOJ – Office of the Attorney General – Litigation Program. The following questions will be left blank on the CPE for AG staff attorneys.

The contract Review #
Contract No.
Contract Amount
Hourly Rate of Pay
Contract Begin and End Dates
Actual Begin and End Dates
Number of Amendments

The remainder of the questions should be completed.

Contractor Name will be the name of the AG attorney – DOJ/AG – Litigation Program. All other questions asked should be self-explanatory. CPE's completed on cases handled by AAG, in-house attorneys should be emailed to Ann Wax @ ann.wax@la.gov. CPE's must be signed by the handling adjuster and supervisor.

DEFENSE COUNSEL BILLING:

Most defense attorneys will submit their invoices through Acuity. An exception may be made when defense counsel is out of state. Nancy Daigle must approve all invoices not presented through Acuity. The adjuster will provide the following required information when requesting contract attorney bill payments:

1. Defense attorney name
2. Contract number and remaining balance.
3. Outstanding, approved invoices with dates of service.
4. An explanation for any reduction in the invoice amount.
5. Contract period dates.

Example:

“Please place the attached invoice in line for payment. I have reviewed and audited the invoice and the charges are in line for payment as follows”.

Acuity contact person is Lucille Gautreaux at Lucille.gautreaux@la.gov>
(225) 342-1517.

