

Policy on Denial of Coverage to Named Employees and Elected Officials

The Pool Administrator or Pool Board may identify certain employees, former employees, or elected officials who pose an unreasonable liability exposure to the Pool. The purpose of this policy is to authorize the Pool Board, upon the recommendation of the Risk Management Director ("Director"), to cancel or decline liability coverage for individual employees, former employees, or elected officials of NMCI member counties when such coverage presents an undue risk to the Pool. If the recommendation is approved by the Board, no defense, indemnity, payment of claims, or other benefits shall be available under any Coverage Agreement to any such excluded individual, or to any Member for any claim, demand, or cause of action arising out of, resulting from, or in any way related to the acts, errors, or omissions of the excluded individual after the effective date of exclusion.

"Unreasonable liability exposure" means an exposure to the Pool of such anticipated frequency or severity that the Pool cannot accept the exposure consistent with sound underwriting principles or its obligation to ensure the long-term financial viability of the Pool. It includes, but is not limited to, (1) exposure associated with an employee whose conduct, misconduct, negligence, poor performance, or other grounds would cause a reasonably prudent employer – acting in good faith and based on credible evidence – to conclude that dismissal of such an employee would be justified; and (2) claim loss experience materially above the peer average.

Although elected officials are not subject to termination, this employee termination standard may be applied to them in determining whether to deny or cancel coverage.

This policy ensures due process through notice and opportunity to be heard.

Procedures

A. Recommendation

The Director will provide a written denial of coverage recommendation to the Pool Board, county, and affected individual(s), which shall include a concise statement of the reasons for the recommendation.

B. Opportunity to be Heard

The recommendation will be placed on the agenda for the next regularly scheduled Pool Board meeting, or a special meeting may be called by the Chair as set forth in the Bylaws. The county or individual(s) may submit a written response and will be given the opportunity to address the Pool Board and provide their rationale as to why the recommendation should be rejected. Because the recommendation is based on the "unreasonable liability exposure" of its employee(s) as defined above and could involve threatened or pending litigation, the county or individual(s) may request that the issue be scheduled and heard in executive session. The final action shall be announced in open session.

Recordkeeping & Confidentiality

With the exception of the agenda and minutes of the final action, all documents related to the recommendation and Pool Board consideration and action on the recommendation shall be retained by the Director as a confidential record accessible only to NMCIA staff and Pool Board members. Member counties may contact the Pool Administrator to ascertain whether a job applicant is eligible for coverage. In the event that NMCIA receives an Inspection of Public Records Act request, subpoena, or discovery request requesting information concerning the recommendation or the Pool Board's consideration and action on the recommendation, NMCIA shall notify the individual and county member who were the subject of the recommendation so that they may, should they choose to do so, seek a protective order from a Court of competent jurisdiction preventing disclosure of the requested documents.

Passed by unanimous consent of the NMCIA Pool Board of Directors on October 22, 2025.