

INDIVIDUAL TECHNICAL ASSISTANCE REPORT

In Response to a Request for Technical Assistance

By the

Maryland Governor's Commission on Law Enforcement and the Administration of Justice

September 11, 1974

Prepared by:

Public Administration Service
1313 East 60th Street
Chicago, Illinois 60637

(Per Contract J-LEAA-015-72)

T.A. 74-121

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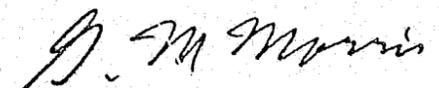
September 11, 1974

Mr. Robert Heck
Police Specialist
Office of Regional Operations
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Heck:

Submitted herewith is a copy of the Individual Technical Assistance Report, required by Article II-A-2 of Contract J-L-FA-015-72, of assistance provided to the Maryland Governor's Commission on Law Enforcement and Administration of Justice in response to the request No. L.A. 74-121.

Sincerely yours,



G. H. Morris
Associate Director

ENCLOSURE

I. PRELIMINARY INFORMATION

- A. **Consultant Assigned:**
H. Felix Kloman
Risk Planning Group, Inc.
Darien, Connecticut
- B. **Date Assignment Received:**
June 19, 1974
- C. **Date of Contact with LEAA Regional Coordinator:**
June 19, 1974
- D. **Dates of On-Site Consultation:**
Initial visitation June 25, 1974
Other visits during July and August, 1974
- E. **Individuals Contacted:**
See attached Consultant's Report.

II. STATEMENT OF THE PROBLEM

A. **Problem as per Request for Technical Assistance:**

The Maryland Governor's Commission on Law Enforcement and the Administration of Justice requested technical assistance in further defining and quantifying Standards C4 and C5 of the State's "Minimum Standards for Police Service" which relate to the provision of liability, false arrest, and life and hospitalization insurance.

B. **Problems Actually Observed:**

As stated.

III. FACTS BEARING ON THE PROBLEM

See attached Consultant's Report.

IV. DISCUSSION OF POSSIBLE COURSES OF ACTION

See attached Consultant's Report.

V. RECOMMENDED COURSE OF ACTION

See attached Consultant's Report.

CONSULTANT'S REPORT

REPORT
TO
THE
MARYLAND GOVERNOR'S COMMISSION
ON
LAW ENFORCEMENT
AND THE
ADMINISTRATION OF JUSTICE

STANDARDS C4 AND C5

MINIMUM STANDARDS FOR POLICE SERVICES

SEPTEMBER 27, 1974

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INTRODUCTION

On June 24, 1974, Public Administration Service retained Risk Planning Group, Inc., to study Standards C4 and C5 of the Minimum Standards for Police Services for the State of Maryland, prepared by the Committee on Police Standards of the Governor's Commission on Law Enforcement and the Administration of Justice. The objective of the study is the further definition and quantification of Standards C4 and C5 which now read as follows:

- | | |
|----|--|
| C4 | All police agencies should have liability insurance and false arrest insurance for all sworn personnel. |
| C5 | All police agencies should have life insurance and hospitalization for all sworn personnel, covering job-related activities. |

The establishment of minimum standards for all police functions in the State of Maryland is designed to improve effectiveness of local law enforcement. It is hoped that they will also attract better educated people to police work. Standards C4 and C5, as well as others, are specifically designed to provide financial security in the event of a job-related suit, injury or illness.

Any attempt to "define and quantify" Standards C4 and C5 requires initially an analysis of their goals. The Police Standards

Committee "...felt that the insurance items were very important and deserved primary attention." Both Standards are included in categories 2 and 3 of the Governor's Commission's funding policy, and must be met in order to obtain Commission funding. As expressed by the Commission, "All police agencies should have liability, false arrest insurance, plus life insurance and hospitalization for job-related activities for all sworn officers, to be eligible for any funding assistance."

Following planning sessions with the Governor's Commission a member of Risk Planning Group spent three days in Maryland interviewing law enforcement personnel. The police agencies visited were the Department of Public Safety, the Maryland State Police, Baltimore County, Montgomery County, Prince George's County, City of Frederick and City of Laurel. Baltimore City was contacted by telephone. In addition, the following organizations were contacted by telephone: the Attorney General's Office, the Insurance Commissioner's Office, the Maryland Counsel to the Fraternal Order of Police, the Law Enforcement Assistance Administration, the International Association of Chiefs of Police, Americans for Effective Law Enforcement, Inc., the National Sheriff's Association and the underwriters of and brokers for several insurance companies. The staff of the Governor's Commission also provided assistance.

MINIMUM STANDARD C4

Introduction

Standard C4, which currently reads,

All police agencies should have liability insurance and false arrest insurance for all sworn personnel,

is explained further by the Commission as follows:

"3. Liability and False Arrest Insurance - Every sworn officer should be covered by this type insurance paid for by the hiring agency to protect them from being sued when performing police duties."

The objective of Standard C4 appears to be to provide financial protection for those employees of police agencies who are charged with enforcing the law. Without this protection every law enforcement officer is potentially subject to large defense expenses and adverse personal judgments. The officer is even subject to suit when acting in the line of duty. And, even if the officer is totally absolved, he may have to pay the cost of his defense. With court judgments running into the millions of dollars and expenses into the thousands, it is unrealistic to expect an individual officer to assume this exposure.

Indemnity Agreement

The most natural place for the individual officer to look for protection is his employer. His best protection is not insurance,

Risk Planning Group, Inc.

but rather a commitment from his employer to pay the costs of his defense and any adverse judgments. The commitment usually takes the form of an indemnity agreement, which obligates the employer to reimburse the employee for the costs of his defense and judgment. The indemnity agreement should cover any act or omission arising out of and in the course of the performance of the duties of the office, position or employment and should include all civil actions and those criminal actions which do not result in convictions. The agreement should cover both compensatory and punitive damages; it should not cover moonlighting activities. Legal counsel should draw up the agreement. An impartial committee should be established to determine whether or not each case is subject to indemnification.

The use of an indemnification agreement benefits the individual law enforcement official in that it spells out exactly where he stands. He is not subject to the terms of an insurance policy, with its limits of coverage and multiple exclusions. An indemnification agreement is without a doubt the simplest and most direct method of providing the individual police officer with liability protection.

An indemnification agreement should cover all police agency personnel, not just sworn officers. Many non-sworn personnel come into contact with the public either directly or indirectly, and are thus exposed to suits. These individuals should also be protected. In fact, the agreement should be extended to volunteers

and all others, while involved in police work.

Reduction and Control of the Liability Exposure

There are a variety of ways of controlling exposures to loss. In police work this consists first of the careful selection and thorough training of police agency personnel. Proper training is without a doubt the most effective way to avoid suits and reduce judgments. The Commission's statement that "85% of officers appointed were placed in the field prior to their recruit training", indicates a disregard of this essential point. The attraction of better educated people to police work and the identification of the immature and emotionally unstable will likewise reduce the exposure to liability.

Funding the Liability Exposure

The question of how to finance the exposures to loss inherent in an indemnification agreement is essentially a question of the financial strength of the employing entity, be it a municipality, a county or the State. A large municipality such as Baltimore City is capable of, and in fact does, fully assume its entire risk. We believe that other municipalities, certain counties and the State itself could also assume a large portion, if not all, of this exposure. Where this exposure is assumed, reserves should be created and funded over a number of years.

On the other hand, most of the political entities in the State of Maryland are not capable of assuming this risk, and so must

look to either the State or insurance for protection.

We believe that the most economical approach would be for the State to assume the liability of all its political subdivisions' police agencies. This obligation could be met by the creation of an adequately funded reserve which the legislature could not reach. While the State would probably have to provide the initial funding, the reserve could subsequently be self-sustaining, participating police agencies contributing assessments in lieu of insurance premiums.

The Decline of Governmental Immunity

Governmental or sovereign immunity is apparently still a valid defense in Maryland. The State's highest court, the Court of Appeals, held in 1971 that it would resist the erosion of sovereign immunity and that it was up to the legislative body to modify the doctrine.¹ On the other hand, Section 1013 of the Charter of Prince George's County has revoked the doctrine in its entirety. To date no other political subdivision of the State has followed suit.

Despite this general immunity, many municipalities and the State Police have purchased liability insurance. This fact may be attributable in part to the erosion of governmental immunity in other states and the possibility that the concept may suddenly

1. Ralph Robinson v. Board of County Commissioners for Prince George's County et al., 262 Md. 342, 278 A.2d 71.

be revoked by the Maryland courts. As few municipalities can afford to be the test case, many have hedged their bets by purchasing insurance.

The liability situation varies from state to state as do the statutory and common law. Governmental immunity exists in some states, including Maryland, and not in others. In certain states, the doctrine has been discarded by the legislature and, in others, by the courts. Several states have limited governmental immunity by statute, and a few of these have waived immunity to the extent that there is insurance. However, there is a definite trend toward the repeal of governmental immunity.

State of the Art in Maryland and Other States

There is no definite pattern in other states regarding liability protection for law enforcement personnel. On the other hand, there is a trend toward the procurement of and increase in protection. Insurance is utilized in most situations. The explanation for this trend is the increasing number of suits brought against policemen and the growing size of settlements. According to the Survey of Police Misconduct Litigation 1967-1971, conducted by the International Association of Chiefs of Police, Inc., the number of suits filed during this five-year period was estimated at 12,900. The number increased each year and more than doubled from 1967 to 1971. We believe that this trend is likely to continue for the next five to seven years.

The question of insurance should not enter into the discussion of

protecting the individual officer, but rather into the discussion of how the employer is to fund the exposure assumed by the indemnification agreement, as well as its own liability. Municipalities in Maryland buy liability insurance for their police departments as part of their General Liability policy, as an endorsement to that policy, or as a separate policy. Of the six police departments visited, two have separate policies, one an endorsement to its General Liability policy, one a package policy and two were not able to provide any information. Coverage for the four ranged from \$300,000 per occurrence to over \$2,000,000 and it is carried with four different insurance companies. Coverage was fairly broad in three of the policies, but the fourth excluded assault and battery.

From the above, it is readily apparent that there is no common policy on the purchase of insurance for police departments in Maryland. In fact, it is our belief that police department personnel as a group are not even aware of their insurance protection or concerned with the subject. Many appear to assume that they are adequately protected, but have no idea of the actual amount or areas of coverage. Worst of all, many falsely believe that because their employer has insurance, they are adequately protected.

This lack of concern may be attributable to the existence of insurance coverage, to the extension of governmental immunity to all non-malicious acts of policemen, performed within the scope of their law enforcement function, and to the relatively few successful suits against law enforcement officers. Loss data is

difficult to obtain as insurance companies are reluctant to reveal underwriting data, and police departments are reluctant to acknowledge possible wrongdoing. Court records are inadequate as the majority of settlements are reached out of court. Furthermore, there is no state or national organization that collects relevant data on the subject. Even the conclusions of the IACP Study, which has not been updated, are subject to question, as the Study is based on 42.7%, or 1,604, of the 3,760 questionnaires sent to law enforcement agencies with ten or more sworn officers. This collecting function could be effectively performed in Maryland by the Governor's Commission and disseminated to police agencies throughout the State.

Insurance Considerations and Provisions

When a police agency purchases insurance, the following acts should be included:

- false arrest, imprisonment and detention
- assault and battery
- malicious prosecution
- false, erroneous or improper service or process
- wrongful eviction
- wrongful entry
- libel and slander
- defamation of character
- humiliation
- invasion of privacy
- deprivation of civil rights
- violation of property rights

As it is virtually impossible to compile a list that will cover every eventuality, any insurance policy statement of coverage should include the equivalent of the following: "... or other claims growing out of the performance of the duties of law enforcement personnel." It is essential that coverage be all-inclusive. Any policy without such terminology probably fails to provide the necessary protection and leaves the insured with the misconception that he/she is adequately protected.

Coverage should extend to both personal and bodily injury. It should also cover punitive as well as compensatory damages. Punitive damages may be awarded and insured in Maryland, although not in several other states. None of the policies reviewed specifically included punitive damages, and one specifically excluded them. Many insurance companies take the position that coverage does not include punitive damages despite the fact that they are not listed as an exclusion. However, the courts have generally ruled that punitive damages are covered unless specifically excluded. This point should be clarified or the exclusion deleted by endorsement.

Policy exclusions should be carefully reviewed and deleted where coverage is unnecessarily limited. However, it should be noted that many of the exclusions are intended to be covered by other insurance or workmen's compensation.

The named insured of any separate policy issued to a police agency should be approximately as follows: (name of police agency)

including, but not limited to, elected or appointed, part or full time commissioners, officials, officers, employees and volunteers, individually and collectively, when acting or deemed by (the police agency) to be acting within the scope of their duties or while performing services on behalf of or under the direction of (the police agency) or any organizational unit thereof. Unless the named insured is all-inclusive, the insurance company may be able to deny coverage.

Other insurance considerations are as follows:

- . Coverage should apply worldwide and not be limited to a particular geographical area or legal jurisdiction. If so limited, protection does not apply to situations such as hot pursuit across municipal or state lines or to the transportation of extradited persons to Maryland.
- . Insurance should be purchased only from companies that have a Best's policyholder's rating of A or A+ and a financial rating of at least AAAA.² Companies with lower ratings may not be able to honor their obligations if confronted with large losses.

2. Best's Insurance Reports Property-Liability is published annually by A. M. Best Company, Park Avenue, Morristown, New Jersey 07960, and includes financial data on a large number of insurance companies operating in the U. S. and Canada. Policyholder ratings reflect the position of each insurer relative to other insurers. Financial ratings indicate the financial strength of insurers. A rating of AAAA indicates capital and surplus funds of at least \$15 million.

- . The insurance policy should cover a period of at least one and preferably three years.
- . The insurance company should be required to give the insured at least 60 days' notice of cancellation in order to allow the insured time to obtain alternate insurance.
- . The insurance company should be required to obtain the prior written consent of the insured for the payment of any out of court settlement. Insurance companies usually reserve this right to themselves in their policies.
- . Coverage should be on the basis of "claims made" rather than "incidents occurred" during the policy period. If on an incidents occurred basis, coverage will apply indefinitely unless limited by a statute of limitation or policy provision. There is also the possibility that the insurer will have ceased to exist by the time the case is filed. The "claims made" basis is more economical as both insured and insurer know at the end of the policy period how many claims they are concerned with and can estimate their costs.

If the police agency is part of a municipal entity, the question arises as to whether the police agency should be insured under a separate contract. As a general rule, the more policies a municipality has, the greater the cost. Based on this observation, we recommend that whenever possible a package liability policy be purchased by the municipality and police protection added, if necessary, by endorsement. A copy of the policy and all endorse-

ments should be available to the police department.

Coverage should be purchased in two layers, a primary layer of say \$100,000 per person and \$300,000 per occurrence and a secondary or excess layer of \$1 million or more. Low primary coverage plus excess insurance is the most economical way to procure coverage. Each layer may be with a different carrier, but the entire liability portion of the primary layer should be with a single carrier in order to avoid gaps and overlaps in coverage and disputes between carriers. This comment pertains especially to those political subdivisions that have one policy for their police function and another for everything else.

The amount of coverage that a police agency should have is difficult to determine, as it depends partially on the activities engaged in, the size of the force and its geographical location. On the other hand, the potential exposure inherent in a single incident is as great in the largest as in the smallest police agency. And, while the larger departments serving metropolitan areas are involved in more frequent and more complicated situations, the increase in exposure is partially offset by generally better educated and better trained personnel.

We are aware of only one case involving law enforcement personnel where the Court awarded in excess of \$2 million. In 1973, a New York State Supreme Court awarded \$3 million to the plaintiff in a suit against a Transit Authority Patrolman. The plaintiff had sued for \$5 million. Other high settlement awards include the

following:

1974	-	\$ 801,000	-	Columbus, Ohio
1972 and 1973	--	\$1,025,000	-	Detroit, Michigan
	-	900,000	-	Whittier, California
	-	800,000	-	Denver, Colorado
	-	750,000	-	Detroit, Michigan
	-	700,000	-	Los Angeles, California

On the other hand, the Survey of Police Misconduct Litigation 1967-1971 reports that "only 230, or 3.8% of all the suits reported were logged as 'lost' by police defendants. While some catastrophic losses were in six figures, the majority of plaintiff verdicts were nominal, and the average loss was approximately \$3,000. Two thirds of the suits filed alleged either false arrest or brutality, and less than 6% sought injunctive relief."

Given inflation and the rising cost and sophistication of medical care and rehabilitation treatment, it is impossible to suggest ... an insurance level that will guarantee full protection. Nevertheless, we recommend that, as a minimum, every police agency in the State of Maryland have liability protection in the amount of \$500,000 per person and \$1 million per occurrence. Even higher limits are preferable; those agencies that can afford higher limits should purchase them.

Many liability insurance companies write police agency protection as part of their municipal package. Endorsements to these policies

are often necessary to obtain the desired coverage. Several companies write separate policies for police agencies. We will only mention two as we believe that they are the only carriers capable of writing this coverage on a national basis. The two are:

American Home Assurance Company
102 Maiden Lane
New York, New York 10005
212 344-9200

The Appalachian Insurance Company
155 South Main Street
Providence, Rhode Island 02904
401 331-6543

Both companies write through brokers, and now insure some police agencies in the State of Maryland. The American Home experience rates each agency, while the Appalachian does not. The American Home limits coverage to the "legal jurisdiction" of the insured. The Appalachian specifically excludes punitive damages. Save these distinctions, the two coverages are similar.

The National Sheriffs' Association, Suite 320, 1250 Connecticut Avenue, N.W., Washington, D.C. 20036 (202 872-0422), offers insurance to law enforcement agencies throughout the country. This coverage is written by the Appalachian and is in the amount of \$100,000 per person and \$300,000 per occurrence. Excess insurance of \$1 million is available for an additional premium of 20%. The cost of this coverage is \$55.00, plus an administrative fee of \$7.50, or \$62.50 per high hazard employee. The premium for other employees is less. The unit of government may be included for an additional premium of 10%. The policy does not cover punitive damages or claims against the insured occurring out of acts or omissions of a high hazard or process officer who is not insured through the National Sheriffs' Association. Both of these exclu-

sions are undesirable.

The cost of insurance varies from company to company and depends in part on the breadth and amount of coverage sought. Cost also varies from state to state and within states, depending on the judicial climate and social and environmental factors. However, according to the Municipal Insurance Manual published by the Maryland Municipal League, personal injury insurance in Maryland usually costs about 15% of the standard liability premium.

We believe that the current cost of insurance protection is high; that the majority of police agencies in Maryland will of necessity continue to rely on the insurance industry for liability protection, and that each, individually, will continue to buy what the insurance industry wants to sell at a dictated price. With the imposition of minimum standards on police agencies throughout Maryland, the opportunity is available for an organization such as the Governor's Commission to negotiate adequate liability protection on behalf of all state police agencies. Such an endeavor would inevitably result in broader coverage and lower costs. Of course, as mentioned earlier, the most economical and long range approach is for the State to self-insure the entire exposure.

Conclusion

In conclusion, we recommend that each police agency employee be indemnified by the employer and the employer, to the extent

necessary, fund this obligation through insurance.

Standard C4 should be reworded approximately as follows:

C4 All police agencies should indemnify all employees against both defense expenses and civil judgments covering acts or omissions arising out of and in the course of the performance of their duties. Police agencies should fund this obligation by establishing a self-insurance reserve and/or by purchasing broad "personal injury" liability insurance, in a minimum amount of \$500,000 per person and \$1 million per occurrence.

The restatement of Standard C4 in two short sentences invariably excludes a great deal of relevant material, much of which we have tried to discuss in this Report. The reworded Standard must be supported by explanatory material regarding insurance provisions, including the specific insurance coverage needed.

MINIMUM STANDARD 'C5

Introduction

Standard C5 as promulgated by the Governor's Commission on Law Enforcement and the Administration of Justice reads as follows:

All police agencies should have life insurance and hospitalization for all sworn personnel, covering job-related activities.

The Standard is further defined by the following excerpts:

"4. Life Insurance - Every sworn officer should be provided with life insurance that would cover his or her family in case of death occurring during a job-related activity."

"5. Hospitalization - The Committee also felt that hospitalization coverage should also be provided for all sworn officers covering job-related activities."

There are two basic conceptual difficulties raised by the present Standard:

1. Life insurance and hospitalization benefits are specifically related to coverage for job-related activities;
2. Retirement benefits, which are an integral part of any employee benefit program, are covered by a

separate Standard, C3.³ Pension plans often provide supplementary or incidental benefits of the type contemplated by Standard C5.

We believe that these two conceptual difficulties should be removed by: (1) - omitting the reference in Standard C5 to "job-related activities" and (2) - adding a sentence to Standard C5 along the following lines: "In determining whether or not the above standards have been met, any death benefits or disability benefits provided by a pension plan or other retirement plan shall be taken into account".

It is helpful to think of an employee benefit program in terms of the specific risks or events against which it provides financial protection. These risks are:

1. Risk of death
2. Risk of disability
3. Risk of old age

The risk of disability should be considered in two parts, namely the risk of paying medical expenses and the risk of losing income while disabled.

In this context, Standard C5 is intended to provide protection in case the employee dies or becomes disabled whereas Standard C3 is intended to provide protection in case the employee survives to old age.

-
3. Standard C3: All police agencies should provide retirement benefits to all sworn personnel.

In order to attract employees most employers find it necessary to offer a comprehensive employee benefit program offering protection against all of the above mentioned risks. Generally speaking, death and disability benefits are never limited to provide protection only against events occurring during job-related activities. On the other hand, pension benefits are by their very nature related to job activity or, more specifically, to duration of service for the employer. However, death and disability benefits provided as ancillary benefits under a pension plan customarily are not restricted to job-related activities.

Death Benefits

Death benefits are usually provided by group life insurance contracts issued by life insurance companies. Normally, the same death benefits are paid irrespective of whether or not death occurs during a job-related activity.

Disability Benefits

1. Medical Expense Benefits - Medical expense reimbursement coverages are normally provided by group insurance contracts issued by life insurance companies or by group contracts issued by service companies (e.g. Blue Cross/Blue Shield coverages). Invariably medical expense reimbursements by insurance companies and/or Blue Cross and Blue Shield are integrated with Workmen's Compensation.

In other words, in determining the amount of medical expenses to be reimbursed or provided by the insurance company and/or Blue Cross/Blue Shield, any benefits paid by Workmen's Compensation insurance are deducted first. It is, we believe, impossible to purchase medical expense reimbursement coverage in today's market without a clause calling for deduction of benefits paid under Workmen's Compensation.

2. Loss of Income Benefits - Loss of income benefits are normally provided by life insurance companies and, again, the same situation prevails with respect to Workmen's Compensation. In most cases, disabilities occurring during job-related activities are either excluded entirely from coverage on the presumption that Workmen's Compensation applies or else benefits payable under Workmen's Compensation are deducted in arriving at the amounts of benefits to be paid by the insurance company.

Benefit Levels

Having redefined Standard C5 to cover protection against the risk of death or disability we turn now to the question of defining the minimum benefits levels for these two major risks. In setting standards applicable to all law enforcement bodies in the State of Maryland we must take account of the number of conflicting factors which will affect the needs of the law enforcement officers involved and also the ability of their particular governing body

to pay for benefits. In reviewing present benefits levels for a number of Maryland political subdivisions, the following factors become apparent:

1. Political subdivisions affected by the Standard can range from State-wide (e.g. Maryland State Police) to county-wide (e.g. Montgomery County Police) to individual municipalities.
2. There is wide variation among these political subdivisions in ability to pay for employee benefit programs.
3. Some law enforcement officer groups will be unionized; some will not.
4. There will be a wide variation in degree of sophistication concerning employee benefits among law enforcement officer groups and on the part of municipal and/or governmental officials involved.
5. In some jurisdictions the law enforcement officers themselves, as well as governmental officials involved, will be comparing employee benefits for police with benefits provided for other governmental employee groups, such as municipal employees, paid firemen, transit workers, etc. On the other hand, this situation may not prevail in rural areas.

As a result, standards which seem adequate for one jurisdiction may seem hopelessly inferior to another jurisdiction. On the other hand,

standards which seem reasonable for the employees in a relatively affluent jurisdiction, such as Montgomery County, may appear unattainable to a small rural community. In order to solve this dilemma, we recommend that three priority levels be established for standards starting with a minimum level applicable to all jurisdictions, an intermediate level which is to be achieved within a five year period of time and an optimum level for those jurisdictions having sufficient funds for this purpose.

This three level approach will serve two purposes. It will encourage the less affluent jurisdictions to upgrade benefit levels to a certain intermediate standard within a five year period. At the same time, it will serve as a guide to the more affluent jurisdictions as to the proper priorities they should follow in providing additional benefits of various types.

Following this scheme, our recommendations for specific benefits are:

1. Death Benefits

Minimum Level - Amount of lump-sum death benefits should equal one year's salary. Benefit payable for all causes of death, both accident and sickness, job-related or non-job-related.

Intermediate Level - Amount of lump-sum death benefit equal to 1-1/2 times annual salary payable in the event of death from any cause. An additional amount of death benefit equal to the above basic amount, payable specifically in the event of death from accidental

causes. This benefit is normally provided in conjunction with a group life insurance contract and is normally referred to as an accidental death and dismemberment benefit (AD&D).

Optimum Level - Amount of lump-sum death benefit payable in the event of death from any cause at least equal to two times annual salary. An additional amount of AD&D benefit equal to above basic amount. In the event of an employee's death from any cause, additional benefits payable in the form of survivor income benefits to specified dependent survivors. Additional death benefits payable in the event of the death of dependent spouse and/or dependent children. Amounts of coverage: at least \$2,000 in the event of the wife's death and at least \$1,000 in the event of any dependent child's death.

Comments

The main purpose of group life insurance is to replace an employee's lost income for a period of time following his death so that his family will have a certain period of time in which to adjust to their new circumstances. Therefore, it is essential that priority be given to coverage on the employee himself, since he will usually be the family breadwinner. There is some disagreement among insurance experts as to whether or not additional accidental death coverage is desirable or necessary. The usual argument in favor of AD&D coverage is that when death is sudden and accidental, the

the family has very little time to adjust to their new circumstances. On the other hand, if the employee dies as a result of illness, particularly prolonged illness, the family has a longer period of time in which to adjust. We include AD&D coverage in the intermediate level simply because accidental death is certainly a specific ever-present hazard for law enforcement officers and it is a relatively inexpensive type of coverage, generally costing less than 10% as much as basic group life insurance coverage.

Survivor income benefits may be purchased from life insurance companies. Benefits are only paid if there are qualified survivors and, therefore, they represent a more efficient way of increasing benefits payable on death than does the purchase of additional amounts of regular group life insurance. Benefits are expressed in terms of monthly income. Dependent death benefit coverages are also available from life insurance companies.

In addition, other work-related benefits are also available to law enforcement officers. Article 41, Section 59 A-1 of the Annotated Code of Maryland, Cash Benefits to Survivors of Law Enforcement Officer Killed in Line of Duty, provides \$15,000 less any State and/or local lump-sum death benefits payable to a surviving spouse or children of any Maryland law enforcement officer killed in the performance of his duties. This Article provides a minimum coverage in the event of the death of the law enforcement officer whether municipal, county or State of \$15,000. To be eligible for the

benefit the officer must have been killed in the performance of his duties and must have a surviving spouse and/or children. The payment is in addition to Workmen's Compensation benefits but is not in excess over municipal and county benefits. By definition this lump-sum death benefit is job-related. We note that the \$15,000 benefit is reduced by the amount of similar lump-sum benefits paid by the State and/or political subdivisions, but it is not reduced by amounts paid under Workmen's Compensation.

Under Title 5 U.S. Code No. 8101, etc., and as extended by Title 5 U. S. Code No. 8191, benefits are provided for any non-Federal law enforcement officer who is injured, sustains disease or is killed under one of the following conditions:

1. While engaged in the apprehension or attempted apprehension of any person - a) who has committed a crime against the United States, or b) who at that time was sought by a law enforcement authority of the U. S. for the commission of a crime against the U. S. or c) who at that time was sought as a material witness in a criminal proceeding instituted by the U.S.
2. While engaged in protecting or guarding a person held for the commission of a crime against the U. S. or as a material witness in connection with such crime.
3. While engaged in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States.

The intent of the law is to provide compensation benefits to State and local officers equivalent to those received by Federal officers. Consequently, Federal compensation must be

reduced by any state or local benefits paid to the injured, ill or killed law enforcement officer. Death benefits are payable only in the event of a surviving spouse, child or other dependent and may not exceed 75% of the deceased officer's salary. Benefits are payable monthly until a spouse's death or remarriage and a child reaches the age of 18, except in the case where said child is a student or incapable of self-support. Additional benefits are available for medical care and in cases of temporary, total or permanent disability. It should be noted that to be eligible for benefits under this Act, the injury, disease or death must be related to the enforcement of a Federal statute and that benefits are not in excess of local compensation. By definition this benefit is also job-related and is an example of survivor income benefits previously mentioned.

2. Medical Expense Benefits

Minimum Level - Basic hospital - surgical - medical expense coverages equal to those provided by service organizations (e.g. Blue Cross/Blue Shield). These basic coverages should be supplemented by major medical protection up to a limit for any one individual of \$20,000.

Intermediate Level - Same as coverage provided under minimum level except that major medical coverage should be increased to a \$100,000 maximum.

Optimum Level - Same coverage as intermediate level

except that dental coverage and vision coverage may be added and major medical increased to \$250,000.

Comments

The basic hospital/surgical expense coverages together with additional major medical coverage can be purchased in a package either from the large number of life insurance companies operating in the State of Maryland or from one of the two Blue Cross/Blue Shield organizations operating in Maryland. Groups located in Montgomery and Prince George's Counties are normally covered by the District of Columbia Blue Cross/Blue Shield Group whereas other groups in the State of Maryland are normally covered by Blue Cross/Blue Shield of Maryland, Inc., located in Towson.

The cost of increasing major medical coverage from the \$20,000 level to the \$100,000 level or more is very small in relation to the possible total benefits that might accrue to any catastrophically disabled individual. In view of the recent escalation in costs of all types of medical service, we believe that every employee should have some form of major medical coverage to protect him and his family against the severe financial impact of catastrophic illness.

It seems likely that a national health insurance bill will be passed by Congress by the end of 1975, if not sooner. We suggest that if, as and when this takes place the standards for medical expense coverages should be re-examined in the light of the new legislation. In 1973 congress passed the

Health Maintenance Organization (HMO) Act. The purpose of the Act is to stimulate the development of HMO organizations throughout the nation. Eventually HMO organizations will represent a major alternative to the present fee-for-service approach to the delivery of medical care. Although the HMO Act has not as yet been implemented on a very large scale, it is widely believed that the passage of a national health insurance bill will give a tremendous boost to the development of HMO organizations. This is another reason why the standards for medical expense coverage should be re-examined after passage of a health insurance bill.

Dental and vision insurance covers many reimbursable items which are considered by the insurance industry and/or Blue Cross to be discretionary in nature. Even if dental and/or vision treatment cannot be postponed indefinitely, it can usually be put off for up to a year. As a result, dental and vision plans generally contain deductibles, a large measure of sharing of the cost with the insureds, and other restrictions. Consequently employees are generally disappointed at the level of actual expense reimbursement. Therefore, considering the present state of the art in relation to dental and vision coverages, we do not feel that either of these two types of coverages should be considered mandatory by the Commission.

3. Loss of Income Benefits

Minimum Level - Short-term disability coverage with

benefits payable for 26 weeks after disability, exclusive of any waiting period required for qualification as a disability. Minimum benefit 50% of salary to maximum of \$100 weekly. Combination of sick leave and/or salary continuance program to cover waiting period.

Intermediate Level - Same as minimum level except that minimum benefit equal to 60% of salary to a maximum of \$120 weekly.

Optimum Level - Long-term disability coverage. Waiting period of 180 days to be covered by a salary continuance program. Amount of benefit equal to 60% of salary to a maximum of \$1,500 monthly, reduced by primary Social Security benefits, Workmen's Compensation benefits and disability benefits paid by a retirement plan. Benefit period at least two years, but in no event beyond the time when employee qualifies for benefits under a retirement program.

Comments

In private industry long-term disability is quite commonly used for salaried employees whereas short-term disability is most often used for hourly employees. Both short-term and long-term disability benefits may be purchased from a number of group insurance companies.

For qualified individuals, disability benefits under Social Security commence at the end of five months disability. Under

Article 101, Section 64A of the Maryland Annotated Code entitled Presumption Upon Total or Partial Disability or Death of a Fire Fighter or Police Officer; Benefits under Article in Addition to Retirement Benefits, Workmen's Compensation benefits are automatically afforded any paid State, municipal, county or airport authority police officer who has any condition or impairment of health caused by heart disease, hypertension resulting in total or partial disability or death. The Act specifically provides that these benefits are in addition to those benefits such officer may be entitled to under the retirement system in which said officer was a participant at the time of his claim. Benefits under this Act, however, are limited so that the total of all benefits payable does not exceed 100% of the employee's salary.

We note that these benefits are job-related and that the benefits are integrated with other disability income benefits payable from a retirement system, so that the total does not exceed 100% of salary.

Contrary to our position on death benefits, we believe that it makes sense to integrate all disability income

benefits, so that the total does not exceed any individual's salary. To do otherwise is to encourage malingering and make it more profitable for an individual to remain disabled than to return to work.

General Comments

The question of who should pay for the death and disability benefits described in Standard C5 is not covered in the present or proposed Standard. We believe that if the Standard were to include specific recommendations as to how the costs of benefits were to be shared between employers and employees, then the Standard would become too complicated, controversial and most likely unenforceable.

In the long run employees must be satisfied with their take-home pay and with their employee benefit program. In the short run, however, it seems desirable to allow political subdivisions some flexibility in deciding how much of the costs they will pay and how much the police officers themselves should contribute. The mere fact that there is flexibility may facilitate the process of upgrading employee benefit programs to the minimum level.

Conclusion

In conclusion, we recommend that Standard C5 be reworded approximately as follows:

C5 All police agencies should have life insurance, medical expense, and loss of income benefits for all sworn personnel in the following minimum amounts:

Life Insurance - Lump-sum death benefit equal to one year's salary

Medical Expense - Basic hospital - surgical - medical expense coverages equal to those provided by service organizations, such as Blue Cross/Blue Shield, supplemented by major medical protection of \$20,000 per individual

Loss of Income - Short-term disability coverage for 26 weeks in amount of lesser of 50% of salary or \$100 per week. Waiting period to be covered by sick leave and/or salary continuance program.

Benefits payable by a pension or retirement plan should be deducted from the above amounts.

END

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