

October 13, 2016

Office of General Counsel

TAKING THE PULSE OF YOUR CLINICAL AFFILIATION AGREEMENTS

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Session Overview

- Why GOOD contracts are necessary
- Using system template agreements
 - Where to find them and how to have them modified
 - Understanding standard requirements (Insurance, Background Studies, Data Privacy, HIPAA, and more...)
 - NETStudy 2.0
- Agreements negotiated with other Hosp. or Health Systems
- Religious Affiliated Facility Agreements
- Practical Tips and Things to Think About and Red Flags
- State Authorizations
- Distance Education
- Resources

Contract Basics

**A clinical site agreement is a contract:
a legally binding document that defines the rights and
obligations of the parties and sets “ground rules.”**



Templates For Site Agreements – Minnesota State Finance site

- Nursing Program – Memorandum of Agreement
 - Nursing Program Notices to Students
- Medical Laboratory Technician and Phlebotomy Program(s)
- Paramedic Programs
- Use updated/most current template found on Finance website: <http://www.finance.mnscu.edu/contracts-purchasing/contracts/forms/index.html>
- *Templates may be modified to list other Allied Health Programs*
- **NOTE:** Non-Allied Health Student Training Experience/Internship Agreements (Not a “short form” or legally sufficient for clinical affiliation agreements).

Necessity Of A Written Contract

- Clarity, completeness, and common understanding is essential.
- Supersedes previous oral discussions or “how we’ve always done it”.
- After contract signed, if you wish to change it, conversations or e-mails to change the contract are not sufficient. Changes to contracts (amendments) must be in writing and signed by the parties.

(continued...)



Necessity Of A Written Contract

(Continued...)

- Contract must be signed **before** (!) the parties begin performing duties under the contract.
 - Good practice and state law requires it.
 - Also reviewed by third parties as part of accreditation and compliance (OCR).
- Good Contracts are Preventative Care:
 - Easier to work out issues before signing contract than to leave things unaddressed or “silent” and risk breaching the contract and/or litigation later.

Examples Of Non-Contracts

- Letters of intent
- Verbal and “hand shake” agreements
- Unauthorized deals or unauthorized signers
- Jumping the gun or taking action before a written agreement
- Gifts

Approved Forms: Required by Board Policy

- Contracts must be prepared on forms approved by the system office to assure that they include all state required contract language. Any modification of forms approved by the system office or the use of a non-system office form requires the review by the system legal counsel and approval of the vice chancellor-chief financial officer. System legal counsel includes either the Minnesota State Colleges and Universities General Counsel or the Minnesota Attorney General's Office
 - Procedure 5.14.2 Consultant, Professional or Technical Services Part 3. Contract Preparation.
 - Note: Avoid changes to footer of document unless done during legal review.

Not A Minnesota State Form Or Template?

- College/University must review for essential elements, prohibited provisions, practicality and business decisions.
- Don't assume that a provision suggested by a party can't be changed or modified.
- If other party wants to use its contract form, consult with Office of General Counsel or Attorney General's Office for legal review and possible negotiation and recommended changes, or drafting addendum or amendment.
- Avoid "We'll sign yours, if you'll sign ours."

Termination

- Preferred: both parties to terminate with or without cause.
- Provide written notice of termination to authorized representative of other party.
- Negotiate over how much notice must be given.
- Contract should be no longer than 5 years from effective date.
- Pay attention to the “end date” so that you have plenty of time to renew or execute a contract prior to need to place students.
- **Note:** Contract should specifically include a sentence in termination provision to allow current students to complete the internship:
 - *“Termination by the Facility shall not become effective with respect to students then participating in the clinical experience program.”*

Indemnification and Liability

- Be alert for sections in other parties' contracts headed: *Hold Harmless; Indemnification; Limitations on Liability; or Liabilities.*
- College and Universities prohibited by law from agreeing to indemnify other party to contract (reference: Minnesota Constitution article XI, section 1 and Minnesota Statutes section 16A.138).

(continued...)

Indemnification and Liability (Continued...)

- It is permissible for other party to contract to agree to indemnify the College/University.
- Minnesota State Template states:

“Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The College/University’s liability shall be governed by the Minnesota Tort Claims Act, Minnesota Statutes § 3.736, and other applicable laws.”

Anti-Discrimination Provisions

- State and/or federal laws prohibit system schools from discriminating on basis of sex, race, national origin, sexual orientation, religion, age, disability and other protected classes.
 - Facilities must also agree under clinical contracts.
 - Do not consent to deleting provisions from the templates.
 - Seek legal assistance if facility objects.

Data Privacy Issues

- Both parties must comply with Minnesota Government Data Practices Act and FERPA, as applicable.
 - Templates include appropriate language.
 - Sharing student data with facility generally requires written consent (e.g., immunization info, SSN, etc.).
 - Facility should understand that student records are “private.”
- HIPAA
 - Facility is “covered entity” but college/university is not, at least re: clinical training.
 - College/University is NOT a “business associate” of facility when it has clinical affiliation relationship.
 - Do not sign “business associate” agreement, if offered;
 - Seek legal assistance if facility persists.

Business Associate Agreements

- Sometimes sent by facility to campus.
- Just say "NO" (thank you).
- College/University not "business associate" of facility when it has clinical affiliation relationship .
- For HIPPA purposes, facility, not campus, is "covered entity".
- <http://www.ogc.mnscu.edu/dataprivacy/hipaa.html>

Confidentiality Clauses Proposed By Facility

- May be overbroad:
 - Can't agree to keep *everything* confidential.
 - Alternative language is available if needed.
 - Must be reviewed and approved by Office of General Counsel or Attorney General's Office.

Caution

- In general, watch out for contract provisions that require the College or University to adopt policies of the facility or take on new compliance responsibilities unless authorized by OGC or AGO.
 - e.g.: proposed requirement that university adopt facility's anti-fraud policy
- The HIPAA language in the system template agreement provides that participants will follow facility's policies.

Immunizations/Health Records

- State law requires students/faculty providing direct care to demonstrate current immunizations.
- Generally College/University keeps records and provides verification to facility.
- Student consent needed to release records or information to facility.
- Be sure to inform students of facility/state law requirements as far in advance as possible.
- If facility wants additional, contact OGC and AGO for guidance and possible wording changes.

CDC Immunization Guidelines

- <http://www.immunize.org/catg.d/p2017.pdf>



Required Background Studies

- **State in agreement who will conduct background studies.**
 - “The College/University agrees and represents that it will require all students and faculty to have completed a background study conducted in accordance with Minnesota Statutes Chapter 245C, Human Services Background Studies, as a pre-condition to participation in the clinical experience.
College/University will not assign a student or faculty member to the Facility if his/her background study documents ineligibility to have direct contact with Facility's patients or residents under applicable law or regulations. If requested, College/University shall provide the Facility with documentation regarding the completion or results of the background study pursuant to the written consent of the subject.”

New NETStudy 2.0 Fingerprinting

- DHS now implemented fingerprint with goal to be converted end of 2016
- DHS selected 3M Cogent as selected vendor
- “Public” sites in MN are selected by DHS and 3M Cogent
- Some campuses want to do own fingerprinting as a “private” site.
 - Contract issues, payments and campus requirements need to be worked out.
 - Cannot be used for purposes other than intended and required by Mn. Chapter 245C.
- Contact M. A. Balber by email if considering doing fingerprinting in-house for this purpose and purchasing equipment.
- Questions about the background study changes and NETStudy 2.0 may be submitted to dhs.netstudy2@state.mn.us or by contacting DHS at 651-431-6625.

NETStudy 2.0

Background studies / Minn... x

mn.gov/dhs/general-public/background-studies/

Contact us A-Z topics eDocs document library Employment

Report Abuse Report Fraud

Search

How do I?

People we serve Partners and providers General public Media

Home > General public > Background studies

General public

- About DHS
- Publications, forms and resources
- Featured programs and initiatives
- Office of the Inspector General
- Licensing

Background studies

Background studies are required for people who provide care in certain health and human service programs and for people who work in child care settings. DHS also completes background studies on others, such as people who are guardians or are planning to adopt a child. State law defines who is required to have a DHS background study and the related processes.

What's new

News and updates about background studies and legislative changes.

General information

Learn more about background studies

Providers

Get information on the background study process, submitting study requests on NETstudy and training opportunities.

Study subjects

Find out when a background study is required and what the background study process includes.

FAQs

Answers to frequently asked questions.

Contact us

Contact information for background studies.

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Changes to background study process and implementation of NETStudy 2.0

Learn what is changing with the background study process that includes scanned electronic fingerprints and photographs.

[+ What is changing](#)

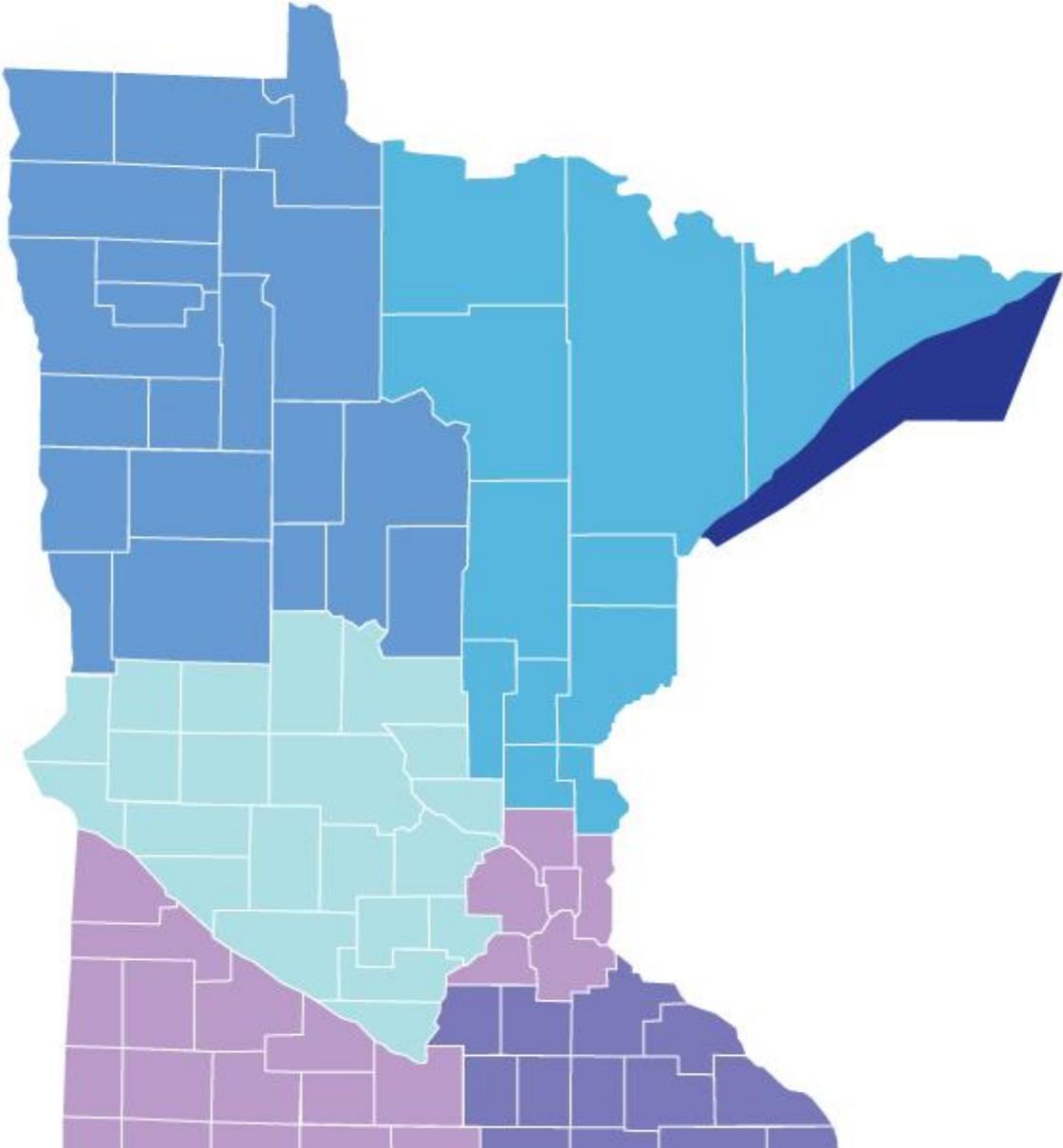
[+ How the changes improve the process](#)

Benefits

Some of the benefits resulting from the new background study process include improved accuracy of background study results and faster results for entities and background study subjects.

Minnesota Fingerprint Locations and Hours

Please select a region below to find a location nearest you.



NETStudy 2.0 PUBLIC SITES Region 3 (Example)



STATE REGION 3			
Company	Address	City	COUNTY
The Consultant Group	44 28th Ave N	St Cloud	Stearns
Adult Client Training Service, Inc	802 East Fairview Avenue	Olivia	Renville
Appleton Area Health Services	30 South Behl Street	Appleton	Swift
Cokato Charitable Trust	511 Cokato St West	Cokato	Wright
Divine House, Inc	320 4th St SW	Willmar	Kandiyohi
Knut Nelson	420 12th Ave East	Alexandria	Douglas
North Country Home Care II, Inc	12567 5th Ave No Suite 100	Zimmerman	Sherburne
West Wind Village	1001 Scotts Avenue	Morris	Stevens
Browns Valley Health Center	114 Jefferson Street South	Browns Valley	Traverse
Mount Olivet Rolling Acres Inc.	18986 Lake Dr East	Chanhasen	Carver
Aveyron Homes, Inc.	222 5th Ave NW	Hutchinson	McLeod
International Quality Home Care Corp	1750 Commerce Dr Ste 130	North Mankato	Nicollet

Attention

Please double check the fingerprinting hours as they may be different than normal open hours.
Appointments are not needed.



Expanded Background Study Requests By Facility

- Facility may request more than required by applicable law.
- Agreement may be revised by OGC or AGO to require *Facility* to be responsible for expanded background studies and costs.
 - advise students in advance
- Refuse to be repository of extra records.

Example: Student must provide to Facility results of a national background and criminal screening, covering a period of at least seven (7) years, within one (1) year prior to his/her educational experience at Sanford. The student shall be responsible for arranging for the national background screening, providing said screening results to Sanford and all costs associated with such screening. The background screening must include at the minimum: Social Security Trace; County Criminal Record History, and; State by State Sex Offender Search.

Drug and Alcohol Testing Requests

- Campus doesn't have authority to require this.
- Contact OGC or AGO to change wording to require facility to arrange directly with student and arrange who will pay costs.
- Student must have results sent to facility, NOT campus.
- Refuse to be repository for results.

Removal Of Students From Clinical Internships

Preferred contract language:

The Facility is responsible for the safety and quality of care provided to its patients by the students who are participating in the clinical experience program at the Facility. In order to effectively fulfill that duty, it is agreed that Facility has ultimate control over all persons involved in the program and may immediately terminate the participation in the program of any of the students enrolled in the program where an emergency exists involving health and safety; and in all other (non-emergency) instances, Facility shall consult with the College/University before taking any action to terminate the participation of a student.

Clinical Internships Student Releases

Students should not sign the contract *between the Facility and School*.

Some facilities may request students to sign a confidentiality agreement, waivers or releases of liability in order to participate.

Because College/University and student are distinct for legal purposes, College/University should:

- Give student ample time for review of facility confidentiality or release or waiver.
- Inform students they are free to consult their own attorney.
- If student doesn't want to sign, may have to choose an alternative site for internship.
- Don't give "legal advice" (OGC and AGO will not advise students individually).

Insurance

- Key consideration: Contract language must be consistent with existing insurance coverage for Minnesota State campuses.
- Sometimes insurance requirements change, usually effective July 1.
- Minnesota Department of Administration, Risk Management and Minnesota State Director of Risk Management provide assistance with coverage requirements, renewals, proof of insurance requests, and changes of insurance coverage for clinic agreements.
- Alternative language/requirements available when other party is a governmental/political unit (municipality, county, etc..) Contact OGC or AGO.
- If clinical facility contracts have insurance provisions which are inconsistent with Minnesota State requirements, don't sign until provision modified.
- Don't agree to requests by Facility to have "lower" insurance requirements. Consult Risk Management, OGC and AGO.

(continued...)



Insurance (Continued...)

ADDITIONAL INSURANCE CONDITIONS

- Upon request, each party shall provide to the other party certificates of insurance or self-insurance evidencing the required coverage.

- Template includes:

If either party receives a cancellation notice from an insurance carrier affording coverage herein, such party agrees to notify the other party within five (5) business days with a copy of the cancellation notice, unless such party's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days' advance written notice to the other party.

Worker's Compensation Insurance

- Minnesota State is self-insured for worker's compensation.
- College/University cannot agree to provide worker's compensation for a student.
- Minnesota State coverage extends only to employees.



Clinical Affiliation Agreements Negotiated With Hospitals Or Health Care Systems

Minnesota State legal counsel has negotiated a number of memorandum of agreement (MOA) templates for specific health care organizations. Samples of these negotiated MOA templates can be found below. Please remember that the MOA's found on this website are to be used for reference and comparison purposes only.

- <http://www.ogc.mnscu.edu/clinicalagreements/index.html>

Clinical Affiliation Agreements

Minnesota State legal counsel has negotiated memorandum of agreement (MOA) templates for specific health care organizations. Samples of these negotiated MOA templates can be found below. Please remember that the MOA's found on this website are to be used for reference and comparison purposes only.

The standard Minnesota State clinical MOA template can be found at: <http://www.finance.mnscu.edu/contracts-purchasing/contracts/forms/index.html>

If you receive a MOA from a facility and they indicate there is a negotiated template, please review what has been sent to you with the corresponding MOA found on this website. By directly comparing the two documents, you can help to ensure that your college or university has received the most up to date MOA as approved for use by Minnesota State legal counsel. Many of the facilities prefer to send the proposed MOA to the campus and not have the campus send a standard Minnesota State clinical template. If an organization uses a cover letter, a "sample" cover letter is also included below for your review and comparison. If you have any questions, please contact the Office of General Counsel.

- [AEGIS Therapies, Inc. 3-Party \(06/16/2016\)](#)
- [Allina Health System \(Approved by Minnesota Attorney General's Office on 05/07/2013\)](#)
- [Avera Health \(3/24/2014\)](#)
- [Catholic Health Initiatives with cover letter \(04/2015\)](#)
- [CentraCare Health with Cover Letter and No Faculty On-Site Agreement \(06/27/2016\)](#)
- [Children's Health Care D/B/A Children's Hospital and Clinics of Minnesota \(05/2015\)](#)
- [DaVita Dakota Dialysis Center, LLC D/B/A Fargo ND Dialysis Center \(08/25/2014\)](#)
- [Department of Veterans Affairs \(U.S.\)](#)
- [Department of Veterans Affairs \(State of Minnesota 03/2015\)](#)
- [Essentia Health \(08/18/2016\)](#)
- [Evangelical Lutheran Good Samaritan Society \(09/2015\)](#)
- [Fairview Health Services with cover letter \(04/2014\)](#)
- [Gold Cross Ambulance Service, Inc. \(03/2014\)](#)
- [HealthPartners with cover Letter \(08/08/2016\)](#)
- [Hennepin County Medical Center \(08/2010\)](#)
- [Mayo Clinic \(Rochester\) and Mayo Clinic Health System Sites- Nursing Rotations \(Recurring\) \(1/22/2016\)](#)
- [Mayo Clinic \(Rochester\)- Non-Nursing Rotations \(Recurring\) \(1/22/2016\)](#)
- [Mayo Clinic Health System- Non-Nursing Rotations to Sites Other Than Rochester \(Recurring\) \(1/22/2016\)](#)

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Clinical Affiliation Agreements Negotiated With Hospitals Or Health Care Systems

- AEGIS Therapies, Inc. 3-party
- Allina Health System
- Avera Health
- Catholic Health Initiatives
- CentraCare Health- no faculty on-site agreement
- Children's Health Care d/b/a Children's Hospital & Clinics of Mn
- DaVita Dakota Dialysis Center LLC d/b/a Fargo ND Dialysis Center
- Dept. of Veterans Affairs (U.S.)
- Dept. of Veterans Affairs (State of MN)
- Essentia Health
- Evangelical Lutheran Good Samaritan Society
- Fairview Health Services
- Gold Cross Ambulance Service, Inc.
- HealthPartners
- Hennepin County Medical Center
- Mayo Clinic (Rochester) and Mayo Clinic Health Systems Sites- Nursing Rotations
- Mayo Clinic (Rochester)- Non-Nursing Rotations (Recurring)
- Mayo Clinic Health System- Non-Nursing Rotations for Sites Other Than Rochester
- Mayo Clinic (Rochester)- Non-Nursing Rotations for Individual Student
- Mayo Clinic Health System Site- Non-Nursing Rotation for Individual Student
- North Memorial Health Care
- Sanford Health
- State of Minnesota Department of Human Services



Religious Affiliated Facility Agreements

- College/University cannot agree to adopt or comply with religious-based policies, procedures, regulations or directives of facility.
- Contact OGC or AGO for assistance in modifying provisions of agreement.

Example: “College/University *acknowledges* that Facility conducts its operations and activities in accordance with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated from time to time by the American Conference of Catholic Bishops. College/University *acknowledges* that Facility requires that the Students perform the services contemplated by the Agreement in a manner consistent with the Ethical and Religious Directives. Notwithstanding the foregoing, this Agreement does not, and shall not be construed to require the College/University to comply with the Catholic Health Initiatives (CHI) Standards of Conduct or the Ethical and Religious Directives or any policies, procedures, regulations, or directives of the Facility that are based on the CHI Standards of Conduct or Ethical and Religious Directives.”

Practical Tips And Things To Think About

- Read entire agreement prior to asking for legal review.
- Send word version, not PDF. Ask for it if necessary.
- Ask internally on campus which academic programs need to be included in each agreement. One agreement per C/U and facility is appropriate to cover academic programs.
- In your email transmittal to OGC or AGO include the following:
- Agreement “works” for College/University? If not, let us know why or what works better.
- Agreement meets programmatic, academic and accreditation requirements?
- Business decisions for College/University? What is your decision?
- Does the contract provide clarity of obligations, responsibilities, and duties internally and externally?

(continued...)



Practical Tips And Things To Think About (Continued...)

- Minnesota State contract template?
 - If not, plan accordingly for review time and negotiation.
- Updated insurance coverage/limits in place (may change on July 1 each year)?
- Alternative or multiple sites for students?
- On-site student supervision expectation-responsibility?
College/University or Facility?
- Have you answered all the questions asked in legal review?
- Do you know your campus contract process for approvals, decisions, and signatures?

Red Flags For Clinical Contracts

- Site does not allow changes to its standard template contract.
- Student is also an employee and site does not feel a contract is necessary.
- Health requirements required by the site, but not currently required by university.
- Site is mailing a signed contract, but changes still being negotiated.
- Indication from site, student, etc. that a student is going to start clinicals without a contract.
- Site says template it provided has been signed by another Minnesota State college or university. Ask which one and get a copy.

Lead Time

- Plan accordingly— expect the best and plan for the worst.
- Have signed contracts in place at least a semester before placing students at a site.
- Use System templates and forms.
 - Resist changing footer.
- Allow time for negotiation.
- Read Agreement.
- Not every contract can be an emergency.

State Authorization-Distance Education

- The Minnesota State Colleges and Universities have joined the State Authorization Network sponsored by WCET for training and materials related to the July 1, 2011 implementation of the federal DOE rule for distance education.
- <http://asa.mnscu.edu/academictechnology/stateauthorization/>
 - **Latest News**
 - **What should my institution do?**
 - **MnSCU Communications**
 - **Federal Regulations and Communications**
 - **Response Letters from States**
 - **State Authorization Reciprocity Agreement (SARA)**
 - **And MORE.....**

Resources For Questions

- **Mary Al Balber**

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Insurance/ Risk Management Issues Or Questions

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Please take a few minutes to complete our poll!