



July 29, 2016

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Introduction of a Foster Care Liability Policy Program

During the 2015 session of the General Assembly, the Legislature expanded the jurisdiction of the Rate Bureau to include a liability insurance policy for the acts and omissions of a foster parent while acting in the capacity of a foster parent. The policy program was with the Department of Insurance on May 1, 2016.

The Commissioner of Insurance has recently approved the new optional Foster Care Liability Policy Program which provides liability coverage to foster parents while acting in the capacity of a foster parent as well as other relatives while residing in the insured location. This policy program is an optional program that member companies of the Rate Bureau may adopt and implement if they elect to do so. It is not required that member companies implement this program.

For your convenience, please find attached a copy of the FC 00 01 07 16, Foster Care Liability Policy, as well as the rating manual for the policy.

The newly introduced Foster Care Liability Policy Program may be implemented on an optional basis in accordance with the following Rule of Application:

This Program becomes effective for policies written on or after July 26, 2016.

Please keep in mind in preparing to implement this Program that it contains copyrighted material of ISO used with their permission under a limited copyright license granted by ISO to the North Carolina Rate Bureau. Under the terms of the limited copyright license, the Rate Bureau is copyrighting the manual and forms included in this Program. Member companies are advised that when they reprint, copy or otherwise use the manual or any forms or endorsements included in the Program, the following notice must appear:

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The Program as filed in North Carolina may be used only by members of the North Carolina Rate Bureau, may be used only in North Carolina, and may not be used outside this State.

Please see to it that this circular is brought to the attention of all interested personnel in your company.

Very truly yours,

F. Timothy Lucas

Personal Lines Manager

FTL:dms

Attachments

FC-16-1

# FOSTER CARE LIABILITY

## SCHEDULE

<b>Bodily Injury/Property Damage</b>	<b>\$</b>
<b>Limit Of Liability Per Occurrence</b>	
<b>Personal Injury Limit of Liability Per Offense</b>	<b>\$</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

### AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

### DEFINITIONS

**A.** In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We", "us" and "our" refer to the Company providing this insurance.

**B.** In addition, certain words and phrases are defined as follows:

**1.** "Aircraft Liability", "Hovercraft Liability", "Motor Vehicle Liability" and "Watercraft Liability", subject to the provisions in **b.** below, mean the following:

**a.** Liability for "bodily injury" or "property damage" arising out of the:

- (1)** Ownership of such vehicle or craft by an "insured";
- (2)** Maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;
- (3)** Entrustment of such vehicle or craft by an "insured" to any person;
- (4)** Failure to supervise or negligent supervision of any person involving such vehicle or craft by an "insured"; or
- (5)** Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.

**b.** For the purpose of this definition:

- (1)** Aircraft means any contrivance used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo;

**(2)** Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;

**(3)** Watercraft means a craft principally designed to be propelled on or in water by wind, engine power or electric motor; and

**(4)** Motor vehicle means a "motor vehicle" as defined in **7.** below.

**2.** "Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.

**3.** "Business" includes any full- or part-time activity of any kind engaged in for economic gain, including the use of any part of any premises for such purposes.

**4.** "Foster care" means care provided by

**a.** You when acting in the capacity of a foster parent licensed under North Carolina law to provide foster care in a family foster home or therapeutic foster home; or

**b.** An "insured" acting in furtherance of your duties as a foster parent with your authorization.

However, "foster care" does not include an act or omission that results from any action or inaction of gross negligence, willful or wanton conduct, or intentional wrongdoing.

**5.** "Insured" means the following when providing foster care:

**a.** You and residents of your household who are:

**(1)** Your relatives; or

**(2)** Other persons under the age of 21 and in the care of any person named above;

b. A student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:

(1) 24 and your relative; or

(2) 21 and in your care or the care of a person described in a.(1) above;

Throughout this policy, when the word "an" immediately precedes the word "insured", the words "an insured" together mean one or more "insureds".

6. "Insured location" means:

a. The "residence premises";

b. The part of other premises, other structures and grounds used by you as a residence; and

(1) Which is shown in the Declarations; or

(2) Which is acquired by you during the policy period for your use as a residence;

c. Any premises used by you in connection with a premises described in a. and b. above;

d. Any part of a premises:

(1) Not owned by an "insured"; and

(2) Where an "insured" is temporarily residing;

e. Vacant land, other than farm land, owned by or rented to an "insured";

f. Land owned by or rented to an "insured" on which a one, two, three or four family dwelling is being built as a residence for an "insured";

g. Individual or family cemetery plots or burial vaults of an "insured"; or

h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

7. "Motor vehicle" means:

a. A self-propelled land or amphibious vehicle; or

b. Any trailer or semitrailer which is being carried on, towed by or hitched for towing by a vehicle described in a. above.

8. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in

a. "Bodily injury"; or

b. "Property damage".

9. "Personal injury" means injury arising out of one or more of the following offenses, but only if the offense was committed during the policy period:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or

e. Oral or written publication of material that violates a person's right of privacy.

10. "Property damage" means physical injury to, destruction of, or loss of use of tangible property.

11. "Residence premises" means:

a. The one family dwelling where you reside;

b. The two, three or four family dwelling where you reside in at least one of the family units; or

c. That part of any other building where you reside;

and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

## FOSTER CARE LIABILITY COVERAGES

### A. Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" arising out of the provision of "foster care", we will:

1. Pay up to our limit of liability for the damages for which an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and

2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" has been exhausted by payment of a judgment or settlement.

## B. Personal Injury Coverage

1. If a claim is made or suit is brought against an "insured" for damages resulting from an offense included in the definition of "personal injury" and arising out of the provision of "foster care" we will:
  - a. Pay up to our limit of liability for the damages for which an "insured" is legally liable.  
Damages include prejudgment interest awarded against an "insured"; and
  - b. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the offense has been exhausted by payment of a judgment or settlement.

## EXCLUSIONS

### A. "Motor Vehicle Liability"

1. Foster Care Liability Coverage does not apply to any "motor vehicle liability" if, at the time and place of an "occurrence", the involved "motor vehicle":
  - a. Is registered for use on public roads or property;
  - b. Is not registered for use on public roads or property, but such registration is required by a law, or regulation issued by a government agency, for it to be used at the place of the "occurrence"; or
  - c. Is being:
    - (1) Operated in, or practicing for, any prearranged or organized race, speed contest or other competition;
    - (2) Rented to others;
    - (3) Used to carry persons or cargo for a charge; or
    - (4) Used for any "business" purpose except for a motorized golf cart while on a golfing facility.
2. If Exclusion A.1. does not apply, there is still no coverage for "motor vehicle liability" unless the "motor vehicle" is:
  - a. In dead storage on an "insured location";
  - b. Used solely to service an "insured's" residence;
  - c. Designed to assist the handicapped and, at the time of an "occurrence", it is:
    - (1) Being used to assist a handicapped person; or
    - (2) Parked on an "insured location";

- d. Designed for recreational use off public roads and:
  - (1) Not owned by an "insured"; or
  - (2) Owned by an "insured" provided the "occurrence" takes place on an "insured location" as defined in Definitions B. 6.a., b., d., e. or h.; or
- e. A motorized golf cart that is owned by an "insured", designed to carry up to 4 persons, not built or modified after manufacture to exceed a speed of 25 miles per hour on level ground and, at the time of an "occurrence", is within the legal boundaries of:
  - (1) A golfing facility and is parked or stored there, or being used by an "insured" to:
    - (a) Play the game of golf or for other recreational or leisure activity allowed by the facility;
    - (b) Travel to or from an area where "motor vehicles" or golf carts are parked or stored; or
    - (c) Cross public roads at designated points to access other parts of the golfing facility; or
  - (2) A private residential community, including its public roads upon which a motorized golf cart can legally travel, which is subject to the authority of a property owners association and contains an "insured's" residence.

### B. "Watercraft Liability"

1. Foster Care Liability Coverage does not apply to any "watercraft liability" if, at the time of an "occurrence", the involved watercraft is being:
  - a. Operated in, or practicing for, any prearranged or organized race, speed contest or other competition. This exclusion does not apply to a sailing vessel or a predicted log cruise;
  - b. Rented to others;
  - c. Used to carry persons or cargo for a charge; or
  - d. Used for any "business" purpose.
2. If Exclusion B.1. does not apply, there is still no coverage for "watercraft liability" unless, at the time of the "occurrence", the watercraft:
  - a. Is stored;
  - b. Is a sailing vessel, with or without auxiliary power, that is:
    - (1) Less than 26 feet in overall length; or
    - (2) 26 feet or more in overall length and not owned by or rented to an "insured"; or

c. Is not a sailing vessel and is powered by:

- (1) An inboard or inboard-outdrive engine or motor, including those that power a water jet pump, of:
  - (a) 50 horsepower or less and not owned by an "insured"; or
  - (b) More than 50 horsepower and not owned by or rented to an "insured"; or
- (2) One or more outboard engines or motors with:
  - (a) 25 total horsepower or less;
  - (b) More than 25 horsepower if the outboard engine or motor is not owned by an "insured";
  - (c) More than 25 horsepower if the outboard engine or motor is owned by an "insured" who acquired it during the policy period; or
  - (d) More than 25 horsepower if the outboard engine or motor is owned by an "insured" who acquired it before the policy period, but only if:
    - (i) You declare them at policy inception; or
    - (ii) Your intent to insure them is reported to us in writing within 45 days after you acquire them.

The coverages in (c) and (d) above apply for the policy period.

Horsepower means the maximum power rating assigned to the engine or motor by the manufacturer.

#### C. "Aircraft Liability"

This policy does not cover "aircraft liability".

#### D. "Hovercraft Liability"

This policy does not cover "hovercraft liability".

#### E. Foster Care Liability Coverage does not apply to the following:

##### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":

- a. Is of a different kind, quality or degree than initially expected or intended; or
- b. Is sustained by a different person, entity, real or personal property, than initially expected or intended.

However, this Exclusion 1. does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force by an "insured" to protect persons or property;

##### 2. "Personal Injury":

- a. Caused by or at the direction of an "insured" with the knowledge that the act would violate the rights of another and would inflict "personal injury";
- b. Arising out of oral or written publication of material, if done by or at the direction of an "insured" with knowledge of its falsity;
- c. Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- d. Arising out of a criminal act committed by or at the direction of an "insured";
- e. Arising out of civic or public activities performed for pay by an "insured";

3. "Bodily injury", "property damage" or "personal injury" sustained by a resident of the household other than a child to whom "foster care" is being provided.

##### 4. "Business"

- a. Arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

This Exclusion 4. applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

b. This Exclusion 4. does not apply to:

- (1) The rental or holding for rental of an "insured location":
  - (a) On an occasional basis if used only as a residence;
  - (b) In part, for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
  - (c) In part, as an office, school, studio or private garage; and
- (2) An insured minor involved in part-time, self-employed "business" pursuits normally undertaken by minors, unless the minor is employed by a "business". A minor means a person who has not attained his or her 19th birthday (or age 23 if a full-time student);

**5. Professional Services**

"Bodily injury" or "property damage" arising out of the rendering of or failure to render professional services;

**6. Communicable Disease**

"Bodily injury" or "property damage" which arises out of the transmission of a communicable disease by an "insured";

**7. Sexual Molestation, Corporal Punishment Or Physical Or Mental Abuse**

"Bodily injury" or "property damage" arising out of sexual molestation, corporal punishment or physical or mental abuse;

**8. Controlled Substance**

"Bodily injury" or "property damage" arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a Controlled Substance as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled Substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.

**ADDITIONAL COVERAGES**

We cover the following in addition to the limits of liability:

**A. Claim Expenses**

We pay:

- 1. Expenses we incur and costs taxed against an "insured" in any suit we defend;
- 2. Premiums on bonds required in a suit we defend, but not for bond amounts more than the limit of liability. We need not apply for or furnish any bond;
- 3. Reasonable expenses incurred by an "insured" at our request, including actual loss of earnings (but not loss of other income) up to \$250 per day, for assisting us in the investigation or defense of a claim or suit; and
- 4. Interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

**CONDITIONS**

**A. Limit Of Liability**

**1. "Bodily Injury" and "Property Damage"**

Our total liability for all damages resulting from any one "occurrence" will not be more than the limit of liability shown in the Schedule. This limit is the same regardless of the number of "insureds," claims made or persons injured. All "bodily injury" and "property damage" resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions from "foster care" shall be considered to be the result of one "occurrence".

**2. "Personal Injury"**

Our total liability for all damages resulting from any one offense will not be more than the limit of liability shown in the Schedule. This limit is the same regardless of the number of "insureds, claims made or suits brought.

**B. Severability Of Insurance**

This insurance applies separately to each "insured." This condition will not increase our limit of liability for any one "occurrence" or offense.

**C. Duties After "Occurrence" or Offense**

In case of an "occurrence" or loss from a covered offense, you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:

- 1. Give written notice to us or our agent as soon as is practical, which sets forth:
  - a. The identity of the policy and the "named insured" shown in the Declarations;
  - b. Reasonably available information on the time, place and circumstances of the "occurrence" or offense; and
  - c. Names and addresses of any claimants and witnesses;
- 2. Cooperate with us in the investigation, settlement or defense of any claim or suit;
- 3. Promptly forward to us every notice, demand, summons or other process relating to the "occurrence" or offense;
- 4. At our request, help us:
  - a. To make settlement;
  - b. To enforce any right of contribution or indemnity against any person or organization who may be liable to an "insured";
  - c. With the conduct of suits and attend hearings and trials; and
  - d. To secure and give evidence and obtain the attendance of witnesses;

5. No "insured" shall, except at such "insured's" own cost, voluntarily make payment, assume obligation or incur expense.

#### **D. Suit Against Us**

1. No action can be brought against us unless there has been full compliance with all of the terms under this policy.
2. No one will have the right to join us as a party to any action against an "insured".
3. Also, no action can be brought against us until the obligation of such "insured" has been determined by final judgment or agreement signed by us.

#### **E. Bankruptcy Of An "Insured"**

Bankruptcy or insolvency of an "insured" will not relieve us of our obligations under this policy.

#### **F. Other Insurance**

This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

#### **G. Policy Period ("Bodily Injury" and "Property Damage" Only)**

This policy applies only to "bodily injury" or "property damage" which occurs during the policy period.

#### **H. Subrogation**

An "insured" may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an "insured" must sign and deliver all related papers and cooperate with us.

#### **I. Concealment Or Fraud**

We do not provide coverage to an "insured" who, whether before or after a loss, has:

1. Intentionally concealed or misrepresented any material fact or circumstance;
  2. Engaged in fraudulent conduct; or
  3. Made false statements;
- relating to this insurance.

#### **J. Liberalization Clause**

If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

1. A subsequent edition of this policy; or
2. An amendatory endorsement.

#### **K. Waiver Or Change Of Policy Provisions**

A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

#### **L. Assignment**

Assignment of this policy will not be valid unless we give our written consent.

#### **M. Death**

If any person named in the Declarations or the spouse, if a resident of the same household, dies we insure the legal representative of the deceased but only to the extent of coverage provided to the deceased at the time of death.

#### **N. Cancellation**

1. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
2. We may cancel this policy by letting you know in writing at least 30 days before the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. Proof of mailing will be sufficient proof of notice.
3. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.
4. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

#### **O. Nonrenewal**

We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.

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**RULE 100.  
INTRODUCTION**

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**About The Foster Care Manual**

The Foster Care Manual contains the rules and rates for the Foster Care line of insurance:

For classes of risks or coverages not found in this manual, refer to the Rate Bureau. The rates, rules, forms and endorsements of the Rate Bureau shall apply in all cases not provided for in this manual.

All rules in this manual are designated to be utilized with rates. All references in the rates, rules, forms, endorsements and examples to rates and/or premiums shall be interpreted to mean those established by the Rate Bureau except those rules which are identified specifically.

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**RULE 101.  
ELIGIBILITY**

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A policy may be issued to provide foster care liability insurance for all insureds in a household.

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**RULE 102.  
COVERAGE APPLICATION**

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- A. Use Forster Care Liability Policy **FC 00 01**.
- B. The individual company Foster Care Liability Declaration page. This should be filed directly with the North Carolina Department of Insurance.

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**RULE 103.  
LIMITS OF LIABILITY**

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**A. Coverage Description**

Foster Care Liability For Property Damage, Bodily Injury, and Personal Injury shall be provided in all cases.

**B. Minimum Limits Of Liability**

The minimum limits of liability required under the Foster Care Liability policy are as follows:

\$100,000 each occurrence (Bodily Injury or Property Damage) or \$100,000 each offense (Personal Injury)

**C. Increase Limits**

These limits may be increased for an additional premium.

**D. Same Limit For All Exposures**

The same shall apply to all exposures.

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**RULE 104.  
EXPOSURES**

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- A. Liability coverage for bodily injury/property damage arising out of an act or omission of the insured acting in their capacity as a foster parent.
- B. Liability Coverage for personal injury arising out of specified offenses, such as false arrest, malicious prosecution, wrongful eviction, slander or libel.

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**RULE 105.  
POLICY PERIOD**

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A Foster care Liability may be written for a period of:

- A. One year and may be extended for successive policy periods by extension certificate based upon the forms, premiums and endorsements then in effect for the company.
- B. Three years prepaid at three times the annual premium.

For maintaining common anniversary dates, a Foster Care policy may be written for a period less than one year or less than three years on a pro rata basis.

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**RULE 106.  
CHANGES OR CANCELLATIONS**

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If insurance is increased, cancelled or reduced, the additional or return premium shall be computed on a pro rata basis unless otherwise stated in another rule.

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**RULE 107.  
MANUAL PREMIUM REVISION**

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A manual premium revision shall be made in accordance with the following procedures:

- A. The effective date of such revision shall be as announced.
- B. The revision shall apply to any policy or endorsement in the manner outlined in the announcement of the revision.
- C. Unless otherwise provided at the time of the announcement of the premium revision, the revision shall not affect in-force policy forms, endorsements or premiums, until the policy is renewed.

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**RULE 108.  
WAIVER OF PREMIUM**

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When a policy is endorsed after the inception date, refer to the company for the amount of additional or return premium that may be waived.

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**RULE 109.**  
**WHOLE DOLLAR PREMIUM RULE**

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Each premium shown on the policy and endorsements shall be rounded to the nearest whole dollar. A premium of fifty cents (\$.50) or more shall be rounded to the next higher whole dollar.

In the event of cancellation by the company, the return premium may be carried to the next higher whole dollar.

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**RULE 110.**  
**BASE PREMIUM COMPUTATION**

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Use the following rate to develop premium for the basic limit for Foster Care Liability:

\$214

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**RULE 111.**  
**INCREASED LIMITS**

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Apply the appropriate factor shown in the following table to the basic limits premium for each exposure.

<b>Limit</b>	<b>Factor</b>
\$200,000	1.21
300,000	1.32
400,000	1.40
500,000	1.45
Over 500,000	Refer to Rate Bureau