

**Board Briefing Memo:  
Directors & Officers (D&O) Liability Insurance Policy  
April 9, 2025**

**The Board is being asked to review the Partners for Health Foundation’s \$5 million D&O Policy and affirm that it provides appropriate and sufficient coverage.**

Overview

The Partners for Health Board of Trustees is covered by a \$5 million Directors & Officers Liability Policy (the “Policy”) that is underwritten by the Philadelphia Indemnity Insurance Company. The Policy protects Trustees against a variety of claims alleging mismanagement by, or liability of the Foundation. Examples include misuse of funds and discrimination toward grantees, grant applicants or employees. (See *Appendix A* for the full text of the Policy.)

In response to a legal alert issued by the Lawyers Alliance for New York in December 2024, Pam Scott and Dave Harrison, PFH Trustee and a Partner at Spiro, Harrison & Nelson, met with the Policy broker to review its terms. They concluded that a \$5 million policy is suitable for Partners for Health, given our assets of approximately \$44 million and low-risk level. This amount of coverage is also in alignment with benchmarking data of other similarly sized private foundations. (The legal alert is excerpted on page 2, and the full text is in *Appendix B*.)

Summary of D&O Policy Coverage

- The Foundation’s \$5 million Policy is for each claim toward damages, with a \$5 million annual aggregate.
- There’s a shared limit of damages that will be covered at \$5 million per year; this limit is renewed annually.
- All legal defense costs are paid by the carrier, Philadelphia Indemnity Insurance Company.
- Legal defense costs are in addition to the limits of liability; they are covered with no limit, for whatever the costs are, and for however long the case goes on.
- The Foundation is covered for any claims made against it by a third party.
- Coverage is extended to employees, heirs/Estates, spouses of Directors & Officers, and volunteers or committee members. It includes:
  - Administrative Body regulatory proceedings, such as matters involving the IRS or State Agencies.
  - A \$5 million (Shared Limit) Employment Practices Liability for claims made against the Foundation from an employee for wrongful dismissal, discrimination, sexual harassment, or employment related retaliation.
  - A Bell Endorsement, which is an optional rider that provides additional protection for specific crisis management expenses (see *Appendix B*, pages 13-20).
- The claim must first be eligible for coverage before the carrier starts to defend the claim.

- According to our broker, there is no D&O coverage to protect organizations from possible exposure for work that promotes health equity.
- The Policy is purchased through a group plan offered to members of Exponent Philanthropy. The \$5 million limit is the maximum offered; the annual premium is \$2,250,

Excerpt from Lawyers Alliance for New York “Legal Alert”

**Make sure your organization has adequate Directors & Officers (D&O) insurance:** In the event of a federal investigation or enforcement action, D&O insurance can cover defense costs. But not all D&O policies provide adequate coverage. Even if you already have a D&O policy, speak with your broker to make sure it covers advancement of defense costs for the organization, its directors, officers and management in the event of investigations by the federal government.

**Why is this important?** Nonprofits may face government investigations and federal enforcement actions as a result of changing federal policies and priorities. This could involve, for instance, inquiries regarding the organization’s compliance with its federal tax-exempt status, or with other federal laws involving antidiscrimination, working with non-U.S. governments or entities, or assisting undocumented individuals.

**Other useful information:** While D&O policies may have exclusions for penalties imposed by government regulators, having a policy that covers defense costs can help an organization mount the best possible defense in any such investigation, without draining the organization’s resources to cover defense costs. It may also reassure officers and directors that they are not putting themselves at undue risk in these uncertain times.