

CALIFORNIA JPIA

White Paper Series

Maintaining Healthy Pool Members **January 2010**

Important:

This reference material is compiled for use by Authority members in the preparation, development and implementation of risk management policies, programs, and procedures. Since this document is designed to meet the needs of the general pool membership, please be aware that the present form is best considered an educational resource for use by your agency in drafting specific documents. This white paper should not be construed as legal advice. Accordingly, any resulting policy, program or procedure that results from this template should always be reviewed and approved as is customary by your agency, including the purview of any necessary legal and/or governing body authorities to ensure the policy being developed meets the unique needs of your jurisdiction. Policies should be implemented after proper training has been provided.

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Executive Summary

At the 2008 Executive Committee Workshop, staff presented a discussion paper on the concept of eliminating coverage for specific members, or canceling membership altogether. The underlying need for such a discussion started with the belief that the Authority plays an important role in maintaining healthy members. When actions of a member result in significant claims or judgments, and they are allowed to go unchecked without intervention from the Authority, all other Authority members are forced to bear the cost of such actions.

The purpose of this white paper is to comprehensively address the Authority's efforts and initiatives aimed at ensuring that members participating in the pool are exercising appropriate risk management activities such that the health of the pool is maintained.

Underwriting Prospective Members

In the member satisfaction surveys conducted by the Authority, members indicated that they are amenable to the concept of pool growth. That willingness to grow, however, is predicated on the fact that growth must take place in a controlled fashion, in a manner that protects existing members from increased claims and exposures, and should only be pursued if there are financial advantages.

Because maintaining healthy pool members begins during the prospective member underwriting process, the process was improved and formalized in 2006. What we learn during the underwriting process about the current and planned operations of a prospective member helps us better understand the exposures and thus protect the pool. A summary of the underwriting process follows.

Prospective Member Underwriting Process

Prospective members are subject to a due-diligence process. Discussions are held with the prospective member to determine if their risk exposures are similar to the pool's exposures. If so, the prospective member completes an application and an analysis of their loss history is then undertaken. If the prospective member's overall losses are less than the amount the prospective member would have paid to participate in the pool, a cost estimate is provided and the prospective member is invited to participate in the next step of the process. If the analysis demonstrates that the prospective member's loss history would not benefit the pool, membership discussions are terminated.

Assuming both parties wish to continue the process, an initial RME is performed that verifies the prospective member's risk exposures, grades the quality of their operations, and gauges management attitude and commitment to risk management. A written staff report and the prospective member's application are then submitted to the Authority's oversight committees for consideration and approval. Following is the step-by-step process.

1. The Authority enters into discussions with the prospective member to determine if the exposures of the prospective member are similar to the pool's exposures.
2. If the prospective member's exposures are similar, the Authority analyzes the prospective member's loss history. The analysis includes a review of the past five years of the prospective member's general liability and workers' compensation loss histories. The loss runs include paid claims, reserves, and total incurred amounts for each claim. Loss amounts include the full potential of the claims, and are not limited to the self-insured retention or to any excess insurance recovery.
3. If the analysis demonstrates that the prospective member has an acceptable loss history, and that the other members of the pool would benefit by having the prospective member join the pool, the Authority compiles a coverage estimate. The estimate, or pro forma, is determined by incorporating the prospective member's five-year loss history into the pool's loss history. If the prospective member's overall losses are less than the amount the prospective member would have paid to participate in the pool, a cost estimate is provided and the prospective member is invited to participate in the next step of the process. If the analysis demonstrates that the prospective member's loss history would not benefit the pool, membership discussions are terminated.
4. If the estimate is also of financial benefit to the prospective member, the prospective member completes an application and sends Authority a \$1,000 application fee. *(Note: If the prospective member is accepted for membership, the application fee is applied toward the initial primary deposit. If the prospective member is not approved for membership, the fee is refunded. If the prospective member elects not to pursue membership after the fee is paid, the \$1,000 is forfeited.)* Authority staff reviews the prospective member's application, financial documents, and website to determine specific exposures that may warrant further assessment.
5. Authority then performs a full-day site visit, known as the initial risk management evaluation, to determine if the prospective member is a good match for the pool. This determination is made based upon exposures and operations observed, management attitude, and a demonstrated commitment to risk management. During the site visit, the Authority explains the scope and focus of the evaluation, answers questions, and observes various departments and facilities. The site visit includes a review of the following types of materials:
 - Injury and Illness Prevention Program
 - Employee manual / handbook
 - Existing occupational safety and health policies, programs and related training documentation
 - Liability waiver forms used by the Recreation Department for the use of facilities and for program participants as well as a recent Recreation Program catalog
 - Engineering requirements for streets and sidewalks
 - Copies of recent inspections performed on city facilities and/or infrastructure
 - Copies of several types of contracts and agreements

- Map of the prospective member's boundaries showing parks, trails, roads, and facilities
6. The Authority prepares a report to summarize the visit. The report is presented to the Underwriting committee for consideration. They meet on an as-needed basis. If they recommend the agency's application for approval, it is forwarded to the Board of Directors for comment. The Board of Directors consists of one elected official from every pool member.
 7. Director comments are forwarded to our Chief Executive Officer so they may be communicated to our Executive Committee, which meets on the 4th Wednesday of each month. The Executive Committee consists of nine members elected by and from the Board of Directors.
 8. The City must receive a 2/3 "yes" vote of the Executive Committee to be approved.
 9. From the initial conversation, the entire underwriting process usually takes 3-4 months.

Evaluating Members

Adding new members is not the only factor impacting the financial obligations of the members. Sometimes the threat to the pool comes from within the existing membership. If we expect prospective members to meet certain standards before joining the pool, it is reasonable to require the existing members to adhere to the same standards. Therefore the Authority regularly considers the impact that current members have on the claims and expenses shared by the pool.

Evaluating member performance cannot be done through a single test. Many insurance industry underwriters have identified competent municipal management, limited scope of operations, few large hazards, and good loss experience as signs of a favorable municipal risk. Equally important to underwriters, however, is the municipal government's commitment to loss control.

In the history of the pool, there have been times in which some members have experienced unexpected claims of significant severity. Others have gone through cycles of economic downturn or even adopted programs or adopted ordinances that proved to be poor public policy. In time, some of these members have made course corrections of their own, restoring themselves to good governance.

At other times, it may be appropriate for the Authority to actively intervene in the member's risk management efforts, or even require the member to address serious operational issues. As such, a balanced approach to evaluating a member must be built around fundamental areas of concern that, in total, rise to the level where the Authority is justified in taking action. Staff routinely collects information from news sources about member activities. In addition, the Authority staff evaluates member claims and trends, and it integrates the information with its own knowledge of the members.

Identifying, Assessing, and Controlling Exposures

The Authority uses both a bottom-up and top-down approach when identifying, assessing, and controlling our members' risk and exposures. A combination of systematic and ad hoc methods are incorporated into both methods to perform risk management due diligence.

The bottom-up approach includes systematic methods such as LossCAP, training opportunities, and our annual Risk Management Awards.

The Loss Control Action Plan (LossCAP) program is the Authority's program to deliver risk management resources to the members and to assist in their implementation. A Risk Management Evaluation (RME) is the basis of LossCAP. An RME is performed biennially. It is an individualized inventory of the issues each member faces. It is designed to help members identify potential liability, property, and workers' compensation issues. Authority staff presents the RME findings to the member, in person. With a focus on each member's top findings, the Authority provides the time and expertise of staff to assist the member with effecting change before the next biennial RME is conducted. The member's Authority-assigned Risk Consultant follows up periodically to ensure progress and successful implementation of the solutions that address the top findings from the RME.

Training opportunities are regularly offered by the Authority. They include multi-day Academies, quarterly Risk Manager Roundtables, an annual Risk Management Conference, and hundreds of single-day workshops addressing over 60 risk management topics. In 2008, nearly 12,500 member employees participated in the training opportunities offered by the Authority. This reflects well on the value and importance our members find in the Authority's training. It also is a testament to the Authority's commitment to ensure our public agency employees have the training needed to effectively manage the risks inherent in public agencies.

Annual Risk Management Awards are presented each July to members recognized for demonstrating excellent risk management practices in each pooled program. Authority staff evaluates both qualitative and quantitative factors that are reflective of a member's risk management efforts. These include a member's five-year average cost and frequency of claims, their rolling retrospective deposit or refund, use of the Authority's risk management consultation services, use of the Authority's training opportunities, and the annual change in a member's cost of coverage.

The ad hoc methods used in our bottom-up approach to identify, assess, and control members' risk and exposures include the results of our risk management consultation services, training opportunities (again), incident reports, the prospective member underwriting process (discussed earlier), initiatives from the Advisory Committees, initiatives due to court decisions, changes to statutes and regulations, white papers addressing trends in pool claim history, requests for legal review, and more.

Risk management consultation services provided by the Authority, also known as the Help Desk, are designed as the first point of contact for the day-to-day concerns that members face. Each

member has been assigned an Authority Risk Consultant. Areas of assistance generally fall into the following categories:

- Reviewing contracts or agreements for appropriate risk transfer and insurance specifications.
- Providing input on risk exposures associated with member-sponsored activities and events.
- Providing access to Authority supported legal opinions.
- Fulfilling requests for field assistance such as indoor air quality and/or other environmental issues, facility issues (skate parks, dog parks, theatre/performing arts issues), and meetings with contractors/service providers, to name a few.
- Discussing program coverage issues with members. In general, coverage is not confirmed with certainty outside the context of a specific claim or complaint.

Training opportunities also generate ad hoc notice of situations, issues, or potential problems within our members' operations. Authority staff is represented at nearly all sponsored training events, and feedback from participants can and has resulted in a proactive response to situations our member employees face every day. The hands-on nature of our staff can result in claim avoidance.

Incident Reports are filed by members when they feel an event, absent a claim and/or lawsuit, may have significant repercussions for their agency. Periodic review of the incident reports alert the Authority to new or newly sensitive areas of liability. Armed with this information, the Authority can mount a response that not only meets the needs of the member who submitted the incident report but also other members that may be, will, or are facing similar situations.

Lessons learned from claims management is another area the Authority uses to identify, assess, and control our members' risk exposures. Much can be learned from our third party claims administrators' own experiences dealing with claimants, claimant attorneys, the courts, juries, city administrations, defense attorneys, and so on. Successful as well as unsuccessful outcomes to the claims process can teach members valuable lessons about minimizing or even avoiding liability associated with operating a public entity.

Loss analysis and trends are integral parts of the RME process described earlier. While the RME is member specific, similar analysis of the pool's loss history on a regular basis is used to give greater clarity and focus to those areas of liability and worker safety that are in most need of attention. In turn, this heightened attention is reflected in the topics presented at our annual conference, in the quarterly roundtables, and in the development of new and/or improved training opportunities.

Our top-down approach to identify, assess, and control the members' risk and exposures includes many annual systematic methods. These include actuarial reviews, financial audits, and cost allocation computations; excess and re-insurance purchases and the associated underwriting process; group purchase of property insurance and the related property inspections, and more.

Actuarial reviews of the Authority are performed annually by an independent actuarial firm. The actuary analyzes the pool's loss history to predict the pool's future funding needs at various

confidence levels. The pool's reserves are also analyzed for adequacy. The resulting reports' conclusions are reflected in the Authority's financial statements and are used to drive the cost allocation computations. Furthermore, pool members can be more confident that the pool's reserves are adequate and it has the ability to meet its financial obligations.

Financial audits of the Authority are required annually by law and are performed by an independent accounting firm. The accounting methods and entries used by the Authority are tested for compliance with Generally Accepted Accounting Principles and various Governmental Accounting Standards Board rules. The resulting reports conclude as to whether or not the Authority's financial statement is a fair representation of the Authority's financial position. The Authority's financial statements have always been given the highest marks in the annual audits.

Cost allocation computations are also conducted annually. The next coverage period's funding estimate is determined by an actuary. It is then apportioned to each member based upon their loss history and payroll, in comparison to the rest of the pool. This is called a member's primary deposit. Every year, a retrospective calculation is made on all past coverage periods to reflect changes in incurred costs of completed coverage periods on the members. The result of the retrospective calculation is either a refund or an additional deposit required from the members. Increasing or decreasing primary deposits and retrospective deposits can be early indications of members with improving or worsening risk management programs.

Furthermore, all Authority members complete an underwriting form each year. The information is compiled and used in the Authority's quest to purchase excess liability and workers' compensation insurance. The information gleaned through the detailed form is utilized by every Authority department to assist in identifying, assessing, and controlling the members' risk and exposures.

Performance Improvement Plans

As previously mentioned, it may be appropriate for the Authority to actively intervene in the member's risk management efforts, or even require the member to address serious operational issues. Factors that are used to help identify a member at risk include:

- a) An increase in annual claim frequency or average severity;
- b) Claims in excess of \$30,000, involving libel/slander, civil rights, employment, or class action;
- c) Allegations or reports of bribery, conflicts of interest, unfairness, dishonesty, or fraud;
- d) Actions that negatively affect employee morale and performance, including allegations or reports of harassment or discrimination, or nepotism;
- e) Unusual turnover of Council Members or executive management staff;
- f) Adverse public policy, including actions or inactions that create legal liability; and,
- g) Inability to pay owed deposits or other cost allocation fees.

The step-by-step performance improvement plan process is detailed on the following pages.

For any member that was unsuccessful in completing the improvement plan, and at any time prior to the end of the established improvement period, recommendations may be made to endorse the Memorandum of Coverage excluding coverage for activities or conditions of the member that are deemed to impose an unreasonable risk on the Authority. This may include the imposition of specific copayments, deductibles, coverage limitations, or cancellation.

Member Performance Improvement Plan Procedure

1. Staff will prepare a report to the Underwriting Committee, outlining the factors that are placing the member at risk, and seeking authorization from the Underwriting Committee to meet with the member and validate the need for a performance improvement plan.
2. Upon authorization from the Underwriting Committee, staff will arrange a meeting with the member's chief executive, explaining the process to the member, and collecting current information relevant for the development of the performance improvement plan.
3. Staff will prepare a report to the Executive Committee, including a draft performance improvement plan for the member. The member's chief executive will be given an opportunity to present a written or oral response.
4. Approval will be sought to initiate a member performance improvement plan and authorize the Authority's Chief Executive Officer to administer the plan.
5. Upon the Executive Committee's approval of the performance improvement plan, the member must formally agree to the performance improvement plan by adopting a resolution by motion of its governing body.
6. The member will be given a maximum of 24 months to complete the performance improvement plan.
7. Subsequent non-substantive modifications to the performance improvement plan must be approved by the Authority's Chief Executive Officer. Subsequent substantive modifications to the plan must be approved by the Executive Committee.
8. Staff will report to the Executive Committee upon conclusion of the established period in which a member was placed on a performance improvement plan.
9. For any member that completed the action items specified in the performance improvement plan, a recommendation will be made to formally dissolve the performance improvement plan and restore the member to good standing.
10. For any member that was unsuccessful in completing the performance improvement plan, or at any time during the plan period when it is determined that the member has defaulted on one of the plan elements, staff may recommend to the Executive Committee any of the following:
 - a) Imposition of specific copayments or deductibles

- b) Coverage exclusions for specific activities or conditions
 - c) Elimination from participation in a joint protection program
 - d) Cancellation from the membership within the Authority
11. If Executive Committee approval is given to initiate any of the actions under Item 11, staff will issue to the member's chief executive a Notice of Intent, not less than 90 days prior to the intended action.
 12. At its own request within 45 days of the Notice of Intent being issued, the member will be given an opportunity to formally appeal the intended action at a meeting of the Executive Committee.
 13. The Executive Committee will hear any appeal from the member, and then take action to either enforce the Notice of Intent, or provide additional direction to staff.
 14. If action is taken to either eliminate the member from participation in a joint protection program or cancel membership from within the Authority, the Executive Committee will also hear a staff recommendation on any refund due to the member if the termination date is prior to the end of the coverage period.
 15. If action is taken to either eliminate the member from participation in a joint protection program or cancel membership from within the Authority, staff will distribute written ballots to the Board of Directors, with three-fourths in favor being required to approve the action.
 16. Upon receipt of a three-fourth vote, the Chief Executive Officer will issue notice to the member.

Member Cancellation

And finally, when every effort fails to improve the performance of a member, the Authority has a mechanism by which to cancel the member's participation in either a program or the pool. The primary interest in cancelling a member stems from a common belief that the other members will pay more if poor-performing members are allowed to remain in the pool. Also of concern is the pool's perceived image and the members' desire to have well-managed and respected members participating.

Articles 26 and 27 of the Joint Powers Agreement read as follows:

Article 26 – Cancellation of Program Participation. The Executive Committee shall have the right to cancel any Member's participation in one or more joint protection programs"

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Article 27 – Member Cancellation. The Board of Directors shall have the right to cancel the membership of any Member based upon a three-fourths vote of the entire Board of Directors. Any Member so cancelled shall on the effective date of the cancellation be treated the same as if the Member had voluntarily withdrawn from membership, said Member and [sic] shall have the same responsibilities. Cancellation, as specified above, shall be within the sole discretion of the Board of Directors and may occur with or without cause, and the Board's discretion shall not be subject to any further review or appeal.