



Association of Bay Area Governments

ABAG PLAN CORPORATION
101 Eighth Street
Oakland, CA 94607-4707

MEMO

Date: June 30, 2016
To: PLAN Claims Committee Members
From: Jill Stallman, ABAG Claims Manager
Re: Claim Policy Review

Recommendation

Staff recommends the Claims Committee adopt the proposed revisions to the Claim Policy, as presented.

Overview

The Claims Committee is charged with the responsibility to work in collaboration with PLAN staff to oversee claim activity of the pool members. This includes reviewing and updating the Claim Policy, as needed. The recent conversion to a Third Party Administrator (York) requires certain revisions and updates to the policy. Other policy revisions have been incorporated to further clarify the intent of the policy.

1.0 Policy

Line 4 Added "and provide necessary oversight of" was inserted to account for the Third Party Claim Administrator (TPA) that is now being utilized for the claim investigation / claim adjusting function.

3.0 Objectives

Paragraph 1: Replaced "ABAG" with "the ABAG PLAN program" to recognize the TPA's involvement.

3.1 Claims Management

Bullet 1: Given the TPA contract, ABAG no longer directly provides claims adjusting staff. Changes made to incorporate the TPA collaboration.

Bullet 4: Adjuster training is viewed as a Best Practice rather than a policy. Removal of this line item is proposed.

4.0 Settlement Authority

Bullet 1: "while remaining within the context of coverage within the liability MOC." was added to avoid any ambiguity.

Bullet 2: language and illustration was added to further clarify the global settlement authority available for PLAN staff before a matter would elevate for Claims Committee review.

Bullet 3: "claim" was replaced "occurrence" for clarification.

5.0. Reporting

Paragraph 1: "open large losses reserved at \$150k or greater" was added to better define "large loss". This correlates to the global authority of PLAN staff.

Paragraph 2: "TPA" was added to recognize the contract arrangement for the claim adjusting function.

Paragraphs 4 & 5: We incorporated the claim review process here, as well, to pull together all claim related activities into the same policy. Again "TPA" was added to recognize this functional relationship.

6.0. Claim Program Standards

Paragraph 1: TPA added

A **Reference** section was added to recognize the associated documents referenced within the policy.

Summary

For the Committee's consideration, attached is the current Claim Policy with proposed changes highlighted. Committee to review, comment and approve all recommended revisions.



Association of Bay Area Governments

Claim Policy
Adopted 10/8/03
Revised 5/19/04
Revised 6/30/2016

1.0 Policy

It is the policy of the Claims Committee of the Board of Directors of the ABAG PLAN Corporation (PLAN Corp) to provide policy guidance to staff of the Association of Bay Area Governments (ABAG) assigned to the ABAG PLAN Program so that ABAG professionally manages and provides necessary oversight of all claims submitted by Members, provides experienced legal counsel to defend covered claims, and resolves coverage or settlement disputes in a fair and cost-effective manner.

2.0 Scope

This *Claims Policy* applies to the Claims Management and Legal Defense Programs established in the *Liability Program Procedures* of the *Revised Risk Coverage Agreement*.

3.0 Objectives

In order to provide a system that will professionally manage claims submitted to ABAG the ABAG PLAN program in a manner that provides Members the full benefits of the Memorandum of Coverage (MOC), this policy has the following objectives:

1. Maintain sufficient resources to manage claims
2. Provide experienced legal counsel to defend covered claims
3. Resolve disputes in a fair and cost-effective manner

3.1 Claims Management

To provide stability and expertise in the management of its claims and to ensure they are investigated, evaluated, and resolved in a timely and professional manner:

- ◆ ABAG PLAN shall maintain a Claims Management Program that provides in-house staff for normal claims processing qualified claims adjusting staff (in-house or contract claims administrator (TPA)). ABAG/TPA shall designate a Claims Examiner for each Member.

- ◆ Each Member shall designate a Claims Liaison in writing as a primary point of contact for resolving claims.
- ◆ The Examiner will work closely with the Claims Liaison to establish an effective claims management program for the Member.
- ◆ ~~The Examiners will receive ongoing training in claims management practices applicable to Members.~~
- ◆ ABAG PLAN shall conduct an audit of the Claims Management Program by a qualified outside firm at least once every two years.

3.2 Defense Counsel List

The Committee shall maintain a *Defense Counsel List* of highly qualified attorneys. The *Defense Counsel List* may be amended by the Committee at any time upon request by a Member or at the Committee's discretion.

- ◆ The objectives for all counsel on the list are to work closely with claims staff and the Member, resolve lawsuits in a timely and effective manner and to abide by the PLAN's *Litigation Management Guidelines*.
- ◆ Legal defense of all covered claims, not subject to a reservation of rights, may only be provided by attorneys on the latest approved *Defense Counsel List*.
- ◆ The Claims Manager has the authority to assign counsel from the list and to enforce the *Litigation Management Guidelines*, provided that approval of a Member Entity's request for specific defense counsel shall not be unreasonably withheld.

3.3. Coverage Determination

It is the PLAN's policy to provide each Member the full benefits of the MOC when analyzing coverage for a claim while protecting all Members by denying payment of uncovered claims and/or providing a defense under a reservation of PLAN's right to decline indemnity.

- ◆ ABAG PLAN staff, legal counsel, or designee (Coverage Counsel) shall be responsible for informing Members of coverage decisions.

A member may accept as final a coverage decision made by ABAG PLAN staff, legal counsel, or Coverage Counsel, or any subsequent coverage decision as outlined below, or may appeal said decision by submitting a written notice of appeal submitted within ninety (90) days of the date of the previous written determination of coverage.

- ◆ A Member may appeal the coverage determination made by PLAN staff, legal counsel, or Coverage Counsel to the Claims Committee.
- ◆ A Member may appeal the coverage determination made by the Claims Committee to the Executive Committee.
- ◆ A Member may appeal the coverage determination made by the Executive Committee to the Board of Directors.

A Member may require binding arbitration of the coverage determination made by the Board of Directors by submitting a written notice requesting such arbitration within ninety (90) days of the date of the Board of Director's written determination.

If the Member and the PLAN Risk Manager cannot agree on an arbitrator within thirty (30) days of the Member's request for arbitration, each party will choose an arbitrator. The two arbitrators will select a third arbitrator within thirty (30) days of their appointment.

The parties shall submit their cases to the third arbitrator by written and oral evidence at a hearing. The arbitrator shall be relieved of all judicial formality and shall seek to enforce the intent of the parties.

The decision of the arbitrator shall be binding and final and not subject to appeal except for grounds of fraud and gross misconduct by the arbitrator. The award will be issued within thirty (30) days of the close of the hearings. The parties shall jointly and equally share with the other the expense of the arbitrator.

4.0 Settlement Authority

- ◆ Each Member is authorized to settle any Property Damage only claims for an amount which is equal to, or less than, ten percent (10%) of said Member's deductible while remaining within the context of coverage within the liability MOC.
- ◆ The Claims Manager and Risk Manager are each authorized to settle any claim with any single claimant for an amount, not including defense costs, up to and including the affected Member's deductible plus the sum set forth below (cumulative/progressive): ~~opposite his/her name~~:

Claims Manager	\$ 50,000
Risk Manager	\$100,000
Total	\$150,000

- ◆ If any single claim occurrence has multiple claimants, the authorization will be applied on a per claimant basis.

- ◆ All other settlements above a Member's deductible shall be approved by the Claims Committee.

5.0 Reporting

The Claim Manager will provide the Claims Committee a yearly report that summarizes open and closed losses greater than Member deductibles and that describes progress in achieving its claims management goals and benchmarks. Report to include all open large losses reserved at \$150k or greater.

Members shall report all claims, including those settled within the Member's authority, to the PLAN Claim Manager/TPA in a timely manner.

Each Member will receive a quarterly report listing the Member's open claims and claims activity since the last report, including all payments made to settle claims on the Member's behalf.

ABAG PLAN/TPA staff will also review claims reports on a regular basis to identify trends and make recommendations to resolve outstanding claims, implement measures to reduce the frequency and severity of similar claims, and share experiences from other members to prevent similar losses from occurring.

ABAG PLAN/TPA will conduct an annual review of claims with each member to assess open claim status, review pending or outstanding activity and address any concerns related to the handling or administration of member claims. Any required action plan will be developed and communicated to member.

6.0 Claim Program Standards

ABAG PLAN/TPA shall seek to maintain the following standards in managing claims:

- Prompt and adequate investigation of coverage, liability and damages
- Initial report addressing issues above sent to member within 2 weeks
- Make recommendation to accept or reject a claim within 30 days
- Appropriate diary follow up to resolve outstanding issues
- Response to all correspondence in a timely manner
- Adequate reserves posted and adjusted as needed
- Clear documentation of all activities and thought process in resolving claim

With respect to the criteria outlined in this policy, the Claims Committee is granted the authority to deviate from the policy when it is appropriate to do so based upon evaluation of the following criteria:

- Favorable or unfavorable claim issues that need to be addressed
- Legal issues or legislation expected to impact a claim settlement or claims procedures, and

- Risk exposures that impact the viability of the program

7.0 Policy Adoption

The *Claim Policy* shall be adopted by majority vote of the Board of Directors. The policy shall be reviewed annually by the Claims Committee. Any modifications are subject to Board approval.

Reference: *Claims Procedure Guide*
Litigation Management Guidelines
Approved Defense Counsel