



**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 oversees 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 the (ABAG/TPA) 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 shall maintain a Claims Management Program that provides qualified claims adjusting staff (in-house or contract (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.
- ◆ ABAG 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/TPA 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/TPA 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 claim 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 under 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):

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

- ◆ If any single 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. 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 activity since the last report, including all payments made to settle claims on the Member's behalf.

Claim Reviews – Members receive a quarterly report of their claims activity and are expected to review the report to identify the nature, cause and amount of their claims. Focus should be on determining whether or not the loss was preventable and how to present in the future. Results should be shared with department managers and affected employees and measures taken to prevent or reduce the impact of future claims.

PLAN/TPA staff 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. Staff should meet with members at least annually for a claim review and recommendations to be included in the member's action plan.

## **6.0 Claim Program Standards**

ABAG/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*