

Managing Risk: What's Ahead for PLAN Members

As a result of PLAN members' continued focus on improving their risk management programs, Fiscal Year (FY) 2006-07 was a very good year for underwriting results. ABAG Risk Manager Marcus Beverly and PLAN Board Committee chairs described these 2006 results and other milestones achieved in Member programs and services during the ABAG PLAN Corporation Board of Directors' annual meeting. New benefits, best practice incentives, and an action plan for managing risks in 2007-08 were also announced at the June meeting held in South San Francisco.

Beverly also reported that three new liability coverage extensions have been added: *Crisis Management (CM) and Response Coverage* and *Accident Insurance—Third Party and Employees* (see article, pg. 2). Optional pollution coverage is now offered and crime renewal coverage is expected to remain unchanged.

The funding allocations also underscore PLAN's efforts to help members implement safety measures by purchasing equipment, training or services, and providing matching grants to support efforts aimed at preventing claims. This funding includes:

- Risk Management Best Practices: provides funding of up to 5% of Members' total liability premium for consulting services that Members may need to improve their programs
- Risk Management Program Grants: offers up to 5% of total funding with at least \$10,000 matching per member for equipment, training, and other services
- Police Risk Management: provides funding up to \$15,000 matching grant per member and makes \$30,000 total available for various training programs
- Defensive Driving: continues the program with a budget of \$25,000
- Risk Management Training: offers grants up to \$2,000
- Sewer Loss prevention: sets aside \$60,000 for FY 07-08

Revisions to the Risk Management Policy (RMP) were also discussed and approved. In particular, any reference to or reliance on the best practices as a minimum or legal standard was eliminated in the RMP. Minor changes to the *Sidewalk Best Practices* were made to clarify that each member should at least consider passing a liability ordinance. Additional best practices for *Aquatic Programs* and *Special Events & Facility Rentals* were approved and draft best practices in the areas of *Landlord Liability*, *Employment Practice Liability*, and *Para-transit Exposures* were reviewed by Board Members, with more analysis to follow.

"Work on assessing Members' risk management programs continues," Beverly said. "PLAN will also focus on increasing risk management services by providing pre-qualified consultants and a menu of services from which Members can choose." The addition of a new Risk

Managing Risk cont. on page 2



Claims Adjuster

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Risk Management Program Funding

New benefits and increased funding were announced at the meeting. The funding for risk management programs in FY 2007-08 approved during the meeting highlight these

What's Inside

- COVER STORY – Managing Risk—What's Ahead for PLAN Members
- 2 COVERAGE CORNER – Three New Liability Coverage Extensions
– New PLAN Board of Director Chair and Vice Chair
- 3 RISK MANAGEMENT FINANCIALS – Funding and Budgets
- 4 MEMBER NEWS— Sewer Smart Summit & Tips to Protect Homes

- 5 PEOPLE – Ten Step Plan for Handling Claims & New Staff Member
- 6 RISK BRIEFS – Update on Police Pursuit Policies and Training
- 7 RISK BRIEFS – Coverage Corner
- 8 CALENDAR – Video Library: Safety & Training Resources

Coverage Corner

Three New Liability Coverage Extensions & New PLAN Board of Director Chair and Vice Chair

PLAN Adds Three New Liability Coverage Extensions

Public Response – Crisis Management (CM) and Response Coverage

First-dollar coverage will be provided by ABAG PLAN's excess insurer to assist members in responding to a crisis by providing expert public relations advice and reimbursement of certain response costs. The coverage applies to a "*Crisis Management Event*," which includes man-made disasters such as explosions and major crashes resulting in covered damages that may exceed the PLAN limit of \$5 million, or that may have significant adverse regional or national news media coverage.



Factory explosion

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This coverage includes *Crisis Management Services*, performed by a Crisis Management (CM) Firm, who advises the member on minimizing potential harm by maintaining and restoring

public confidence in the member. A list of pre-approved CM firms is included with the coverage and the limit is \$50,000.

Public Response Costs are covered if they are reasonable and are necessary expenses incurred during a CM Event, such as medical or funeral expenses, counseling, travel or temporary living expenses. These costs must be pre-approved by the insurer and associated with covered damages. The limit is \$250,000.

To qualify, the "*Crisis Management Event*" must be reported within 24 hours, which means immediately contacting a PLAN representative or Marcus Beverly at (510) 464-7969, or calling the after-hours cell phone at (510) 459-6642. PLAN members may also contact the insurer directly at 1-877-AIG-3100 to report the event and receive advice, authorization, and direction in responding to a crisis.

Accident Insurance – Third Parties and Employees

This traditional accidental death and disability coverage provides a benefit to third parties while lawfully in or on premises Members' own, rent or control. It also covers PLAN member employees who work at least 20 hours a week while actively performing the duties of their occupation. The limit is \$50,000 per person and \$5 million aggregate per occurrence. For questions or to report a claim, contact Marcus Beverly at (510) 464-7969.

This is only a brief description of the new coverage extensions. All terms and conditions of the policies apply, with coverage determined by the respective insurers.

ABAG PLAN Corporation A Pooled Liability Assurance Network

Providing self-insured coverage to
cities in the San Francisco Bay Area

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ABAG PLAN Board of Directors

New Chair and Vice Chair Begin Term of Service

At the recent PLAN annual meeting, **Julie Carter**, Assistant to the City Manager, Dublin, was elected Chair Of the PLAN Board of Directors for FY 2007-08 and **Emma Karlen**, Finance Director, Milpitas, was elected Vice Chair.

Special recognition was also given to outgoing Chair **Larry Anderson**, Burlingame City Attorney, for his outstanding leadership and service.

Managing Risk cont. from pg. 1

Management Analyst will help further these efforts. An outreach plan, which includes notice of service credits, was extended for contacting members and raising their awareness of benefits and the programs available to help their efforts.

Managing Funds

In respect to managing funds, a new administrative formula for rate stability has

been implemented and higher limits have been achieved sooner than expected. All key benchmarks have improved substantially with assets and total reserves up and liabilities down. As a result, PLAN's Reserve to SIR (self insured retention) ratio is almost 6:1, surpassing the goal of 5:1, and very close to reaching PLAN's goal to be able to achieve a \$10 million SIR.

Risk Management Financials: Funding and Budgets Annual Report

Members experienced fewer liability claims, and the amount of claim costs paid out decreased during Fiscal Year (FY) 2006-07. Jim Steele, ABAG PLAN Board Finance Committee Chair, South San Francisco, detailed these results at the annual meeting in his overview of PLAN financial and committee activities.



Sidewalk Repair

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PLAN's Financial Report, dated March 31, 2007, shows total discounted expected liabilities projected at just over \$17 million. Over-deductible liability claims paid were below average at \$1.3 million and property claims at \$535,000. Investments reflect a \$48.2 million market value, with an overall yield of 4.47%, an average maturity of 2.35 years, and an average duration of 1.82 years.

The Premium for PLAN's current limit of \$15 million excess of \$5 million SIR (self insured retention) was quoted for \$680,399, reflecting a premium reduction of 9.64%. A renewal option for a higher limit of \$25 million was also presented, but not approved by the Board.

Liability and Property Program Funding

The funding options for *Liability* and *Property Programs* FY 2007-08, as described by ABAG PLAN Risk Manager Marcus Beverly, included a change in administrative expense allocation. The administration expense was calculated with a higher percentage allocated to variable expense, based on claims from both the liability and property programs. A cap was also set for administrative expense so that the amount would not exceed the loss funding for any member. The Board approved the Liability Program Funding options, including the proposal to maintain the \$5 million SIR, funded at 50% Confidence Level, with excess insurance of \$15 million, for a total limit of \$20 million. The Property Program funding was also approved as presented with members enjoying a 20% reduction in their rate.

Administrative Budget FY 2007/08

PLAN's administrative budget will remain \$2,400,000, unchanged from FY 2006-07 funding. Beverly reported

that personnel costs increased by 13% with the new analyst position (a 4% increase without the position), but the position will be funded from liability reserves for 2007-08. The new budget also includes a breakout of insurance and depreciation expenses from the *Miscellaneous* category, with litigation audit expense included under Legal Consultants.

Audit Shows Continued Progress

The results of the claims management audit and significant claim settlements show that PLAN has maintained previous improvements in file documentation, investigation, and analysis. Orry Korb, Claim Committee Chair, presented the audit report of January 9, 2007, which the Board accepted and approved at the June meeting. Continued progress in diary and litigation management was demonstrated, as well as PLAN's commitment to continue improving in these areas. Areas of strength, such as technical experience, investigation, documentation, and litigation management, were also noted.

Actuarial Review of the Liability Program

Mike Harrington of Bickmore Risk Services presented his firm's analysis of the Program's outstanding liabilities and funding for the 2007-08 program year. Liabilities at a 90% confidence level are projected to be \$25 million, with \$46.7 million in assets and more than \$21 million in the SIR (self insured retention) Fund.

Funding of the \$5 million SIR for 07/08 is estimated at \$4,788,000, with excess insurance of \$15 million estimated at no more than \$775,000 and administrative expenses at no more than \$2,400,000.

Overall FY 2007-08 funding is expected to be \$7,963,000, compared with \$8,061,000 last year.



Liability Insurance paperwork

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SEWER SMART SUMMIT 2007 TUESDAY, SEPTEMBER 25

It's that time of year again when ABAG PLAN launches its Be Sewer Smart Summit and Public Outreach Campaign. Public Works Directors, city engineers, operators of sanitary districts, and other stakeholders are invited to come together to learn about new regulations, best practices, and strategies for preventing backups and backflows and achieving their operational and business goals.

The Be Sewer Smart Summit 2007 will feature Eric Maag, new director of the Division of Water Quality for the State Water Resources Control Board, who will discuss what is needed to comply with the new regulations and reporting of SSOs (Sanitary Sewer Overflows) with their new database. Attendees will also learn the inside story on how other districts implemented *Best Practices* for capital improvements, as well as for the prevention of backups and backflows.

The Be Sewer Smart Summit begins at noon with lunch, presentations, and panels throughout the afternoon, culminating in a reception and exhibit. A press conference will be held the morning of the summit to engage Bay Area media in the Be Sewer Smart Public Outreach Campaign. Register at www.sewersmart.org. Sponsorships are available; contact Mary Lou Thiercof at 510/336-1047 or mlt@workingimages.com.

**Be Sewer Smart
This Rainy Season**
Prevent Backups & Backflows



SAVE THE DATE!
BE SEWER SMART SUMMIT 2007
Tuesday, September 25, 12 Noon
JOSEPH P. BORT METROCENTER AUDITORIUM,
OAKLAND

Be Sewer Smart Campaign: Sewer Smart Tips

Property owners have three effective strategies for preventing costly sewer backups into their homes or businesses.

1. MAINTAIN YOUR SEWER SYSTEM

Sanitary sewer systems are designed to handle three types of waste products: used water, human body waste, and toilet paper. Residents can avoid common problems with proper maintenance. Practicing the following basic *DOs and DON'Ts* will keep a sanitary sewer working properly and help prevent sewer backups and avoid expensive plumbing and cleanup bills.

DO: Collect grease in a container and throw it in the garbage. Put food scraps in a compost bin or the garbage for disposal with solid waste. Place a wastebasket in the bathroom to dispose of items such as disposable diapers and personal hygiene products. Use a backflow prevention device (BPD) as needed.

DON'T: Never pour grease, fats and oils from cooking down the drain. Don't use the sewer to dispose of food scraps.

- **Don't** use the toilet as a wastebasket for garbage or chemicals. These items can kill "good" bacteria used for sewage treatment, cost much more to treat, and can enter the Bay.

- **Don't** plant trees with shallow, spreading root systems near your sewer lateral. Tree roots seek water sources, such as cracked sewer lines. Once the roots have penetrated the line through cracks, the roots can create a dense mat and trap materials.

As needed, contact one of our Sewer Smart plumbing partners to schedule a simple and inexpensive (from \$50 to \$100) Sewer Smart home inspection to find any hidden problems.

2. CONSIDER INSTALLING A BACKFLOW PREVENTION DEVICE

Backflow prevention devices (BPDs) allow water and backup materials to escape from the cleanout rather than flowing into the home. Go to www.sewersmart.org for more information and for a **free BPD**, as long as supplies last.

3. CHOOSE AND PLANT TREES CAREFULLY

Avoid planting trees that can spread roots that invade and clog your system. ABAG has a sewer smart planting guide at www.sewersmart.org that will help residents pick "sewer smart" plants.

For more detailed information and resources on preventing backups, backflows, BPDs, licensed contractors, tree planting guides, go to www.sewersmart.org

Introducing Gertruda Luermann, PLAN Risk Management Analyst

Please join us in welcoming Gertruda Luermann, the newest member of ABAG PLAN’s expert staff. Gertruda joined ABAG as a Risk Management Analyst in April. She is analyzing the exposures of members and monitoring the big picture of claim trends to help members reduce loss and liability, which will help determine the kind of specialized training needed by members to reduce risk. “I am looking forward to learning about and becoming familiar with each PLAN member city, so that I can better assist in addressing their needs,” Gertruda says.

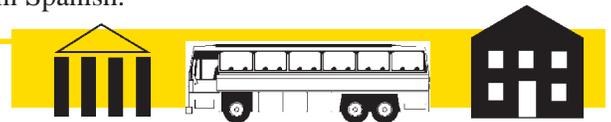


Gertruda is a risk management professional experienced in legal and risk management liability issues, such as general, product, pollution, litigation, as well as patent infringement and contract disputes. She previously

served as a Risk Manager/Paralegal for Arysta LifeScience North America Corporation, the largest privately-held global agrochemical company. There she introduced and implemented analysis of loss exposures and appropriate risk control measures, and developed procedure manuals for claims handling and disaster recovery preparedness. She was also a litigation paralegal for Arnold White and Durkee in Menlo Park, a global law firm focused on complex Intellectual Property, Litigation and Antitrust matters.

Born and educated in Germany, Gertruda holds the ARM designation by the Insurance Institute of America. She is a member of Risk and Insurance Management Society, Inc. and a paralegal certified by De Anza College in Cupertino. She is fluent in German and literate in Spanish.

The Ten Step Plan for Handling Claims



Practicing the following ten steps will ensure that PLAN Members facilitate and manage the filing of claims received by cities in the most efficient and expeditious way possible. The checklist of actions below outlines the process to follow:

1. Date stamp the claim the date it is received by the City. If it is hand delivered, please note that on the ABAG Form.
2. Send the claim envelope to ABAG along with the claim, in the event there is a question about timeliness of the claim.
3. Use the following forms to send the claim or incident report to ABAG, along with all information available to the city at that time (photos, police reports, and city reports):
 - a. **Liability/Loss Notice** – For a general liability claim, prepare this form to submit with the claim and include City claim numbers on the form.
 - b. **Incident Report** - If the incident involves bodily injury or property damage that may eventually result in a claim being filed, please file this report.
 - c. **Vehicle Damage Report** - If the incident involves damage to a City vehicle – fill out the report, include any repair bills, photos, and the amount of time the vehicle was out of service for repairs.
 - d. **Property Damage Report** - If the incident involves damage to City property, fill out the form. If a person, other than a City employee, damaged City property, please provide as much information about the responsible party so we can try to collect the labor, material and equipment costs for the City.
4. Forms to respond to claims are located on the ABAG website, at www.abag.ca.gov. Click on “SERVICES” on the left side of the screen and then Click on Insurance and Risk Management and use the drop down menu under “MEMBERS.” You will need the login id and password, which if you don’t have available, you can contact an ABAG PLAN examiner to receive. After you have logged in, select the form you need.
5. Fax, email or mail the claim to ABAG as soon as possible so that we can preserve defenses, such as insufficiency (20 days) or untimeliness (45 days), and inspect the area quickly.
6. ABAG Staff will contact claimants within 24 hours of receipt of the claim.
7. Send out an information request for inspection, repair records, or other information to the relevant City department.
8. ABAG staff will make recommendations for handling the claim after completing the investigation.
9. Attach **a proof of service by mail** with the recommended claim response notices to substantiate the date of mailing.
10. When in doubt, call your ABAG PLAN Examiner for assistance or 510/464-7962.

Law Enforcement Officers Have *Qualified Immunity* for Injuries Caused By HighSpeed Pursuit of Vehicle...

But Police Pursuit Policies and Training Must Be in Place

All PLAN members were advised that they had to update their police vehicle pursuit policy by July 1st to meet new state standards which include the need to provide training on the new standards to all officers.

California courts, as well as courts in other states, have long grappled with civil rights and injury claims linked to high speed pursuits of vehicles by police officers. In a recent US Supreme Court case, *Scott v. Harris*, (April 30, 2007), the issue before the courts was whether a law enforcement official could, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his flight by ramming the motorist's car from behind. The Supreme Court held that in considering the reasonableness of an officer's actions, courts should balance the risk of bodily harm to the plaintiff against the risk of harm to the public (by the fleeing vehicle) that the officer is trying to eliminate. The Court further held that a suspect's culpability should be considered as *part* of the reasonableness analysis, **not a justification of a pursuit in any situation.**

It is important to note that this decision does not override California state law that provides conditional immunity from liability for injuries from police vehicle pursuits. The conditional immunity rests on law enforcement agencies adopting appropriate pursuit policies and providing regular and periodic training. **July 1, 2007 was the deadline in California for law enforcement to update their pursuit policy with provisions on police vehicle pursuits, penalties for evading arrest, and the new standards for written policies on the safe conduct of motor vehicle pursuits; and, most critically, to provide training on the new standards to all officers.** This deadline is the result of the passage of SB 719 (Romero) on Police Pursuits which became state law in October 2005 (Chapter 485) and added Section 17004.7 to the Vehicle Code.

Police Pursuit Policy and the Balance Test

Following new standards, the policy must include the "balance test" for assessing the need for the pursuit and balancing the risk of harm to the public. The guidelines to be used to craft a correct policy include the need to define "vehicle pursuit" and determine under what circumstances to initiate a pursuit. Pursuit is generally defined as "an event involving one or more law enforcement officers attempting to apprehend a suspected or actual violator of

the law in a motor vehicle while the driver is using evasive tactics, such as high speed driving, driving off a highway, turning suddenly, or driving in a legal manner but failing to yield to the officer's signal to stop."

Next an updated policy should articulate the reasons a pursuit is authorized and identify the issues that should be considered in reaching the decision to pursue. It should also address

the importance of protecting the public and balancing the known or reasonably suspected offense, and the apparent

need for immediate capture, against the risks to peace officers, innocent motorists, and others.

When using the "balance test" for assessing the need for the pursuit and balancing the risk of harm to the public, the following elements need to be considered and factored in: public safety, nature of offense and apparent circumstances, officer safety, vehicle code requirements, passenger in officer's vehicle (e.g., citizen, witness, prisoner), pedestrian and vehicular traffic patterns and volume, other persons in or on pursued vehicle (e.g., passengers, co-offenders, hostages), location of the pursuit (e.g., school zone, playground, residential, downtown, jurisdiction), time of day, speed of fleeing suspect, weather and visibility, road conditions, identity of offender (if known, and/or offender can be located at a later time), capabilities of law enforcement vehicle(s), ability of officer(s) driving, availability of additional resources, whether supervisory approval is required, officer's/supervisor's familiarity with the area of the pursuit, and quality of radio communications (e.g., out of range, garbled, none).

The bottom-line is that law enforcement has qualified immunity for injuries caused by police pursuits as long as the correct policy with the balance test is in place and periodic training is provided.



Vehicle pulled over by police safely

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Coverage Corner

Are You Paying Too Much for Your Copies?

A member's close inspection of its monthly copier lease invoice caused the member to question the insurance fee of \$34 and prompted the query, "Is leased equipment covered by PLAN?"

The answer is yes— all leased equipment is covered in the PLAN property coverage, as long as the value of the equipment is included in the personal property values in the member's property schedule. This means you do not have to pay for *additional* insurance coverage that a lease requires, if you can prove you have insurance for the property.

To prove you have coverage that protects their interests, the leasing company will ask you to provide a certificate of insurance and a loss payee endorsement for the property. You can provide both using the PLAN website. Choose the property coverage option, complete the information requested, submit, and your documents will appear in a PDF file that you can save and send to the lessor. The member who asked the question provided the proof of insurance and saved the monthly fee.

What about Flood Coverage?

After receiving reimbursement from FEMA for a flood loss in 1998, a member was required to purchase flood insurance for affected properties. While recently reviewing all their insurance coverage, including this flood policy, the member asked "Does ABAG PLAN include flood insurance in their coverage?"

The answer is yes – the member does not need the additional insurance since the PLAN coverage includes flood, and the properties in question were on the member's insured property schedule. Coverage for properties in flood zones A and V was added in the last few years, so separate flood insurance that may have been required in the past is no longer needed. The member was able to cancel the flood insurance policy and save several thousand dollars a year.

What about your coverage?

Both questions highlight a practical cost saving step that all members should take. Review your leases, invoices, and "other" insurance policies to make sure you have not taken on unneeded, extra insurance and are paying fees for coverage you already have. If you have questions or need assistance reviewing your invoices or other insurance coverage, please contact Marcus Beverly at marcusb@abag.ca.gov or 510-464-7969.



Vehicle in Flooded Street

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Pursuit cont. from pg. 6

Vehicle Pursuit Guidelines

1. When to Initiate a Pursuit

Penal Code §13519.8(b) (1) | Vehicle Code §17004.7(c)(1)

The "Balance Test" should be used as a guide in determining whether or not to pursue. An officer's reasonable suspicion must be based upon the facts perceived by the officer at that time. Factors, which can be used in continuously assessing the need for apprehension versus risk created by the pursuit, are set forth below. Other factors may be considered in addition to those criteria listed below. The policy should remain consistent with applicable Federal and State case law relative to law enforcement pursuits. Case law interpreting §17004.7 prior to the amendments of Senate Bill 719 (2005) has upheld a number of policies, which include a list of factors for officers to consider when initiating a pursuit.

Update on Risk Management Policy Implementation

Sixteen PLAN Members have qualified for the *Framework and Best Practices* grants. Nine Members are very close to qualification, and six Members still need additional work. These results and an updated scorecard of each Member's progress in various best practices were announced as part of the report made by Mary Beth O'Connell, Bickmore Risk Services, in June. This report was an overview of PLAN progress in implementing the Risk Management Policy.

To help incorporate the policy, PLAN staff have assessed Members' needs and provided personal assistance and training to Members to implement *Framework and Operational Best Practices*. This assistance has also included identifying and developing new best practices for specific exposures and sponsoring a menu of annual and periodic workshops and webinars.

Meeting Schedule 2007 - 2008

All meetings are at ABAG's offices unless noted.

10/17/07

Board of Directors

8:30 a.m. to 4:30 p.m., TBD

12/5/07

Risk Management Committee

10:00 a.m. to 1:00 p.m., TBD

2/6/08

Claim Committee

10:00 a.m. to 1:00 p.m., ABAG

2/28/08

Police Chief Steering Committee

10:00 a.m. to 1:00 p.m., ABAG

3/20/08

Finance Committee

1:00 p.m. to 3:00 p.m., ABAG

4/16/08

Risk Management Committee

10:00 a.m. to 1:00 p.m., ABAG

5/1/08

Actuary Committee

10:00 a.m. to 1:00 p.m.

5/14/08

Executive Committee

10:00 a.m. to 1:30 p.m., ABAG

6/11/08

Board of Directors

11:30 to 4:30 p.m., Los Altos Hills

Video Library: Safety and Training Resources At Your Fingertips

ABAG PLAN

Members have an invaluable training resource available. ABAG PLAN is a member of the National

Resource Safety Center's (NRSC) safety video lending library and PLAN members can borrow videos from the NRSC library. There is no cost to members, other than return shipping charges and any late or damaged video fees incurred. The NRSC is the nation's largest safety lending library and maintains a collection of more than 10,000 safety and health videos, covering a wide range of topics with new videos ordered on a regular basis, and including a section devoted to videos in Spanish.

Borrowing the Videos

The NRSC membership allows ABAG PLAN members to check out up to two videos at any one time. As the videos are returned, others may be checked out. Six videos can be checked out at one time for all members of ABAG PLAN.

NRSC's on-line video catalog is located at

<http://www.nrsc.com/index2.htm>. Full information regarding the ordering process can be found at

http://www.abag.ca.gov/plan/members/training_resources.html where links to the ABAG PLAN *Video Ordering Instructions* and an *ABAG PLAN Video Request Form* are available. This PLAN Video Request Form should be used to order the videos and must be faxed to ABAG PLAN at (916) 244-1199. *If videos are ordered directly from the NRSC, a video rental fee will be charged.* Bickmore Risk Services administers the subscription service on behalf of ABAG PLAN.

