The California JPIA has a responsibility to its pool members to help guard against member actions that can result in adverse claims. Members have the same responsibility to each other and, through the policy setting of the Executive Committee, have entrusted Authority staff to follow specific related procedures.

This paper discusses these procedures, including the Authority’s prospective member underwriting efforts, describing protocols followed to ensure that existing members are held to the same standards of governance and risk management.

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EXECUTIVE SUMMARY

By its very definition, a risk-sharing pool means that all members of the pool are apportioned the total cost of risk. Each member of the pool is impacted by the actions of other members, either positively or negatively. In this context, these actions provide general insight into members themselves, including their quality of operations, professional management, risk management importance, and governing body effectiveness.

The Authority has long recognized the need to carefully evaluate prospective members by assessing the agency’s potential risk performance in the future. If that risk performance is a net cost to existing members, the Authority is able to decline the prospective member’s application for membership.

If prospective members are expected to meet certain risk performance standards before membership is granted, it is reasonable to require existing members to adhere to the same risk performance standards. Since the pool’s beginnings, there have been times in which members have experienced significant claims. Others have adopted programs or approved ordinances that reflect poor public policy.

These patterns repeat themselves over time, so it is appropriate for the Authority to actively intervene in the member’s risk management efforts, or even require the member to address serious operational issues. In both instances, 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 on behalf of all other members.

PROSPECTIVE MEMBERS

In satisfaction surveys conducted by the Authority, members have indicated that they are amenable to the concept of pool growth. A willingness to grow, however, is predicated on the fact that it must take place in a controlled fashion, in a manner that protects existing members from high exposure or increased claims, and only be pursued if there are greater pooling advantages.

Accordingly, maintaining healthy members begins during the prospective member process. Generally, agencies are thought desirable if risk exposures are similar in operations to existing members. What is learned during the prospective member process tells much about current or planned operations of a prospective member, and it also helps the Authority understand potential risks to the pool.

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learned during the prospective member process tells much about current or planned operations of a prospective member, and it also helps the Authority understand potential risks to the pool.

Key steps in the prospective-member underwriting process are as follows:
1. Agency claim analysis of the last five years
2. Agency management interview
3. Agency site visit and field evaluation, including:
   A. Employee manual/handbook, including policies related to employment practices, discrimination, harassment, and workplace violence
   B. Occupational safety and health policies and programs
   C. Roadways and streets, including inspection records, if applicable
   D. Facilities, including inspection reports
   E. Injury and illness prevention program
   F. Contract instructor agreements, if applicable
   G. Playground inspection records, if applicable
   H. Contracts management practices
   I. Recreational waiver forms, if applicable
   J. Records retention
   K. Training records
4. Financial pro forma
5. Governance review
6. Reputation review

Upon conclusion of this work, the Authority prepares a report to summarize the analysis. If staff recommends consideration of membership, the report is presented to the Authority’s Underwriting Committee. The report may include conditions of membership, if significant items are identified that must be addressed before granting coverage. If the Committee recommends membership approval, the application for membership is forwarded to the California JPIA’s at-large Board of Directors for comment. Any comments are then forwarded to the Authority’s Executive Committee, which then votes on the recommendation.

**EXISTING MEMBERS**

As early as 2005, staff began looking into ways of working more closely with members in in order to support risk management and good governance. In fact, early efforts led to the creation of the California JPIA’s Loss Control Action Plan (LossCAP) program; the purpose of which is to integrate the delivery of various Authority programs and services in a manner that reduces frequency and severity of member losses.

In 2008, the Executive Committee heard recommendations on how to transform these practices into a formal policy. Remedies for members in distress included limiting or cancelling coverage, or terminating membership altogether. Based upon these recommendations, the Executive Committee supported changes to the Joint Powers Agreement. Articles 26 and 27 were both added by the Board of Directors in order to recognize the importance of good governance; first, by providing a framework
for helping members who are facing cancellation of participation in joint protection programs; and, second, by providing a last resort option where a three-fourths vote of the entire membership will cancel membership altogether.

HEALTHY MEMBER PROTOCOL

Poor governance by one member does represent a very real risk to other members, and it is something that cannot be left to work itself out. As such, the Authority has worked to position itself in order to intervene in a member’s operations effectively and at the appropriate point in time. To do so, staff relies on information and analysis coming from three primary activities. First, the Authority’s risk managers each manage a portfolio of members participating in the LossCAP program. This puts them on the front lines of contact with member staff, and affords them access and insight into how the member is doing; second, the Authority routinely monitors newsfeeds for stories and events concerning the membership; and third, the Authority has developed a database that provides robust analytics of member performance.

The Executive Committee has approved practices and procedures that have come to be known as the California JPIA Healthy Member Protocol. At the root of such efforts is the Authority’s stated goal of helping restore members to good governance and sound operation. The policy and process is as follows:

1. Regardless of their origin, concerns regarding member governance or activity will generally be measured against one or more of the six following criteria:
   A. Increases in member claim frequency or severity;
   B. Frequency and severity of claims 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. Adverse public policy, including actions or inactions that create legal liability; and
   F. Inability to pay owed contributions or other cost allocation fees.

2. Upon authorization of the Chief Executive Officer, staff will arrange a meeting with the member of concern, explaining the process to the member and collecting additional relevant information needed for the development of a performance improvement plan.

3. After meeting with the member, a report will be prepared for Executive Committee consideration that will include identified concerns and a proposed member performance improvement plan. The proposed plan will include a list of action items, the due date for completing the action item, indicate who is responsible for completing the action item, and define what constitutes completion.

4. The Chief Executive Officer may also recommend excluding coverage, copayments, member retained limits or deductibles for activities or conditions of the member that are deemed to be a risk to the pool. Such exclusions, copayments, member retained limits or deductibles may be imposed immediately upon adoption, or as a consequence of failing to adhere to an approved performance improvement plan. The member’s manager or chief executive will be given an opportunity to present a written or oral response to the Executive Committee.
5. Upon the Executive Committee's approval of any performance improvement plan, the member must formally agree to the performance improvement plan by adopting a resolution by action of its governing body.

6. Approval of any member performance improvement plan will authorize the Authority's Chief Executive Officer to administer the plan.

7. The member will have appropriate time, as determined by the Chief Executive Officer, to improve governance through the completion of action items established in the plan. In no instance should the time period provided exceed two years, unless determined otherwise by the Chief Executive Officer. If concerns arise over egregious actions or solvency of the member, this timeline may be modified accordingly.

8. Periodic meetings between Authority staff and the member will be maintained to address challenges and progress.

9. Subsequent modifications to the performance improvement plan must be approved by the Authority's Chief Executive Officer.

10. The Chief Executive Officer will provide progress reports to the Executive Committee on a quarterly basis, and more frequently when action or inaction of the member warrants such report. The Chief Executive Officer will report upon conclusion of the established period in which a member was placed on a performance improvement plan.

11. 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.

12. 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 or more of the plan elements or poses an emerging and adverse risk to the pool, the Chief Executive Officer may recommend to the Executive Committee any of the following:
   A. Imposition of specific copayments, member retained limits or deductibles
   B. Coverage exclusions for specific activities or conditions
   C. Elimination from participation in a joint protection program
   D. Cancellation of the performance improvement plan
   E. Initiation of procedures to cancel membership in the Authority

13. If Executive Committee approval is given to initiate any of the actions under Item 12, staff will issue to the member a Notice of Intent, and will endeavor to provide as much notice as possible, not less than 30 days prior to the intended action.

14. The member will be given an opportunity to formally appeal the intended action before the Executive Committee if such a request is made within 14 days from the date the Notice of Intent is issued.

15. 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 the Chief Executive Officer.

16. If action is taken to either eliminate the member from participation in a joint protection program or initiate membership cancellation, 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.

17. If action is taken to initiate membership cancellation, the Chief Executive Officer will distribute written ballots to the at-large Board of Directors, with three-fourths voting in favor required to approve the action.
18. Upon receipt of the required vote, the Chief Executive Officer will issue notice of cancellation to the member.

CONCLUSION

The California JPIA has a responsibility to its pool members to help guard against member actions that can result in adverse claims. Members have the same responsibility to each other and, through the policy setting of the Executive Committee, have entrusted Authority staff to follow certain procedures. These begin with a stringent and careful prospective member process and continue through monitoring existing members; carrying the same standards for what constitutes sound operations, management attitudes and beliefs, risk management profile, and actions of the governing body.

The Authority and its members are well-served by this, which has proven its effectiveness in making sure that the Authority does all it can to support healthy pool members before decisions are made regarding coverage and membership.