

SUMMARY OF 2011 AMENDMENTS
to
PURMS “INTERLOCAL AGREEMENT”

[Proposed final for Consideration at 11/10/11 PURMS Annual Board Meeting]

While there were a lot of updating language changes in the proposed Amendments to the PURMS Interlocal Agreement (“Amended ILA”), they are evident from the color-font version of that document on PURMS’ Website. Most are self-explanatory. The purpose of this Summary is to identify and briefly discuss the salient and more substantive changes in the Amended ILA. I am not identifying or referencing any deleted provisions or paragraphs from the Amended ILA since they were no longer relevant to PURMS’ procedures and operations or requirements for the Amended ILA.

The paragraph references below are to the Amended ILA you received on October 11, 2011. Where it is instructive to include a reference to a paragraph in the current ILA, I have done so.

ILA Paragraph 2: “2011 Amendment and Restatement of ILA and Program Documents”

¶ 2.1(b) – States that one of the major purposes for the 2011 Amendments to the ILA is to ensure compliance with the WACs specifically governing Washington joint self-insurance programs (*see* WAC 82-60 and 82-65), and to incorporate the effects of the 2009 and 2010 PURMS Resolutions.

ILA Paragraph 4: “Status and Authority of PURMS”

¶ 4.2(b) – Makes it clear that Members are subject to “reassessment” in accordance with the PURMS Program Documents, as required by WAC 82-60-02005(1).

¶ 4.2(i) – Clarifies that the Board has the authority and duty to establish a bond on PURMS’ Auditor for the faithful performance of his/her duties; and the authority, in its discretion, to establish bonds on PURMS’ Officers, Committees and Administrator.

¶ 4.4.1(c) – Makes it clear that the Executive and Administrative Committee’s decisions on issues within their jurisdiction are binding on all Risk Pools that are the subject of the decision, regardless of representation on the Committee; subject however, to the Board’s authority in ¶ 6.2.4 to delegate or withdraw authority or duties to or from these Committees by Majority Vote, and ¶ 19, the Appeals paragraph of the Interlocal Agreement.

ILA Paragraph 5: “Program Documents, Voting Standards and Amendment Procedures”

¶ 5.1 – Sets out the SIA Program Documents in a more understandable format and provides more description of what the Documents are and do.

¶ 5.1.1 – Makes it clear that PURMS considers the Interlocal Agreement to be both its “Foundation Agreement” and its “Bylaws” for purposes, among others, of notice to and pre-approval

of changes by the State Risk Manager's office ("SRM"). (*See also* WAC 82-60-065(1)(a) and 82-65-280)

- ¶ 5.1.12 – The "Financial Procedures" referenced here are a new addition to the Program Documents and contain provisions implementing decisions of the Executive Committee in the spring of 2010 in connection with its review of the Financial Activities of PURMS' Auditor, Committees and Administrator. All of the documents constituting PURMS' "Financial Procedures" are set forth in ILA ¶ 12.1 as part of PURMS "Financial Procedures Manual", including PURMS' Investment Policy, Investment Procedures and Disbursement Procedures. Changes in these last three documents were previously subject to Super-Majority Vote (85% of the Members); the amendments propose permitting amendment of any of the documents constituting the Financial Procedures by a [Two-Thirds] [Majority Vote].
- ¶ 5.1.13 – This paragraph adds the "Financial Procedures" to the hierarchy of controlling documents in the case of a conflict, in descending order: Interlocal Agreement; Financial Procedures; Operational Rules and Procedural Memoranda.
- ¶ 5.2 – Simply expressly states that all Members warrant their authority to be signatories to the Amended ILA and to be bound by its terms.

Paragraphs 5.3 – 5.5 reflect new rules regarding voting for and amending the Interlocal Agreement and the other Program Documents. These amendments are substantially like Resolution 11-12-09-5 (re "Authorizing Voting Procedures re Resolutions for 11-12-09 Board Meeting") and Resolution 11-4-10-1 (re "Application of SIA Voting Standards to 2010 Resolutions and SIA Amendments") that were previously approved by the Board and Members.

- ¶ 5.3.1 – Members agree to be bound by decisions of the Board and/or Members passed by the applicable Voting Standard; if the Amendment is to the Interlocal Agreement, regardless of the applicable Voting Standard, all Members must execute Authorizing Resolutions approving the Amendment. (*See* WAC 82-60-02021(2))
- ¶ 5.3.2 – Provides that Amendments to the Program Documents requiring a Unanimous Vote, Super-Majority Vote or Two-Thirds Vote may be passed or rejected by a combination of Directors' votes on behalf of the Amendment at the Board Meeting and by Authorizing Resolutions enacted by Member's governing bodies after the Board Meeting, even if they did not attend the meeting. Members are no longer required to "participate contemporaneously" in a Board Meeting or lose their rights under Voting Standards higher than Majority Vote. (*See also* ILA ¶ 6.3.4) (Note: Majority Votes are treated differently on this issue. *See* ¶¶ 6.3.2 and 6.3.3 below)
- ¶ 5.4 – Paragraph 5.4 addresses the Voting Standards for the other Program Documents. In several places, brackets are around two choices. Again, such brackets identify a subject yet to be addressed to the Executive Committee.

- ¶ 5.4.1 – This paragraph proposes some different (mostly lower) Voting Standards for amendment of various Program Documents than are applicable in ¶¶ 5.2.2 and 5.3 of the current ILA. Now, the ILA can be amended only by Unanimous or Super-Majority Vote; there are provisions on subjects currently committed to amendment only by Unanimous Vote in ¶ 5.3(a) that probably should be at a lower Voting Standard. *See* for example, PURMS Excess Insurance. The original Voting Standards requiring Unanimous Vote for subjects in old ¶¶ 5.2.2 and 5.3 are currently retained in ¶ 5.4.2 of the Amended ILA. This subject has yet to be considered by the Executive Committee.
- ¶ 5.4.1(e) – Makes the distinction that Coverages for the Liability and Property Pools may be amended by a Super-Majority [or Two-Thirds] vote of the Boards for these Risk Pools; in contrast, each Member of the H&W Pool decides its own scope of coverage and whether coverage will be provided for particular H&W Claims.
- ¶ 5.4.3 – Amendments of the ILA must be approved by Authorizing Resolutions from all Members, even if the Voting Standard applied is Super-Majority or lower. This means Members that voted against an Amendment that passes by the applicable Voting Standard must also execute Authorizing Resolutions approving the Amendments.
- ¶ 5.4.4 – Identifies the requirements of Members’ Authorizing Resolutions.
- ¶ 5.4.5 – Provides some specific procedures for curing defective or undelivered notices of Board meetings and subsequent minor changes in the amendment documents by providing that: (a) Members can waive in writing the thirty (30) day notice required for amendments to the “Foundation Agreement” [although thirty (30) days’ advance notice must still be provided to SRM]; (b) permits non-material or conforming changes to the amendments so long as approved by the Executive Committee; and (c) allows for subsequent cure of any such defects by the Member executing an Authorizing Resolution.
- ¶ 5.6 – Amendments to Program Documents (other than the Interlocal Agreement) by a standard less than a Unanimous Vote may be authenticated as having passed (or failed) by the applicable Voting Standard by the signature and date of [at least two] of PURMS Officers.

ILA Paragraph 6: “Board of Directors”

- ¶ 6.2.2 – Adds to the Board’s duties the general responsibility to see that PURMS’ Risk Pools comply with the Program Funding Requirements.
- ¶ 6.2.3 – Provides for the election of PURMS Officers by Majority Vote of the Board.
- ¶ 6.2.4 – This provision was the requirement of several Members’ attorneys when the SIA was first substantially rewritten in 1995. The concern was that the PURMS Board not give up power to any of PURMS’ Committees that couldn’t be taken back by the Board by Majority Vote; provided that the Board cannot effect a change to the SIA by a Voting Standard higher than a Majority Vote through the authority in this paragraph.

- ¶ 6.2.5 – This provision reflects a long-time practice and terms now in the Administrator Service Agreement (“ASA”) and the Client Service Agreement with the Broker that allow the Administrator [and/or the Executive Committee] authority to approve renewals of Excess Insurance so long as there is not a material change in terms; otherwise the decision is to be made by the Board.
- ¶ 6.2.8(b) – Makes it clear that it is *not* one of the Board’s duties to decide coverage issues relating to an H&W Claim of an Employee of a Member of the H&W Pool; but rather, this decision is made by the Member.
- ¶ 6.3.2 – [mis-numbered 6.3.1] “Quorum” is currently defined as a “majority of all Members”. With eighteen (18) Members, that means ten (10) Members must be present or participating in the meeting for there to be a Quorum. “Majority” is defined as “...the affirmative vote of *more than half* of the total Members”. Thus, with only a Quorum, one Member can prevent the Board from doing any business, including all issues requiring only a Majority Vote. We are proposing that “Majority Vote” be redefined to mean “at least half” of all Members. Then 9 out of 10 Members could still transact business.
- ¶ 6.3.3 – As noted in ¶ 5.3.2 above, on issues subject to a Voting Standard greater than a Majority Vote may be passed by a mix of Director’s votes at the Board meeting and Members subsequently executing an Authorizing Resolution, even if they were unable to attend or participate in the meeting. On the other hand, this ¶ 6.3.3 makes it clear that a Member that fails to attend or otherwise participate in the Board meeting waives its right to vote on any Majority Vote issue taken up at the meeting. [NOTE: The following should be added to this paragraph 6.3.3: “If a Member fails to return its Authorizing Resolution within ninety (90) days from the date of the Board’s Vote thereon, the Member shall be deemed to have cast its Vote in favor of the Majority of Votes at the time.”]
- ¶ 6.3.4 – This paragraph affirms that Members that do not attend or participate in a Board meeting do not waive their right to Vote under a Voting Standard higher than Majority Vote; that is, unless the measure passes or is defeated at the meeting or by Authorizing Resolutions received thereafter.

ILA Paragraph 7: “Board Meetings”

- ¶ 7.1.1 and ¶ 7.1.2(a) – WAC 82-60-02013 states the requirements for notice and an Agenda for the governing body’s “regular” meeting (i.e. a PURMS “General Meeting”) that must be provided to Members, and to the State Risk Manager at the same time and in the same manner, but requires thirty (30) days’ notice for a General Meeting while the WAC only requires a minimum of ten (10) days for a “regular” meeting. The WAC requires that the notice and Agenda must be published on PURMS’ Website.
- ¶ 7.3 – Has been changed to allow an “Emergency Meeting” to be called and held as soon as reasonably practicable if requested by the Administrator, any two Officers, any three non-officer Directors or by the Administrative Committee.

¶ 7.10 – Provides that “recessed and rescheduled” Board meetings may not take up new issues, unless new notice including the new issue is provided, or as provided in ILA ¶ 7.6 (which allows votes on non-Agenda items provided a Super-Majority of Directors are present at or otherwise participating in the meeting).

ILA Paragraph 8: “PURMS Officers”

¶ 8.3 – This paragraph contains a new provision that gives authority to the President of PURMS (and the Vice-President in the President’s absence) to sign contracts between PURMS and third-party service providers with the written authority of the two [or one of the two] other Officers; unless the ILA specifically assigns approval of such a contract to the Board. The Board may also delegate this power to the President.

ILA Paragraph 9: “Committees”

¶ 9.1.2(a) – This paragraph and ¶ 9.1.2(b) below address issues relating to the authority of the Executive Committee. Sub-¶ (a) is a general grant of authority to the Executive Committee to take action on matters necessary to conducting PURMS business unless the ILA specifically provides for a decision by the Board; to the extent practical, any such decisions by the Executive Committee could be modified or reversed by the Board by Majority Vote.

¶ 9.1.2(b) – This paragraph provides authority for the Board to delegate to the Executive Committee [either by Two-Thirds or Majority Vote] any decision that could be made by the Board by Majority Vote. When the Executive Committee is acting under such authority, it will comply with the Open Public Meetings Act. Executive Committee decisions made pursuant to delegated authority bind Members and bind PURMS vis-à-vis transactions with Third Parties.

¶ 9.1.3(b) – Adds oversight of the Risk Pools’ compliance with the Program Funding Amendments to the duties and authority of the Executive Committee.

¶ 9.1.3(c) – Adds responsibility and authority to the Executive Committee to review, as deemed needed, the Financial Activities of PURMS and the Risk Pools’ compliance with the Program Funding Amendments.

¶ 9.1.3(h) – Gives the Executive Committee the power to sign contracts for third-party services to PURMS; and, provides that the Executive Committee can delegate some or all of its responsibilities in this regard to the Administrator.

¶ 9.1.4 – Makes it clear the Executive Committee can meet whenever it wants, as requested by the President, the Administrative Committee or the Administrator.

¶ 9.2.6 – Makes it clear the Administrative Committee can meet whenever it wants, as requested by the Auditor or the Administrator. Notice of all Administrative Committee meetings shall also be provided to PURMS’ Officers and to all members of the Operations Committee.

- ¶ 9.2.8(b) – Paragraph 9.4.3 of the Operational Rules identifies a list of subjects which are assigned to the “Primary Jurisdiction” of the Administrative Committee, meaning such issues should be taken to and/or addressed by the Administrative Committee in the first instance, subject to appeal to the Executive Committee and then the Board under ILA ¶ 19. Paragraph 9.2.8(b) makes it clear that the Board may, under a particular circumstance, assign an area of or issue within the Administrative Committee’s “Primary Jurisdiction” to the Executive Committee or to the Board itself for decision. Similarly, issues not specifically committed in the Program Documents to the judgment of the Administrative Committee may be delegated to the Administrator.
- ¶ 9.2.9 – This paragraph simply memorializes a right Members have always had to have a representative attend a particular Administrative Committee meeting and participate in discussions; provided the representative shall have no vote.

ILA Paragraph 10: “Administration of PURMS and its Risk Pools”

- ¶ 10.10.1 – This updates the paragraph by referring to the Administrator Service Agreement (“ASA”) executed with the Administrator in December 2009, and to Exhibit 1 to the ASA which contains all of the Administrator’s Operational Duties. It deletes the requirement that the ASA be an Appendix to the SIA. Finally, it notes that while the ASA was approved by a Unanimous Vote (because some provisions of the ASA *de facto* amended the SIA), future material changes or additions may be approved by the Board by Majority Vote.
- ¶ 10.1.2 – This paragraph reflects the termination provisions included in the ASA executed in 2009, i.e. the ASA may be terminated at any time by a Two-Thirds Vote, and for cause by Majority Vote with a right to Cure. The paragraph makes it clear that selection of another or new Administrator would be subject to “Competitive Solicitation” required by the WACs.
- ¶ 10.1.4 – This paragraph has been amended to conform to the terms of Resolution No. 11-12-09-3 which provided that PURMS may obtain a bond on the Administrator, at PURMS expense. However, the Administrator is required to provide a bond if the law specifically requires it of the Administrator. PURMS indemnifies the Administrator for loss of security or bonding company recourse for a loss under such bond.
- ¶ 10.2.1 – The reference in this paragraph is to the Client Service Agreement (“CSA”) which is the name of the current agreement with Marsh USA, Inc. (“Marsh”). The term of the CSA shall be one (1) year, unless extended up to a maximum of three (3) years by the Executive Committee. Any material change in the CSA must be approved by the Board by Majority Vote.
- ¶ 10.2.2 – As with the ASA, the CSA with the Broker may be terminated anytime upon a Two-Thirds Vote; and for cause by Majority Vote. If PURMS selects a new or different broker-of-record, the process is subject to Competitive Solicitation, as required by the WACs.

¶ 10.2.4 – Although the CSA has for some time authorized Marsh to provide broker and other services to individual PURMS Members, PURMS did not have express authority to permit this and Members could have perhaps objected. The situation is now clear.

ILA Paragraph 11: “PURMS Records and Board and Committee Meeting Minutes”

¶ 11.3.1 – This provides that Members shall have the right to have a representative “inspect and copy” documents relating to PURMS. Paragraph 12.h of Exhibit 1 to the ASA allocates the cost of this procedure. Paragraph 11.3.1 gives the Administrator the alternative of producing the records requested by the Member electronically.

¶ 11.3.3 – While ¶ 11.3.2 requires PURMS to provide records to the public as required by law, ¶ 11.3.3 makes it clear that records relating to H&W Pool Members’ Health Plans that are governed by HIPAA are not within this requirement.

ILA Paragraph 12: “PURMS Financial Procedures, Auditor, Accounting and Financial Reporting Requirements”

¶ 12.1 – This is a new paragraph establishing PURMS’ “Financial Procedures” in accordance with decisions of the Executive Committee at its spring 2010 meetings. Certain of those “Financial Procedures” were approved by the Board at its June 2010 meeting and a faithful performance bond on the Auditor (also covering the Committees, Officers and Administrator) was approved by the Executive Committee and reported at the Board’s November 2010 meeting. Sub-paragraphs (a) through (h) identify the documents relating to PURMS’ Financial Activities that are to comprise PURMS’ “Financial Procedures Manual”.

¶ 12.2 – Makes it clear the Auditor is approved and removed by a Majority Vote of the Board.

¶ 12.2.1 – This paragraph provides that the Auditor “...shall have primary responsibility for supervising the investment, management, transfer and disbursement of the Assets of PURMS and its Risk Pools.” This language, together with new language described in several paragraphs below regarding the Auditor’s “faithful performance”, attempts to maximize the likelihood and scope of coverage that might be provided under the new Berkeley Government Crime Policy (with a faithful performance endorsement).

¶ 12.2.1(b) and (c) – Makes the Auditor responsible to “...supervise implementation and maintenance of PURMS’ Financial Procedures”. The Auditor shall “...faithfully perform his or her duties hereunder, and under applicable law, and shall faithfully account for all monies of PURMS and its Risk Pools, subject to indemnification of the Auditor in ¶ 23.1.”

¶ 12.2.2 – By Resolution No. 11-8-07-1, the Board established the position of “Deputy Auditor”, to serve if and when the Auditor could not. This paragraph memorializes the Resolution.

¶ 12.2.3 and 12.2.4 – The Auditor may delegate portions of his/her financial responsibilities to the Administrator, which must be set forth in the ASA. Notwithstanding such delegation, the

Auditor "...remains accountable to PURMS for the faithful performance of all of the Auditor's financial duties..."

- ¶ 12.2.5 – Embodies the Board's decision in Resolution No. 11-12-09-2 which provides that PURMS shall obtain a bond on its Auditor as required by 48.62.111 covering discharge of the Auditor's duties and faithful performance. PURMS indemnifies the Auditor for loss of security or recourse by the bonding company as provided in ¶ 23.1. The Executive Committee can renew the bond; provided any significant changes in the bond must be approved by the Board.
- ¶ 12.3.2 – This paragraph embodies the decision of the Executive Committee in the spring of 2010 meetings to require, and so provide in the standing letter of authorization with the bank, that wire transfers can only be initiated by designated individuals in the Administrator's office, and can only be approved by a bank "call-back" to and written approval of [one (1)] [two (2)] designated Standing Members of the Administrative Committee.
- ¶ 12.4.2 – This paragraph updates the language of already existing Disbursement Procedures for all expenditures of the Liability and Property Pools, i.e. written approval of the expenditure by two (2) Standing Administrative Committee members prior to the Administrator issuing the check.
- ¶ 12.4.3 – This paragraph also requires the Disbursement Procedures involving approval by two (2) Standing Members of the Administrative Committee for all H&W Pool expenditures *except* payment of H&W Claims. Because of volume and claim turn-around time, pre-written approval is impractical. As the best alternative, ¶ 12.4.3 requires the Administrator "...to establish and maintain a system of internal and system controls, computer security and separations of financial duties, satisfactory to the Auditor...", to maximize security and accurate payment of claims. In its spring 2010 meetings, the Executive Committee, Auditor and Administrator reviewed in detail, among other things, the Administrator's control mechanisms for payment of H&W Claims and generally approved them.
- ¶ 12.4.4 – It is made the Executive Committee's responsibility to review and make (or recommend, as appropriate) changes in procedures relating to PURMS' Financial Activities. Changes to [Investment and] Disbursement Procedures are subject to _____ Vote of the Board.

ILA Paragraph 13: "PURMS and Risk Pool Financing and Assessment Methodology"

The paragraphs identified below were sent out to Member in separate documents: one containing ¶¶ 13A, 13C and 13D; and the other containing only the provisions of ¶ 13B reflecting the Program Funding Amendments for the H&W Pool. All of paragraph 13 will be the subject of a second Summary you will receive explaining the Program Funding Amendments.

¶ 13A – "Liability and Property Pools – Financing Methodology and Assessment Mechanisms"

¶ 13B – "H&W Pool – Reserves, Program Funding and Assessments"

¶ 13C – “Allocation of Administrative Expenses to and among Risk Pools”

¶ 13D – “Payment of Assessments – Interest and Remedies (All Risk Pools)”

ILA Paragraph 20: “Withdrawal from a Risk Pool”

¶ 20.1.3 – This is a “clean-up” paragraph providing that a Member that has given its Notice of Withdrawal [ninety (90)days before year-end] may no longer vote on any PURMS matters unless the matter directly affects the Withdrawing Member’s “Substantive Rights”.

ILA Paragraph 23: “PURMS Indemnifications”

¶ 23.1 – This paragraph provides for the mandatory indemnification by PURMS of Members’ employees providing service to PURMS, as Directors, Officers, Auditor or members of PURMS’ Committees. The indemnification does not apply if the Board determines “...the indemnitee was not acting in good faith or was not acting within the scope of his/her duties for PURMS.” These provisions were approved by the Board by Resolution No. 11-12-09-2.

¶ 23.2 – This paragraph provides for the mandatory indemnification by PURMS of the Administrator for claims arising out of performance or failure of performance of the Administrator’s duties for PURMS. In addition to the “bad faith/scope of employment” exception to indemnification under ¶ 23.1, indemnification of the Administrator also does not apply to a suit against the Administrator by PURMS for breach of the ASA. These provisions were approved by the Board by Resolution No. 11-12-09-3.