

# LGIT NEWS

Spring 2010

Serving Maryland Local Governments Since 1987

*Introducing the*



## Maryland Local Government Health Cooperative



*in Partnership with  
BENECON and CIGNA Healthcare*



# Health Cooperative Will Begin on July 1

I am pleased to announce that the Maryland Local Government Health Cooperative (a LGIT sponsored Cooperative) has joined with CIGNA Healthcare and BENECON to provide health coverage to Maryland local government officials and employees. The “Health Co-op,” which is already providing provisional pricing, will officially begin on July 1<sup>st</sup>, after 18 months of careful planning. At its March 17<sup>th</sup> meeting, the LGIT Board of Trustees voted to join with CIGNA Healthcare and provide health coverage beginning July 1, 2010. Before signing off on the program, the Board — which is responsible for setting eligibility requirements and policy — needed to feel satisfied that the Cooperative will provide Maryland local governments with the best possible healthcare solution. After extensive negotiations among LGIT, BENECON and CIGNA Healthcare, the Board determined that CIGNA is the best possible partner for the Cooperative available today. This is because CIGNA already has a comprehensive network in place and because CIGNA is excited about partnering with LGIT and BENECON to provide this product to Maryland’s local governments.

The Health Co-op model has been extremely successful in Pennsylvania, where several local governments have joined together to share loss and administrative costs, without the possibility of an assessment. According to Fred Bean, BENECON’s Senior Vice President of Government Business, the model works because of stable pricing, attentive service, member ownership and the best business model available. BENECON first developed this model in 1991 and currently administers three public sector cooperatives for over 220 public entities. Bean also stated that BENECON has had only two local governments drop out of its Cooperatives during that time.

The two most important factors when selecting health coverage are price and network. CIGNA is a major player in the health insurance field and has one of the most comprehensive networks in the State of Maryland.

The Cooperative can offer stable pricing because of the methodology used by BENECON’s actuary. In determining price, their actuary anticipates that every member will have seven good years and three bad claims years out of every ten. The Cooperative can also offer price stability because it sets its “stop loss” coverage

at a conservative level. That means in determining the member’s premium, the actuary includes an amount for stop loss coverage to protect the member and the Cooperative against a catastrophic injury or illness or an overall bad claims year. The final reason the Cooperative is able to offer stable pricing, is because there is a “cross share” component built into the premium. Cross share means a percentage of the member’s premium goes into a pool and when one member has a worse than anticipated year, the other members contribute to that member’s losses. There is no chance for chronic subsidization of any one member, because the member that had the “bad year” will see a premium adjustment in the next program year. Every member will eventually have a bad year, so over time, the cross share component will benefit all members.

On behalf of LGIT’s Board, I invite you to contact Robin Richardson to receive a quote. Robin can be reached toll free at (888) 400-4647. Over the long run, we believe the Maryland Local Government Health Cooperative will be your best option for health coverage, so please call Robin today.

— Tim Ailsworth  
Executive Director

## Welcome Robin Richardson



It is my pleasure to introduce Robin Richardson, who is a Senior Consultant for BENECON, the Pennsylvania company that is partnering with

LGIT and CIGNA Healthcare to bring you the new Maryland Local Government Health Cooperative (Health Co-op). Robin is responsible for marketing the Health Co-op to you, our Maryland cities, towns and counties. Robin has been with BENECON since 2005, where she has been responsible for marketing the Pennsylvania Municipal Health

Insurance Cooperative (PMHIC) and the Susquehanna Municipal Trust (SMT). Our new Health Co-op is modeled after PMHIC, which is a health cooperative for municipalities in Pennsylvania that have joined together to purchase health coverage. SMT is a self-insurance workers compensation pool for Pennsylvania municipal entities.

Prior to joining BENECON, Robin was the Director of Risk Management Services for the Penn Prime Property and Liability Insurance Trust, which much like LGIT, is an organization sponsored by the Pennsylvania League of Cities. Prior to her time with Penn Prime, Robin was the Personnel/Risk Manager for the Borough of Carlisle, Pennsylvania,

so Robin understands your needs. Her peers in Pennsylvania have recognized Robin by electing her the president of the Pennsylvania Chapter of the Public Risk Management Association.

Even though Robin has already visited and provided several Maryland local governments with health coverage quotes, I ask that you please join me in welcoming Robin to Maryland. We at LGIT are excited about teaming with Robin to bring you the new Health Co-op. Please give Robin a call and allow her the opportunity to provide you a quote. Robin can be reached toll free at (888)400-4647.

## From the Boardroom

The Board of Trustees met on January 25, 2010, and took the following actions:

- Approved membership in the MML Corporate Partner Program. This program promotes the exchange of ideas between private sector leaders and the leaders of Maryland's cities and towns with the goals of strengthening municipal government, encouraging economic competitiveness, and promoting corporate civic engagement.

The Board of Trustees met on March 17, 2010, and took the following actions:

- Approved the report of the Nominating Committee to submit the following for election by the members to a three-year term on the Board of Trustees: Sonny Bloxom (Worcester County), Sharon Greisz (Howard County), Susanne Hayman (Kent County), and Susan M. Keller (Frostburg).

### Staff Wellness Program

We recently hosted a Crime Prevention Lunch and Learn, in which Corporal Mallar of the Anne Arundel County Crime Prevention Unit addressed the important subject of Crime Prevention, including personal safety and home security.

We've also completed a six-week self-defense class offered during lunch hour for those employees wishing to learn how to defend against an attacker, by using simple techniques designed to disarm any assailant.

If you'd like more information about how to start a Wellness Program in your workplace, please give us a call — we'd love to share our growing program with you!

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# Programs Again Available for FY 2011

## Rate Stabilization Program

I am happy to announce that at its March 17, 2010 meeting, the LGIT Board of Trustees voted to return 2 million dollars to the membership in the form of rate stabilization credits for Fund Year 2011. LGIT prides itself in providing Maryland local governments with exceptional insurance and risk management products at a stable price. So, to accomplish this mission, the Board decided to give back this money to assist our governments in a time of need. However, prior to authorizing this credit, the Board had an outside actuary look at its numbers to ensure the credit was being provided in a fiscally responsible manner. LGIT annually engages an outside actuary to look at its financials, to ensure the Trust is adequately funded; this year, the Board asked the actuary to go one step further to determine if the Trust could responsibly provide a premium credit to its membership. The actuary determines the Trust's long- and short-term needs prior to making a recommendation, and this year, he found that while rates need to be increased slightly (less than 1% overall) based on our members' experience, the Trust could safely return premium credits to the membership.

The Rate Stabilization Credit program was implemented two years ago, when LGIT members were facing increases in their insurance. That year, the actuary determined that 2 million dollars could be set aside to stabilize rates, while last year, he suggested that an additional 1 million dollars could be put into the program. Overall, 5 million dollars have been set aside for our members' benefit, and this year, our members will receive credits worth 1.575 million dollars.

The LGIT Board is made up of elected and appointed officials just like yourselves who understand what you are going through this year. In providing the Board with a range the Board could safely set aside, the actuary stated that even after giving back 2 million dollars this year, there is only one chance in one hundred thousand (or .001%) that the Trust will not have enough money to pay out all of its claims. In other words, the Trust is adequately funded even after setting aside this money.

Rate stability is our primary goal, so the Board did not want to give back all the money in one year. It would not be fair to our members to give back a large amount of money one year and not give any back in future years. The Trust understands that stable pricing will be of greater assistance to our local governments in the long run. Wild swings in the cost of insurance benefits no one. Additionally, this method of returning money ensures that LGIT will be around for the long term — long after the commercial insurance market loses interest in insuring local government entities.

The rate stabilization program is just another way that LGIT and its elected Board of Trustees is serving the best interests of Maryland local governments. As of July 1<sup>st</sup>, the Trust will have returned 3.125 million dollars in Rate Stabilization Credits to its members, while leaving an account balance in that fund of 1.925 million dollars to be returned in future years.

— Tim Ailsworth  
Executive Director

## Loss Control Credit Program

The Local Government Insurance Trust is pleased to announce that the Loss Control Credit Program will continue for coverage year 2010-11. As in the past, this added-value service is only available to members of the Primary Liability Pool.

The LGIT Board of Trustees has approved this program as part of a plan to return a portion of the equity balance from the Primary Liability Pool to its participants by rewarding those members who have engaged in exceptional loss control activities. A funding level of \$300,000 has been allocated in FY 2011 toward this effort. Members wishing to participate will be required to complete a web survey tailored to the lines of primary liability coverage the member currently has in effect.

Resulting survey scores are weighted by primary liability line of coverage based on the ratio of the pool's aggregate loss costs for that line to the total aggregate loss costs of the prior year. Qualifying participants will receive a credit of 5% of their Primary Liability premium for the FY 2011 renewal. All survey responses must be received by June 1, 2010, in order to qualify for the FY 2011 Loss Control Credit.

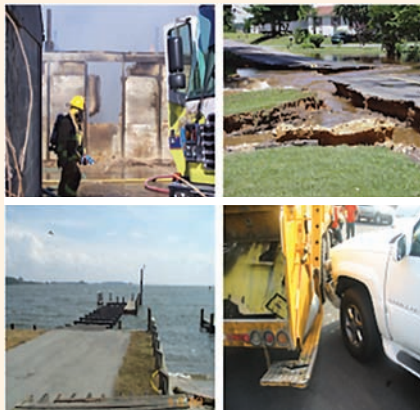
— Hank Schomburg  
Director, Loss Control and Underwriting

# Springtime is Renewal Time!

With spring around the corner, it's time for LGIT members to be thinking about the upcoming renewal season. The Underwriting Department is currently updating and compiling important information concerning members'

renewals, including beneficial changes to the Scope of Coverage, updates to the renewal applications, and other information that members will need to help them complete the renewal application process quickly and correctly.

We strongly encourage all members to take full advantage of our member renewal workshops, which are offered only once per year and focus on changes to scopes of coverage, new property and liability coverages, the Renewal Application and rates. The renewal workshops will benefit those new to insurance and to public entity risk management, as well as those who are seasoned professionals.



The workshops are offered regionally across the state throughout the month of April on the following schedule:

- April 21, 2010 - LGIT, Hanover
- May 04, 2010 - Frostburg Library

All workshops run from 10 a.m. to 1 p.m., and lunch will be provided. Please plan to attend and bring your renewal applications, along with any questions you may have for LGIT staff.

## A Valuable Reminder

While members are compiling renewal information, this is an excellent time to review vehicle and property schedules, including future FY 2011 property and auto acquisitions, completed capital projects, and also counts for additional police officers and other employees. This is also a good time to have your department heads review and revise these schedules so they are as up-to-date as possible. Doing this will be a great help to the Underwriting staff and a benefit to the members.



Larry Bohlen  
Training Coordinator

## Early Pool Rate Indications for 2010-2011

LGIT's actuary has recommended the following changes in pool funding based on current information:

### The Good News Is:

- General Liability funding should be reduced by 6.9%;
- Automobile Liability funding should be reduced by 7.9%;
- Total Primary Liability funding should be increased by only 0.9%;
- If Property re-insurance costs remain flat, funding will decrease by 2.3% or more; however, we are expecting the prices to go down significantly;
- Total funding of all pools is expected to decrease by at least .04%.

### The Not So Good News:

- Public Officials Liability funding should be increased by 13.6%;
- Law Enforcement Liability funding should be increased by 8.7%;
- Auto Physical Damage funding should be increased by 3.8%.

### No News Yet:

- We do not yet know the final costs of the Property reinsurance program, but we are shopping for quotes from a new source and expect significant reductions;
- We do not yet know the actual costs to reinsure the Excess Liability or Equipment Breakdown, but expect reductions or, at worst, a flat renewal.
- Once we have received the final outstanding reinsurance quotes, the funding and rates will be submitted to the Underwriting Committee and the Board of Trustees for final approval. You will be notified of your individual rates as soon as possible, once they are approved.



Hank Schomburg  
Director, Loss Control and Underwriting

## Local Government Officials and Legislative Immunity for Violations of Federally Protected Rights

Section 1983 of the Civil Rights Act of 1871 allows individuals to sue local governments, elected officials, and governmental employees to redress violations of federally protected rights, including the rights of free speech, due process, and equal protection. Although the statute enables individuals to sue, the United States Supreme Court has long held that federal and state — and more recently, local legislators — are entitled to absolute immunity from civil liability under §1983 for their legislative activities. The rationale for the immunity was stated by the Supreme Court in *Bogan v. Scott-Harris*, 523 U.S. 44 (1998); “Regardless of the level of government, the exercise of legislative discretion should not be inhibited by judicial interference or distorted by the fear of personal liability.” The Court also observed that the time and energy required to defend a lawsuit are of particular concern at the local level, “where the part-time citizen legislator remains commonplace.”

The absolute immunity for legislative activities is broad, as it extends to officials outside the legislative branch when they perform legislative functions. Further, although the immunity is a formidable defense, it is limited to actions taken in the sphere of legitimate legislative activity. Consequently, when a lawsuit challenges the actions of a local government legislator or other public official, one of the first questions that must be answered is whether the act was truly legislative. Whether an act is legislative depends on the nature of the act, rather than on the motive or intent of the official performing it. In many instances, the determination will be easy. For example, voting for an ordinance, introducing a budget, and signing an ordinance into law are acts that are quintessentially legislative. In other instances, the determination will be more complex.

Recently, the Court of Special Appeals of Maryland was called upon to decide whether legislative immunity protected an executive branch official from liability under §1983. In *Mayor and City Council of Baltimore v. Guttman* (decided on February 2, 2010), a vendor providing auto body repairs for Baltimore City appeared on two local television newscasts to criticize the city’s repair practices. Shortly thereafter, the City’s purchasing agent submitted a request to the Board of Estimates to terminate the vendor’s contract under the contract’s termination for convenience clause. The Board, which is part of the executive branch and not a legislative body, approved the request. The purchasing agent then informed the vendor that her contract had been terminated. In response, the vendor filed suit against the City and the purchasing agent under §1983, alleging that

she was fired for engaging in protected free speech. The purchasing agent moved to dismiss the suit on grounds of legislative immunity and his motion was granted.

After the vendor obtained a final judgment against the City, she appealed the dismissal of the purchasing agent. The Court of Special Appeals ruled that the purchasing agent was not entitled to legislative immunity. The Court noted that the agent was not a member of the Board of Estimates and had not voted to terminate the contract. Instead, he had merely asked the Board to terminate the contract. The Court further reasoned that even if the purchasing agent had voted, the act of voting on this particular request was not a legislative act because it “did not involve a policy-making decision of a general scope.” More specifically, the purchasing agent’s request was not made in context of an overall budgetary plan for the fiscal year. As such, his request could not be deemed “legislative activity.” Instead, the Court characterized it as an executive or administrative act that was not entitled to legislative immunity.

This case emphasizes that when local government officials assert the defense of legislative immunity, courts will examine whether their actions were both substantively and procedurally legislative. As to substance, a court may inquire whether the activity involved “policy-making” or “line-drawing.” If the act or decision in question affected only a small number or a single individual, the court might be more inclined to conclude that the act was administrative. As to procedure, the court may inquire whether the action was accomplished by means of established legislative procedures. In the *Guttman* case, the purchasing agent’s request was neither substantively nor procedurally legislative.

In conclusion, although legislative immunity may protect local legislators and other officials from personal liability for their legislative activities, it is important to remember that it does not protect local governments and that local governments, themselves, can be sued under §1983 for the legislative and executive actions of their officials. Consequently, it is incumbent upon all officials to act in the best interests of the public they serve and within all legal and constitutional constraints.



John F. Breads, Jr.  
Director, Legal Services



## Digging Out of Snow Claims

Despite the warming weather, our members are still reporting snow related claims. Since February 5, 2010, the beginning of the first blizzard, LGIT members have reported 288 snow-related occurrences during a one month period. By comparison, LGIT's claim staff generally receives approximately 130-140 claims per month – so we have doubled our normal monthly claims count. As expected, the majority of these claims involve property damage to our members' structures, as well as liability claims related to snow plowing or snow removal operations. We are handling these additional claims with our current staff, so we ask your patience as we prioritize and process these claims.

This winter, LGIT has recorded five catastrophic (CAT) storm occurrences, which have damaged 28 structures for 15 members. Currently, these losses have a total incurred reserve of \$1,426,000; however, these reserves are expected to increase, as our members receive repair and replacement estimates. LGIT's retention for each CAT loss cannot exceed \$100,000. Baltimore County also reported a significant fire loss, unrelated to the winter storms, which destroyed a portion of a fire station and mobile fire equipment apparatus. The reserve for this claim is \$1,685,000; however, LGIT's final retention of this loss will be \$100,000.

As we dig out of these claims, our objective is to respond to our members' building and vehicle losses as quickly as possible so that governmental operations may resume promptly. So that building losses receive top priority, Dorie Schwartz will be handling all CAT property losses for all members. Please call her on ext. 717 if you have any questions regarding your CAT loss claim. Also, please remember that all liability losses must still be fully investigated, which may require taking statements from your employees, and obtaining reports, photographs and other documentation. LGIT recommends that, as required by the Local Government Tort Claims Act, you require all claimants to notify you in writing of any intent to make a claim. Likewise, please do not accept liability for occurrences without first speaking with your LGIT representative. We thank all of our members for their assistance and patience as we attempt to provide you with prompt and efficient claim services.



Sherri N. Butler  
Director, Claims Services

## Employment Law Hotline

*The Hotline is a phone service available to Liability Program members that provides up to 30 minutes of free legal advice on employment matters. We have selected to print one inquiry of interest that was posed through the Hotline. This member service is provided by LGIT, with the assistance of Daniel Karp, Esquire and Kevin Karpinski, Esquire.*

**Question:** Can a local government take action about an employee that is exhibiting bizarre and erratic behavior, if this person is not consistently performing their job duties and has displayed anger at employees inappropriately?

**Answer:** Yes. In the case in question, the local government needs to take some action and cannot ignore this kind of behavior. The possibility of liability by the local government as well as equal protection claims that another employee could allege when they are not performing the essential functions of their job, mandates some form of action such as a warning or medical evaluation. The local government needs to look at this behavior strictly from the view of performance and whether the performance of the employee is acceptable; if not, it should take steps to deal with the situation.

**Call Before  
You Act!**

**800.845.8055**

# Training & Seminar Class Schedule

Spring 2010

## April

### Regional Policy Year 2011

#### Renewal Workshops

All workshops run from 10:00 a.m. - 1:00 p.m. with lunch directly following.

April 21 - LGIT, Hanover

### Dealing with Angry People

Fridays, 11:30 a.m. to 4:00 p.m. & working lunch.

April 30 - Bel Air



## May

### Regional Policy Year 2011

#### Renewal Workshops

All workshops run from 10:00 a.m. - 1:00 p.m. with lunch directly following.

May 04 - Frostburg Library

### Dealing with Angry People

Fridays, 11:30 a.m. to 4:00 p.m. & working lunch.

May 14 - Hanover

May 21 - Hagerstown



## Training & Seminar Class Registration

800-673-8231 or (general information)  
443-561-1700

<http://www.lgit.org/training/registration.htm> (online registration)

443-561-1701 (FAX registration  
forms to Attn: Michelle  
Yannone)

## New Materials Added to the Loss Control Resource Library

### Understanding the New ADA

- Coastal 2009 ADA-003 16 minutes DVD Format

The A.D.A. Amendments Act (A.D.A.A.A.) was signed into law in 2008 and is now in effect! The Americans with Disabilities Act has now been clarified and significantly expanded. This is good news to many people but it raises some concerns for supervisors and managers. This program covers the fundamentals of the original A.D.A. and explains the changes that are now in effect because of the new Act.

### Workplace Violence: The Myths and The Mystery

- Wumbus 2007 MAN-029 16 minutes DVD Format

Violence - Unfortunately, no workplace is immune to it. However, knowing the truth about workplace violence is the first step in handling it safely and in maintaining a safe and productive workplace. This presentation will dispel any myths surrounding workplace violence and will provide the information that every worker needs to know to remain safe among their co-workers.

### Forklift Safety: Real Accidents, Real Stories

- Wumbus 2009 OSH-006 11 minutes DVD Format

Throughout this training session, viewers will be introduced to the OSHA standard 1910.178, which governs powered industrial trucks, including forklifts — the focus of this presentation. Viewers will hear thought-provoking stories of real forklift incidents and the far-reaching effects such incidents can have. The video will discuss preventing injuries, accidents and property damage during the use of forklifts, why this is necessary, and how to stay safe and in compliance with the corresponding OSHA PIT standard.

### Forklift Safety: The Triangle of Stability

- Wumbus 2009 SAF/IN-012 10 minutes DVD Format

This training presentation educates forklift operators on how to safely maneuver their vehicles. It focuses on all aspects of forklift stability, including the stability triangle, working with different surfaces, carrying loads properly, proper braking techniques, preventing property damage, and how to move through any environment safely.

### Tree Trimming Safety

- Wumbus 2007 SAF/OUT-005 19 minutes DVD Format

This video covers PPE, high lift truck safety, and how to deal with chippers, chain saws, and other types of tree trimming devices such as the String Trimmer.

## LGIT Training Grants

LGIT's Risk Management Committee recently selected the following members to receive LGIT training grants:

**Queen Anne's County** - for an employee to attend the Safety Management Conference - amount \$616.73

**Caroline County** - for Effective Supervisory Skill Building training - amount \$2,101

**Howard County** - for Officer Survival of Aggressive and Dangerous Dogs training - amount \$3,000

**City of Annapolis** - for Street Survival for Female Law Enforcement Officers training - amount \$2,805