

Barry Kling

From: Jennifer K. Sands <jsands@omwlaw.com>
Sent: Wednesday, January 04, 2017 6:03 PM
To: Barry Kling; Linda Parlette
Subject: RE: NCACH Bylaws DRAFT 11202015 clean version

Dear Barry and Linda:

Set forth below are initial considerations for discussion with the Board next week in furtherance of refining the Bylaws. These considerations are premised on a WA non-profit corporation as the entity for operating the NCACH. As discussed, the non-profit would be governed by a Board, without corporate "membership rights" as some non-profit corporations have.

I did review the work-group draft bylaws, and found them helpful as a starting point. There are a couple of practical/mechanical items set forth in the draft, which I mention below. Also, while I note the Regional/Leadership Council and Coalition references in the Governance Structure section of the draft bylaws, it is my understanding that those groups' interplay with the Board will be refined by policy or other means outside the initial Bylaws. Please advise if this is not the case and the interplay between the Regional Council and the Bylaws will need to be included. Since the proposed bylaws amendment threshold is 2/3 (which is not uncommon), it may be more nimble for the Board to adopt policies outlining the interaction between the Board and the other regional actors, unless it is a critical component of the bylaws in the Board's perspective.

A. PARTICIPANTS.

1. Role of Non-voting member. What does the Board contemplate the role of a non-voting member to be? Does such member participate in discussion without vote? Generally, non-voting members do not count for purposes of determining a quorum, although I note that the draft bylaws refer to "entire membership of the Governing Board" in reference to quorum, and clarification would be helpful. The draft also refers to the Regional Council members as non-voting Board members, and is that the extent of the non-voting category?

B. MANNER OF ACTING.

1. Proxies/Communication. Note that a Board director (or officer) role is a fiduciary obligation, and may not be delegated to another by written proxy (in contrast to a shareholder or corporate member). As the charter (and to a certain extent the draft bylaws) point out, a director may participate by telecommunication means. E-mail voting is also permitted if done directly by a director.

2. Consensus. The draft bylaws refer to action by consensus (defined as unanimity). While I understand the thought behind this decision-making, in reality it may prove practically difficult to achieve. The Board may want to revisit the concept of consensus as set forth in the draft bylaws, including the obligation to resolve in "good faith", "listen with an interest to resolve" and "obligated to try and find an alternative that meets the interests of the concerned party" and the like, especially where electronic vote may be the vehicle for the decision-making. It is of course the Board's prerogative to retain the consensus expectation, but this is not the norm (as reflected in the other ACH Bylaws that have been circulating in the State.)

C. GOVERNANCE.

1. Standing Committees. Apart from the Executive Committee, what other standing committees are envisioned - for example, governance, finance, nominating, outreach/communications? Is every Board member expected to serve on a committee?
2. Role of Executive Committee. The draft speaks of the Executive Committee (Chair, Vice Chair, Treasurer and Secretary- and in fact a majority of that Committee acting alone as a quorum) as empowered to "decide on pressing matters of business which may arise and which require a decision before the next meeting.") Does the Board have a sense of any limitation on this power to act (especially if there is electronic voting allowed by the larger Board)? The draft outlines that the Executive Committee presents its decisions, recommendations and actions for review and approval by the Governing Board, which may be read at odds with the decision-making authority of the Executive Committee.
3. Office Removal. What percentage vote would be required for removal of an Officer? Simple majority as in the case of directors?
4. Executive Director. Does the Board intend to set out the ED role/responsibility in a written document outside the Bylaws?
5. Backbone/Administrative Organization. If the Chelan Douglas Health District continues as the admin/backbone organization, is the intent to set that out in a separate agreement?

Gil passed on to me your Board packet email earlier, and I apologize that this memo did not get to you in time for inclusion in that packet. I hope that this can be circulated in time for the Board to give it some consideration in advance of the next week's meeting.

If you have any questions, please do not hesitate to call or email.

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