

Colorado Commission on Affordable Health Care

MINUTES Sept 22, 2014

In attendance: Marcy Morrison, Larry Wolk, Linda Gorman, Ira Gorman, Jeffrey Cain, Cindy Sovine- Miller, William Lindsay, Dorothy Perry, Greg D'Argonne, Chris Tholan, Steve Erkenbrack (call in), Elisabeth Arenales

Absent: Rebecca Cordes, Marguerite Salazar, Sue Birch

Also in attendance: 36 members of community

The meeting was called to order by Bill Lindsay at 12:02 pm

Bill thanked COPIC for hosting the meeting. He mentioned the Commission will be looking at alternative places for future meetings. He thanked CDPHE for their support of the Commission website, phone line, and retaining the funds appropriated by the General Assembly. He then asked members of the community to sign in if they wanted to present comments to the Commission.

Review of proposed agenda:

- 1) Approve Minutes from last meeting,
- 2) By-laws review and discussion
- 3) Principles for the Commission
- 4) Meeting schedule
- 5) Public comment

Bill noted that in the future if there are decision items to be voted upon they will be noted as such on the agenda.

Minutes:

Minutes from previous meeting were approved with edits related to spelling of several names, with a unanimous vote.

By-Laws:

The committee reviewed the Planning Committee draft By-Laws. Elisabeth Arenales lead the discussions and all references are to that initial draft. An overview of how the Planning Committee came up with the current set of by-laws was presented. A spreadsheet comparing several State Commissions was used by the Committee to identify

key provisions that should be included, and others did so. Elisabeth commented that the spreadsheet comparisons are available to anyone who wants it.

Elisabeth then briefed the Commission on work that she and Steve ErkenBrack had done, under the direction of Bill Lindsay, to determine the best way to obtain legal representation. Among the Commission's options is Eric Khun of the Attorney General's office. There was consensus that Eric Khun would be a great resource as legal counsel, but the Commission reserved the right to hire additional counsel as necessary.

Elisabeth was directed to begin formal discussions with Eric to see if he might be able to review the draft By-Laws, and answer specific questions that the Commission had put forth.

The Commissioners discussed the need for a set of operating principles which would seek to amplify certain aspects of the By-Laws. The Planning Committee was directed to create a draft for review by the Commission at its next meeting.

Goal and Scope:

The By-Laws discussion started with a review of the draft goals for the Commission, and the scope of its work. Elisabeth noted that the language in the document was pulled from the statute. It was agreed by consensus that these sections need further refinement but that the points of distinction should be added to the operating principle and that the Commission would leave the language of the Goals and Scope as is written.

Mission:

Discussion occurred on the mission including the option to add a definition section to the By-Laws. It was agreed to proceed without a definition section. However, it was noted that there is a need for clarification at some point in the document on specific terms. The Commission agreed to look at adding this elsewhere and keep the wording of the Mission as is written.

Governance: Agreed to leave as written.

Charge: Agreed to leave as written.

Powers and Duties: Discussion ensued about the duties of the Commission. It was noted that this section could be very long if the Commission pulled the various charges from the statute. Instead, it was decided to add language to refer to the Statute rather than repeat it.

Membership and Participation: Discussion took place on voting and non-voting members. A question arose regarding whether there should be a restriction on Executive Branch members participating in committees or serving as Chair or Vice Chair of the Commission. It was noted that there could be concerns around the appearance of the

Executive Branch controlling the action of the Commission if non-voting Executive Branch members were to take leadership roles.

It was agreed that Executive Branch members could send a delegate to meetings if they desired. However, all agreed that if non-voting members are going to send a designee, he/she should be assigned up front and that this person should be the only one representing the Department (i.e., the same person should attend all meetings that the Department Director can not attend).

All agreed that Chair will appoint Committee Chairs, as specified in statute.

With regard to attendance, it was agreed that voting members could not send a designee/delegate and that all members should make every effort to attend meetings.

There was agreement not to allow proxy voting.

Officers: A discussion took place on the election of officers. It was agreed to change the drafted proposed wording on the vote for Officers from “all Commissioners” to “all those present.”

After discussion it was agreed that there would only be two officers; Chair and Vice-Chair. Other important functions (e.g., Secretary, Treasurer, etc.) would be performed by staff. However, it was noted that the by-laws could be amended if needed in the future to include other Officers.

Discussion occurred regarding the possible need for a committee to monitor the finances of the Commission, and to do fund raising.

Other discussions included:

Leadership Elections- no additional changes to the draft wording

Leadership Terms- after discussion of intent, the consensus was to leave as written

Vacancy in leadership- no discussion. Agreed to leave as written.

Removal of Chair/Vice-Chair- no discussion. Leave as written.

Leadership duties- Add that Commission members may speak about the work of the Commission so long as they note they are speaking as individuals, not on behalf of the Commission. Chair must do the same unless an action is taken by the Commission. The Chair will be the designated spokes person for the Commission, although this duty could be delegated by the Chair.

Time of Election- keep as written; i.e., at the earliest of the adoption of By-laws or by January 1, 2015

Quorum: For the Commission and committee meetings, it was decided to use 50% +1 as a definition of a quorum.

Meeting Attendance: no discussion. Agreed to retain the wording as presented.

Voting: A discussion on the term “consensus” took place. Definitions were provided and it was agreed that the Commission would operate on a consensus basis, versus an official vote, whenever possible. It was noted that seeking to operate on a consensus basis does not preclude a vote, and any Commissioner can request a formal vote of the Commission, at any time that a decision is being made.

It was agreed there will be a formal vote on specific items, and when a consensus can not be reached. The hope is that if a consensus can not be reached, the item will be worked on some more and then brought back to the table.

Voting to pass non-business items will be 2/3rds of those in attendance. In case of a decimal when determining if 2/3rds was achieved, it was agreed that the sum will be rounded up to the nearest whole number.

Voting for business items will be simple majority of those present.

All votes will be recorded in Minutes.

A discussion was held around the possibly of raising the voting for legislative recommendations to higher than 2/3rds. It was agreed that since the Commission is made up of a variety of members, that 2/3rds would provide a valid recommendation that the legislature will want to see. However, it was specified that the report to the Legislature will identify any dissenting opinion(s) will be provided. Furthermore, the opportunity for a minority report will also be available. It was then agreed that the 2/3rds majority requirement would stand.

Open Meetings/Sunshine Laws/Public Accountability: After discussion, it was agreed the Commission needs input from legal counsel regarding this section of the By-Laws. It was noted there is also vague language on the requirement for one public meeting in each Congressional District over course of Commission. Commissions wondered whether this requirement is this annually, once over three years or when recommendations are to be made to the Legislature.

It was agreed that, when possible, the public meetings should be held in each district prior to recommendations being presented.

The Commission will add language not promising to consider written public comments if comments are not submitted at least 24 hours prior to any meeting.

A break was taken from 1:30pm to 1:40pm.

Regular Meetings: No discussion. Agreed to proceed as outlined.

Special and Emergency Meetings: No discussion.

Executive Session: It was agreed to have legal counsel review and provide feedback on the wording regarding Executive Sessions of the Commission.

Compensation: It was agreed that the Commission needs to have legal counsel clarify reimbursement for travel, other related expenses, for Committee members. It appears from the statute that only Commission members may be reimbursed. It was agreed the Commission must have a good telephone system in place so advisory committee members can call in since travel will not be reimbursed.

Conduct of Meetings: A discussion took place on the use of Robert's Rules of Order. It was agreed that Robert's Rules will be the fall back in case of disagreement on procedure but that generally the Commission will operate more informally than is intended in Robert's Rules.

Minutes: Minutes will be kept for all Commission meetings.

Committees:

- 1) Commission Committees- No discussion. It was agreed to proceed as outlined.
- 2) Advisory Committees- The Commission noted that statute is clear. Advisory Committees should include members of the public
 - a. It was agreed that there needs to be oversight/guidelines on the appointees, ensuring a balanced perspective, etc., and that this would be under the direction of Chair/Vice-Chair.
 - b. It is unclear if these meetings should be subject to Open Meetings rules. It was agreed to discuss this with legal counsel. However, it would be the intent of the Commission to have all meetings related to the Commission to be open to the public.
- 3) Other committees- There was no other discussion. It was agreed to proceed as written.

Charge to Committees: There was no discussion. It was agreed to proceed as written.

Report of Committee: There was no discussion. It was agreed to proceed as written.

Voting for Committee: A discussion around non-voting Commission members being able to vote on committees took place. This needs to be reviewed by legal counsel and considered further.

Staff and Project Support: It was agreed that Commission staff may be individual contractors or the staff functions could be performed by a sub-contracting organization.

A discussion took place on what is meant by “non-partisan” particularly for independent consultants. The Commissioners agreed that further clarification was needed and that a legal opinion should be requested.

Communication: It was agreed that only the Chair or a designee can speak for the Commission. This discussion had occurred earlier in the meeting and it was requested that guidelines should be developed and wording added to the By-Laws regarding Commissioners speaking on their own behalf, not that of the Commission.

Finances/Bank Accounts/Donations: It was agreed to have legal counsel to look at this section. Questions around the need for a financial audit or review process needs to be addressed.

Contracts: It was agreed that a legal opinion should be sought on this section.

Indemnification: Commissioners were very interested in this section and felt that a legal opinion should be obtained on the subject of Commissioner’s liability.

Amending By-Laws: There was no discussion. It was agreed to proceed as drafted.

Member Conduct: After discussion, consensus was reached to have wording on this topic in the operating procedures, rather than the By-Laws.

Amendment 41: After discussion it was recommended to have legal counsel weigh in on this. The Commissioners are not elected officials. However, all agreed to the need to avoid a perception of impropriety. It was asked if the Commissioners could embrace the concept behind the Amendment but to soften the requirements regarding actions not related to Commission business.

Conflicts of Interest: Commissioners agreed that this topic needs further discussion. It was noted that conflicts of interest can not be avoided but need to be managed by having parameters put in place. Transparency and disclosure are very important but it was felt these might fit best in the Operating Procedures, or event a separate document.

It was agreed that:

- 1) Commissioners will complete a form disclosing any potential conflicts
- 2) A comprehensive, written standard shall be created.

Public comment

The Commission then took public comment.

Representative Stevens-

I feel this is the most important part of the next 3 years. Pages 10-12 of the Statute are very instructional. “By at least 2/3 votes” language is really important due to the significance of your recommendations.

Regarding Advisory Committee members she noted that it is important to make sure that sub committees are balanced just like the Commission. You don't want people to feel they didn't get a voice, or they weren't invited, etc. This is way too important to leave people out.

As for the question on Consultants to the Commission being non-partisan, she said we need be thoughtful on this issue.

She noted that there will be laws changed based upon recommendations from the Commission and those laws will impact millions of people, and many organizations.

Katherine Mulready-

Suggested to broaden the language on Amendment 41. Commissioners have business interests and occupational duties which must be considered. Look at options and possibilities.

Cliff Croan-

Cringed at the idea of Conflict of Interests by Commissioners. Allowing a vote on a sub-committee versus on the Commission when a conflict exists can look like a dodge. Look at the appearance of impropriety and try to avoid this.

Victor Dukay- Lundy Foundation

On page 4- Add additional report date of June. He also suggested the Commission move the dates to page 1 section 4 under "Charge".

Ken Connell-

Public hearings- The Commission has the freedom to solicit a free range of economists. He suggested that people like Gerald Freeman and Reinhart from Princeton might not be invited to share data in the process because they are controversial. He asked if the Commission would consider a full range of expert opinions like the 208 Commission did.

He noted that cutting costs needs to be carefully considered. The Commission should review the ACA, Medicaid expansion, Colorado SIM, etc and models for projected costs and savings. He challenged the Commission to always put the interest of the Health of Colorado first.

-End of public comment-

Note that since none of those speaking signed in the spelling of their names, or that of their organizations may be in correct. For that we apologize.

At the end of public comments, Bill reviewed the suggested changes to the By-Laws. It was suggested that another draft of the By-Laws be presented as well as the operating principles and the conflict of interest documents be presented at the next meeting.

Bill thanked Elisabeth Arenales for her hard work on the By-Laws draft. He noted how much time this took, and the intensity of the work. He then commented that the Planning Committee is working hard. There is a lot going on behind the scenes.

Bill apologized that the full agenda had not been completed. However, he noted that the discussion on the By-Laws wording is important and that the progress that was made was an important first step.

The next meeting will take place Oct 27 or Oct 30, 2014. An electronic poll of the Commissioners will be sent out to pick the date.

The meeting was adjourned at 3:04pm.