

DRAFT FOR DISCUSSION

BY-LAWS

COLORADO COMMISSION ON AFFORDABLE HEALTH CARE

I. Goal and Scope of the Colorado Commission on Affordable Health Care

The Colorado Commission on Affordable Health Care (“Commission”) was established in order to engage in analysis of health care costs in Colorado and make recommendations for action to the Governor, the Senate Committee on Health and Human Services or its successor committee, and the House of Representatives Committee on Health, Insurance and Environment and Public Health Care and Human Services or their successor committees. C.R.S. § 25-46-101(i).

II. Mission

The Mission of the Commission is to ensure that Coloradans have access to affordable health care in Colorado. C.R.S. § 25-46-104(1).

III. Governance

The Commission is authorized to “establish by-laws as appropriate for its effective operation.” C.R.S. § 25-46-103(4). This document, as approved by the Commission and modified as appropriate according to Section XXII herein, will constitute the Commission’s bylaws.

IV. Powers and Duties

The Commission has the powers and duties specified in C.R.S. § 25-46-104(2), including any “authority necessary to perform its administrative duties; and any other duties necessary to fulfill its mission”.

The duties of the Commission include investigating the contributors to health care cost in Colorado and examining the diverse components that impact health care cost, such as regulation. It shall pay special attention to the effect of recommended policies on individual patient outcomes, access to care, and spending. In doing this, the Commission has a duty to examine existing knowledge on these topics and, when appropriate, to add existing knowledge by doing original research as necessary.

V. Membership and Participation

a. Members

Members of the Commission are selected by the Governor and leadership of the Majority and Minority parties of the Colorado House and Senate. C.R.S. § 25-46-103. There are twelve voting members of the Commission and five non-voting, ex-officio members.

Voting members fulfill positions and criteria outlined in statute. Non-voting members include the Commissioner of Insurance, the Executive Directors of the Departments of Public Health and Environment, Human Services, and Health Care Policy and Financing or their designees, and a representative of the All Payer Claims Database.

b. Officers

The Commission shall elect a Chair and Vice-Chair from its membership. C.R.S. § 25-46-103(2)(d). Non-voting members shall not serve as Chair or Vice-Chair.

Leadership Elections:

Option A:

The Chair and Vice Chair shall stand for election separately and each shall be elected by a nomination process and ~~majority vote of the voting members of the Commission. two-thirds vote of the voting members of the Commission. Except in the case of an unforeseen emergency, all voting members of the Commission must be present, in person or by telephone, for the selection of the Chair and Vice-Chair. Except in the case of an unforeseen emergency, at least two-thirds of all voting members must be present for the election of Chair and Vice-Chair.~~

Commented [EA1]: 2/3 or 9 voting members must be present and at least 7 of them must vote in favor of chair/vice-chair candidates.

Option B:

~~The Chair and Vice Chair shall stand for election separately and each shall be elected by a nomination process and two-thirds of the voting members of the Commission. Except in the case of an unforeseen emergency, all voting members of the Commission must cast a ballot in the election. Members not present at a meeting where an election is held may vote by casting their ballot in writing and sending it to the Commission's Administrator in advance of the meeting at which an election is held.~~

Commented [EA2]: All voting members must cast a ballot, but those not able to be present can do so in writing in advance of the meeting. Election is by 2/3 of voting members.

Leadership Terms:

The Chair and Vice-Chair shall each serve one-year terms, but are not subject to any limitation on the number of terms they may serve. The Chair and Vice Chair may resign by giving written notice to the Chair or Vice-Chair. Any vacancies in leadership shall be filled at the

earliest possible opportunity. Commission members elected to fill a leadership vacancy shall serve the remainder of the term and stand for election at the same time that the person who occupied the position he or she is filling would ordinarily stand for election.

Removal of Chair/Vice-Chair:

The Chair or Vice-Chair may be removed from office, whether for cause or because of incapacity, only by a vote of at least two-thirds of the voting members of the Commission.

Leadership Duties:

The Chair shall be responsible for setting the agenda and presiding over all meetings, appointing the Chairs of all committees, including Advisory Committees, of the Commission and working with the Commission to define the authority, scope and duties of any standing, ad hoc, Advisory or other committees. The Chair shall speak for the Commission to the public, the media, elected officials and other policy makers, and potential funders, or delegate the task of speaking for the Commission to members of the Commission as appropriate.

The Vice-Chair shall fulfill the duties of the Chair when the Chair is not available, carry out any tasks or duties assigned by the Chair, and support the Chair and the Commission as necessary.

Time of election

The first election of Chair and Vice-Chair shall be held either upon adoption of these by-laws or by January 31, 2015 as determined by the Commission. Chair and Vice-Chair elections shall be held in December of each of the following years.

c. Resignation of Commission Members

Any member who is no longer able to participate on the Commission shall notify the Commission Chair and the appointing authority for that position as soon as practicable.

d. Removal of Commission Members

The Commission Chair shall have the authority to raise any issues of misconduct or non-performance, including significant failure to participate in the work of the Commission by voting members of the Commission, with a member's appointing authority.

Removal of Commissioners is governed by statute as follows:
Members may be removed by their appointing authority for cause.
C.R.S. § 25-46-104(2)(c).

e. Vacancies

Vacancies are governed by statute as follows: If a vacancy occurs on the Commission, the appointing authority for the member whose position is vacated shall appoint a member to fill the vacant position. C.R.S. § 25-46-104(2)(c).

f. Quorum:

Commission meetings: A quorum for purposes of meetings of the Commission is a majority of the voting membership of the Commission. Any fraction of membership created by a vote requirement for any vote under these By-Laws shall be rounded up for purposes of determining whether the voting requirement was satisfied.

Committee meetings: A quorum for purposes of meetings of any Committee of the Commission shall be a majority of the voting members of the Committee.

g. Meeting attendance

Except for the four members of the Commission representing the Executive Branch, no Commission member, nor any Committee member, may send a delegate to represent them at any meeting.

Commissioners and Committee members shall make best efforts to attend Commission and committee meetings in person, but may participate by telephone when necessary.

h. Voting - Commission

Proxies: No Commission member shall be permitted to vote by proxy.

Consensus: The Commission shall strive to make decisions based on the consensus of all Commissioners.

Regular Business: Where consensus is not possible, if the matter before the Commission is not a recommendation or finding for inclusion in a report to the General Assembly or a legislative recommendation, a vote shall be taken. Matters brought to a vote shall pass or fail when a majority of a quorum of voting members of the Commission vote to approve or disapprove a motion.

Legislative Requirement of Two-Thirds of Voting Members: Recommendations and Findings: Any findings and recommendations included in annual reports required to be submitted by the Commission by November 15, 2015 and November 15, 2016, to the Governor, the Health and Human Services Committee of the Senate or its successor committee, and the Health, Insurance, and Environment

and the Public Health Care and Human Services Committee of the House of Representatives or their successor committees must be approved by at least two-thirds of the voting members of the Commission. C.R.S. § 25-46-104(8)(a). Individual votes shall be counted and recorded. The Commission shall submit a final report to the Governor and the committees specified above by June 30, 2017, detailing the work of the Commission and the final outcome of its efforts. C.R.S. § 25-46-104(8)(c).

Legislative Recommendations: Any legislative recommendations submitted to the General Assembly must be approved by at least two-thirds of the voting members of the Commission. C.R.S. § 25-46-104(8)(b). Individual votes shall be recorded.

In the event that there is not unanimity among Commissioners about the recommendations and findings and legislative recommendations, the Commission shall represent different viewpoints held by Commissioners in its public report(s) or recommendations.

VI. Open Meetings/Sunshine Law/Public Accountability:

The Commission is a publically constituted body established to serve the interests of the people of Colorado. Commissioners shall at all times hold themselves to the highest standards of public accountability.

Open Meetings - Open Records:

The Commission shall comply with the Colorado Open Meetings Law and the Colorado Open Records Act. C.R.S. § 25-46-103(7)(b)(1), except as specified for executive session and meetings with up to five commissioners.

Public Meetings: All meetings of the Commission, including all Committee, Subcommittee and Advisory Committee meetings shall be open to the public. All meetings of the Commission, including Committee, Subcommittee and Advisory Committee meetings shall be noticed and an agenda outlining the topics to be discussed and the times available for public comment shall be posted at least three (3) business days in advance of any meeting.

Exceptions:

Executive Session: The Commission, or any Committee or Subcommittee composed of commissioners, may enter into an Executive Session at any regular or special meeting for the purposes allowed by the Colorado Open Meetings Law. C.R.S. § 24-6-401 *et seq.* Any executive session will comply with the requirements of Section X below.

Up to Five Commissioners: Up to five Commission members may convene without complying with the Colorado Open Records Act or the Colorado Open Meetings law in order to understand data or to organize and plan for the business of the Commission. No formal action shall be taken at any such meeting. C.R.S. § 25-46-103(7)(B)(II).

Public Comment: There shall be an opportunity for public comment at each public meeting of the Commission and each meeting of a Committee, Subcommittee or Advisory Committee of the Commission. An opportunity for public comment shall be made available at least once during each meeting and prior to any vote of the Commission, Committee, Advisory Committee or Subcommittee of the Commission. The public may comment by telephone unless there is a practical reason why phone participation is not possible at a particular meeting. The public may also submit written comments or testimony on any decision item as well as on any item of business before the Commission or any of its committees. Written comments regarding the subject matter of a decision item must be submitted at least 24 hours in advance of any Commission vote in order for them to be considered in the decision making process. There is no assurance that comments submitted less than 24 hours in advance of a meeting will be considered prior to the vote on that decision item.

Public Hearings: In addition to any other public hearings the Commission may hold, the Commission shall hold at least one public meeting in each Congressional district in the state in order to solicit input on health care cost drivers and ways to control health care costs. The Commission shall accept written and oral testimony at these public hearings. C.R.S. § 25-46-104(7).

VII. Regular Meetings

Schedule: The Chair of the Commission shall establish a schedule for commission meetings. The Commission shall meet at least once a month on average. C.R.S. § 25-46-104(5). Commission members shall make best efforts to attend meetings in person, but may attend meetings by telephone when necessary.

VIII. Special and Emergency Meetings

Special meetings may be called by the Chair from time to time as necessary upon a minimum of seventy-two hours' notice.

Emergency Meetings may be called by the Chair upon a minimum of twenty-four hours' notice. Emergency meetings shall only be called

when immediate action is necessary to address a legal or personnel issue or to protect the integrity of the Commission.

IX. Executive Session

The Commission, or any Committee or Subcommittee composed of commissioners, may enter into an Executive Session at any regular or special meeting for the purposes allowed by the Colorado Open Meetings Law. C.R.S. § 24-6-401 *et seq.* The Commission, or any Committee or Subcommittee composed of commissioners, in entering executive session shall:

1. Announce, in the open meeting, the topic for discussion in executive session, including specific citation to the provision of C.R.S. § 24-6-402(3)(a) authorizing the Commission, or any Committee or Subcommittee composed of commissioners, to meet in executive session. The Chair shall identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized.
2. Approve the holding of an Executive Session by the affirmative vote of two-thirds of all voting members of the Commission, or any Committee or Subcommittee composed of commissioners.
3. Electronically record the discussion in the Executive Session, including a citation to the provision in the Colorado Open Meetings Law that authorizes the Commission, or any Committee or Subcommittee composed of commissioners, to meet in Executive Session. The Chair of the Board, or delegate, shall maintain the recording in a confidential manner for a period of ninety (90) days after the meeting, during which period interested parties seeking access to the recording may challenge the basis for the executive session in accordance with the Colorado Open Meetings Law.
4. Confine the discussion to the announced topic(s) for the Executive Session.
5. Not adopt a proposed policy, position, resolution, rule or formal action, except the review, approval, and amendment of the minutes of an Executive Session, during the Executive Session. Any final action or vote of the Commission shall be conducted in public.

X. Compensation:

Members of the Commission serve without compensation but may be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. C.R.S. § 25-46-103(3).

Non-Commission members of an Advisory Committee or any other Committee or Sub-committee serve without compensation or reimbursement for expenses. C.R.S. §25-46-104(4)(a)

XI. Conduct of Meetings

The Chair will manage meetings of the Commission in the most informal manner possible. The Chair may use the current version of *Roberts Rules of Order Newly Revised* to manage meetings of the Commission or to answer procedural questions that arise in all cases to which they are applicable and in which they are not in conflict with state or federal law or regulation, these By-Laws, and any special rules adopted by the Commission.

XII. Minutes

Minutes shall be kept of all regular and special meetings and shall include at least names of all Commission members present, the location of the meeting, a summary of the issues or matters discussed, any public testimony received, and the outcome of any votes taken; including the vote of individual Commission members in the event, in the absence of consensus, a vote is called. Minutes of the discussion in Executive Session shall comply with the requirements of the Colorado Open Meetings Law. C.R.S. § 24-6-401 *et seq.* All minutes, other than minutes taken in Executive Session, shall be available for inspection by the public upon request.

XIII. Standing and Ad Hoc Committees of the Commission, Advisory Committees. Other Committees/Subcommittees

a. Commission Committees: The Chair, in consultation with the Commission, may establish standing and ad hoc Committees of the Commission comprised solely of Commission members as necessary to carry out the work of the Commission. The Chair shall appoint a Chair of any Commission Committee and determine the charge to the Committee, the scope of work of the Committee, length of time the Committee shall be constituted, desired work product and reporting requirements. Any recommendations presented to the Commission by any Commission committee shall include a summary of the discussion leading to the recommendation as well as any minority or dissenting opinion(s) as appropriate.

Non-voting Commission members may serve on Commission committees, including as Chair. Non-voting Commission members may vote when acting on Commission committees.

b. Advisory Committees: The Commission shall create advisory committees that focus on specific subject matters and make recommendations to the Commission. C.R.S. § 25-46-104(4)(a).

Appointments to Advisory Committee: The Chair of the Commission shall appoint members of the Commission to serve on Advisory Committees and shall appoint a Commission member as chair of each Advisory Committee. C.R.S. § 25-46-104(4)(a).

Advisory Committee Members: The chair of an Advisory Committee shall select interested members of the community who are not members of the Commission to serve on the Advisory Committee he or she chairs. When appointing non-Commission members to an Advisory Committee, the Chair of the Advisory Committee shall ensure representation from broad and diverse interests. C.R.S. § 25-46-104(4)(b).

The chair of an Advisory Committee shall observe guidelines established by the Commission for the constitution of Advisory Committees and selection of members.

- c. Other Committees/Subcommittees:** The Chair may constitute any other committees or subcommittees as may be necessary to further the work of the Commission.
- d. Charge to Committees:** The Chair of the Commission, in consultation with the Commission, shall issue a specific, written charge to each Committee including the scope of work, timeline of the Committee, desired work product and manner of work.
- e. Report of Committee:** Any recommendation or report by any Committee of the Commission to the Commission shall include a summary of how the committee arrived at that recommendation and any minority or dissenting opinion(s) as appropriate.

XIV. Voting: Committees:

Public Vote: Any vote or final action by the Commission or any Committee shall be conducted in public.

Commission Committees: A majority vote of a quorum of the Committee is required in order for a motion to pass. Any recommendations made to the Commission shall include a summary of the discussion that led to the recommendation and any minority or dissenting opinion(s) as appropriate. No proxy voting is permitted, but Committee members may vote by telephone.

Advisory and other Committees/Subcommittees: No vote shall be taken unless the Chair of the Committee is present. Committee motions shall

pass or fail on majority vote of the members of the Committee. No proxy voting is permitted, but Committee members may vote by telephone.

XV. Staff and Project Support

The Commission may hire staff to facilitate its work, including an administrator and other staff as necessary to collect evidence-based research, analysis, and modeling to inform the commission about cost drivers and cost containment approaches. C.R.S. § 25-46-104(6)(a).

XVI. Independent Consultants

As funds allow, the Commission may also contract with non-partisan, independent contractors to provide resources for data collection, research, analysis, and publication of the Commission's findings and reports. C.R.S. § 25-46-104(6)(b)(I).

The Commission may also, as funds allow, contract with healthcare cost experts with demonstrated experience controlling health care costs through market-oriented approaches to advise the Commission. C.R.S. § 25-46-104(6)(b)(II).

XVII. Communication

The Chair of the Commission shall be the official spokesperson for the Commission unless he or she specifically assigns or delegates that duty to another individual or organization. Other Commission members are free to discuss the Commission's work with any interested party, as they see fit, but in so doing must clarify they are speaking for themselves, and not the Commission. The Chair of the Commission, or their designee, shall be responsible for managing the communications of the Commission, including to the media, legislators, the Governor and other policy makers, foundations and the public unless he or she specifically assigns or delegates that task.

XVIII. Finances/Bank Accounts/Donations:

The Commission shall establish a budget, arrange to keep financial records, account for and report on income and expenditures, pay bills, and address any other financial accounting and oversight needs as appropriate.

XIX. Contracts

The Commission may enter in to contracts as necessary to carry out its responsibilities and fulfill its duties. The Commission is exempt from the "Procurement Code", C.R.S. § 24-101-112.

XX. Protection from Liability

Members of the Commission, Staff and Consultants are not liable for an act or omission in their official capacity performed in good faith in accordance with Article 46 of Title 25. C.R.S. § 25-46-103(6). Individual members of the Commission, and employees and agents of the Commission, are entitled to the immunity granted pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, for any act performed within the course and scope of authority of Article 46, Title 25, unless such act or omission constitutes willful and wanton misconduct. The terms of the Colorado Governmental Immunity Act govern when immunity applies. Any member of the Commission, and any other person acting as a consultant or witness before the Commission, shall be immune from liability in any civil action brought against said person for acts occurring while the person was acting as such a member, consultant, or witness, if such person was acting in good faith within the scope of such person's respective capacity, makes a reasonable effort to obtain the facts of the matter as to which action was taken, and acts in the reasonable belief that the action taken by such person was warranted by the facts. C.R.S. § 24-10-118(2)(b).

XXI. Amendment of By-Laws:

These by-laws may be amended at a regularly constituted meeting, upon thirty days advance written notice and a two-thirds vote of the voting membership of the Commission.

Commented [EA3]: I don't believe this needs to be changed.