



**Standing Advisory Board Meeting
Draft Minutes**

Date: Wednesday, May 22, 2019
Time: 4:00 PM
Location: 1225 "Eye" Street NW, 4th Floor, Board Conference Room or by Conference Call
Call- in Number: 1-650-479-3208 access code: 735 916 434

Members Present: Dave Chandrasekaran, Chris Gardiner, Laurie Kuiper, Billy MacCartee, Claire McAndrew, Dania Palanker

Members Absent: Jill DeGraff, Kevin Dougherty

I. Welcome, Opening Remarks and Roll Call, Chris Gardiner, Chair

Mr. Gardiner called the meeting to order at 4:04 p.m. A roll call of members confirmed that there was a quorum of the Standing Advisory Board (SAB) with five members present.

Mr. Gardiner stated that this meeting will be our fifth to review and consider changes needed to the HBX enabling legislation. As a reminder, the HBX Executive Board Ad Hoc Committee on Legislation asked for our input on this proposal. Today, we will return to our discussion on conflict of interest provisions which have been the topic area that has tied us up for some time.

II. Approval of Draft Agenda, Chris Gardiner, Chair

It was moved and seconded to approve the draft agenda. The motion passed unanimously by voice vote.

III. Approval of Minutes, *Chris Gardiner, Chair*

It was moved and seconded to approve the minutes of the May 2, 2019 meeting. The motion passed unanimously by voice vote.

IV. Discussion Items

- a. Continued Discussion Regarding Clean Up of the DC Health Benefit Exchange Authority Legislation, Conflict of Interest Provisions -- Purvee Kempf, HBX Staff*

Ms. Kempf reminded the SAB that the conflict of interest provisions were in the HBX enabling legislation, before the Council adopted a comprehensive code of conduct for the District. We have had numerous discussions about the provisions. Based on past discussions, staff has put together a [draft](#) of possible amendments to guide the conversation today.

The draft adds subsection (a), stating that the Executive Board members and HBX staff are subject to the comprehensive code of conduct for the District.

In (b)(1), the term “third party administrator” was added to the list of entities prohibited from being a member of the Executive Board or HBX staff.

In (b)(2), the term “senior leadership” has been added as a modifier to “member” which applies to persons excluded from being a member of the Executive Board or HBX staff. Ms. Kempf stated that the prior language, without the modifier, prevented health professionals who are members of a professional association, such as doctors or nurses, from serving on the Executive Board or HBX staff. She stated it was common, for example, for retired health care professionals to retain their professional memberships as a way of keeping up with their professions. The prior conversation among SAB members conversation was that we still wanted to preclude persons in high positions within those associations from serving. Also sub 3) remains as we still want to not exclude health professionals who receive no compensation for rendering services from serving.

Ms. Kempf noted that previously, the SAB members had discussed the post-employment restriction in sub (b), and the financial conflicts section is sub (c). She reminded the SAB members that they had already discussed that since Executive Board members and HBX staff are now subject to the a comprehensive code of conduct for the District, and that has been memorialized in the new sub (a), (b) and (c) could be stricken.

Mr. Chandrasekaran asked for clarification on item (b) 1), previously we had discussed “lobbyist” in that language. Ms. Kempf said that in a previous draft, “affiliated with, or otherwise a representative of” had been stricken and replaced with “lobbyist.” She said there was some conversation that “lobbyist” was not equivalent with “affiliated with, or otherwise a

representative of”, but certainly a lobbyist would not be qualified to serve under “consultant” or “representative of.” She thought if we kept the language as is, we did not need to add the term lobbyist. Mr. Chandrasekaran agreed.

Ms. Kempf said she was particularly interested in what SAB members thought of the language in (b)(1), “affiliated with, or otherwise a representative of.” She noted that since we added (a) regarding the code of conduct, she was not clear from prior conversations if the SAB was comfortable with the language as it stands.

Mr. Gardiner asked if “affiliated with” was a defined term. Ms. Kempf said it was not. Ms. Kempf said this language had been implicated in the past, and HBX staff had to confer with the Office of the Attorney General (OAG) on the issue. The OAG used the Black’s Law Dictionary definition of the term, “a condition of being united, in close connection, allied, associated or attached, to a person, body or organization. While affiliation imports less than membership in an organization, but more than sympathy, a working alliance to bring to fruition the prescribed program of a prescribed organization, as distinguished from mere cooperation.” Mr. Gardiner asked about the spouse of a Board member or staff who is employed by a carrier. Does this language extend to that situation? Ms. Kempf said that family members do not create a prohibition but creates a potential conflict of interest that would require recusal. Those recusal processes exist now through the ethics officer of an agency or through the Board of Ethics and Government Accountability (BEGA).

Ms. Palanker said that “affiliated with” was exceptionally broad and could be separated from “representative of.” She thought that, for example, persons who volunteer for a health clinic or helps with a fund raiser should not be excluded. Those persons are not a “representative of” the entity. Mr. Chandrasekaran asked if we could narrow “affiliation” to “financial” affiliation. Ms. Palanker asked if that included people who donated money to an entity; she also noted that there is a difference between donation \$50,000 and \$50. Ms. Kempf believed that based on the OAG analysis, a donation would not preclude service, unless the donation came with strings attached.

Mr. Chandrasekaran said there may be conditions associated with donations to an entity; there certainly are with receiving grant funds. Ms. Kempf said it would be a fact-based inquiry on which OAG would need to opine. She did think the addition of “financial” was a good option.

Mr. Gardiner asked if there was a materiality amount associated with financial affiliation. Ms. Kempf went back to language previously discussed: “in a manner that an employee knows is likely to have a direct and predictable effect on the employee’s financial interest or the financial interest of a person closely affiliated with the employee.” Then they define “direct and predictable effect” and “a person closely affiliated with the employee.” Direct and predictable effect involves a close causal link as opposed to speculation. What they don’t do is give an

amount. Potentially it could be down to a dollar. She assumes that OAG opinions may have narrowed that. Mr. Chandrasekaran thought that common law ties it to “de minimus” and a reasonable person standard. Ms. Kempf said the definitions she is reading are from the BEGA website or the OAG opinions. Ms. Kempf said she had followed up on a previous discussion and she had confirmed that mutual funds and blind accounts and do not create a financial conflict.

Mr. Chandrasekaran, with respect to the new (a), referencing the code of conduct did not explicitly state the financial conflicts that come on the front end and do we think that is now covered in (b). He wanted to clarify what (a) is for. Ms. Kempf said (a) is codifying what exists today in that the code of conduct applies. She also reminded the SAB that the comprehensive code of conduct is broader than financial conflicts.

Ms. Kempf said she was hearing potential consensus on adding the term “financially” before “affiliated with, or otherwise a representative of.” Ms. Palanker agreed it made sense.

Debbie Curtis, HBX staff, asked if there were comments on (b)(2) “senior leadership” member. Ms. Kempf said staff had looked at the tax code and various other federal laws, and there are lots of different types of language used. SAB members discussed various terms, including “governing board,” “executive director,” and “officer.” Ms. Kempf pointed out that the term modified only “member.” Board members and employees are still prohibited; this new language is in addition to other prohibitions. Ms. McAndrew and Mr. Chandrasekaran thought the term “senior leadership” was good.

Ms. Kempf said staff would make the change of adding “financially” regarding affiliation. She thought the SAB was reaching consensus, but she noted that there were some members absent from the meeting today and she wanted them to have an opportunity to weigh in. She also noted that the SAB would be voting on narrative language, not precise legislative language because any legislative language needs to go to the OAG for legal sufficiency analysis.

V. Public Comment

No public comment was proffered.

VI. Closing Remarks and Adjourn, *Chris Gardiner, Chair*

Mr. Gardiner noted that another meeting would need to be scheduled, and that Ms. Curtis would be reaching out to SAB members for scheduling and other input.

The meeting was adjourned at 4:45 p.m.