

**Ventura County MediCal Managed Care Commission (VCMMCC)  
dba Gold Coast Health Plan (GCHP)**

**Regular Meeting**

**Wednesday, November 9, 2016, 9:00 a.m.**

**Gold Coast Health Plan, 711 East Daily Drive, Community Room, Camarillo, CA 93010**

**AGENDA**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PUBLIC COMMENT**

The public has the opportunity to address Ventura County Medi-Cal Managed Care Commission (VCMMCC) doing business as Gold Coast Health Plan (GCHP) on the agenda. Persons wishing to address VCMMCC should complete and submit a Speaker Card.

Persons wishing to address VCMMCC are limited to three (3) minutes. Comments regarding items not on the agenda must be within the subject matter jurisdiction of the Commission.

**CONSENT CALENDAR**

**1. Approval of Ventura County MediCal Managed Care Commission Meeting Regular Minutes of September 26, 2016**

Staff: Tracy Oehler, Clerk of the Board

**RECOMMENDATION:** Approve the minutes.

**FORMAL ACTION ITEMS**

**2. Approval of Chief Executive Officer Employment Contract**

Staff: Scott Campbell, General Counsel

**RECOMMENDATION:** Approve the employment contract with Dale Villani.

Meeting Agenda available at <http://www.goldcoasthealthplan.org>

### **3. Approval of Contract for Pharmacy Benefits Manager Services**

Staff: Anne Freese, Pharmacy Director

RECOMMENDATION: Staff is presenting a revised contract, per Commission direction, for approval.

### **INFORMATION/DISCUSSION**

#### **4. Discussion on Procedures for Board Meetings**

Staff: Scott Campbell, General Counsel

#### **5. 2015-2016 Strategic Plan Evaluation**

Staff: Dale Villani, Chief Executive Officer

#### **6. Industry Perspective and Regulatory Overview**

Presenter: Brianna Lierman, Chief Executive Officer, Local Health Plans of California

### **CLOSED SESSION**

#### **7. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: Chief Executive Officer

#### **8. CONFERENCE WITH LABOR NEGOTIATORS**

Agency designated representatives: Scott Campbell, General Counsel

Unrepresented employee: Chief Executive Officer

#### **9. REPORT INVOLVING TRADE SECRET**

Discussion will concern: Pharmacy Benefits Manager Rates

Estimated date of public disclosure: Three years from execution of contract pursuant to Welfare and Institutions Code Section 14087.58

#### **10. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: Two Cases

## **COMMENTS FROM COMMISSIONERS**

### **ADJOURNMENT**

Unless otherwise determined by the Commission, the next regular meeting will be held on January 23, 2017, at Gold Coast Health Plan at 711 E. Daily Drive, Suite 106, Community Room, Camarillo, CA 93010.

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**Administrative Reports relating to this agenda are available at 711 East Daily Drive, Suite #106, Camarillo, California, during normal business hours and on <http://goldcoasthealthplan.org>. Materials related to an agenda item submitted to the Commission after distribution of the agenda packet are available for public review during normal business hours at the office of the Clerk of the Board.**

**In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact (805) 437-5509. Notification for accommodation must be made by the Monday prior to the meeting by 3 p.m. to enable the Clerk of the Board to make reasonable arrangements for accessibility to this meeting.**

## **AGENDA ITEM NO. 1**

### **Ventura County Medi-Cal Managed Care Commission (VCMMCC) dba Gold Coast Health Plan (GCHP)**

#### **September 26, 2016 Regular Meeting Minutes**

##### **CALL TO ORDER**

Commissioner Darren Lee called the meeting to order at 2:03 p.m. in the Community Room located at Gold Coast Health Plan, 711 E. Daily Drive, Camarillo, California.

##### **PLEDGE OF ALLEGIANCE**

Commissioner Lee led the Pledge of Allegiance.

##### **ROLL CALL**

Present: Commissioners Anthony Alatorre, Shawn Atin, Narcisa Egan, Peter Foy, Michele Laba, M.D., Darren Lee, Gagan Pawar, M.D., Catherine Rodriguez, and Jennifer Swenson

Absent: Commissioner Lanyard Dial, M.D.

##### **OATH OF OFFICE**

The Clerk of the Board administered the oath of office to Commissioners Egan and Rodriguez.

##### **PUBLIC COMMENT**

None.

##### **CONSENT CALENDAR**

- 1. Approval of Ventura County MediCal Managed Care Commission Regular Meeting Minutes of August 22, 2016.**

**RECOMMENDATION:** Approve the minutes.

Commissioner Alatorre moved to approve the recommendation. Commissioner Swenson seconded.

**AYES:** Commissioners Alatorre, Atin, Egan, Foy, Laba, Lee, Pawar, Rodriguez, and Swenson.

**NOES:** None.

ABSTAIN: None.

ABSENT: Commissioner Dial.

Commissioner Lee declared the motion carried.

## **FORMAL ACTION ITEMS**

### **2. July 2016 Fiscal Year to Date Financials**

**RECOMMENDATION:** Accept and file July 2016 Fiscal Year to Date Financials.

Patricia Mowlavi, Chief Financial Officer, reported the financials for the month of July included a gain in net assets of approximately \$4.3 million, the Medical Loss Ratio (MLR) increased to 87% trailing the Plan at 93.5% due to the delay in the implementation of the ARCH programs; the Tangible Net Equity (TNE) amount increased to approximately \$157.3 million. It was noted the revenue includes a \$2.8 million reserve for the expected refund due to the Department of Health Care Services for rate overpayments.

A discussion followed between the Commission and staff regarding the Plan being consistent with similar plans' required TNE of 500% to 600%; how once the \$230 million is paid to the State due to overpayments, the Plan will have two plus months in cash to cover expenses; clarification of the Physician ACA 1202 amount due to the reserves not being used by the end of the fiscal year resulting in a gain; the inception to date rate adjustment to the Mental Health Services due to the lack of prior experience; and how the Plan's membership rate has stabilized with little growth expected.

The Commission requested the Profit and Loss Statement to reflect a breakdown of the aid category by Adult Expansion and Adult/Family.

Commissioner Atin moved to approve the recommendation. Commissioner Alatorre seconded.

AYES: Commissioners Alatorre, Atin, Egan, Foy, Laba, Lee, Pawar, Rodriguez, and Swenson.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Dial.

Commissioner Lee declared the motion carried.

**3. Consideration of Amending the Audit Committee Charter by Reducing the Required Meetings to Twice a Year**

RECOMMENDATION: Approve the amended Audit Committee Charter revising the required meetings to twice a year.

Ms. Mowlavi gave the staff report.

Commissioner Lee moved to approve the recommendation. Commissioner Alatorre seconded.

AYES: Commissioners Alatorre, Atin, Egan, Foy, Laba, Lee, Pawar, Rodriguez, and Swenson.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Dial.

Commissioner Lee declared the motion carried.

**4. State of California Department of Health Care Services Contract Amendment A21 Behavioral Health Treatment**

RECOMMENDATION: Ratify the Chief Executive Officer's execution of Amendment A21 Behavioral Health Treatment to the Department of Health Care Services Contract.

Dale Villani, Chief Executive Officer, stated Amendment A21 memorializes the Fiscal Year 2014/15 Intergovernmental Transfer (IGT) rates and the transfer of the Behavioral Health Treatment (BHT) program from regional treatment centers to the Medi-Cal plans. As the IGT is a pass-through item and the BHT supplemental rates are expected to match the costs incurred, there is no fiscal impact.

Commissioner Alatorre moved to approve the recommendation. Commissioner Swenson seconded.

AYES: Commissioners Alatorre, Atin, Egan, Foy, Laba, Lee, Pawar, Rodriguez, and Swenson.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Dial.

Commissioner Lee declared the motion carried.

**5. Consideration of Amending the 2016 Conflict of Interest Code Biennial Review**

RECOMMENDATION: Approve the amended Conflict of Interest Code and forward to the Ventura County Clerk of the Board's Office for adoption in fall of 2016.

Tracy Oehler, Clerk of the Board, gave the staff report.

Commissioner Atin moved to approve the recommendation. Commissioner Laba seconded.

AYES: Commissioners Alatorre, Atin, Egan, Foy, Laba, Lee, Pawar, Rodriguez, and Swenson.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Dial.

Commissioner Lee declared the motion carried.

**6. Benefit Enhancement – Cardiac Rehabilitation (ARCH)**

RECOMMENDATION: Approve cardiac rehabilitation as a benefit for Gold Coast Health Plan members.

Nancy Wharfield, M.D., Associate Chief Medical Officer, stated the Plan would like to add cardiac rehabilitation services to members as it is currently not a benefit under Fee for Service Medi-Cal. The services could reduce mortality rates by 20% to 30%, as well as a 30% reduction in readmission rates.

Commissioner Pawar moved to approve the recommendation. Commissioner Atin seconded.

AYES: Commissioners Alatorre, Atin, Egan, Foy, Laba, Lee, Pawar, Rodriguez, and Swenson.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Dial.

Commissioner Lee declared the motion carried.

## 7. Administrative Services Organization (ASO) Consultant

**RECOMMENDATION:** Subject to review by legal counsel, authorize and direct the Chief Executive Officer to execute a contract amendment with Optimity Advisors (Optimity) to assist the Plan in development of a Request for Proposal (RFP) designed with multiple “service towers” for the potential procurement of an Administrative Services Organization (ASO) vendor.

Ruth Watson, Chief Operating Officer, stated in February 2016, the Commission approved staff to move forward with a contract with Optimity to assist the Plan with evaluating the existing ASO. The next step in the project is to develop and issue an RFP designed around the service tower concept with total costs estimated between \$300,000 and \$375,000.

A discussion followed between the Commission and staff regarding the scope of work and explanation of costs due to Optimity’s ability to develop a complex and multi-faceted RFP needed for the ASO.

Commissioner Rodriguez moved to approve the recommendation. Commissioner Alatorre seconded.

AYES: Commissioners Alatorre, Atin, Egan, Foy, Laba, Lee, Pawar, Rodriguez, and Swenson.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Dial.

Commissioner Lee declared the motion carried.

Scott Campbell, General Counselor, announced Closed Session Item No. 8, Discussion Involving Trade Secrets, with Mr. Villani recusing himself from both Closed and Open Sessions due to prior ownership of stock in Magellan.

### **CLOSED SESSION**

The Commission adjourned to Closed Session at 2:52 p.m. regarding the following item:

## 8. DISCUSSION INVOLVING TRADE SECRETS

Pursuant to Government Code Section 54956.87

Discussion will concern: Rate of payment for health care services provided by pharmacy benefit providers.



## **RECONVENE TO REGULAR MEETING**

The Regular Meeting reconvened at 4:11 p.m.

Mr. Campbell stated there was no reportable action taken on Agenda Item No. 8, Discussion Involving Trade Secrets.

### **9. Presentation of Pharmacy Benefits Manager (PBM) Request for Proposal (RFP) Results and Selection**

**RECOMMENDATION:** Select a vendor to provide PBM services from the three RFPs received.

Anne Freese, PharmD, Director of Pharmacy, stated the RFP was issued with the intent to find the best business partner for Gold Coast Health Plan (Plan) to ensure members have the best customer experience, best health outcome, and cost effective solutions for the Plan. Focus was placed on industry best practices, Medicaid and Medicare knowledge, and clinical and quality initiatives in order to realize positive member outcomes. In addition to assessing whether each vendor met the RFP requirements and the minimum qualifications, each vendor was assessed in three major areas: (1) technical questions; (2) contract terms and conditions and statement of work; and (3) pricing as well as a review of the scoring process. Scoring results begin on page 64 of the agenda packet.

Michael Maurer, General Counsel, gave an overview of the contract process, which included the professional services agreement; a service order, which laid out a scope of work; and attachments presenting the pricing and performance guarantees, including a review of each of the vendors' contract differences.

A discussion followed between the Commission and staff regarding the core selection team and subject matter experts and their scoring; network access scoring being based on the vendors providing analysis on which pharmacies are in the network, which pharmacies are not and what additional pharmacies in the county would be included; and clarification that the eligibility files referred to members.

Mr. Campbell stated each vendor would have forty minutes to give their presentations with twenty minutes to answer questions from the Commission. The request was made that while each vendor presented, the other two vendors would voluntarily leave the room so as to provide a fair process. This request was made known to the vendors prior to the Commission meeting by Counsel.

Tim Wicks, President of OptumRx, and staff gave a presentation including a rebuttal of the results of the RFP scoring.

A discussion followed between the Commissioners and OptumRx regarding the company having no current Medicaid contracts in the state of California; direct

contracts with pharmacies originated through Pharmacy Services Administrative Organization (PSAO); confirmation the scoring weight for each component was not included in the RFP and there was an opportunity for vendors to submit questions in writing; and addressed OptumRx's experience with the 340B program.

The Commission recessed at 5:45 p.m.

The Regular Meeting reconvened at 6:11 p.m.

Kevin Brown, President of Script Care, Ltd. (SCL), gave a presentation including additional cost savings initiatives not discussed with the Plan.

A discussion followed between the Commissioners and SCL regarding the company has not been through a Health Resources and Services Administration audit in Ventura County; the contract price does not reflect the 340B pricing; clarification on why there are currently only nine contracted pharmacies in the County as the pharmacies are awaiting the outcome of the award of this RFP; SCL does not provide services for other County Organized Health System plans; and the current 340B savings is \$8.3 million with an additional savings of \$3.6 million once the specialty pharmacies are added.

Rob Coppola, Vice President of Sales for Magellan Rx Management, LLC (Magellan), and staff gave a presentation and overview of the company and services.

A discussion followed between the Commissioners and Magellan regarding the company having both direct contact with pharmacies and through PSAOs; ability to provide 340B integration with the clinics; experience working with 340 Basics, but not SCL; willingness to enter into performance guarantees; and experience working in California with CenCal Health and rebates, as well as government plans: a national Medicare Prescription Drug Plan program, Medicare Choice Organization clients, and 25 direct state clients full PBM.

Mr. Campbell stated the contracts already contain claim processing and performance guarantees, but the language could be modified to clarify and amplify the 340B component.

Dr. Freese reminded the Commission to consider the process the Plan underwent regarding the RFP, which included close to 100 questions requiring the vendors to provide detailed information on experience, processes, policies, and data in order for the Plan to perform an objective review of the RFP. The scoring process was performed independently with all the scores combined at the end, which provided a fair and objective process.

A discussion followed between the Commissioners and staff regarding the fact the topic the scoring weight for each component was not included in the RFP so the vendors would not focus on one section over another with the objective being the vendors would answer the RFP as a whole so as not to game the system; a review

of the entire RFP process; concerns expressed and review of the scoring process; and concerns expressed regarding the disruption of 340B process, though it was noted by Dr. Freese 340B is outside of the PBM relationship and the extent of the program's impact is the discount it brings to the Plan.

Mr. Campbell provided direction to the Commission stating there are contracts ready to be executed for each of the vendors if the Commission decides to choose one, with the need for the Commission to provide direction to staff to finalize one of the contracts with one of the vendors or they could make the decision more time is needed to review the RFP responses. Based on the scoring, Magellan is the top candidate and it is the Commission's decision on how to proceed. It was noted the Plan gave the vendors an opportunity to improve their pricing prior to the Commission meeting and SCL submitted information, which did not change their scoring ranking.

Mr. Campbell announced Closed Session Item No. 8, Discussion Involving Trade Secrets, regarding pricing.

### **CLOSED SESSION**

The Commission adjourned to Closed Session at 9:19 p.m. regarding the following item:

#### **8. DISCUSSION INVOLVING TRADE SECRETS** Pursuant to Government Code Section 54956.87

Discussion will concern: Rate of payment for health care services provided by pharmacy benefit providers.

### **RECONVENE TO REGULAR MEETING**

The Regular Meeting reconvened at 9:31 p.m.

Mr. Campbell stated there was no reportable action taken on Agenda Item No. 8, Discussion Involving Trade Secrets.

#### **9. Presentation of Pharmacy Benefits Manager (PBM) Request for Proposal (RFP) Results and Selection**

**RECOMMENDATION:** Select a vendor to provide PBM services from the three RFPs received.

Commissioner Foy made the recommendation to select OptumRx to provide PBM services with the request to change the invoice payment terms for network pharmacy from 14 days to 30 days. Commissioner Atin amended the motion to include additional performance guarantees for 340B pricing. Commissioner Rodriguez seconded the motion.

The motion was restated as follows: Exercising the Commission's discretion, the motion is to award the PBM services contract to OptumRx for three years with direction to staff

to work out a guarantee on 340B pricing into the performance guarantee language, and changing the invoice terms for network pharmacy claims from 14 days to 30 days. The revised agreement would be presented to the Commission at the next meeting.

AYES: Commissioners Atin, Egan, Foy, Laba and Rodriguez.

NOES: Commissioners Alatorre, Lee, Pawar, and Swenson.

ABSTAIN: None.

ABSENT: Commissioner Dial.

Commissioner Lee declared the motion carried with the roll-call vote of 5-4-0.

Mr. Villani returned to the meeting at 9:44 p.m.

### **9A. Public Employee Appointment**

Title: Chief Diversity Officer

Mr. Campbell stated the Chief Diversity Officer (CDO) item is also listed under Closed Session and at the Human Resources/Cultural Subcommittee (HR/CD) meeting, the Subcommittee spoke with the candidate for this position on an interim basis.

Mr. Villani stated an email was received from Ms. Naoisha Shakoori stating she was withdrawing her name for consideration.

A discussion followed between the Commissioners and staff regarding the recruitment process including an internal recruiter as well as an outside agency to expedite the process; making the CDO a full-time position; considering candidates' current salaries in order to attract candidates; and appointing Danita Fulton, Director of Human Resources, as the interim CDO until the position is filled with direction she would report directly to the Commission and HR/CD.

The Commission unanimously agreed to appoint Ms. Fulton as the interim CDO.

### **REPORTS**

**10. Chief Executive Officer (CEO) Update**

**11. Chief Operations Officer (COO) Update**

**12. Chief Medical Officer (CMO) Update**

The Commission unanimously agreed to omit the verbal presentations of the Reports.

Mr. Campbell announced the Closed Sessions items are the ones listed on the Agenda and on Agenda Item No. 15, Conference with Legal Counsel – Existing Litigation, Commissioners Alatorre and Pawar will be recusing themselves as they are employed by Clinicas del Camino Real, an entity affiliated with America's Health Plan.

### **CLOSED SESSION**

The Commission adjourned to Closed Session at 10:02 p.m. regarding the following items:

#### **13. PUBLIC EMPLOYEE APPOINTMENT**

Title: Chief Diversity Officer

#### **14. CONFERENCE WITH LABOR NEGOTIATORS**

Agency designated representatives: Scott Campbell, General Counsel

Unrepresented employee: Chief Diversity Officer

#### **15. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: Two Cases

### **OPEN SESSION**

The Regular Meeting reconvened at 11:00 p.m.

Mr. Campbell stated there was no reportable action taken.

### **COMMENTS FROM COMMISSIONERS**

None.

### **ADJOURNMENT**

The meeting was adjourned at 11:01 p.m.

## **AGENDA ITEM NO. 2**

**TO:** Gold Coast Health Plan Commission  
**FROM:** Scott Campbell, General Counsel  
**DATE:** November 9, 2016  
**SUBJECT:** Amendment of CEO's Employment Contract

### **SUMMARY:**

The Commission may approve an amendment to the Chief Executive Officer's employment contract, extending it for an additional three years to May 31, 2020 and adjusting compensation.

### **BACKGROUND/DISCUSSION:**

The CEO, Dale Villani is currently under contract with the Plan until May 31, 2017. The proposed amendment will extend the term of the contract for an additional three years, to May 31, 2020. Additionally, the amendment adjusts the CEO's compensation, beginning June 1, 2017, from \$375,000 to \$386,250, a 3% increase. In each subsequent year he will receive a 3% increase.

As part of the compensation, the CEO will be eligible for annual incentive-based compensation of up to 20% of his annual salary, based on goals and threshold developed by the Commission and the CEO by May 31 of each year. The Commission will have the discretion to determine whether and goals have the incentive plan are achieved and whether to provide the incentive compensation. Under the current contract, the incentive-based bonus is up to 25% of the annual salary.

The amendment includes a longevity bonus, which is a lump sum of 5% of gross salary each year, payable June 15 of each year beginning in 2018 if the CEO remains with the Plan through May 31 of that year.

The amendment does not otherwise change or replace any terms of the current CEO agreement.

### **FISCAL IMPACT:**

There is no impact to the amount of compensation owed under the existing contract. The salary increases and other potential compensation are only applicable during the term of the extension to 2020. During the extension term, the CEO's gross compensation will begin at \$386,250, with 3% annual increases and the possibility of up to 25% combined additional annual compensation.

**RECOMMENDATION:**

Approve amendment to the CEO's Employment Agreement.

**CONCURRENCE:**

N/A

**ATTACHMENT:**

Proposed First Amendment to Employment Agreement

## **FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

This First Amendment to Employment Agreement (“Amendment”) is entered into between the VENTURA COUNTY MEDI-CAL MANAGED CARE COMMISSION, DOING BUSINESS AS, GOLD COAST HEALTH PLAN, a public entity (“GCHP”) and A. DALE VILLANI (“EMPLOYEE”) (collectively, “the Parties”). It is effective on the latest date of execution set forth below.

### **RECITALS**

A. GCHP and EMPLOYEE entered into an Employment Agreement dated May 27, 2015 (the “Employment Agreement”) with a term extending to May 31, 2017.

B. GCHP desires to continue to employ EMPLOYEE as Chief Executive Officer of GCHP (CEO), and EMPLOYEE accepts such employment, subject to the additional and amended terms and conditions set forth herein. The parties intend that, except as set forth in this Amendment, the terms and conditions of the Employment Agreement shall remain in force and effect for the duration of the amended term provided below.

NOW, THEREFORE, in consideration of the above referenced recitals which are incorporated herein by reference, term, conditions, covenants and promises set forth below, the parties agree as follows:

### **SECTION 1. TERM**

The term (in Section 2 of the Employment Agreement) is hereby amended to extend an additional three years, with termination as of close of business on May 31, 2020. This Term may be extended by mutual written agreement. Nothing herein, however, shall be construed as requiring either party to ultimately agree to such extension of the Agreement or a new employment agreement. GCHP agrees to begin considering whether to extend the Agreement on or about October 1, 2019, and to notify EMPLOYEE of its position as soon thereafter as practicable, but not later than December 1, 2019.



## **SECTION 2. COMPENSATION**

Section 3 of the Employment Agreement is amended as follows:

(A) Commencing on June 1, 2017, GCHP shall pay to EMPLOYEE an annual gross salary of three hundred eighty-six thousand two hundred fifty dollars (\$386,250.00), which shall be subject to all applicable payroll taxes and withholdings.

(B) On June 1, 2018 and again on June 1, 2019, EMPLOYEE's annual gross salary shall increase by three percent (3%).

(C) On June 1, 2018 and on an annual basis thereafter, EMPLOYEE shall also be entitled to be eligible for an incentive plan up to 20% of annual salary should EMPLOYEE meet established goals of the incentive plan set by the Commission of GCHP. The goals and thresholds of the incentive plan shall be developed among the Commission of GCHP and the EMPLOYEE by approximately May 31 of each year. Whether the goals and threshold of the incentive plan are achieved to the satisfaction of the Commission, and whether or not to provide any amount under the incentive plan is within the sole discretion of the Commission and its decision shall be final.

(D) If EMPLOYEE remains employed with GCHP as of May 31, 2018, EMPLOYEE shall earn a longevity bonus equal to five percent (5%) of his then-current gross salary, payable in a lump sum (subject to payroll taxes and withholdings) on or before June 15, 2018. If EMPLOYEE remains employed with GCHP as of May 31, 2019, EMPLOYEE shall earn a longevity bonus equal to five percent (5%) of his then-current gross salary, payable in a lump sum (subject to payroll taxes and withholdings) on or before June 15, 2019. If EMPLOYEE remains employed with GCHP as of May 31, 2020, EMPLOYEE shall earn a longevity bonus equal to five percent (5%) of his then current salary, payable in a lump sum (subject to payroll taxes and withholdings) on or before June 15, 2020. Nothing in this provision shall restrict either party's right to terminate the Employment Agreement (as amended herein) for any reason prior to EMPLOYEE earning the longevity bonuses described in this paragraph, in which case no longevity bonus shall be earned or paid.

## **SECTION 3. OTHER TERMS REMAIN IN EFFECT**

Except as expressly provided in this Amendment, the terms and conditions of the Employment Agreement shall remain in force and effect through the end of the amended contract term on May 31, 2020.

**SECTION 4. COUNTERPARTS**

This Amendment may be executed in two or more counterparts, including via facsimile or electronically-transmitted signature, each of which shall be deemed an original, but all of which together shall constitute one-in-the-same document.

Executed at Camarillo, California, as of the date set forth below.

DATE: \_\_\_\_\_

VENTURA COUNTY MEDI-CAL MANAGED  
CARE COMMISSION DBA GOLD COAST  
HEALTH PLAN

By: \_\_\_\_\_  
Chair

DATE: \_\_\_\_\_

“EMPLOYEE”

\_\_\_\_\_  
A. Dale Villani

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Secretary, Commission

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

Attorneys for Ventura County Medi-Cal Managed Care Commission dba  
Gold Coast Health Plan

By: \_\_\_\_\_  
Scott H. Campbell

### **AGENDA ITEM NO. 3**

**TO:** Gold Coast Health Plan Commission  
**FROM:** Scott Campbell, General Counsel  
**DATE:** November 9, 2016  
**SUBJECT:** Award of Pharmacy Benefits Manager Contract

#### **SUMMARY:**

At its October 24, 2016, meeting the Commission elected to award the Pharmacy Benefits Manager (“PBM”) contract to OptumRx but only on the condition that OptumRx would expressly agree to defend, indemnify and hold the Plan harmless against any action arising from the award of the contract. As of the date of this staff report, OptumRx has only agreed to a limited form of indemnity, which does not satisfy the Commission’s condition.

#### **BACKGROUND/DISCUSSION:**

At its September 26, 2016, meeting the Commission initially took action to award the PBM Contract to OptumRx, provided that OptumRx included additional performance guarantees related to the 340B program in its contract and amended certain provisions regarding the timing of payments. While negotiations with OptumRx were pending, the other two potential PBM vendors, Magellan and ScriptCare, each submitted protests against the award to OptumRx. The protests alleged, among other things, that OptumRx did not comply with the Request for Proposal (“RFP”) and that the Commission should have followed staff’s recommendations. The Commission considered the protests, and found that to the extent OptumRx’s proposal did not comply with the RFP, the deviations were minor and waived all irregularities. Because of the protests, and because the content of OptumRx’s proposal was a basis for the protests, the Commission conditioned an award to OptumRx on OptumRx’s agreement to indemnify, defend and hold the Plan harmless in any litigation related to its decision to award the contract to OptumRx.

As of the time of the preparation of this staff report, staff was unable to finalize the contract because OptumRx declined to agree to indemnify, defend and hold the Plan harmless without limitations. The additional indemnity language proposed by OptumRx is attached to this report. The litigation risks associated with OptumRx’s limited indemnity will be discussed in closed session.

Additionally, both Magellan and ScriptCare have offered changes to their contract documents to address the Commission’s condition but as of the date of this staff report neither has in Staff’s opinion, provided language that fully complies with the Commission’s condition. Magellan’s

proposed additional indemnity language is attached to this report. ScriptCare did not propose to add any indemnity language but did offer to increase the amount of the implementation credit.

**FISCAL IMPACT:**

The potential litigation risks and costs will be discussed in closed session.

**RECOMMENDATION:**

Direct staff on how to proceed with the Award of the PBM contract and the associated indemnity, defend and hold harmless provisions.

**CONCURRENCE:**

N/A

**ATTACHMENTS:**

1. The Providers' proposed language on defense, indemnity, and hold harmless provisions.
2. Cover letter from OptumRx.

## Attachment 1

### Proposed Indemnity Provisions

#### OptumRx's Proposed Indemnity Provision:

*At GCHP's request and direction and to the extent allowed by law, CONTRACTOR shall indemnify GCHP, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof ("Indemnified Parties") to the extent that CONTRACTOR will contribute an amount of up to \$500,000 in the aggregate ("Maximum Contribution Amount") towards the total amount incurred by the Indemnified Parties to defend, settle or pay any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and other such procedures), judgments, orders, and decisions, brought against Indemnified Parties that challenge, attack, or seek to modify, set aside, void, or annul, any action of GCHP in awarding or entering this Agreement ("Actions"), whether such Actions are brought under Code of Civil Procedure Sections 1085 or 1094.5, or any other federal, state, or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. Any payment by CONTRACTOR pursuant to this provision may be applied to defense costs incurred by an Indemnified Party in connection with the defense of an Action, or may be applied towards any settlement or judgment against an Indemnified Party related to such Action. In the event of an Action for which an Indemnified Party seeks payment from CONTRACTOR pursuant to this Section, the Indemnified Party shall on a monthly basis provide reasonable documentation of all expenses incurred by the Indemnified Party in defense, settlement or payment regarding the Action, and CONTRACTOR shall remit to the Indemnified Party payment of the expenses incurred by the Indemnified Party in the defense, settlement or payment regarding the Action in the prior month period, within 30 days of receipt of documentation from the Indemnified Party, up to the Maximum Contribution Amount in the aggregate. If this provision is deemed unenforceable or otherwise disqualifies CONTRACTOR from performance under this Contract, then (a) this provision shall be declared null and void and (b) all monies paid to date or otherwise owing under this provision shall be promptly refunded by the Indemnified Parties to CONTRACTOR.*

*GCHP shall have the sole right and discretion to defend, settle, compromise, or otherwise resolve any and all Actions. Notwithstanding the foregoing, in the event an Action is filed against an Indemnified Party, the Indemnified Party shall: (i) diligently defend the Action; (ii) consult with CONTRACTOR in advance of any settlement of any Action if the settlement involves the payment of money to a third party; and (iii) on a regular basis keep CONTRACTOR apprised of the status of the Action.*

*This section shall be in addition to any other indemnity provision contained in the Agreement and shall not be construed to limit any rights otherwise held by GCHP under the Agreement.*

**Magellan's Proposed Indemnity Provision:**

*CONTRACTOR shall indemnify, defend, and hold GCHP, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, in each case who are acting within the course and scope of their employment or engagement by GCHP and without fraud or malice ("Indemnified Parties"), harmless from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings, judgments, orders, and decisions ("Actions"), brought against Indemnified Parties that challenge, attack, or seek to modify, set aside, void, or annul, any action of GCHP in awarding or entering this Agreement, whether such Actions are brought under Code of Civil Procedure Sections 1085 or 1094.5, or any other federal, state, or local law.*

*In the event that an Action is brought, GCHP will promptly notify CONTRACTOR and will have the option at any time to either (i) tender its defense to CONTRACTOR, in which case CONTRACTOR will represent the Indemnified Parties' interests at CONTRACTOR's expense, or (ii) undertake its own defense, in which case CONTRACTOR will be responsible for and shall pay reasonable fees and expenses of the defense by Best Best & Krieger LLP or such other counsel approved by CONTRACTOR. GCHP shall have the sole right and discretion to settle, compromise, or otherwise resolve any and all claims, causes of action, liabilities, or damages against it, notwithstanding that GCHP may have tendered its defense to CONTRACTOR. CONTRACTOR shall have the right to participate in the defense and to consent to any settlement or other compromise, which consent shall not be unreasonably withheld. Unless CONTRACTOR reasonably has withheld consent, any such resolution will not relieve CONTRACTOR of its obligation to indemnify GCHP. If CONTRACTOR could and would settle and GCHP does not agree, then CONTRACTOR's obligation to indemnify and defend the Indemnified Parties after the settlement request is limited to the rejected settlement amount.*

*Notwithstanding the foregoing, CONTRACTOR's total liability under this section for amounts other than reasonable fees and expenses of the defense shall not exceed \$250,000.*

*This section shall be in addition to any other indemnity provision contained in the Agreement and shall not be construed to limit any rights otherwise held by GCHP under the Agreement.*

November 2, 2016

**VIA EMAIL – [Scott.Campbell@bbklaw.com](mailto:Scott.Campbell@bbklaw.com)**

Ventura County Medi-Cal Managed Care Commission  
c/o Mr. Scott Campbell  
Best Best & Krieger  
300 South Grand Avenue  
25<sup>th</sup> Floor  
Los Angeles, CA 90071

Dear Chairman Lee and Commission Members,

In light of the protests and threats of litigation that Ventura County Medi-Cal Managed Care Commission (“Commission”) has received from Magellan Rx Management, LLC (“Magellan”) and Script Care Ltd. (“Script Care”) arising from the conditional award of RFP – GCHP060316 issued by Gold Coast Health Plan (“GCHP”) to OptumRx, Inc. (“OptumRx”), OptumRx is pleased to offer GCHP the indemnification protection set forth in the proposed language below:

At GCHP’s request and direction and to the extent allowed by law, CONTRACTOR shall indemnify GCHP, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (“Indemnified Parties”) to the extent that CONTRACTOR will contribute an amount of up to \$500,000 in the aggregate (“Maximum Contribution Amount”) towards the total amount incurred by the Indemnified Parties to defend, settle or pay any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and other such procedures), judgments, orders, and decisions, brought against Indemnified Parties that challenge, attack, or seek to modify, set aside, void, or annul, any action of GCHP in awarding or entering this Agreement (“Actions”), whether such Actions are brought under Code of Civil Procedure Sections 1085 or 1094.5, or any other federal, state, or local constitution, statute, law, ordinance, charter, rule,



regulation, or any decision of a court of competent jurisdiction. Any payment by CONTRACTOR pursuant to this provision may be applied to defense costs incurred by an Indemnified Party in connection with the defense of an Action, or may be applied towards any settlement or judgment against an Indemnified Party related to such Action. In the event of an Action for which an Indemnified Party seeks payment from CONTRACTOR pursuant to this Section, the Indemnified Party shall on a monthly basis provide reasonable documentation of all expenses incurred by the Indemnified Party in defense, settlement or payment regarding the Action, and CONTRACTOR shall remit to the Indemnified Party payment of the expenses incurred by the Indemnified Party in the defense, settlement or payment regarding the Action in the prior month period, within 30 days of receipt of documentation from the Indemnified Party, up to the Maximum Contribution Amount in the aggregate. If this provision is deemed unenforceable or otherwise disqualifies CONTRACTOR from performance under this Contract, then (a) this provision shall be declared null and void and (b) all monies paid to date or otherwise owing under this provision shall be promptly refunded by the Indemnified Parties to CONTRACTOR.

GCHP shall have the sole right and discretion to defend, settle, compromise, or otherwise resolve any and all Actions. Notwithstanding the foregoing, in the event an Action is filed against an Indemnified Party, the Indemnified Party shall: (i) diligently defend the Action; (ii) consult with CONTRACTOR in advance of any settlement of any Action if the settlement involves the payment of money to a third party; and (iii) on a regular basis keep CONTRACTOR apprised of the status of the Action.

This section shall be in addition to any other indemnity provision contained in the Agreement and shall not be construed to limit any rights otherwise held by GCHP under the Agreement.

As our proposed language outlines, OptumRx is willing to indemnify GCHP to the extent that we will provide them with up to \$500,000 to assist with the costs of the defense and settlement of any Action. Based on our estimations of what it would cost to defend and potentially settle any Action, we feel this amount will provide GCHP with more than sufficient funds.

OptumRx greatly values GCHP as a partner and is strongly committed to providing GCHP with best in class pharmacy benefit management services at the best financial value. It is our hope that after reviewing our above-outlined indemnification offer, coupled with the leading financials that OptumRx has previously proposed to

GCHP, the Commission will come to the conclusion that OptumRx truly has provided GCHP and its members with the best aggregate financial value.

We look forward to the opportunity to continue our partnership with GCHP. Please do not hesitate to reach out if you have any questions for OptumRx.

Respectfully,



Marissa Watt  
Associate General Counsel  
OptumRx  
[Marissa.Watt@optum.com](mailto:Marissa.Watt@optum.com)  
(224) 231-1704

cc: Michael Maurer, Associate, Best Best & Krieger  
Robert Hollis, Vice President, Payer Sales, OptumRx  
Julie Fogarty, Senior Associate General Counsel, OptumRx

## **AGENDA ITEM NO. 4**

**TO:** Gold Coast Health Plan Commission  
**FROM:** Scott Campbell, General Counsel  
**DATE:** November 9, 2016  
**SUBJECT:** Discussion on Procedures for Commission Meetings

### **SUMMARY:**

Commissioner Catherine Rodriguez asked that the General Counsel's office briefly discuss the procedures for making and passing motions at Commission meetings.

### **BACKGROUND/DISCUSSION:**

As a public body, the Commission must conduct its meetings in public, following the procedures outlined in the Brown Act. The Brown Act provides guidance on how meetings are noticed and what discussions constitute meetings. The Brown Act does not discuss the procedures for making, passing and amending motions.

Currently, the Commission's bylaws discuss the procedures for motions, and provide that when the bylaws do not provide guidance, Robert's Rules of Order are to be used as guidance. Robert's Rules of Order are designed for large legislative bodies and are burdensome and hundreds of pages long. For smaller legislative bodies or governing boards, many jurisdictions use Rosenberg's Rules of Order, which are much simpler. These rules, which are also attached, will be discussed.

### **FISCAL IMPACT:**

None at this time.

### **RECOMMENDATION:**

Review the report. If the Commission wants to formerly adopt Rosenberg's Rules of Order, the bylaws would need to be amended.

### **CONCURRENCE:**

N/A

**ATTACHMENTS:**

- 1) Bylaws
- 2) Rosenberg's Rules of Order

**AMENDED AND RESTATED BYLAWS FOR THE OPERATION OF  
THE VENTURA COUNTY ORGANIZED HEALTH SYSTEM**

**VENTURA COUNTY MEDI-CAL MANAGED CARE COMMISSION  
(dba Gold Coast Health Plan)**

**Approved: October 24, 2011  
Amended: April 25, 2016**

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# **AMENDED AND RESTATED BYLAWS FOR THE OPERATION OF THE VENTURA COUNTY ORGANIZED HEALTH SYSTEM (dba Gold Coast Health Plan)**

## **ARTICLE I**

### **Name and Mission**

The name of this Commission shall be the Ventura County Medi-Cal Managed Care Commission, hereafter referred to in these Bylaws as the VCMMCC. VCMMCC shall operate under the fictitious name, Gold Coast Health Plan.

The VCMMCC shall design and operate a program or programs, whose mission is to improve the health of its members through the provision of the best possible quality care and services. This will be accomplished by:

- (a) Delivering medical care via a contracted provider network that will improve access to primary, specialty and ancillary services;
- (b) Establishment of mechanisms to assure that medical care services meet appropriate quality of care standards;
- (c) Incorporating a plan of service delivery and implementing reimbursement mechanisms which promote the long-term viability of a locally operated Medi-Cal managed care system and the existing participating provider networks inclusive of “Safety Net” providers herein defined as Medi-Cal disproportionate share hospitals, county clinics, federally qualified health centers, and licensed rural health clinics;
- (d) Implementing a financial plan which includes the creation of a prudent reserve and which provides that if additional surplus funds accrue, they shall be used to expand access, improve benefits and augment provider reimbursement in Ventura County;
- (e) Placing a high priority on prevention, education, early intervention services and case management for enrolled recipients;
- (f) Ensuring that all obligations, statutory, contractual or otherwise, shall be the obligations of the VCMMCC and shall not be the obligations of the County of Ventura or the State of California; and
- (g) Implementing programs and procedures to ensure a high level of member satisfaction.

## ARTICLE II

### Commissioners

The governing board of the VCMMCC shall consist of eleven (11) voting members (“members” or “Commissioners”) who shall be legal residents of Ventura County. Members shall possess the requisite skills and knowledge necessary to design and operate a publicly managed health care delivery system.

Members of the VCMMCC shall be appointed by a majority vote of the Board of Supervisors and shall consist of the following:

(a) Physician Representatives. Three members shall be practicing physicians who serve a significant number of Medi-Cal beneficiaries in Ventura County. One shall be selected from a list with a minimum of three (3) nominees submitted by the Ventura County Medical Association, one shall be selected from a list with a minimum of three (3) nominees submitted by Clinicas Del Camino Real and one shall be selected from a list with a minimum of three (3) nominees submitted by the Ventura County Medical Center Executive Committee.

(b) Private Hospital/Healthcare System Representatives. Two members shall be representatives of private hospitals and healthcare systems operating within Ventura County and shall be selected from a list with a minimum of three (3) nominees submitted by the Hospital Association of Southern California. Nominees shall be from different hospitals and healthcare systems. The two appointed members shall not be affiliated with the same hospital or healthcare system.

(c) Ventura County Medical Center Health System Representative. One member shall be a representative of the Ventura County Medical Center Health System and shall be selected from a list with a minimum of three (3) nominees submitted by the Ventura County Medical Center administration.

(d) Public Representative. One member shall be a member of the Board of Supervisors, nominated and selected by the Board of Supervisors.

(e) Clinicas Del Camino Real Representative. One member shall be the chief executive officer of Clinicas del Camino Real or designee nominated by the Clinicas del Camino Real chief executive officer and approved by the Ventura County Board of Supervisors.

(f) County Official. One member shall be the Ventura County Health Care Agency Director or designee nominated by the Health Care Agency Director and approved by the Board of Supervisors.

(g) Consumer Representative. One member shall be a Medi-Cal beneficiary and/or a representative of an advocacy organization that serves the Medi-Cal population and is



not otherwise represented on the Ventura County Medi-Cal Managed Care Commission. This member shall be appointed from applications submitted to the Ventura County Executive Office after a posting of public notice for the open position.

(h) Ventura County Medical Center Health System Representative. One member shall be the Ventura County Medical Center Family Medicine Residency Program Director or Faculty Designee and approved by the Board of Supervisors.

### **Selection and Terms of Commissioners**

In order to stagger terms with the intent of maintaining experienced members, in the initial cycle of appointments, the following appointees shall serve two-year terms: one of the Ventura County Medical Center Health System Representatives, the Physician Representative nominated by the Ventura County Medical Association, the Public Representative, and one Private Hospital/Healthcare System Representative. All other initial appointments and all subsequent appointments to the VCMCC shall be for four-year terms. No member may serve more than two consecutive four-year terms. Any vacancy will be filled by the Board of Supervisors for the remainder of the unexpired term and shall maintain the balance of representation on the VCMCC. The term of each subsequent appointment shall be deemed to commence on March 15 of the year of the appointment.

A member may resign effective on giving written notice to the Clerk of the VCMCC, unless the notice specifies a later date for his/her resignation to become effective. Upon receipt of such notice, the Clerk shall notify the Chairperson and the Board of Supervisors. The Clerk of the VCMCC shall enter the notice in the proceedings of the Commission. The acceptance of a resignation shall not be necessary to make it effective.

A member may be removed from the VCMCC by a 4/5 vote of the Board of Supervisors.

Nominations to the VCMCC shall be submitted to the Ventura County Executive Office, which shall be responsible for screening nominees and presenting candidates to the Board of Supervisors.

### **ARTICLE III**

#### **Officers**

(a) Officers of the VCMCC shall be a Chairperson and Vice-Chairperson.

(b) The Chairperson and the Vice-Chairperson shall be elected by majority vote of the members in attendance at the first meeting of the VCMCC to serve for the remainder of the calendar year in which the first meeting occurs. Officers subsequently elected to these offices, pursuant to the procedures outlined under "Election" below, shall serve a term of two years or until their successor(s) has/have been duly elected.

(c) No individual shall serve more than two consecutive terms in any of the elected officer positions.

### **Election**

- (a) The VCMMCC shall elect officers by majority vote of the members present.
- (b) The election of officers shall be held at the first regular meeting of the VCMMCC after March 15 (or after the date upon which the Board of Supervisors appoints Commissioners for the present term if later than March 15) in every even-numbered year. The two-year terms of office shall be deemed to commence on March 15 of the year of the election, regardless of when the election actually occurs. The officers of the prior term shall continue to preside over any meetings and perform all other functions of their offices until new officers are elected.
- (c) Notwithstanding the normal election process detailed in paragraphs (a) and (b) above, when circumstances warrant it, an election may be held at any time during the year. Circumstances that would warrant a special election include: one or more of the officers wishes to resign as an officer, or one or more of the officers is terminated.

### **Duties**

- (a) The Chairperson shall:
  - 1. Preside at all meetings;
  - 2. Execute all documents approved by the VCMMCC;
  - 3. Be responsible to see that all actions of the VCMMCC are implemented; and
  - 4. Maintain consultation with the Chief Executive Officer (CEO).
- (b) The Vice-Chairperson shall:
  - 1. Exercise all the responsibilities of the Chairperson in the absence of the Chairperson; and
  - 2. In agreement with the Chairperson, perform all responsibilities mutually agreed upon.

## ARTICLE IV

### Standing Committees

(a) At a minimum, the VCMCC shall establish two (2) committees/advisory boards, one member/consumer based and one provider based. VCMCC staff will be responsible to gather a list of potential appointments and make recommendations to the VCMCC for membership on these boards. Each of the boards shall submit a charter to the VCMCC for approval. All meetings of standing committees shall be subject to the provisions of the Brown Act.

(b) Executive/Finance Committee.

- i. Purpose. The role of the Executive/Finance Committee shall be to assist the CEO and VCMCC accomplish its work in the most efficient and timely way. Meetings of this committee shall be at the request of the Chairperson or CEO to evaluate time sensitive matters. The Committee shall report on all of its activities to the governing board at the next regular meeting of the governing board.
- ii. Membership. The Executive/Finance Committee shall be comprised of the following five (5) Commissioners:
  1. Chairperson
  2. Vice-Chairperson
  3. Private hospital/healthcare system representative (to rotate between the two representatives following the representative's resignation from the committee)
  4. Ventura County Medical Center Health System representative
  5. Clinicas Del Camino Real representative

The CEO and Finance Director will serve as Ex-Officio members to Co-Chair the committee.

If the private hospital/healthcare system representative, the Ventura County Medical Center Health System representative and/or the Clinicas Del Camino Real representative are also the Chairperson and/or Vice-Chairperson of the governing board, then, the other Commissioner who is a representative of the same constituency or organization as the Commissioner serving as Chairperson or Vice-Chairperson shall be appointed to the Executive/Finance Committee to fill that reserved seat. For example, if the Ventura County Medical Center Health System representative and the Clinicas Del Camino Real representative are also the Chairperson and Vice-Chairperson,

respectively, of the governing board, then, the other Ventura County Medical Center Health System representative and the physician representative nominated by Clinicas Del Camino Real shall be appointed to fill the respective designated seat on the Executive/Finance Committee.

Appointments to the Committee shall be made at either the regular meeting in which the Chairperson and Vice-Chairperson are elected or at the next regular meeting immediately thereafter. Appointments may also be made at any regular meeting where the appointment is necessitated by a resignation, termination, vacancy, special election of officers, or other event which results in the Committee lacking full membership.

iii. Duties of the Executive/Finance Committee.

1. Advise the governing board Chairperson on requested matters.
2. Assist the CEO in the planning or presentation of items for governing board consideration.
3. Assist the CEO or VCOMMCC staff in the initial review of draft policy statements requiring governing board approval.
4. Assist the CEO in the ongoing monitoring of economic performance by focusing on budgets for pre-operational and operational periods.
5. Review proposed State contracts and rates, once actuary has reviewed and made recommendations.
6. Review proposed contracts for services over the assigned dollar value/limit of the CEO.
7. Establish basic tenets for payment-provider class and levels as related to Medi-Cal rates:
  - PCP
  - Specialists
  - Hospitals
  - LTC
  - Ancillary Providers
8. Recommend auto-assignment policies for beneficiaries who do not select a Primary Care Provider.
9. Review and recommend provider incentive program structure.
10. Review investment strategy and make recommendations.
11. On an annual basis, develop the CEO review process and criteria.

12. Serve as Interview Committee for CEO/CMO/CFO.

13. Assist the governing board and/or the CEO in determining the appropriate committee, if any, to best deal with questions or issues that may arise from time-to-time.

14. Develop long-term and short-term business plans for review and approval by the governing board.

15. Undertake such other activities as may be delegated from time-to-time by the governing board.

iv. Limitations on Authority. The Executive/Finance Committee shall not have the power or authority in reference to any of the following matters:

1. Adopting, amending or repealing any bylaw.

2. Making final determinations of policy.

3. Approving changes to the budget or making major structural or contractual decisions (such as adding or eliminating programs).

4. Filling vacancies or removing any Commissioner.

5. Changing the membership of, or filling vacancies in, the Executive/Finance Committee.

6. Hiring or firing of senior executives, but may make recommendations to the governing board as to their appointment, dismissal or ongoing performance.

7. Taking any action on behalf of the governing board unless expressly authorized by the governing board.

## **ARTICLE V**

### **Special Committees**

Members may be asked to participate on a subcommittee, task force or special project as part of their responsibilities. The VCMMCC may establish a committee(s) or advisory board(s) for any purpose that will be beneficial in accomplishing the work of the VCMMCC.

## **ARTICLE VI**

### **Meetings**

- (a) All meetings shall be subject to the provisions of Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code relating to meetings of local agencies ("Brown Act").
- (b) A regular meeting shall be held monthly. The VCMMCC shall by resolution establish the date, time and location for the monthly meeting. A regular meeting may, for cause, be rescheduled by the Chairperson with 72 hour advance notice.
- (c) Closed session items shall be noticed in compliance with Government Code section 54954.5.
- (d) Special meetings may be called, consistent with the Brown Act, by the Chairperson or by a quorum of the VCMMCC. Notice of such special meeting shall conform to the Brown Act.
- (e) Any meeting at which at least a quorum cannot attend, or for which there is no agenda item requiring action may be cancelled by the Chairperson with 72 hour advance notice.
- (f) A quorum shall be defined as one person more than half of the appointed members of the VCMMCC. For these purposes, "appointed members" excludes unfilled positions and those vacated by resignation or removal. Unless otherwise expressly stated in these bylaws, a majority vote of members present and constituting a quorum shall be required for any VCMMCC action.
- (g) After three (3) absences of any member during a fiscal year, the reasons for the absences will be reviewed by the VCMMCC and it may notify the Board of Supervisors of the absences, if it deems this action appropriate. Three or more absences from regular meetings may be cause for the VCMMCC to recommend dismissal of that member to the Board of Supervisors.

### **Conduct of Meetings**

- (a) The Chairperson shall adhere to the order of items as posted on the agenda. Modifications to the order of the agenda may be made to the extent that (on the advice of counsel) the rearrangement of the agenda items does not violate the spirit or intent of the Brown Act.
- (b) All motions or amendments to motions require a second in order to be considered for action. Upon a motion and a second the item shall be open for discussion before the call for the vote.

(c) Voice votes will be made on all items as read. An abstention will not be recognized except for a legal conflict of interest. In furtherance of the foregoing, an abstention or refusal to vote (not arising from a legal conflict of interest) shall be deemed a vote with the majority of those Commissioners who do vote, except when there is a tie vote and the motion or action fails. For example, if there are 7 Commissioners present at a meeting (none of whom are subject to a legal conflict of interest), (i) a motion passes with 3 votes in favor and 4 Commissioners abstaining, (ii) a motion passes with 3 votes in favor, 2 votes against and 2 Commissioners abstaining; and (iii) a motion fails with 3 votes in favor, 3 votes against and 1 Commissioner abstaining.

(d) A call for a point of order shall have precedence over all other motions on the floor.

(e) Without objection, the Chairperson may continue or withdraw any item. In the event of an objection, a motion to continue or reset an item must be passed by a majority of the members present. A motion to continue or reset an item shall take precedence over all other motions except for a point of order.

(f) An amendment to a motion must be germane to the subject of the motion, but it may not intend an action contrary to the motion. There may be an amendment to the motion and an amendment to an amendment, but no further amendments. In the event the maker of the original motion accepts the amendment(s), the original motion shall be deemed modified. In the event the maker of the original motion does not accept the amendment(s), the amendment(s) shall be voted separately and in reverse order of proposal.

(g) Where these Bylaws do not afford an adequate procedure in the conduct of a meeting, the Chairperson may defer to the most current edition of Robert's Rules of Order, to resolve parliamentary questions.

(h) The Chairperson shall be permitted to make motions and vote on all matters to the same extent and subject to the same limitations as other Commissioners.

## **ARTICLE VII**

### **Powers and Duties**

The VCMMCC is responsible for all of the activities described in Article I of these Bylaws and in its enabling ordinance. In furtherance of such responsibility, the VCMMCC shall have the following powers and duties and shall:

(a) Advise the Chief Executive Officer (CEO) and request from the CEO information it deems necessary;

(b) Conduct meetings and keep the minutes of the VCMMCC;

(c) Provide for financial oversight through various actions and methodologies such as the preparation and submission of an annual statement of financial affairs and an estimate of the amount of funding required for expenditures, approval of an annual

budget, receipt of monthly financial briefings and other appropriate action in support of its financial oversight role;

- (d) Evaluate business performance and opportunity, and review and recommend strategic plans and business strategies;
- (e) Establish, support and oversee the quality, service utilization, risk management and fraud and abuse programs;
- (f) Encourage VCOMMCC members to actively participate in VCOMMCC committees as well as subcommittees;
- (g) Comply with and implement all applicable federal, state and local laws, rules and regulations as they become effective;
- (h) Provide for the resolution of or resolve conflict among its leaders and those under its leadership;
- (i) Respect confidentiality, privacy and avoid any real or potential conflict of interest; and
- (j) Receive and take appropriate action, if warranted, based upon reports presented by the CEO (or designated individual). Such reports shall be prepared and submitted to the VCOMMCC at least annually.

## **ARTICLE VIII**

### **STAFF**

The VCOMMCC shall employ personnel and contract for services as necessary to perform its functions. The permanent staff employed by the VCOMMCC shall include, but not be limited to, a Chief Executive Officer (CEO), Clerk and Assistant Clerk.

#### **Chief Executive Officer**

The CEO shall have the responsibility for day to day operations, consistent with the authority conferred by the VCOMMCC. The CEO is responsible for coordinating all activities of the County Organized Health System.

The CEO shall:

- (a) Direct the planning, organization, and operation of all services and facilities;
- (b) Direct studies of organizations, operations, functions and activities relating to economy, efficiency and improvement of services;



- (c) Direct activities which fulfill all duties mandated by federal or state law, regulatory or accreditation authority, or VCMMCC board resolution, and shall bring any conflict between these laws, regulations, resolutions or policy to the attention of the VCMMCC;
- (c) Appoint and supervise an executive management staff, and such other individuals as are necessary for operations. The CEO may delegate certain duties and responsibilities to these and other individuals where such delegated duties are in furtherance of the goals and objectives of the VCMMCC;
- (d) Retain and appoint necessary personnel, consistent with all policies and procedures, in furtherance of the VCMMCC's powers and duties; and
- (f) Implement and enforce all policies and procedures, and assure compliance with all applicable federal and state laws, rules and regulations.

### **Clerk**

The Clerk shall:

- (a) Perform the usual duties pertaining to secretaries;
- (b) Cause to be kept, a full and true record of all VCMMCC meetings and of such special meetings as may be scheduled;
- (c) Cause to be issued notices of regular and special meetings;
- (d) Maintain a record of attendance of members and promptly report to the VCMMCC any member whose position has been vacated; and
- (e) Attest to the Chair or Vice-Chair's signature on documents approved by the VCMMCC.

### **Assistant Clerk**

The Assistant Clerk shall perform the duties of the Clerk in the Clerk's absence.

## **ARTICLE IX**

### **Rules of Order**

The Chairperson shall be responsible for maintaining decorum during VCMMCC meetings. All motions, comments, and questions shall be made through the Chairperson. Any decision by the Chairperson shall be considered final unless an appeal of the decision is requested and passed by a majority of the VCMMCC members present.

## **ARTICLE X**

### **Amendments**

(a) These Bylaws may be amended by an affirmative vote of a majority of the voting members of the VCMMCC. A full statement of a proposed amendment shall be submitted to the VCMMCC at least two weeks prior to the meeting at which the proposed amendment is scheduled to be voted upon.

(b) The Bylaws shall be reviewed annually and amendments to the Bylaws may be proposed by any VCMMCC member.

(c) Bylaws may be suspended on an ad hoc basis upon the affirmative vote of a majority of the VCMMCC members present.

## **ARTICLE XI**

### **Nondiscrimination Clause**

The VCMMCC or any person subject to its authority shall not discriminate against or in favor of any person because of race, gender, religion, color, national origin, age, sexual orientation or disability with regard to job application procedures, hiring, advancement, discharge, compensation, training or other terms or condition of employment of any person employed by or doing business with the VCMMCC or any person subject to its direction pursuant to federal, state or local law.

## **ARTICLE XII**

### **Conflict of Interest and Ethics**

VCMMCC members are subject to conflict of interest laws, including Government Code section 1090 and the 1974 Political Reform Act (Government Code section 8100 et seq.), as modified by Welfare and Institutions Code section 14087.57, and must identify and disclose any conflicts and refrain from participating in any manner in such matters in accordance with the applicable statutes. Members of the VCMMCC agree to adhere to all relevant standards established by state or federal law regarding ethical behavior.

## **ARTICLE XIII**

### **Dissolution**

Pursuant to California Welfare & Institutions Code, section 14087.54:

(a) In the event the Commissioners determine that VCMMCC may no longer function for the purposes for which it was established, at the time that VCMMCC's then existing

obligations have been satisfied or VCMMCC's assets have been exhausted, the Board of Supervisors may by ordinance terminate the VCMMCC.

(b) Prior to the termination of the VCMMCC, the Board of Supervisors shall notify the State Department of Health Care Services ("DHCS") of its intent to terminate VCMMCC. The DHCS shall conduct an audit of VCMMCC's records within 30 days of the notification to determine the liabilities and assets of VCMMCC. The DHCS shall report its findings to the Board of Supervisors within 10 days of completion of the audit. The Board of Supervisors shall prepare a plan to liquidate or otherwise dispose of the assets of VCMMCC and to pay the liabilities of VCMMCC to the extent of VCMMCC's assets, and present the plan to the DHCS within 30 days upon receipt of these findings.

(c) Upon termination of the VCMMCC by the Board of Supervisors, the County of Ventura shall manage any remaining assets of VCMMCC until superseded by a DHCS-approved plan. Any liabilities of VCMMCC shall not become obligations of the County of Ventura upon either the termination of the VCMMCC or the liquidation or disposition of VCMMCC's remaining assets.

(d) Any assets of VCMMCC shall be disposed of pursuant to provisions contained in the contract entered into between the state and VCMMCC.



# Rosenberg's Rules of Order

REVISED 2011

*Simple Rules of Parliamentary Procedure for the 21st Century*

*By Judge Dave Rosenberg*



## MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

## VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

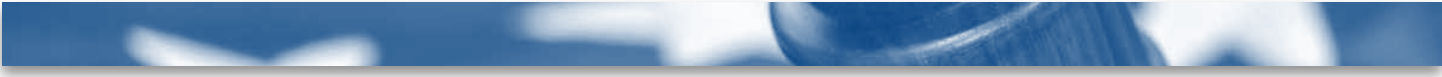
### About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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### ABOUT THE AUTHOR

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.



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## INTRODUCTION

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The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

### Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

### The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

### The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:

**First**, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

**Second**, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

**Third**, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

**Fourth**, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

**Fifth**, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

**Sixth**, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

**Seventh**, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

**Eighth**, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

**Ninth**, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

**Tenth**, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

## Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move . . .”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day notice in the future for all our meetings.”
3. **Making the motion**. As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

## The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

**The basic motion.** The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”



**The motion to amend.** If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

**The substitute motion.** If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

### Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

**First**, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

**Second**, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

**Third**, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

### To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

**Motion to adjourn.** This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

**Motion to recess.** This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

**Motion to fix the time to adjourn.** This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

**Motion to table.** This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

**Motion to limit debate.** The most common form of this motion is to say, “I move the previous question” or “I move the question” or “I call the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

**NOTE:** A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

## Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

**Motion to limit debate.** Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

**Motion to close nominations.** When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

**Motion to object to the consideration of a question.** Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

**Motion to suspend the rules.** This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

## Counting Votes

The matter of counting votes starts simple, but can become complicated.

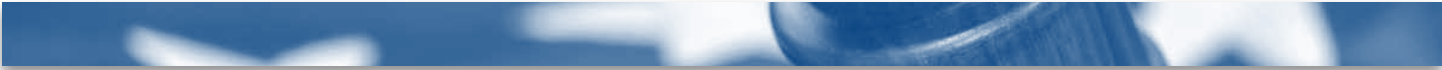
Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in



California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

*How does this work in practice?*

*Here are a few examples.*

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention not to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

## The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

## Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

**Privilege.** The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

**Order.** The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

**Appeal.** If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

**Call for orders of the day.** This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

**Withdraw a motion.** During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

## Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

**Rule One:** Tell the public what the body will be doing.

**Rule Two:** Keep the public informed while the body is doing it.

**Rule Three:** When the body has acted, tell the public what the body did.



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**AGENDA ITEM NO. 5**

TO: Gold Coast Health Plan Commission  
FROM: Dale Villani, Chief Executive Officer  
DATE: November 9, 2016  
SUBJECT: 2015-2016 Strategic Plan Evaluation

VERBAL PRESENTATION



**AGENDA ITEM NO. 6**

TO: Gold Coast Health Plan Commission  
FROM: Brianna Lierman, Chief Executive Officer, Local Health Plans of California  
DATE: November 9, 2016  
SUBJECT: Industry Perspective and Regulatory Overview

VERBAL PRESENTATION