

**OHA Advisory Committee Meeting**  
**July 27, 2021**  
**12:00 p.m. to 12:30 pm**  
**Via Teams**  
**Minutes**

*Meeting convened at 12:02 pm*

Attendance: **Members in attendance:** Lynne Ide, Dina Berlyn, Susan Halpin, Mark DeWaele  
**Absent:** Steve Wanczyk-Karp  
**OHA Staff:** Ted Doolittle, Sean King, Adam Prizio, Denise Ramoutar, Valerie Wyzykowski and Sherri Koss

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Sherri took roll call

1. Welcome & Approval of Agenda and Minutes

- Motion to approve July 27, 2021 agenda; Lynne Ide motioned to approve and Dina Berlyn seconded; No discussion, no nays, motion carried unanimously
- Motion to approve April 27, 2021 minutes; Lynne Ide motioned to approve and Mark DeWaele seconded; No discussion, no nays, motion carries

2. Administration Report

a) **Budget**

- Nothing to report at this time

b) **Personnel**

- Stable OHA staff
- Jacqueline Murillo completed her APRN degree using an 1199 union time off and tuition reimbursement benefit. OHA made substantial accommodations to facilitate this, and we are proud of her accomplishment and wish her well in whatever comes next for her.

c) **Other**

- Nothing

3. Review of Healthcare Advocate Reappointment Process/Discussion

- Ted was reappointed and is only the second reappointment in the history of OHA
- Victoria Veltri served over a year beyond the end of her initial four-year term, which did not follow the language of the appointment statute.  
With respect to Ted's reappointment, this Advisory Committee acted in January 2021, in accordance with the statute, to recommend Ted's reappointment, and the recommendation was forwarded to the Governor's office. The Governor's did not act within the 60 days prescribed by the statute, and subsequently, the recommendation was forwarded to the General Assembly, also as prescribed by the statute. The Governor's office learned that the General Assembly had received the recommendations, and despite having missed their statutory deadline to act on the Advisory Committee's recommendation, the Governor's office proceeded as if they retained authority to act on the Advisory Committee's recommendation and submitted a letter to the General Assembly supporting the reappointment of Ted. The General Assembly then proceeded on the basis of the Governor's nomination, rather than the Advisory Committee's direct recommendation. The Governor's letter, and the legislature subsequently in considering the nomination, also did something that did not happen during Kevin Lembo's reappointment, namely, they back

dated the appointment to the date that Ted's initial term had expired, rather than starting a full four-year term on the date that his renomination was confirmed. Kevin Lembo's reconfirmation was to a full four-year term starting on the date of his confirmation. The Statute provides for the OHA Advisory Committee to assume the primary role in the nomination process for the Healthcare Advocate. The Committee gets to submit names of up to 5 candidates, and the Governor has a limited amount of time to choose off that list. If the Governor does not act, then the Committee sends it to the General Assembly. Ted raised concerns about the precedent created with Vicki Veltri, who served for nearly 2 years without being re-appointed, in relation to the process of how the reappointment was done this time. An agency that was carefully structured to be substantially independent of the Governor should not have to stand by for 2 years waiting for other offices to take action. The statute is clear that the Governor's office has 60 days, not two years. There is also an open question as to whether the Governor's office or General Assembly may backdate an appointment to be less than four years from the date of reconfirmation, which in Ted's case was only a few months. The statute would seem only to empower the Governor or the General Assembly to grant a four-year term, not some lesser amount of the Governor's or the General Assembly's choosing. In Vicki's case, if the legislature had done this, she would only have had 2 remaining years of being independent of the Governor. When Kevin Lembo was reappointed, his new four-year term was not retroactive, but rather was effective on the date of the confirmation. Ted wants Committee's thoughts on this history and how to set OHA and future legislatures and Governors up for more clear reappointment processes in the future.

- The question Ted would like advice from the Committee on is whether it makes sense to formally document and further specify, either via regulation or some other written mechanism, the statutorily defined roles, responsibilities, and timelines between the Committee, the Governor, and the General Assembly. Under our statute, OHA has authority to promulgate regulations to implement appointment statute, and OHA wants feedback on whether to promulgate a regulation that gives it more flesh on the bones. For example, if the Governor doesn't respond within 60 days, to whom should the Committee send their letter. In this case, OHA GC Sean King sent the Committee's letter to the persons that the Governor's office indicated, and it went into a proverbial black hole. OHA seeks guidance on whether we should specify in a regulation, or in some other way, that the Committee's recommendation letter gets sent to (name the position of the person) and when 60 days is expired to the letter will be forwarded to the General Assembly (and again, list the title of person(s)). It is common for a new Governor to have a new team that won't have experience with a previous reappointment/appointment. In all three instances so far of Healthcare Advocates being eligible for re-appointment, three different Governors have not acted in a timely way, probably in at least some cases due to lack of awareness of statutorily defined roles, responsibilities and deadlines. Ted feels it would be good to have it formalized in one place. Sean adds that the initial stumbling block in this instance, per the General Statutes, is that the Governor's office is supposed to send notice to the Advisory Committee not less than 90 days before of the expiration of the Healthcare Advocate's term of office, and we never got that communication, despite OHA proactively reminding the Governor's office. The Statute at that point is pretty clear on what is to happen next. The Governor acts on the Advisory Committee's recommendation and passes that recommendation to the General Assembly, or if the Governor doesn't act then the Committee directly communicates with the General Assembly, and the General Assembly would act and take it from there. It's not clear who on the Governor's staff collects this information and passes it on to the Governor. Sean feels having a regulation that states the title of whom to send this

information to would be helpful and hope to avoid future issues as this. And if the Governor fails to act, who (with specific title) would get the recommendation at the General Assembly. The Committee's letter that was sent to the General Assembly was addressed to Senate and House Leadership . That created some communication between the General Assembly and Governor's office, and at that point, the Governor's office wanted to take it back from the General Assembly. Susan feels this was a really unique year, with Covid and a lot of pieces that may have fallen through the cracks during the crisis. Doesn't feel you can plan around these issues. Susan would be happy to review what OHA is suggesting but would like to have something in writing to respond to with suggestions, pointing to authority and the statute for review. Ted responds that this is preliminary discussions and looking for suggestions. Susan asks if OHA has had any discussions with the Governor's office as to what we are trying to do. Ted responds that he wanted to bring it to the Committee first to get their take on the situation. We will work closely with the Governor's office on any changes. Mark asks has this happened in other instances or is this the first. Ted responds that this has happened in Vicki's case. Didn't it go to the Legislature in Kevin Lembo's reappointment? Ted responds it did. Mark states that this was an unusual year. Is this common? Ted responds that very few agencies have an Advisory Committee that has the primacy that this Committee has in the reappointment process. This has happened in the past, with gubernatorial failure to act under three different Governors, and feels it's a trend regardless of the year it is. Lynne asks do we have to go through a promulgation or can we just ask to have clarification. What is the easiest? Feels clarification is needed for future use. Ted talks about an inter-agency Memorandum of Agreement as another option. Not sure if the Legislature is open to an MOA, but perhaps would be possible with the Office of the Governor; this might be a faster track than promulgating a regulation; the downside is it would leave the reappointment mechanism subject to political forces later, as MOAs are easy to cancel or modify, and also typically have an expiration date. Susan feels it would be helpful to see the information in writing. Lynne feels that there has been more than one incident just with OHA and that clarification would be a good idea. Dina feels this is worth looking at and would like to see the language OHA would suggest

- Ted states this is a long-term project with no particular urgency, but it is a problem that needs to be addressed and clarified for future OHA, General Assembly, and Office of the Governor stakeholders, but would like to make progress while the situation is still fresh in everyone's minds. The Committee is advised to expect further updates and materials regarding this in 2021 and 2022.

#### 4. Data Reports

- Ted brings attention to the chart on page 1 – 2<sup>nd</sup> quarter comparison of new intake cases are considerably up from this time last year.

#### 5. COVID19 Update

- Governor issued an interim telework rule effective until September 1, 2021, providing that staff need to work 50% of their time in the office
- However, staff are allowed to apply to work between at home up to 80% at of the time. All OHA staff applied and all were approved to work at home 80%. This is an interim policy that ends September 1, 2021 because the SEBAC collective bargaining unit and the state are in contract negotiations.

- Sean, Val has nothing to add, no questions from the Committee

6. Other Business

- Ted was invited by CMS to review ACA marketplace navigator applications, due to the fact that the Biden Administration reinstated navigator funding which had gone away under the prior administration. That work should conclude this week.
- OHA is working on regulation comments on the following:
  - The No Surprises Act passed last year, comment due this week
  - CMS's annual payment regulation – OHA will comment on this week

Mark DeWaele motioned to adjourn and Lynne Ide seconded; no nays; no discussion motion carries unanimously; Meeting adjourned at 12:32 pm.

**The next meeting is scheduled for  
Tuesday, October 26, 2021  
12:00 – 12:30 PM**