Board Governance Committee Members

VOTING MEMBERS

Jeff Griffith, EMT-P, Chair
Terry Corrales, RN
Laura Barry

NON-VOTING MEMBERS

Diane Hansen, President & CEO
Kevin DeBruin, Chief Legal Officer
Stephanie Baker, Chief Operations Officer

ALTERNATE VOTING MEMBER

Hugh King, Chief Financial Officer
Omar Khawaja, Chief Medical Officer

COMMITTEE SECRETARY

Nanette Irwin

Asterisks indicate anticipated action. Action is not limited to those designated items.

3 minutes allowed per speaker with a cumulative total of 9 minutes per group. For further details & policy, see Request for Public Comment notices available at Public Comments and Attendance at Public Board Meetings.

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TO: Board Governance Committee

MEETING DATE: Thursday, October 6, 2022

FROM: Nanette Irwin – Committee Secretary

Background: The Extraordinary Event Management policy #58873 is respectfully presented to the Board Governance Committee for its triennial review and approval.

Budget Impact: N/A

Staff Recommendation: Review/Approval

Committee Questions: N/A

COMMITTEE RECOMMENDATION:

Motion: X

Individual Action:

Information:

Required Time:
TO: Board Governance Committee

MEETING DATE: Thursday, October 6, 2022

FROM: Nanette Irwin – Committee Secretary

Background: The minutes of the Board Governance Committee meeting held on Thursday, August 4, 2022 is respectfully submitted for review/approval.

Budget Impact: N/A

Staff Recommendation: Review/Approve

Committee Questions: N/A

COMMITTEE RECOMMENDATION:

Motion: X

Individual Action:

Information:

Required Time:
TO: Board Governance Committee

MEETING DATE: Thursday, October 6, 2022

FROM: Nanette Irwin – Committee Secretary

Background: The Outsourced Labor Policy #58912 is respectfully presented to the Board Governance Committee for its triennial review and approval.

Budget Impact: N/A

Staff Recommendation: Review/Approval

Committee Questions: N/A

COMMITTEE RECOMMENDATION:

Motion: X

Individual Action:

Information:

Required Time:
Board Governance Committee
Board Governance Committee Charter Review

TO: Board Governance Committee

MEETING DATE: Thursday, October 6, 2022

FROM: Nanette Irwin – Committee Secretary

Background: The Board Governance Committee Charter is respectfully presented to the Board Governance Committee for its review and approval.

Budget Impact: N/A

Staff Recommendation: Review/Approval

Committee Questions: N/A

COMMITTEE RECOMMENDATION:

Motion: X

Individual Action:

Information:

Required Time:
Board Governance Committee
Legislative Update

TO: Board Governance Committee
MEETING DATE: Thursday, October 6, 2022
FROM: Nanette Irwin – Committee Secretary

Background: The Legislative Update dated September 27, 2022 is respectfully presented to the Board Governance Committee for reference.

Budget Impact: N/A
Staff Recommendation: Reference
Committee Questions: N/A

COMMITTEE RECOMMENDATION:
Motion:
Individual Action:
Information: X
Required Time:
TO: Board Governance Committee

MEETING DATE: Thursday, October 6, 2022

FROM: Nanette Irwin – Committee Secretary

Background: The Lucidoc Board Policy Listing dated September 29, 2022 is respectfully presented to the Board Governance Committee for reference.

Budget Impact: N/A

Staff Recommendation: Reference

Committee Questions: N/A

COMMITTEE RECOMMENDATION:

Motion:

Individual Action:

Information: X

Required Time:
ADDENDUM A
I. PURPOSE:
To establish a set of guidelines for notifying the Board of Directors when key events occur that pose a significant risk to Palomar Health.

II. DEFINITIONS:
Extraordinary Events: Events that may pose a significant risk to Palomar Health.

III. TEXT / STANDARDS OF PRACTICE:
"Extraordinary Events" as outlined below must be reported to the Chair of the Board and the appropriate Board Committee Chair(s) by the Chief Executive Officer (CEO) or designated leadership team member in a timely manner as outlined in the applicable procedures. To the extent that an Extraordinary Event requires confidential treatment, communications should be initiated by an attorney representing Palomar Health in order to be protected by legal privileges.

List of “Extraordinary Events”

1. Publicity. All non-routine matters that are likely to be the subject of media coverage.
2. Employee Terminations and Discipline
   a. Pending termination of any key personnel for any reason.
   b. Pending termination of any non-consultant employee related to fraud, theft, breach of patient confidentiality, or any circumstances that are likely to be the subject of publicity.
   c. A recommendation to forego suspension or termination of an employee that materially departs from standard guidelines/practices regarding employee discipline or termination.
   d. Any deviation from standard limitations on an employee’s physical and electronic access during an administrative leave pending completion of an investigation that lasts longer than five (5) days.
3. Major System Failures and Other Threats to Physical Safety or Security of Employees, Patients, or Visitors. Events not involving direct patient care that create a risk of significant physical harm, violence or other harm to employees, patients or visitors. Examples include, but are not limited to, threats of physical violence, significant life/safety threats, and significant failures involving primary electronic systems or physical infrastructure.
4. Significant Patient Privacy or Confidential Data Breach. Any suspected breach of protected health information or confidential Palomar Health data which is of a significant volume or is assessed as likely to result in any public disclosure.
5. Any Suspected Drug Diversion. Any suspected theft or other diversion of drugs which is likely to result in discipline of an employee or has any potential to adversely affect patient care.
6. Patient Care Matters. Any patient care matter involving extraordinary circumstances, such as one or more of the following:
   a. Probable liability exposure of $1 million or greater;
   b. Probable media coverage (negative or positive);
   c. Involves a “systems issue” that exposes multiple patients to risk of serious injury;
   d. Involves significant detrimental impact on involved care providers;
   e. Involves a “never event” or sentinel event
7. Matters Covered by Legal, Risk, Compliance or Departments of Legal with Related Functions.
   a. Any pending, threatened, or reasonably likely litigation, claim or assessment, including those arising from noncompliance with laws and regulations regarding the administration of federal or state programs (such as Medicare, Fraud & Abuse, Stark, EMTALA, Securities Laws, etc.) that meets one or more of the following:
      i. Likely to exceed the designated threshold amount of $50,000 in alignment with current health district law; or
ii. Involves currently unassessed risks that appear to potentially involve extraordinary penalties (such as, but not limited to, termination of licensure, accreditation or qualification for payment for substantial services/activities).

b. Any act of fraud, suspected fraud, or breach of ethical standards on the part of any Palomar Health employee in the following categories:
   i. Someone in a significant position of leadership;
   ii. A person who is directly involved in or is in a position to impact the internal financial accounting/reporting process; or
   iii. An event of theft that does or could involve a material financial loss to the company Palomar Health.

c. All investigations by governmental entities regulatory bodies involving a reasonable likelihood that the government contact could result in a finding of illegality, required correction of process, or other noncompliance with any law or regulation.

d. All internal investigations under “Attorney Client Privilege” involving a reasonable likelihood that the investigation could result in a finding of illegality, required correction of process, or other noncompliance with any law or regulation.

d-e. Any other matter that must be reported to a regulatory body within 24 hours of knowledge of occurrence.

8. Regulatory-Related. Any matter that must be reported to a regulatory body within 24 hours and any instance in which a regulatory body makes an unscheduled visit for the purposes of an investigation.

9-8. Policy to be reviewed every 3 years.

IV. ADDENDUM:

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<thead>
<tr>
<th>Document Owner:</th>
<th>DeBruin, Kevin</th>
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<td>Approvals</td>
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<td>- Committees:</td>
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<tr>
<td>Original Effective Date:</td>
<td>01/04/2018</td>
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<tr>
<td>Revision Date:</td>
<td>[07/05/2021 Rev. 2]</td>
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<tr>
<td>Attachments:</td>
<td>Patient Safety Event Response, Investigation and Follow-Up</td>
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(REFERENCED BY THIS DOCUMENT)

Paper copies of this document may not be current and should not be relied on for official purposes. The current version is in Lucidoc at https://www.lucidoc.com/cgi/doc-fw.pl?ref=pphealth:58873.
Policy: Extraordinary Event Management

I. PURPOSE:
To establish a set of guidelines for notifying the Board of Directors when key events occur that pose a significant risk to Palomar Health.

II. DEFINITIONS:
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   b. Pending termination of any non-consultant employee related to fraud, theft, breach of patient confidentiality, or any circumstances that are likely to be the subject of publicity.
   c. A recommendation to forego suspension or termination of an employee that materially departs from standard guidelines/practices regarding employee discipline or termination.
   d. Any deviation from standard limitations on an employee’s physical and electronic access during an administrative leave pending completion of an investigation that lasts longer than five (5) days.
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   a. Any pending, threatened, or reasonably likely litigation, claim or assessment, including those arising from noncompliance with laws and regulations regarding the administration of federal or state programs (such as Medicare, Fraud & Abuse, Stark, EMTALA, Securities Laws, etc.) that meets one or more of the following:
      i. Likely to exceed the designated threshold amount of $50,000 in alignment with current health district law; or
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   i. Someone in a significant position of leadership;
   ii. A person who is directly involved in or is in a position to impact the internal financial accounting/reporting process; or
   iii. An event of theft that does or could involve a material financial loss to Palomar Health.

c. All investigations by regulatory bodies involving a reasonable likelihood of a finding of illegality, required correction of process, or other noncompliance with any law or regulation.

d. All internal investigations under “Attorney Client Privilege” involving a reasonable likelihood that the investigation could result in a finding of illegality, required correction of process, or other noncompliance with any law or regulation.

e. Any other matter that must be reported to a regulatory body within 24 hours of knowledge of occurrence.

8. Policy to be reviewed every 3 years.

IV. ADDENDUM:

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Document Owner: DeBruin, Kevin

Approvals
- Committees:

Original Effective Date: 01/04/2018
Revision Date: [07/05/2021 Rev. 2]
Attachments: Patient Safety Event Response, Investigation and Follow-Up

(REFERENCED BY THIS DOCUMENT)

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ADDENDUM B
Notice of upcoming meeting was posted Thursday, July 28, 2022. Full agenda packet was posted on the Palomar Health website on Thursday, July 28, 2022.

The meeting was held virtually via GoToMeeting pursuant to Board Resolution No. 01.10.22(03)-03 and called to order at 12:00 p.m. by Committee Chair Jeff Griffith.

Quorum comprised of: Chair Jeff Griffith, Director Terry Corrales, and Director Laura Barry

Excused Absences: None

None

None

1. Minutes: Board Governance Committee Meeting – Thursday, June 2, 2022

MOTION by Director Barry, 2nd by Director Corrales to approve the June 2, 2022 meeting minutes as written.

Roll call voting was utilized:
Director Barry - Aye
2. Board Policy: Board Dispute Resolution #70012

**MOTION** by Director Corrales, 2nd by Director Barry to accept the policy as written. Roll call voting was utilized:
- Director Corrales - Aye
- Director Barry - Aye
- Director Griffith - Aye
All in favor. None opposed.

**DISCUSSION:**

Mr. DeBruin, Esq. stated that the draft Board Dispute Resolution policy had been created by Holland and Knight and requested that Ms. Brown, Esq. present the policy to the committee. Ms. Brown, Esq. stated that the policy is intentionally brief and encourages a cohesive Board that works toward the common goal of advancing the organization and its goals. Article I includes definitions that define engagement and active dialogue. Article II defines the commitment. This commitment’s intent is to assist individual directors or factions of the Board to obtain resolution in conjunction with the Legal Department, General Counsel, or equivalent position to ensure compliance with the Ralph M. Brown Act. Article III defines third-party neutral options for further dispute resolution within a flexible framework. The board is empowered to appoint a third party for a formal negotiation, mediation, or arbitration depending on the dispute, and if there are four or more members of the Board involved, the Brown Act procedures must be followed. The policy provides considerable discretion on what tool to employ, and that all issues initially go through the Legal department, which provides a safe guard to both the Board and the organization.

Director Barry requested clarification on the difference between mediation and arbitration. Ms. Brown, Esq. stated that in mediation the parties decide whether an issue is confidential or not, in arbitration issues can be public. The main difference between arbitration and mediation is that in arbitration the arbitrator makes findings of fact and findings of law that are binding on the parties and so the arbitrator impacts the legal rights of the parties. In mediation, the mediator works with the parties and the parties determine their own negotiated written outcomes that are agree to and that agreement becomes binding on the parties.

Director Barry asked if the presented policy is a typical/standard type policy with the three different levels of Alternative Dispute Resolution (ADR), would like to understand more thoroughly how this would work for the Board, and if the Board would choose which level to implement. Ms. Brown, Esq. stated that it was envisioned that disputes would first be brought to the Legal Department, Legal would review the dispute, and would then make a written recommendation to the Full Board on which procedure is best suited for the facts and circumstances of that dispute. If the dispute was one Board member against another Board member, a negotiated compromise may be the better approach and would be confidential. If a dispute originated from a faction of the Board, such as four members against three members, then that would tip the process over into the Brown Act so that part of the negotiated compromise would have a public component.

Director Corrales asked if the Board has to be in agreement that there is a dispute and if there needs to be a vote to determine if they wish to go to either arbitration, mediation, or negotiation. Ms. Brown, Esq. stated that when a dispute first arises it would go to Legal and Legal would make a written recommendation to the Full Board on how to address it. However, it could be that none of the ADR processes are acceptable or appropriate depending on what Legal recommends. The Full Board would then take a vote and a simple majority of the Board members would determine whether to accept or reject Legal’s recommendation. Holland and Knight built in a safe guard to ensure that Legal initially views all disputes involving the Board.

Director Corrales asked that if someone wanted to bring a dispute to the Board would they do so at a Board meeting. Would Legal then step in and provide particulars of the issue, and would the Board have to vote by simple majority as to whether they wanted to continue or not? Ms. Brown, Esq. stated yes, except if someone has an individual concern. For individual disputes one should first speak with Legal and then Legal or outside counsel would make a recommendation on how to deal with that dispute. If Legal believes it should be presented to the Full Board, Legal would create a write up and present it to the Full Board. The Full Board would then vote to accept or reject the recommendation.
Director Griffith stated that this policy was created because ACHD’s list of best practices contained this type of policy and Palomar Health did not have anything similar. Plus, an issue came up in the past between Board members where the Board determined it would be beneficial to hire a corporate counselor to speak with Board members. Director Griffith’s aspirations for this policy are to act as a gateway for any conflict, which might first be settled at the legal department level without going to the Full Board. Legal could be considered a counseling service that begins the process and goes to increasing levels depending on the situation. This policy is an avenue to address everyone’s concerns and to resolve conflicts before they explode, before they go to the Full Board, and before they go to the newspapers. Director Griffith stated that the policy will be beneficial to Palomar Health.

Director Griffith asked Director Barry for her thoughts and concerns regarding the policy. Director Barry stated that she thought it was a good policy, although she is still concerned about lawsuits. If one Board member decides to sue another Board member, can the policy ensure mediation is the first step? Ms. Brown, Esq. stated that yes, this is part of the reason the policy was created. When Board members are backed by third party organizations, there are two different tools that can be used: 1) the Board of Directors Code of Conduct, and 2) the Board Dispute Resolution policy. This policy endeavors to funnel disputes into defined procedures and provides a basis for stating that an individual director is responsible for following the policy first. To the extent that an individual does not raise the issue internally, then they are in violation of the Board Dispute Resolution policy as well as the Board of Directors Code of Conduct policy.

Director Griffith asked for Director Corrales’ thoughts and concerns regarding the policy. Director Corrales stated that she is in agreement with the policy, that she appreciates the policy funnels disagreements into Legal as a first step, and appreciates that those who try to avoid the process will be in violation of both the Board of Directors Code of Conduct policy and the Board Dispute Resolution policy.

Director Griffith asked Ms. Brown, Esq. if there were any legal concerns with this policy. Ms. Brown, Esq. stated that the only concern she sees is a potential accusation that if disputes are first funneled to private mediation, Palomar may be running afoul of the Brown Act. That is why the policy states that actions must be in accordance with the Brown Act. Palomar needs to ensure that no one tries to hide disputes, while also trying to ensure that inter-Board disputes are handled internally so they don’t create outside litigation without the Board having awareness of it.

Director Corrales stated that hopefully this policy will reduce or eliminate civil lawsuits. Board issues are addressed in the public eye according to the Brown Act. Ms. Brown, Esq. stated that this policy is trying to mirror other agency formats in that agencies will first exhaust administrative remedies before appealing to Superior Court. To the extent that Palomar can’t somehow resolve disputes through this policy, then and only then can a Board member resort to the outside court system. Palomar obviously does not want to keep people from exercising their rights to the court system. Palomar can point them to this policy informing them of the proper procedure, and if an agreement cannot be reached in a less expensive negotiated compromise using the third party neutral, then and only then can other avenues of solving disputes be implemented.

Director Griffith stated that this policy gives Legal another responsibility as the initial contact to instruct others as to what it means and how to implement dispute resolution. The policy offers a menu of different solutions and provides a defined process that attempts to resolve conflicts in a less expensive and less disruptive manner. This policy will need to go to the Full Board for review and approval. Director Griffith then asked how many sources Ms. Brown, Esq. researched to develop this policy. Ms. Brown, Esq. stated she had reviewed six or seven policies from both the private and public sectors. She chose to review private sector policies because the private sector is very aware of how expensive individual Board disputes can be when brought to a court system. A couple private Boards use this ADR procedure, plus they have a list of third party neutrals that specialize in corporate governance and offered to provide a list to Palomar Health. Director Griffith stated that this is a fantastic policy and he appreciates everyone’s hard work.

3. Board Policy; Extraordinary Event Management #58873

**MOTION** by Director Barry, 2nd by Director Corrales to table the policy until the committee can review the redlined version and vote at that time. Roll call voting was utilized:
- Director Barry - Aye
- Director Corrales - Aye
- Director Griffith - Aye

All in favor. None opposed.

Ms. Brown, Esq. to send housekeeping edits to the Committee Secretary and redlines (if any) to the committee for review.

**DISCUSSION:** Mr. DeBruin, Esq. stated that this policy is on the standard tri-yearly review and was not recommended for retirement by Holland and Knight during the Bylaw and Board policies review in the middle of last year. Director Greer asked if this policy is actually needed. Mr. DeBruin, Esq. stated that he had no suggestions for changes and this policy is at the Boards discretion, although he thought it was unnecessary. If there was an extraordinary event, the Board has broad power under the Brown Act to act immediately.
and swiftly to call emergency meetings without notice. So, if an emergency took place the Board could do all necessary steps without this policy. Mr. DeBruin, Esq. deferred to Ms. Brown, Esq. for comments. Ms. Brown, Esq. stated that Holland & Knight decided to keep the policy because there were patient care matters associated with it and matters covered by Legal, Risk, and Compliance. Ms. Brown offered to circulate the edits for the policy and stated that it is good to define an extraordinary event to the extent it requires Board attention. The Board should be aware of all of extraordinary matters and people should report them, and to the extent that people do not report them, then this policy provides the Board a measure of coverage to say, “did the employee, executive, or Board member follow this procedure or bring it to the Board’s attention in a timely manner”. If the Board was not informed, it relieves the Board of some measure of liability pursuant to the business judgement.

Director Griffith asserted that this policy should be kept and requested the edits/redlines that Ms. Brown, Esq. mentioned. Ms. Brown, Esq. stated that many of the edits were housekeeping and she will send them to the Committee Secretary for updating. Any redlines found will be forwarded to the Board Governance Committee members and suggested tabling the policy till the next Governance meeting. The committee members agreed to table the policy.

Director Corrales agreed that this policy is an additional safeguard for Palomar Health to ensure all rules are being followed. Ms. Brown, Esq. stated this policy provides a defense to potential liabilities for the Board in the event of an extraordinary incident when reporting channels are not appropriately followed. Director Corrales stated that the policy is a good idea and thanked Ms. Brown for her thorough clarification of the policy.

4. Board Policy; Political Activities on Palomar Health Property #21783

**MOTION** by Director Barry; 2nd by Director Corrales to approve the policy as written.
Roll call voting was utilized:
Director Corrales - Aye
Director Barry - Aye
Director Griffith - Aye
All in favor. None opposed.

**DISCUSSION:** Mr. DeBruin, Esq. stated that this policy was recommended to be kept by Ms. Brown, Esq. and Mr. Holtzman, Esq. The policy lays out, under the Political Reform Act, the prohibitions of elected officials in using property or other means of a local government agency to campaign on local government property. Since this is an election year it is important for the Full Board to review and understand its prohibitions and standards of practice. Although the three directors on this committee are not up for this current re-election, the other four are. So, it would be a good idea to review the prohibitions of the Political Reform Act and best practices under the Fair Political Practices Commission related to political activities at the Full Board level. Director Corrales stated that she thinks this policy is absolutely necessary. She would like a copy of the policy to be emailed to all Board members to emphasize the importance of following these rules, especially in this electoral year. Director Griffith requested that Legal distribute an email to the Full Board regarding the policy, asserting that the Governance Committee requested this distribution. Mr. DeBruin, Esq. stated that Legal will distribute the policy to all Board members by sending it to the Board Chair and then blind cc’ing all the Directors so that no one can respond to avoid improper Brown Act communications. Mr. DeBruin, Esq. volunteered to send the email out after the next Full Board meeting with hopes that Director Greer could be informed and she could mention it during her standard comments at the upcoming Full Board meeting. Director Corrales agreed that the process is perfect.

5. Board Policy: Public Comments and Attendance at Public Board Meetings #21790

**MOTION** by Director Barry; 2nd by Director Corrales to approve the policy with the requested changes.
Roll call voting was utilized:
Director Barry - Aye
Director Corrales - Aye
Director Griffith - Aye
All in favor. None opposed.

**DISCUSSION:** Mr. DeBruin, Esq. stated that this policy was revised before the Bylaws major revision. There are references in the Bylaws on how to conduct the public comment period, although this policy is more specific in how the Board will conduct the public comment period. The main change was to alter the two 15 minute periods (one at the
beginning and one at the end of the meeting) into one 30 minute period at the beginning of every meeting, including committee meetings. Additional changes were incorporated from the public comment section under the Brown Act into this policy; it restates the statutes relating to public comments under the Brown Act. At the time Holland & Knight reviewed the policy they recommend to keep it as an ancillary policy in conjunction with the Bylaws. Mr. DeBruin’s, Esq. main concern is misunderstandings by assistants or others not familiar with the Brown Act and the potential miss-instruction that the forms are required, when in reality they are not required. All attendees at meetings that are not disruptive are allowed to provide a public comment during the comment period within the time frame established. There is a form that we ask attendees to fill out when making a public comment, which is permissible, we just can’t require it. Ms. Brown, Esq. agreed that having an ancillary public policy is good in that it indicates the Board’s investment and concerns in public thoughts and opinions. Director Griffith supported the changes for the elimination of the second public comment period, which makes this policy more in line with best practices, the Brown Act, and other regulations. Director Corrales stated that ethics legislation states that people do not have to provide their name if they choose not to. So it is important to let the public know, to listen to their concerns, and not comment on their comments; this is a very important policy. Ms. Brown, Esq. suggested deleting the “Definitions” heading as there are no definitions and the committee agreed.

6. Board Policy; Public Comment Form #62012

**MOTION** by Director Corrales, 2nd by Director Barry to approve the policy with recommended edits to be completed by Legal.

Roll call voting was utilized:
- Director Corrales - Aye
- Director Barry - Aye
- Director Griffith - Aye

All in favor. None opposed.

**DISCUSSION:** Mr. DeBruin, Esq. stated that this form is attached to the Public Comments and Attendance at Public Board Meetings policy and changes need to be made to some of the language such as changing “shall” to be permissive and not mandatory and suggested a motion to approve this policy with changes that Legal will make. The committee agreed. Director Barry suggested that the Public Comment Form and the Public Comments and Attendance at Public Board Meetings policy be provided to the Board together.

7. Board Policy; Board Agenda Creation #63352

**MOTION** by Director Corrales, 2nd by Director Barry to retire the policy.

Roll call voting was utilized:
- Director Corrales - Aye
- Director Barry - Aye
- Director Griffith - Aye

All in favor. None opposed.

**DISCUSSION:** Mr. DeBruin, Esq. stated that after the last Bylaw review, the Bylaws now give the Chair the authority to set the agenda for regular meetings and allows for other Board members to make suggestions. The purpose extensively relates to both regular and committee meetings, but the actual policy only relates to committee meetings. Mr. DeBruin, Esq. suggested this policy be retired. Board agenda creation processes and procedures can be included in the Committee Charters. Mr. DeBruin, Esq. asked Ms. Brown, Esq. if an auxiliary policy or clarifications are needed. Ms. Brown stated that no addition language or auxiliary policy is needed. Again Mr. DeBruin, Esq. recommended retiring this policy with the understanding that the committees will now create their own agendas and the Chairs of the committees will have a similar power to the Chair of the Full Board in creating the agenda. The committee agreed. Director Barry stated that this policy appears to be redundant and that retirement would be the best option.

8. Board Policy; Bylaws of Palomar Health #59212

**MOTION** by Director Corrales, 2nd by Director Barry to table the Bylaws to Mr. DeBruin, Esq. to provide information from the older version of the Bylaws to all Board Members.

**Legal to update the Public Comment Form. Committee Secretary to forward the form to the Full Board for review and approval.**

**DISCUSSION:**
allow all Board Committees to develop their respective charters. Roll call voting was utilized:
Director Corrales - Aye
Director Barry - Aye
Director Griffith - Aye
All in favor. None opposed.
Committee members for development of their respective charters.

DISCUSSION: Mr. DeBruin, Esq. introduced Director Barry who had comments regarding this policy. Director Barry stated that the committee charters should be a top priority, and that non-voting members need to be moved to the charters so when changes are made they can go directly to the Full Board and leave the voting members with their overarching duties. Mr. DeBruin, Esq. suggested tabling this policy to allow the committees time to develop their respective charters at their next Board Committee meetings. The older version of the Bylaws can be used to assist the committees in developing the specific duties of each committee. This will help with the committee’s vision of limiting basic administrative changes to the Bylaws. Director Griffith stated that the Bylaws should be addressed only every three years as the Bylaws are basically the Board’s constitution. It would also be best practice to set up committee charters that would allow for more flexibility and easier use. Director Griffith asked if there would be an educational piece at the next Full Board meeting to inform the Board members about the charter concept and development. Mr. DeBruin, Esq. stated that he believes Director Greer will be making a reference to the charters in her comments at the next Full Board meeting to incentivize the committee chairs to begin their committee charters. Legal can send out the former duties from the older Bylaw version as a template for the committees to establish their charters. Mr. DeBruin, Esq. and Ms. Brown, Esq. offered to help the committees devise effective charters and to make it an expedient process. Mr. DeBruin, Esq. hopes the charters will be done by the next organizational meeting in December 2022. Director Griffith stated that since templates and Bylaws information will be provided to all the committee chairs it will be easier for everyone and charter creation will make Palomar Health more efficient.

9. Creation of Standing Committee Charters

MOTION. No vote required. This was an informational topic for discussion.

DISCUSSION: Mr. DeBruin, Esq. had spoken with Director Greer about two issues: 1) did the Governance Committee want the charters to be approved through the Governance Committee before they go to the Full Board or if the committee wants the charters to go directly to the Full Board for approval, and 2) should the specific duties from the older version of the Bylaws be used as a template and given to the committees to establish their own charters; with Legal providing guidance and assistance to the Chairs and Committee Assistants. Mr. DeBruin, Esq. recommended sending the duties to each committee, having each committee create their own charter, and sending the charters to the Full Board for review and approval, bypassing the Governance Committee. He stated that this process could be an informational process only and not require a vote if that is what the committee chose; Director Griffith, Barry, and Corrales could discuss preferences. If the Governance Committee believes this needs to go through the Governance Committee, then the committee could vote on that and then make the recommendation to the Full Board. Ms. Brown, Esq. and Director Griffith both agreed that Mr. DeBruin’s, Esq. recommendation of bypassing the Governance Committee was the fastest way to complete this process. Director Barry stated as long as each committee can have Legal’s assistance to develop the charters in a proper way, she did not see a need for the charters to go through Governance for review, and it would be best if all the committees worked and completed the charters at the same time. Director Corrales agreed with Director Barry in that the charters don’t need to go through the Governance Committee. Director Corrales requested clarification on the complete process of how the charters will be created. Ms. Brown, Esq. stated that the initial starting point will be at the next Full Board meeting on Monday, August 8, 2022 with the Board Chair introducing charter creation. Committee Chairs would then call a Special Meeting, invite Legal and Holland & Knight, and place charter development on the agendas as a drafting session. Before the meeting, the former committee descriptions/duties from the older version of the Bylaws will be circulated to the committee members with perhaps a template. During the drafting session, both Legal and Holland & Knight would attend and listen to all the committee members discuss their various tasks. From this, Ms. Brown, Esq. would create proposed draft charters for each committee and send them to the committee members for review. To speed the process along, the committees should have a set time period to express their comments and review redlines. Legal would then make the final review of all charters to ensure the contents comply with all applicable laws and requirements. Once fully approved by the committees and Legal, the charters would then go to the Full Board for review and approval. Director Barry asked if she is correct in that her starting point is receiving the description/duties of the Finance committee contained in the Bylaws that was just tabled? Ms. Brown, Esq. clarified that the information will come out of the previous version of the Bylaws, will be sent to each member of the committees, and she will provide a proposed charter. Director Barry mentioned that the non-voting members are still in the Bylaws. Ms. Brown, Esq. stated that the non-voting members will be removed from the Bylaws and placed in the charters. Director Barry stated that it will be great to have the charter describing the Finance Committee’s roles and responsibilities. Director Griffith reiterated that all
committees will have a lot of help, and the starting point will be the next Full Board meeting on Monday, August 8, 2022 with the Chair introducing the charter concept. Director Barry thanked Director Griffith for all the clarification and understanding for this project.

### INFORMATIONAL ITEMS

**1. Standing Items**

- The Hurst, Brooks, Espinosa Legislative update, dated June 24, 2022 was referenced.  
  **DISCUSSION:** Director Corrales thanked the Committee Secretary for noting the important issues in the Legislative Update that apply to California Healthcare Districts and Palomar Health.

- The Lucidoc List of Board Policies dated July 27, 2022 was referenced.  
  **DISCUSSION:** None

**2. RoundTable/Comments**

- None

### FINAL ADJOURNMENT

Meeting adjourned by Director Griffith at 1:10 PM.

### SIGNATURES:

**ACTING COMMITTEE CHAIR**

Jeff Griffith, EMT-P

**COMMITTEE SECRETARY**

Nanette Irwin, BSIT
ADDENDUM C
I. PURPOSE:

It is the goal of Palomar Health to ensure the maintenance of its own labor force whenever possible. There are circumstances, however, in which it is more prudent to utilize the workforce of a business partner or collaborator. In those circumstances, it is the intention of Palomar Health that the partner business will provide services of the same or better quality and is a reputable employer that meets all legal requirements related to applicable State and Federal laws related to wage and benefits.

II. DEFINITIONS:

A. Outsourced Labor: Palomar Health’s use of a third party to perform any activity or provide any kind of service to or on behalf of Palomar Health on a continuing basis that is either currently undertaken by Palomar Health or could be when considering a future service or activity. Short-term contract labor positions are excluded from the definition of Outsourced Labor in this policy.

B. Business Partner: a third party contractor which supplies labor or services on behalf of Palomar Health.

III. STANDARDS OF PRACTICE:

A. When Palomar Health administration is considering utilizing outsourced non-Palomar Health labor, prior to a final recommendation from the Chief Executive Officer or executive staff, the following processes must be followed:

1. All contractually-stipulated procedures within the current labor union contract must be followed when considering union positions or job functions.

2. Initial notification must be made to Human Resources and/or Executive Management Team sixty (60) days before targeted contract signing which includes a full presentation on the intended supplier of the outsourced labor as well as the scope of services to be contracted.

3. A written comprehensive cost-benefit analysis, which includes the financial opportunity, the costs associated with the transition, and other non-tangible costs and benefits, must be presented to the Executive Management Team a full thirty (30) days prior to the intended contract signing. Every effort should be made to provide information that allows for a similar basis for comparison between insourced and outsourced work product.

B. This policy and related procedures can be waived in the event of a designated crisis situation, in which case the Chief Executive Officer would be the only obligated notification required. The Executive Management Team must be notified at the next regularly scheduled meeting.

C. All approved contracts must contain stipulations regarding the regular reporting of process and outcome data that demonstrate a comparable level of quality and service to that which is provided by Palomar Health employees.

D. Procedure to reviewed every three (3) years.

IV. STEPS OF PROCEDURE:

A.
Paper copies of this document may not be current and should not be relied on for official purposes. The current version is in Lucidoc at https://www.lucidoc.com/cgi/doc-gw.pl?ref=pphealth:58912.
ADDENDUM D
I. **Purpose.** The Governance Committee (“Committee”) of the Palomar Health Board of Directors (“Board”) aims to oversee, establish, and monitor the effective and efficient management of the governmental processes of the Board.

II. **Membership.**

A. **Voting Membership.** The voting members (“Voting Members”) of the Committee may consist of those individuals appointed as Voting Members of the Committee by the Chair of the Board (“Board Chair”) in accordance with the Bylaws of Palomar Health (“Bylaws”) and other applicable policies of the Board.

B. **Alternate(s).** Any alternate voting members (“Alternates”) of the Committee may consist of those individuals appointed as Alternates of the Committee by the Board Chair in accordance with the Bylaws and other applicable policies of the Board. Alternates enjoy voting rights only in the absence of a Voting Member. Unless Alternates enjoy voting rights, they may attend the meetings of the Committee only as an observer.

C. **Non-Voting Membership.** The non-voting members (“Non-Voting Members”) may consist of the following individuals:

- President and Chief Executive Officer of Palomar Health
- Chief Legal Officer of Palomar Health
- Chief Financial Officer of Palomar Health
- Chief Operations Officer of Palomar Health
- Chief Medical Officer of Palomar Health

III. **Authority.** The Committee has no expressed or implied power or authority except to make recommendations to the Board related to the Committee’s purpose and duties as described in this Charter.

IV. **Duties.** The duties of the Committee may include:
A. Make an annual, comprehensive review of the Bylaws, policies and procedures and receive reports regarding same, and elicit recommendations on such issues from management and the Board.

B. Provide guidance to the CEO in the development of education and orientation programs that enhance member understanding of Board stewardships, health care, issues and management.

C. Assist in development and completion of an annual Board self-assessment and where appropriate make recommendations to enhance governance of the organization by its members.

D. Review and where appropriate make recommendations to the Board on pending or existing state and federal legislation that could affect the direction of the District and Board member responsibilities.

E. Annually review the boundaries of the District to ensure compliance with its charter in the completion of health care stewardship responsibilities.

F. Review such other issues associated with Palomar Health and/or Board governance and its effectiveness, including but not limited to Board member orientation and continuing education.

G. Advise the Board on the appropriate structure and operations of all committees of the Board, including committee member qualifications.

H. Monitor developments, trends, and best practices in corporate governance, and propose such actions to the Board.

I. Perform such other duties as may be assigned by the Board.

V. Committee Chairperson, Liaison, and Assistant.

A. The Chairperson of the Committee (“Committee Chairperson”) may be the individual appointed as Committee Chairperson by the Board Chair in accordance with the Bylaws and other applicable policies of the Board.

B. The Chief Legal Officer may serve as the Palomar Health Administration’s liaison (“Administrative Liaison”) to the Committee.

C. The Executive Assistant to the Chief Legal Officer may serve the assistant to the Committee (“Committee Assistant”).

VI. Meetings. The Committee will meet at least quarterly and more often as needed. A majority of the Voting Members will constitute a quorum. The Committee Assistant will record the meeting minutes and forward a copy to the Board Secretary upon
approval of the meeting minutes by the Committee. The Committee Chairperson may coordinate with the Administrative Liaison to invite any officer, staff member, expert or other advisor who is not a member of the Committee to attend a meeting of the Committee to discuss topics germane to the purpose and duties of the Committee.

VII. Committee Agendas.

A. The Committee Chairperson holds the primary responsibility for creating Committee Meeting Agendas. The Committee Chairperson will routinely work with the Administrative Liaison and the Committee Assistant in creating agendas. The Committee Chairperson will carefully consider all input regarding Agenda items from the Administrative Liaison. The authority for approval of final agendas for Committee Meetings will reside with the Committee Chairperson. Any disagreement, dispute, or confusion over specific agenda items and/or their appropriateness on the agenda between the Committee Chairperson and the Administrative Liaison that cannot be resolved will be referred to the Board Chair for resolution. The Board Chair, if indicated, may consult with Board or Corporate Counsel, the CEO, and/or other members of the Administration to achieve resolution. If the Board Chair feels the issue cannot be satisfactorily resolved, the Board Chair will take the issue to the Board.

B. Members may request to place items on a Committee Meeting Agenda. The Committee Chairperson will consider each item so requested and determine whether or not it is an appropriate Committee Agenda item. The Committee Chairperson will make every effort to accommodate all reasonable individual Member requests including refining the requested agenda item as indicated. The Committee Chairperson may decline to put the item on a Committee Agenda based upon his or her judgment. Any disagreement, dispute or confusion over specific agenda items and/or their appropriateness on the agenda between the Committee Chairperson and Member that cannot be resolved will be referred to the Board Chair for resolution. The Board Chair may consult with the Board or Corporate Counsel, the CEO and/or other members of the Administration to achieve resolution. If the Board Chair determines the issue cannot be satisfactorily resolved, the Board Chair will take the issue to the Board.

VIII. Review and Revision. The Committee may review this Charter annually. Any revisions proposed by the Committee to this Charter must be approved by the Board in accordance with the Bylaws.
ADDENDUM E
Gubernatorial Action on Bills of Note ... So Far

Despite signing a few bundles of bills over this past weekend, Governor Newsom, as of yesterday, still had more than 500 bills on his desk that await action. Three plus days remain prior to the Friday, September 30 deadline for all veto and signing decisions on 2022 bills. A seldom-used and rather passive tool also is available to the Governor – should he neither sign nor veto a bill, it will be come law by virtue of inaction.

Next week we will put out a comprehensive list of the Governor’s actions on bills of interest. In the meantime, we have a few actions of note to report in the following policy areas.

► Health and Human Services

**SB 1338 (Umberg) – SIGNED**
The Governor signed the Community Assistance, Recovery, and Empowerment (CARE) Program, which creates an opportunity in a civil court setting for developing an individualized care plan for persons with qualifying mental health conditions. You will all be hearing more about implementation plans on the CARE Act in the weeks and months ahead.

**AB 32 (Agular-Curry) – SIGNED**
Governor Newsom signed AB 32, which makes various changes to Medi-Cal telehealth policy, including permitting Department of Health Care Services (DHCS) to allow new patients to be established with providers using audio-only synchronous and other modalities, and permits exceptions from requirements to ensure beneficiary choice of modalities.

**AB 1926 (Choi) – VETOED**
Governor Newsom vetoed AB 1926, which would have allowed a properly executed voluntary declaration of parentage (VDOP) to be completed and submitted electronically. While the Governor stated he agrees that an electronic VDOP option could be beneficial, he signaled that legislation is not necessary and the process could be completed administratively.

Worth Noting: Public Charge Final Rule to Take Effect December 23, 2022

On September 9, the United States Department of Homeland Security (DHS) published the final rule for public charge determinations and the use of public benefits. The final rule takes effect on December 23, 2022; it provides clarity and consistency for noncitizens on how DHS will administer the public charge ground of inadmissibility. The rule restores the historical understanding of a “public charge” that had been in place for decades, until the Trump Administration began to consider supplemental public health benefits, such as Medicaid and nutritional assistance as part of the public charge inadmissibility determination. The changes include the exclusion of Medi-Cal when determining the use of public benefits, with the exception of long-term institutionalized care.

An updated Public Charge Guide has been posted on the California Health and Human Services Agency website to serve as a resource for individuals and families with questions about the current federal public charge policy.
**AB 2306 (Berman) – VETOED**
The Governor vetoed AB 2306, which would have expanded and modernized the Independent Living Program (ILP) to include current and former foster youth up to 22 years of age, and, subject to an appropriation and federal approval, up to age 23, and expanded the services for which counties can provide stipends to assist youth with specified independent living needs to include former foster youth up to 25 years of age, as specified. In his veto message, the Governor cited lower than expected revenues and the need for fiscal prudence; he suggested that this bill and others like it should be considered as part of the annual budget process.

**SB 929 (Eggman) – SIGNED**
The Governor signed SB 929, which expands DHCS’ existing responsibility to collect and publish information about involuntary detentions under the Lanterman-Petris-Short (LPS) Act to include additional information, such as clinical outcomes, services provided, and availability of treatment beds, and requires DHCS to convene a stakeholder group with specified membership to make recommendations on the methods to be used for efficiently providing the department with this information.

**SB 1054 (Ochoa Bogh) – SIGNED**
The Governor signed SB 1054, which specifies that confidentiality provisions relating to applications and records concerning any form of public social services includes protective services provided through public social services agencies. The bill also authorizes employees of a county’s adult protective services agency or a county’s child welfare agency to disclose information with each other for the purpose of multidisciplinary teamwork in the prevention, intervention, management, or treatment of child abuse or neglect or the abuse or neglect of an elder or dependent adult.

▶ **Climate**

Earlier this month, Governor Gavin Newsom signed more than 40 climate-related bills to facilitate his Administration’s California Climate Commitment, a plan to – over the next two decades – create four million new jobs, reduce air pollution by 60 percent, reduce state oil consumption by 91 percent, reduce fossil fuel use in buildings and transportation by 92 percent, and cut refinery pollution by 94 percent.

Recall that the Governor had sought a number of these proposals at the end of the legislative session to address numerous climate concerns, including severe drought, wildfires, and energy supply challenges. Specifically, he sought legislation to achieve carbon neutrality no later than 2045 and 90 percent clean energy by 2035, establish new setback measure to protect communities from oil drilling, and accelerate the state’s transition to clean energy, among others.

▶ **General Government**

**AB 1951 (Grayson) – VETOED**
Governor Newsom vetoed AB 1951, which would have eliminated the local share of sales tax related to the purchasing of manufacturing equipment. Citing the softening economy and the impact of the loss of sales tax revenues on counties and cities, the Governor urged the Legislature to consider such proposals in the context of the state budget.

**SB 1131 (Newman) – SIGNED**
The Governor signed SB 1131, which establishes an address confidentiality program for public entity employees and contractors and includes additional protections for election workers and reproductive health care providers. SB 1131 contains an urgency clause, so it takes effect immediately.
Transportation

SB 1121 (Gonzalez) – SIGNED

Governor Newsom signed SB 1121, which requires the California Transportation Commission (CTC), in consultation with the California State Transportation Agency (CalSTA) and the Department of Transportation (Caltrans), to prepare a needs assessment of the cost to operate, maintain, and provide for the necessary future growth of the state and local transportation system for the next 10 years. The needs assessment would include a forecast of the expected revenue, including federal, state, and local revenues, to pay for the cost identified in the needs assessment, any shortfall in revenue to cover the cost, and recommendations on how any shortfall should be addressed. SB 1121 will require an interim needs assessment on or before January 1, 2024, and a completed needs assessment on or before January 1, 2025, and every five years thereafter.

Governor Creates Racial Equity Commission

On September 13, Governor Newsom signed an executive order directing state agencies and departments to take additional actions to embed equity analysis and considerations in their mission, policies and practices. The executive order also establishes the state’s first Racial Equity Commission.

The Racial Equity Commission, developed with Senator Dr. Richard Pan and the racial equity organizations that sponsored SB 17, will produce a Racial Equity Framework consisting of resources and tools to promote racial equity and address structural racism. (Recall that Dr. Pan’s SB 17 did not make it to the Governor’s desk.) More broadly, the Commission will recommend tools, methodologies, and opportunities to advance racial equity, and will be available to provide direct assistance to state agencies in reviewing and updating policies and practices upon request.

The equity analysis will help expand opportunity by addressing disparities for historically underserved and marginalized communities. Under the order, state agencies and departments are directed to embed policies and practices in their strategic plans in order to further advance equity and opportunity and address disparities in access and outcomes. As part of these efforts, agencies and departments will incorporate more inclusive public engagement and data analysis to better serve all Californians.

News and Updates from the Department of Health Care Services

Supplemental Payment Program for Non-Hospital 340B Clinics – On September 15, the Centers for Medicare & Medicaid Services (CMS) approved SPA 21-0015 regarding the 340B Federally Qualified Health Centers, the Rural Health Clinics, and the Tribal Supplemental Payment Program.

AB 80 (Chapter 12, Statutes of 2020) authorizes DHCS to implement a payment methodology to provide for supplemental payments to qualifying non-hospital 340B community clinics to secure, strengthen, and support the community clinic and health center delivery system for Medi-Cal beneficiaries. The supplemental payments will support clinics who apply and certify that they are providing additional level of engagement to integrate, coordinate health care and manage the array of beneficiary health complexities. The Legislature provided $131 million in total funds for these supplemental payments.

The calculations will be based on a per visit basis. The supplemental payment amounts will be in addition to any other amounts payable to clinic or center providers with respect to those services. The supplemental payments will not impact FQHC or RHC reconciliation of their PPS rate.
CMS approval for the program is effective retroactively from January 1, 2022, through June 30, 2023. This approval does not include non-hospital 340B community clinics; DHCS continues to work with CMS to secure approval for those facilities.

**Federally Qualified Health Center (FQHC) Alternative Payment Methodology (APM) Webinar** – On September 30, from 2:30 p.m. to 4:30 p.m., DHCS will host a webinar to introduce stakeholders to the new FQHC APM, targeted for implementation no sooner than January 1, 2024. DHCS will present information about the APM and answer stakeholder questions. Use this link to [join the webinar](#).

**Covered California Board Meets – No Further Actions to Address Affordability Due to Governor’s Veto of SB 944**

The Covered California Board met on September 15. While the agenda included a number of routine items, such as state and federal updates, as well as action items related to internal Board committees and a 10 percent increase to the Navigator Program Contract, what was of most interest to stakeholders is what didn’t happen. Although the agenda included a 2023 cost sharing and affordability contingency item, no action was taken on the item because Governor Newsom had vetoed [SB 944](#) (Pan) two days prior.

SB 944 would have eliminated deductibles and lowered copayments for many Covered California enrollees in 2023 and 2024. The budget passed by the Legislature this summer includes $304 million for this purpose. But in his [veto message](#) on SB 944, the Governor cited worries about a downturn in state revenue and his desire to reserve the funds in case they are needed to offset future premiums.

Secretary Ghaly began the discussion of affordability, despite noting that there would be no action to address affordability. He noted the tremendous progress on the last several budgets to expand coverage and access. He also suggested that California’s state-funded subsidies laid the framework for what became possible with COVID and the American Rescue Plan as well as the subsequent Inflation Reduction Act with 36 months of additional support. But he also noted the need to be prudent and have an eye on sustainability. “It is important just as this Governor has done in so many other places to promote policy and direction … and to put in place a commitment … and do all we can to protect it moving forward.”

During public comment, speakers noted that there will be higher deductibles and costs in 2023 due to the veto of SB 944. Some of the stakeholders are projecting that silver plan deductibles could increase to $5,000 and primary co-pays to $50. Many noted the missed opportunity to mitigate increases in out-of-pocket costs, especially during a time of inflation. Some noted that the veto is counter to efforts to address health equity. Another speaker stated that half of Californians delayed or avoided care due to costs last year. Commenters mentioned that they expect many new Covered California members once the public health emergency is lifted and Medi-Cal redeterminations resume. Several speakers struck a hopeful tone about finding ways to address rapidly rising costs in 2024, if not 2023.

**LAO Releases Report on Provision of Criminal Indigent Defense Services**

Last week, the Legislative Analyst's Office (LAO) published a report to assess the provision of criminal indigent defense. The report provides background on the constitutional right to effective assistance of counsel, a description of how defense services are provided in the 58 counties, discussion of the state’s increased involvement in the provision of indigent defense services – both by virtue of recent
state budget investments as well as an expanded role of the Office of the State Public Defender, and an overview of recent litigation.

Much of the LAO's assessment focuses on the lack of information available statewide to permit a comprehensive assessment of the level and effectiveness of indigent defense services. Accordingly, the LAO offers three principal recommendations to the Legislature:

(1) Statutorily define appropriate metrics to more directly measure the quality of indigent defense;
(2) Require counties collect and report data to the state’s Office of the State Public Defender; and
(3) Use the submitted data to determine future legislative action.

We anticipate that the Legislature may have an interest in continued discussion in this area.

**Committee on the Revision of the Penal Code: October Meeting Focuses on Bail and Pre-Trial Release**

As we have discussed previously, Governor Newsom recommended in the 2019-20 budget and the Legislature subsequently approved the creation of the Penal Code Revision Committee (see Sections 11-18 of **SB 94**, the 2019-20 public safety budget trailer bill). The committee’s stated objectives are as follows:

- Simplify and rationalize the substance of criminal law.
- Simplify and rationalize criminal procedures.
- Establish alternatives to incarceration that will aid in the rehabilitation of offenders.
- Improve the system of parole and probation.

The Committee has a two-day meeting scheduled for October 10 and 11; participation will be by videoconference only. The focus of the Day 1 agenda is bail, pre-trial release, and other related matters. Multiple panels, individual practitioners, academics, and state officials have been invited to share their perspectives on the broad policy area. The second day of activities will focus on administrative matters and ongoing business of the committee.

Please feel free to contact any one of us at Hurst Brooks Espinosa with questions …

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