Greater Tompkins County Municipal Health Insurance Consortium

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"Individually and collectively we invest in realizing high quality, affordable, dependable health insurance."

AGENDA
Governance Structure Committee
February 20, 2018 – 5:00 P.M.

Heyman Conference Room, Old Jail- Call-in Option Available

1. Welcome (5:00)

2. Changes to the Agenda (5:02)

3. Approval of 1/11/19 minutes (5:05)

4. Review of Communications with Legal Counsel (5:07)

5. Review of SWSCHP's Article 47 Model and Discuss within our Current Framework (5:15)

6. Discussion of Action Steps, Direction for Consultants, and Information Desire for Next Meeting (6:00)

7. Adjournment (6:30)

Next Meeting: March 20, 2019 @ 5 PM

Governance Structure Committee
Minutes – Draft
January 16, 2019 – 5:00 p.m.
Old Jail Conference Room

Present: Kevin Williams, Lisa Holmes, Bud Shattuck, Greg Pelicano, Jim Bower, Judy Drake, Ed Fairbrother, Chuck Rankin, Eric Snow, John Fracchia (arrived at 5:07 p.m.), Steve Thayer (via conference call; excused at 6:00 p.m.)
Excused: Olivia Hersey, Dave Schneck
Guests: Don Barber, Executive Director; Steve Locey, Locey and Cahill (via conference call)

Call to Order

Ms. Drake called the meeting to order at 5:02 p.m. and asked for introductions of all present.

Changes to the Agenda

There were no changes to the agenda.

Mr. Fracchia arrived at this time.

Committee Organization

Membership

Ms. Drake said the Committee's membership is intended to have broad representation with membership from each of the Counties as well as individuals representing labor, town, city, and village participants of the Consortium. She stressed this is not a closed group and other thoughts and viewpoints are welcome.

Leadership

It was MOVED by Mr. Shattuck, seconded by Mr. Fracchia, and unanimously adopted by voice vote by members present, to elect Chuck Rankin as Chair of the Committee. MOTION CARRIED.

It was MOVED by Mr. Shattuck, seconded by Ms. Drake, and unanimously adopted by voice vote by members present, to elect John Fracchia, as Vice Chair of the Committee. MOTION CARRIED.

Meeting Schedule

The Committee agreed to meet the 3rd Wednesday of each month at 5 p.m. through June.

Actions and Scope of the Committee's Work

The Committee agreed to take action based on consensus unless a need arises to vote. Mr. Shattuck commented that he found the survey used during the last process to be helpful and suggested that approach could be used again. Mr. Barber spoke of the previous Committee's work and said the end result was a reduction of one Board meeting and some responsibilities being transferred to the Audit and Finance Committee. Mr. Shattuck noted, however, that this process will be different than before as the Consortium will be bringing staff on and the Executive Committee has asked that the Committee recommend a different structure.

Mr. Barber said there are currently 45 Directors on the Board and it is very likely to move beyond 50 in 2020. From an Executive Director's point of view it is becoming very difficult to keep Directors informed and engaged in the Consortium to make good decisions. He said the Committee should present the Board with an option that provides some flexibility going forward as it will continue to grow.

Article 47 Governance Structure Requirements

Mr. Barber reviewed a chart included in the agenda showing the structure of the Consortium, NYMIR (Article 61), and SWSCHP (Article 47) and presented the following list of issues that have been identified that need to be addressed:

- Labor Representation on Governing Board
- Compliance with Article 47
- Weighted Voting
- Decision making process
- Balancing partner ownership with ability/desire to participate in decision making
- Process to provide operation's information to partners
- Finding a balance for those partners that don't have time to get involved with those partners that do

Mr. Locey said there are two section of Article 47 that deal with what the Consortium is required to do:

4702 (c) "Governing board" means the group of persons designated in the municipal cooperation agreement establishing the municipal cooperative health benefit plan, to be responsible for administering the plan.

4705. Municipal cooperation agreements. (a) The municipal cooperation agreement, under which the municipal cooperative health benefit plan is established and maintained, and any amendment thereto, shall be approved by each participating municipal corporation by majority vote of each such corporation's governing body, and shall:

(8) establish a governing board to be responsible for the management, control and administration of the municipal cooperative health benefit plan, provided any municipal cooperative agreement to establish such a plan which is entered into after the effective date of this article shall provide that unions which are the exclusive collective bargaining representatives of employees who are covered by such health benefit plan shall be entitled to representation on such governing board.

Mr. Locey said this was one of the first hurdles the Consortium had to overcome with the Department of Financial Services (DFS) and noted that the representation labor is entitled to is not defined. The Consortium was instructed by DFS to come up with an agreement and if everyone agreed to it the Department would approve it. He explained labor represents 15% of the Board membership. This percentage was based on collective bargaining units on average paying 15% of the premium. The formula for labor representation on the Board is still 15% but there is a structure where another labor representative is added for every five municipalities that join. He noted any recommendation on membership of the Board must include representation from labor.

Mr. Locey called attention to the following provision that must be included in the MCA:

(1) describing the composition, number and procedures under which governing board members are chosen, provided that, for those agreements entered into after the effective date of this article, the governing board shall include representation by unions which are the exclusive collective bargaining representatives of employees covered by the plan, and that such unions shall establish and agree to the procedures by which the member or members of the governing board which represent unions are selected;

Mr. Locey said the Law doesn't state who has to be on the Board, but it does outline the Board's responsibilities:

(2) designating one governing board member to have custody of all reports, statements and other documents of the plan; and

3) that the governing board shall meet at least annually at a time and place in this state designated in accordance with the agreement.

He spoke to the savings being realized by membership in the Consortium, particularly to small municipalities and said they are seeing approximately a 25% savings from what they could have purchased in the community-rated environment. In response to Ms. Holmes concerning weighted voting, Ms. Drake said although that is included in the MCA it has never been used. There have been discussions related to coming up with a formula based on region and Ms. Drake said Mr. Locey has frequently spoken about the potential for a change in demographics if membership were to be extended to an area beyond the 7-county region currently allowed.

Mr. Locey said at present the Consortium could potentially have 133 municipal participants: 7 counties, 4 cities, 85 towns, and 37 villages. At this time participants include 2 counties 2 cities, 26 towns, and 9 villages. Ms. Drake noted the outstanding issue of whether groups such as Soil and Water Conservation Districts can join. Mr. Fairbrother said he, too, has received inquiries, including whether the Soil and Water Conservation District in Chemung County can join. He suggested a structure be considered whereby a Director would go back and communicate and share information with other participants.

Mr. Barber said any change to the MCA will need to be approved by each of the participants and DFS. He explained the composition of NYMIR's 13-member Board of Governors which establishes its own bylaws and Ms. Drake questioned whether the MCA can be simplified in a way to make the structure similar to that of NYMIR. She spoke of the process required by DFS for each of the municipalities to approve the MCA each time changes are made and suggested substantive changes be made to the MCA that would allow for approval of bylaws by the Board. Mr. Locey said the MCA has to contain language that describes the composition, number, and procedures under which governing board members are chosen.

Mr. Shattuck raised the point that there are many small municipalities that are receiving a significant cost savings by being in the Consortium but do not have time to attend a lot of meetings. He questioned whether a look can be taken at each of the counties or grouped areas and select representatives of those areas, particularly as the Consortium is growing into other areas.

Mr. Locey said the MCA currently says that no one person can represent more than one municipality. He doesn't believe this is required language but something that has historically been language to make sure that each entity has a representative. If this language was

removed the possibility would exist for multiple towns of villages to elect the same representative.

There was discussion of other municipalities joining and what the potential impact on the structure could be. Mr. Shattuck suggested if a representative model were to be recommended, basing it by county might not work the best.

Mr. Thayer was excused at this time.

There was consensus that Mr. Locey and Mr. Barber should present John Powers, the Consortium's legal counsel, with the following questions:

- In the current MCA: Can "4. No Director may represent more than one Participant" under C. Board of Directors be removed?
- Can a person represent a municipality in an Article 47 Municipal Cooperative if they do not work for or are an elected official of a municipality?

Ms. Drake also suggested asking if a lot of the language in the MCA be simplified since it was initially drafted based on a much small number of participants.

Mr. Barber offered to provide members with information on SWSCHPS, a school district that is a large Article 47 and NYMIR which is an Article 67. He commented that NYMIR holds an annual meeting where everyone has an opportunity to attend or vote by proxy.

Ms. Drake asked that members think about the decisions that take place between meetings and what structure and responsibilities committees should have in addition to how members would be appointed. Mr. Shattuck said another important topic to discuss is labor.

Mr. Fairbrother commented that with technology there are a number of ways for people to be involved and stay informed. Mr. Pellicano said although having a connection is important he doesn't believe it is a necessity. He likes a representative structure and thinks municipalities in his County would support allowing him to represent them.

Mr. Barber will also explore the idea of a proxy with Mr. Powers. Mr. Williams said he doesn't support a proxy being permitted because of ways it could be used to influence an outcome. He suggested there be a structure that provides a designation and a term. He also thinks each municipality should come to at least an annual meeting to set rates. Mr. Bower questioned allowing someone who isn't engaged for most of the year to be allowed to vote on rates. Mr. Barber responded that NYMIR officers only vote on rates; the annual meeting is held at a different time of the year. Ms. Holmes said a representative model makes a lot of sense but seems like it is a moving target since the Consortium is growing. She suggested a model could include representation from counties, cities, towns, villages, and labor.

The Committee will be provided with the response from Mr. Powers prior to the next meeting on February 20th which will inform further discussion.

Adjournment

The meeting adjourned at 6:30 p.m.

Tompkins County Health Consortium

From: Don Barber, Health Consortium ED
Sent: Wednesday, January 30, 2019 9:44 AM
To: John G. Powers; Stephen Locey
Cc: Tompkins County Health Consortium; Robert Spenard
Subject: RE: GTCMHIC Governance Structure Review
Attachments: NYMIR.pdf

Dear John,

Thank you so much for your analysis of the statute pertinent to the questions Steve asked about Consortium governance. I have a couple of follow-up questions.

Question #1:

MCA- It would be my understanding that our MCA could be changed by mutual agreement of our partners if the amended language (according to Section T of the MCA) was in compliance with Article 47 and 5-G.

5-G: I am familiar with NYMIR, also a 5-G whereby municipal corporations pool property and casualty risk. They have a model whereby the Governing Board is elected by the municipal partners. (I have attached the Subscriber Agreement for your reference.) Would this model of the municipal partners electing a Board of Governance meet requirements of 5-G in your opinion?

Question #2 Comment: we fully expect DFS review and comment on any changes to MCA. The anticipated problem is they tend to shy away from providing a review until the amended language has been accepted by all municipal partners.

Question #3 Comment: The Consortium had one municipal rep (Town of Enfield) that was not a municipal official during their 2nd audit and they did not cite this as a condition that needed to be rectified. It turned out that this person lost interest over time and the Town of Enfield was not being represented. They changed their representation to an elected official. Since then, that person has left public office and is not a municipal official yet still serves as the Town of Enfield's rep. NYMIR did not require that the persons serving on the Board of Governors was an elected official, but they did require that they be an appointed official, like "Risk Manager".

Question #4

MCA can be change according to Section T.

5-G: Referring back to NYMIR: Recognizing the NYMIR structure differences: Municipal partners can vote by proxy at the Annual meeting where the Board of Governors are elected (a simple majority of municipal partners must be present or have sent in a proxy to hold the vote). At the BoG level, proxies are not allowed.

Thank you in advance for sharing your thoughts on these reflections. By the way NYMIR has close to 900 members.

Sincerely,

Don Barber- Executive Director
Greater Tompkins County Municipal Health Insurance Consortium
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edconsortium@tompkins-co.org

From: John G. Powers <jpowers@hancocklaw.com>
Sent: Tuesday, January 29, 2019 6:18 PM
To: Stephen Locey <slocey@loceycahill.com>
Cc: Don Barber, Health Consortium ED <edconsortium@tompkins-co.org>; Tompkins County Health Consortium <consortium@tompkins-co.org>; Robert Spenard <rspenard@loceycahill.com>
Subject: RE: GTCMHIC Governance Structure Review

Steve:
Please see our responses to your questions.
Best,
John

HANCOCK ESTABROOK, LLP
COUNSELORS AT LAW

John G. Powers, Esq.

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Website: www.hancocklaw.com

From: Stephen Locey [mailto:slocey@loceycahill.com]
Sent: Thursday, January 17, 2019 9:14 AM
To: John G. Powers <jpowers@hancocklaw.com>
Cc: Don Barber GTCMHIC (EDConsortium@tompkins-co.org) <EDConsortium@tompkins-co.org>; Michelle Pottorff - GTCMHIC (consortium@tompkins-co.org) <consortium@tompkins-co.org>; Robert Spenard <rspenard@loceycahill.com>
Subject: GTCMHIC Governance Structure Review

John:

Would you kindly respond to the attached letter at your earliest convenience? Let us know when you think a response would be able to be developed by so we can set the appropriate expectation with the Governance Structure Committee. As always, we thank you in advance for your assistance and we look forward to your reply. Please do not hesitate to contact us if you need any background information to assist you with your reply.

Thank You,
Steve Locey

Stephen P Locey
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1995 To 2015 20th ANNIVERSARY

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January 17, 2019

John G. Powers, Esquire
Hancock Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, NY 13202

Dear John:

This letter is in follow-up to the initial meeting of the Greater Tompkins County Municipal Health Insurance Consortium ("Consortium") Governance Structure Committee. This Committee was established to evaluate the governance model of the Consortium to ensure it continues to meet the needs of the various municipal corporations and collective bargaining units in the Consortium.

As you are acutely aware, when the Consortium was formed in 2010, the original geographic definition included just those municipal corporations located within Tompkins County. This pool of possible municipal corporation partners initially included one (1) city, one (1) county, nine (9) towns, and six (6) villages for a total of seventeen (17) municipal partners.

Today, the definition of eligible municipal corporation partners now includes not only the municipal corporations in Tompkins County, but also includes the municipal corporations located in the six (6) counties contiguous to Tompkins County. Based on this new definition the Consortium has grown to include the following municipal corporations:

Current Members	Counties	Cities	Towns	Villages	Totals
Cayyga County	0	0	9	1	10
Chemung County	0	0	1	1	2
Cortland County	0	1	7	1	9
Schuyler County	0	0	0	0	0
Seneca County	1	0	0	0	1
Tioga County	0	0	0	0	0
Tompkins County	1	1	9	6	17
Consortium Totals	2	2	26	9	39

With this large population noted above, ensuring the Consortium can conduct business is becoming a growing concern. There is some anxiety that factors like finding a large enough venue for meetings, travel time for board members, the cost of attending meetings (time and money), continued success leading to complacency, and other logistical concerns will make attaining quorums difficult in the future. This is especially true if the Consortium continues to grow at its current or at an accelerated pace. The potential pool of municipal corporations includes at minimum the following municipalities:

Potential Members	Counties	Cities	Towns	Villages	Totals
Cayyga County	1	1	23	9	**34**
Chemung County	1	1	11	5	**18**
Cortland County	1	1	15	3	**20**
Schuyler County	1	0	8	4	**13**
Seneca County	1	0	10	4	**15**
Tioga County	1	0	9	6	**16**
Tompkins County	1	1	9	6	**17**
Consortium Totals	**7**	**4**	**85**	**37**	**133**

Based on the conversations of the Consortium Governance Structure Committee which included a review of Article 47 of the New York State Insurance Law and the current Municipal Cooperative Agreement, we have been asked to obtain answers to the following initial questions, in no specific order:

1. Does the governing board of an Article 47 Municipal Cooperative Health Benefit Plan have to include a director or voting member from each municipal corporation in the Consortium?

2. Can Paragraph C, Board of Directors, Sub-Paragraph 4 be stricken from the current Municipal Cooperative Agreement allowing a single person to represent more than one municipal corporation in the Consortium?

3. Is a person allowed to represent a Municipal Corporation in an Article 47 Municipal Cooperative Health Benefit Plan if they are not an employee or an elected official of the municipal corporation in question provided they are duly appointed by the legislative body of said municipal corporation?

4. Is a proxy voting model allowed in an Article 47 Municipal Cooperative Health Benefit Plan?

The answers to the above questions will greatly assist the Committee with its work. Please let us know if you have any questions or if you require any additional background to assist you in your response.

The Committee is hopeful that they can receive your reply within the next ten (10) business days. Please let us know if this expectation is reasonable or if it is not, when you estimate a reply will be forth coming so the Committee can schedule its next meeting accordingly. As always, we thank you in advance for your assistance and we look forward to your reply.

Sincerely,

Stephen P. Locey
President, CEO
Locey & Cahill, LLC

Copy: GTCMHIC Governance Structure Committee

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COUNSELORS AT LAW

**Confidential and Privileged
Attorney-Client Communication**

JOHN G. POWERS
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January 29, 2019

Stephen Locey
Locey & Cahill, LLC
120 Walton Street, Suite 500
Syracuse, NY 13202

ATTN: GTCMHIC GOVERNANCE STRUCTURE COMMITTEE

RE: QUESTIONS CONCERNING CORPORATE GOVERNANCE

Dear Steve:

You have asked for legal guidance regarding specific questions concerning membership on the existing Board of Directors as well as related questions concerning potential alternate voting practices for the Board in light of recent and anticipated growth in the Consortium. Below, I've set forth each of the four questions you have posed and outlined the relevant considerations under the various sources of legal guidance regarding operation and governance of a self-insured Article 47 municipal cooperative. To that end, it is important to emphasize that the Consortium is governed by *at least* three sets of legal rules that bind it, including the following:

(1) the current Municipal Cooperative Agreement ("MCA");

(2) the provisions of Article 47 of the New York Insurance Law that govern self-insured health care municipal cooperatives; *and*

(3) the provisions of Article 5-G of the New York General Municipal Law that govern the operation of municipal cooperatives in general.

These three sources act *in combination* with each other. Thus, any conduct or action must be authorized under *all three* sources. Accordingly, the guidance outlined below is structured to respond to each question considering each separately applicable body of law.

QUESTION 1: DOES THE GOVERNING BOARD OF AN ARTICLE 47 MUNICIPAL COOPERATIVE HEALTH BENEFIT PLAN HAVE TO INCLUDE A DIRECTOR OR VOTING MEMBER FROM EACH MUNICIPAL CORPORATION IN THE CONSORTIUM?

Municipal Cooperative Agreement:

Yes. MCA §C(1) provides that "[t]he voting members of the Board ***shall*** be composed of one representative of each Participant. . . ." (emphasis added). In addition, MCA § C(4) provides that "[n]o Director may represent more than one Participant."

Article 47 of NY Insurance Law:

No. N.Y. Ins. Law § 4705(c)(1), in relevant part, permits the Consortium the discretion to determine "***the composition, number and procedures under which governing board members are chosen***. . ." (emphasis added).

Article 5-G of NY General Municipal Law:

Maybe. Article 5-G contains no guidance specifying board make-up. However, the New York Comptroller's Office has opined that an officer of each of the participating municipalities "should" form a part of any board overseeing a municipal cooperative. *See* Compt. Op. 82-109 at p. 3.

QUESTION 2. CAN PARAGRAPH C, BOARD OF DIRECTORS, SUB-PARAGRAPH 4 BE STRICKEN FROM THE CURRENT MUNICIPAL COOPERATIVE AGREEMENT ALLOWING A SINGLE PERSON TO REPRESENT MORE THAN ONE MUNICIPAL CORPORATION IN THE CONSORTIUM?

Municipal Cooperative Agreement:

Yes. However, bear in mind that MCA § "T" must be complied with to amend the MCA. It reads: "Any change or amendment to this Agreement shall require the unanimous approval of the Participants, as authorized by their respective legislative bodies."

Article 47 of NY Insurance Law:

Yes. But keep in mind that the Department of Financial Services ("DFS") has in the past exercised exacting review authority over the specific terms of the MCA. It is possible that the DFS may view any amendment to the MCA as requiring its approval. Otherwise, Article 47 contains no specific provisions barring amendments to cooperative agreements, so long as the agreement continues to meet the requirements of § 4705 of the Insurance Law.

Article 5-G of NY General Municipal Law:

Yes. However, the General Municipal Law implies that any amendment to a Cooperative Agreement must be approved by each participating municipality under the same process by

which the original agreement was approved *i.e.*, approval by each municipality's respective legislative bodies. *See* AG Op. 88-46 at p.6.

QUESTION 3. IS A PERSON ALLOWED TO REPRESENT A MUNICIPAL CORPORATION IN AN ARTICLE 47 MUNICIPAL COOPERATIVE HEALTH BENEFIT PLAN IF THEY ARE NOT AN EMPLOYEE OR AN ELECTED OFFICIAL OF THE MUNICIPAL CORPORATION IN QUESTION PROVIDED THEY ARE DULY APPOINTED BY THE LEGISLATIVE BODY OF SAID MUNICIPAL CORPORATION?

Municipal Cooperative Agreement:

Yes. MCA § C does not specify any required credentials or affiliation for the designated board of director or designee.

Article 47 of NY Insurance Law:

Maybe. Article 47 is silent on this issue. However, the Insurance Department (now DFS) has previously opined that a board member need not necessarily be an officer under Article 47, but the DFS did not go so far as to opine that the board member could lack any affiliation with the municipality altogether. *See* Ins. Op. 8/1/2003 at p.3.

Article 5-G of NY General Municipal Law:

Maybe. Article 5-G contains no guidance regarding board member credentials or affiliation. However, the New York Comptroller's Office has opined that a board member must be an officer of a participating municipality and cannot be a mere teacher or employee "since the powers and duties held by the trustees are not of the sort that are delegable to employees." *See* Compt. Op. 82-109 at p. 3. The Insurance Department (now DFS) subsequently limited that opinion to its facts—in Ins. Op. 8/1/2003 at p.3—and allowed for a broader interpretation of permissible board members. However, even that opinion did not go so far as to permit the designation of non-affiliated board members.

QUESTION 4. IS A PROXY VOTING MODEL ALLOWED IN AN ARTICLE 47 MUNICIPAL COOPERATIVE HEALTH BENEFIT PLAN?

Municipal Cooperative Agreement:

No. MCA § C requires a Director to be present at a meeting to count toward a quorum and to vote. Thus, although voting by proxy is not specifically addressed in the existing MCA, the present provisions in MCA § C would not permit a Director to vote *in absentia* by giving his/her written proxy to another Director.

Article 47 of NY Insurance Law:

Maybe. Article 47 is silent on this issue.

Article 5-G of NY General Municipal Law:

Questionable. Article 5-G is silent on this issue. However, there is long-standing authority that an individual municipality may not surrender or delegate its individual responsibility regarding the use of its taxpayer funds to a third-party. This principle has been held to apply derivatively to municipal cooperatives. There is at least an argument that proxy voting is the exercise of non-delegable authority by a delegate. When viewed in this manner, such a practice could be challenged as being prohibited.

* * *

Please let me know if you have any follow-up questions regarding these answers or would like to discuss other ideas for overcoming the barriers to efficient governance that you outline in your January 17, 2019 letter.

Very truly yours,

HANCOCK ESTABROOK, LLP

John G. Powers

cc: Don Barber

February 12, 2019
Dear Don:

The SWSCHP model that you have provided is along the lines of what I was referring to regarding a "work-around" concerning the minimum legal requirements regarding board representation. From the standpoint of our current governance model, a pivot on this basis would entail at least the following:

1. delegating the majority of operational responsibility from the Board itself to a more reasonably-sized, representative subcommittee. This could be the current Executive Committee, or a separately formed committee to fill this specific role (hereinafter referred to as the "*Subcommittee/Executive Committee*");
2. the overall board would no longer meet regularly but would instead meet once a year at an organizational "annual meeting";
3. the Subcommittee/Executive Committee would take over the responsibility of conducting regularly-scheduled meetings and would assume responsibility for the vast majority of the operational decisions for the Consortium over the course of the year (with the exception of that described below);
4. the Subcommittee/Executive Committee would have to assume a more robust minute taking and/or reporting function to the Board regarding the conduct of business during the course of the year because that reporting function (to the Board as a whole) would act as a substitute for the Board's regular, on-going, legally-required oversight responsibility;
5. a more permissive "special meeting" trigger may also need to added to the MCA to allow for situations where a non-participating Board members determines that some action taken by the Subcommittee/Executive Committee requires immediate full Board review;
6. I differ with the SWSCHP model to the extent that it suggests that its board of governors has delegated the responsibility for setting assessments to its executive committee. In my view, that function—i.e., premium equivalent rate setting—is non-delegable duty and should be approved by the entire Board at the annual meeting. However, based on the practical considerations involved in the budget forecasting process, this may involve a situation where the Subcommittee/Executive Committee determines/oversees the rate setting process and its groundwork (with fulsome contemporaneous reporting to the Board as a whole), and the result of that work is either approved or ratified by the Board at the annual meeting;
7. the SWSCHP model also retains responsibility with the entire board for: (i) amendment or termination of the cooperative; (ii) expulsion of a member. These exceptions seem sensible; however, there may be more such responsibilities that should be specifically retained by the Board, as a whole, for similar policy reasons; and finally
8. all of these changes would have to be reflected in specific amendments to the MCA. In terms of the question of whether to engage the DFS up front in this process, my view is that DFS will eventually evaluate and assess the legality the changes sooner or later. I would much rather be in a position where DFS was consulted in advance then a situation where the DFS potentially disapproved of a structural change *after* we had already gone through the complicated process of amending the MCA.

In the event you want to consider such changes to the current governance model, I would advise that you first obtain informal buy in on a conceptual level from the Board and DFS. Once that has occurred, we can work with the EC on specific recommended changes to the present MCA that would incorporate and harmonize the relevant moving parts necessary to bring about such a change.

Best regards,

John

February 14, 2019

To: Governance Structure Committee
From: Don Barber, Executive Director

Re: SWSCHP's (an Article 47) Governance Model

I have pasted below the pertinent Governance Structure sections form SWSCHP's MCA which has been approved by DFS or their predecessor, NYSID.

This 1st section (Article 4.1.) states the responsibility for managing the Plan resides solely with the Board and in broad terms states those responsibilities.

The governance of the Plan shall be in all respects in the hands of the Board of Governors (hereinafter sometimes referred to as "the Board"), which shall be responsible for the management, control and administration of the Plan. The Board shall have authority to regulate and manage the affairs of the Plan, including the design of health coverage benefits under the Plan and preparation of the Plan document and summary Plan description(s). The Board shall have the authority to establish joint fund(s) to finance all Plan expenditures (including claims, reserves, surplus, administration, stop-loss insurance, and other expenses). The Board shall prepare an annual budget for the Plan, shall maintain reserves in amounts equal to or exceeding the minimum amounts required by Section 4706 of Article 47 of the New York Insurance Law, and shall establish premium equivalent rates for participating members on the basis of a community rating methodology filed with and approved by the Superintendent of Insurance.

Article 4.3 states that Governors (Directors are volunteers).

The Governors shall serve without remuneration

Article 4. 4 states the same model as the Consortium whereby each municipal partner has one Director. Labor doesn't have seat on the SWSCHP's Board. I will assume this is due the grandfathering negotiations with NYSID.

The Board of Governors shall consist of one Governor for each member and each Governor shall be designated by each member by duly adopted resolution. No person

Article 4.5 states that the Board must meet at least once per year

The Board of Governors shall have not fewer than one regularly scheduled meeting(s) in each fiscal year, and more frequently as the Board of Governors may determine, at times and places, to be determined by the Board. The Board's annual meeting shall be

So far the SWSCHP model mirrors our MCA with exception of Labor directors.

With Article 4.6 things begin to change. SWSCHP's elects the Executive Committee of at least 7 Governors. SWSCHP's does allow a Governor to not be from a member municipality by 2/3rd vote. I'm guessing this has more to do with the founding members securing their place at the table. SWSCHP's is mute on term limits or interests to be included on Executive Committee other than CFO.

At the first meeting of the Board of Governors, the Governors shall select from among themselves an Executive Committee, consisting of at least seven Governors to serve in the two succeeding fiscal years. The Executive Committee shall select from among themselves officers consisting of the President, the Vice-President and the Chief Fiscal Officer. The President shall conduct all meetings of the Board of Governors and shall provide for the keeping of minutes of such proceedings. The Chief Fiscal Officer shall perform the functions set forth in Article VI hereof and shall be the fiscal officer of a member school district. A Nominations Committee may be appointed by the Executive Committee to recommend nominees from whom the Board of Governors select Executive Committee members. Unless at least two-thirds of the Governors on the Executive Committee vote otherwise, a majority of Governors on the Executive Committee shall be from member school districts listed in Appendix A hereto.

Article 4.6 describes the authority given to the Executive Committee. A quick read show they manage the plan for the Board and prepare materials for the Board to vote on at annual meeting.

The Executive Committee shall have authority to regulate and manage the routine affairs of the Plan and to act with full authority on behalf of the Governors, including the authority to establish assessments, carryovers and refunds in accordance with Article IX herein or to enter into any agreement for the purchase of insurance, consulting or claims processing, legal, accounting, audit or other services which shall, during the term of such agreement, result or be expected to result in an increase in previously established assessments to members, except that the Executive Committee shall not have the authority to:

a. Amend or terminate the Plan in accordance with Article X herein; or

b. Expel or terminate any Plan member in accordance with Article VIII herein.

Subject only to these two exceptions, the Executive Committee shall be authorized to act on behalf of the Plan wherever this Cooperation Agreement refers to the Board of Governors. The Executive Committee shall meet as necessary and meetings may be called, scheduled and held in conformance with the notification requirements pertaining to Board of Governors meetings as set forth in Article IV herein. The Executive Committee shall maintain minutes of such meetings. The Executive Committee, except as specifically otherwise provided herein, may take action upon the vote of a majority of its members and the presence of a majority shall constitute a quorum. The Executive Committee by unanimous vote may permit other types of public entities (such as towns, villages or counties) in New York State to participate as Plan members, if deemed appropriate. In that event, any reference to school district in this Cooperation Agreement shall be read to also include that type of public entity. If deemed appropriate, the Executive Committee by unanimous vote may also change the name of the Plan.

Article 4.10 states how Board members vote and introduces that polls of Governors is an option for gathering information.

Except as specifically otherwise provided herein, no action may be taken by the Board of Governors except by a vote of a majority of the total number of Governors.

In the event that a Governor is unable to attend a meeting in person, he or she may attend, be counted towards a quorum, and vote by proxy or by telephonic or electronic connection that permits him or her and all other Governors present to communicate with each other on a contemporaneous basis.

The Board of Governors may act by telephonic or other poll as well as by meeting; provided, however, that the President of the Board of Governors shall maintain a written record of any action that is taken by poll.

Article 4.14 states the timing of at least one meeting. Although not stated, it appears to be the Annual meeting. This section also provides a process for removing elected members of Executive Committee.

Not less than 15 days prior to the end of every fiscal year, a general meeting of all Plan members shall be held, at which each member may be represented by its general meeting, the Plan members may, by majority vote of the total membership, decide on any propositions which may be put to them by the Board of Governors, the Executive Committee, or by a group of Plan members aggregating not less than twenty-five percent (25%) in number of the total Plan membership; elect successors to an Executive Committee members whose terms are to expire at the end of the current fiscal year; and also, by two-thirds vote of the total membership, remove and replace any Executive Committee member.

Not unlike our MCA, the SWSCHP's agreement establishes a Benefits Committee (not unlike our Joint Committee). This Article states who serves on the committee and their responsibilities.

ARTICLE V: BENEFITS COMMITTEE

1. There shall be an advisory Benefits Committee consisting of eight persons, three from the New York State United Teachers representing teachers of the Plan members, one from the employee organizations representing other employees of the Plan members and four Superintendents or Business Official serving on the Plan's Executive Committee. The term of office of the Benefits Committee members shall be four years. Terms shall be staggered so as to provide continuity on the Committee. In the first year

The purpose of the Benefits Committee shall be to make annual recommendations to the Executive Committee with respect to future levels of benefits and related premium cost. In so doing, the Benefits Committee shall seek to maintain a constructive

I am sorry that I cannot be with you when the Governance Structure Committee next meets. My recommendation to you is to work with the SWSCHP's framework to brainstorm changes to our Governance Structure that address the needs of the Consortium and the peculiarities of our current MCA. Please go back and look at John Powers guidance for considering SWSCHP (his letter of Feb. 12th)

I know Michelle will take good notes of the information you want Steve and I to work on for our committee's next meeting. I get on it as soon as I return.

STATE-WIDE SCHOOLS

COOPERATIVE HEALTH PLAN

SWSCHP COOPERATION AGREEMENT

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STATE-WIDE SCHOOLS

COOPERATIVE HEALTH PLAN

SWSCHP COOPERATION AGREEMENT

ARTICLE I: DEFINITIONS

1. "Plan" shall mean the State-Wide Schools Cooperative Health Plan, as provided for in this Cooperation Agreement or as may hereafter be provided for by amendment of this Cooperation Agreement, and as established and operated pursuant to Article 47 of the Insurance Law of the State of New York.

2. "School District" shall mean a union free, central, or city school district as defined by the Education Law of the State of New York.

3. "BOCES" shall mean a Board of Cooperative Educational Services as defined by the Education Law of the State of New York.

4. "Plan Member" or "member" shall mean a school district or BOCES which has qualified and been approved for membership in the Plan pursuant to Article VIII hereof.

5. "Governor" shall mean a managerial employee chosen by a Plan member to represent such member in the governance of the Plan.

6. "Plan Administrator" or "Administrator" shall mean the person or entity designated in accordance with Article VII hereof to administer the day-to-day ministerial functions of the Plan.

7. "Employee" shall mean any employee of a Plan member, or any retiree from the employment of a Plan member, for whom the Plan member wishes to secure health coverage pursuant to the Plan.

8. "Health coverage" shall mean such provisions as the Governors shall make for payment and/or reimbursement of medical, surgical, hospitalization, pharmaceutical, and related expenses, whether by policies of insurance, complete or partial self-insurance, or otherwise.

ARTICLE II: EFFECTIVE DATE, FISCAL YEAR AND DURATION OF PLAN

1. The Plan shall first become effective on such date as a sufficient number of Plan members to furnish a minimum aggregate number of 4,500 covered employees shall, having first qualified for Plan membership pursuant to Article VIII hereof, have executed this Plan document in accordance with Article XIII hereof, provided, however, that the Plan shall lapse unless, within 30 days thereafter, a Board of Governors shall have been selected and a meeting of Governors shall have been held.

2. The Plan shall initially function on a January 1 to December 31 fiscal year, which may be changed in the Board of Governors' discretion to a July 1 to June 30 fiscal year.

3. The Plan shall continue from year to year until and unless terminated in accordance with Article X hereof.

ARTICLE III: PURPOSES OF PLAN, LIMITATIONS, MUTUAL WARRANTIES

1. The purposes of the Plan are to effect cost savings in members' expenses for health coverage; to permit members to secure improved levels and quality of health coverage; to provide for centralized administration, funding, and disbursements for health coverage; and to provide for such risk management services as may be appropriate to reduce future expenses and liability for health coverage, including the purchase of excess risk or stop-loss insurance.

2. It is expressly understood and agreed by each Plan member, inter alia, as follows:

   a. Each member will continue to be individually liable for the performance of all agreements with its own employees for health coverage, whether such agreements derive from individual contracts, from collective bargaining agreements, or otherwise. The Plan shall not be liable to any individual employee, association of employees, or employee union for the performance of agreements made by individual Plan members.

   b. Coverage through each Plan member shall be available for persons previously employed by such Plan member, including the dependents of such person, where such persons retired on or before December 31, 1985, and were eligible at the said date for such coverage in the New York State Government Employees Health Plan ("State Plan" or "Empire Plan"), provided that the obligation of each Plan member for the payment of premiums shall in no event exceed the obligations for payments of premiums it would have had for such persons and their dependents had the Plan member continued its participation in the State Plan.

c. Each member agrees that it will adhere to the requirements of the Plan, will cooperate in such inquiries and furnish such information as may be necessary or appropriate for Plan purposes, and will promptly pay on demand such initial assessments, continuing assessments, and supplementary assessments as may properly be made pursuant to the Plan or by the Superintendent of Insurance; and each member consents that the Plan may, in its own name, commence such legal or equitable actions or proceedings in the Supreme Court of the State of New York or in any other competent tribunal having jurisdiction against any member to enforce the obligations of such member pursuant to the Plan.

d. Each member agrees to share the costs of, and assume the liabilities for, health coverage provided under the Plan.

e. Nothing in this Cooperation Agreement shall be construed to waive any right a covered person possesses with respect to the confidentiality of medical records and such right to confidentiality may only be waived upon such covered person's written consent.

3. As a condition precedent to membership in the Plan, each Plan member represents and warrants to the Plan and to every other member as follows:

a. That it has made a full and complete investigation to its own satisfaction of the Plan, including, without limitation, the fiscal and organizational provisions of the Plan; that it has consulted with independent counsel to the extent it may have deemed appropriate to determine the legality of the Plan and the legality of its own participation therein; that it has in all respects the power and authority to participate in the Plan as a member; and that it has lawfully and properly taken all steps and performed all acts which may be required to participate in the Plan pursuant to the Plan itself and all applicable laws.

b. That it has made such arrangements as may be required with its employees, associations of employees and employee unions to secure such consents as may be required for it to become a Plan member.

ARTICLE IV: BOARD OF GOVERNORS

1. The governance of the Plan shall be in all respects in the hands of the Board of Governors (hereinafter sometimes referred to as "the Board"), which shall be responsible for the management, control and administration of the Plan. The Board shall have authority to regulate and manage the affairs of the Plan, including the design of health coverage benefits under the Plan and preparation of the Plan document and summary Plan description(s). The Board shall have the authority to establish joint fund(s) to finance all Plan expenditures (including claims, reserves, surplus, administration, stop-loss insurance, and other expenses). The Board shall prepare an annual budget for the Plan, shall maintain reserves in amounts equal to or exceeding the minimum amounts required by Section 4706 of Article 47 of the New York Insurance Law, and shall establish premium equivalent rates for participating members on the basis of a community rating methodology filed with and approved by the Superintendent of Insurance.

2. The Board of Governors shall have authority to engage persons to provide professional, clerical and managerial services to assist it in these functions on such terms as the Board deems to be in the best interests of the Plan and insofar as permitted by law.

3. The Governors shall serve without remuneration from the Plan, except that the participating school district employing the chief fiscal officer of the Plan may be reimbursed for reasonable expenses incurred in connection with such officer's duties in connection with the Plan.

4. The Board of Governors shall consist of one Governor for each member and each Governor shall be designated by each member by duly adopted resolution. No person shall serve as a Governor who is not a managerial employee of a Plan member. Recognition by the New York State Public Employment Relations Board that an employee is "managerial" shall be presumptive evidence that he or she is of managerial status; but the absence of such recognition shall not be a bar to service as a Governor if it be otherwise satisfactorily shown that the employee has sufficient discretion and authority to discharge managerial authority as a Governor.

5. The Board of Governors shall have not fewer than one regularly scheduled meeting(s) in each fiscal year, and more frequently as the Board of Governors may determine, at times and places, to be determined by the Board. The Board's annual meeting shall be held in New York State. Each Governor shall be given no less than 20 days' written notice of each regularly scheduled meeting, provided that said notice shall not be required in the event [each] the Governor waives said notice in writing either before or after said meeting.

6. At the first meeting of the Board of Governors, the Governors shall select from among themselves an Executive Committee, consisting of at least seven Governors to serve in the two succeeding fiscal years. The Executive Committee shall select from among themselves officers consisting of the President, the Vice-President and the Chief Fiscal Officer. The President shall conduct all meetings of the Board of Governors and shall provide for the keeping of minutes of such proceedings. The Chief Fiscal Officer shall perform the functions set forth in Article VI hereof and shall be the fiscal officer of a member school district. A Nominations Committee may be appointed by the Executive Committee to recommend nominees from whom the Board of Governors select Executive Committee members. Unless at least two-thirds of the Governors on the Executive Committee vote otherwise, a majority of Governors on the Executive Committee shall be from member school districts listed in Appendix A hereto.

7. The Executive Committee shall have authority to regulate and manage the routine affairs of the Plan and to act with full authority on behalf of the Governors, including the authority to establish assessments, carryovers and refunds in accordance with Article IX herein or to enter into any agreement for the purchase of insurance, consulting or claims processing, legal, accounting, audit or other services which shall, during the term of such agreement, result or be expected to result in an increase in previously established assessments to members, except that the Executive Committee shall not have the authority to:

   a. Amend or terminate the Plan in accordance with Article X herein; or

   b. Expel or terminate any Plan member in accordance with Article VIII herein.

   Subject only to these two exceptions, the Executive Committee shall be authorized to act on behalf of the Plan wherever this Cooperation Agreement refers to the Board of Governors. The Executive Committee shall meet as necessary and meetings may be called, scheduled and held in conformance with the notification requirements pertaining to Board of Governors meetings as set forth in Article IV herein. The Executive Committee shall maintain minutes of such meetings. The Executive Committee, except as specifically otherwise provided herein, may take action upon the vote of a majority of its members and the presence of a majority shall constitute a quorum. The Executive Committee by unanimous vote may permit other types of public entities (such as towns, villages or counties) in New York State to participate as Plan members, if deemed appropriate. In that event, any reference to school district in this Cooperation Agreement shall be read to also include that type of public entity. If deemed appropriate, the Executive Committee by unanimous vote may also change the name of the Plan.

8. The President acting alone, or a group of Governors constituting not less than two Governors, may call special meetings of the Board of Governors on no less than 5 days' written notice to all Governors, which notice shall specifically state the purpose for which the special meeting is called.

9. A majority of the total number of Governors shall be required for a quorum at any special or regular meeting.

10. Except as specifically otherwise provided herein, no action may be taken by the Board of Governors except by a vote of a majority of the total number of Governors.

11. In the event that a Governor is unable to attend a meeting in person, he or she may attend, be counted towards a quorum, and vote by proxy or by telephonic or electronic connection that permits him or her and all other Governors present to communicate with each other on a contemporaneous basis.

12. The Board of Governors may act by telephonic or other poll as well as by meeting; provided, however, that the President of the Board of Governors shall maintain a written record of any action that is taken by poll.

13. No Governor shall be liable to any other Governor or Plan member for actions taken in good faith and within the scope of such Governor's authority; and the Plan shall indemnify, save and hold harmless each Governor from any liability to third parties arising from actions taken in good faith and within the scope of such Governor's authority, including reasonable and necessary attorneys' fees and disbursements incurred in connection therewith.

14. Not less than 15 days prior to the end of every fiscal year, a general meeting of all Plan members shall be held, at which each member may be represented by its general meeting, the Plan members may, by majority vote of the total membership, decide on any propositions which may be put to them by the Board of Governors, the Executive Committee, or by a group of Plan members aggregating not less than twenty-five percent (25%) in number of the total Plan membership; elect successors to an Executive Committee members whose terms are to expire at the end of the current fiscal year; and also, by two-thirds vote of the total membership, remove and replace any Executive Committee member.

15. The Board of Governors shall designate a bank or trust company in which joint funds, including reserve funds, are to be deposited and which shall be located in New York State, duly chartered under Federal law or New York laws.

ARTICLE V: BENEFITS COMMITTEE

1. There shall be an advisory Benefits Committee consisting of eight persons, three from the New York State United Teachers representing teachers of the Plan members, one from the employee organizations representing other employees of the Plan members and four Superintendents or Business Official serving on the Plan's Executive Committee. The term of office of the Benefits Committee members shall be four years. Terms shall be staggered so as to provide continuity on the Committee. In the first year of the existence of the Committee, one representative of the teachers shall be elected for two years, one for three years and one for four years; the representative of the other employees shall be elected for two years; one Superintendent or Business Official shall be elected for two years, one for three years, and two for four years.

2. The purpose of the Benefits Committee shall be to make annual recommendations to the Executive Committee with respect to future levels of benefits and related premium cost. In so doing, the Benefits Committee shall seek to maintain a constructive balance among the following factors:

   a. quality and levels of health benefits for the employees of SWSCHP members which are desirable in light of health needs and health benefits made available to employees of other school districts and BOCES in the geographic area(s) in which SWSCHP members are located;

   b. SWSCHP historical levels of consumer service and assistance to employees and retirees of SWSCHP members with respect to health coverage matters;

   c. the costs of delivering health benefits and SWSCHP's financial viability;

   d. regulatory requirements, including reserves and surplus;

   e. sound and competitive premium rates for the purpose of encouraging SWSCHP members continue their membership in SWSCHP; and

   f. such other or different factors as the Executive Committee may deem appropriate.

3. By February 1 of each year, the Plan Administrator/Consultant to the Plan shall inform the Benefits Committee of the present and projected cost of the benefits of the Plan. Such determination by the Consultant shall be based on a prudent decision as to the necessary level of reserve funds and shall include a projected cost for continuation of current benefits, estimated impact on the level of SWSCHP reserve and surplus funds, options for consideration, and other pertinent matters.

4. The Plan Administrator/Consultant to SWSCHP shall from time to time throughout the year, and in no event later than February 1 of each year, inform the Benefits Committee and Executive Committee of changes in benefits and premium rates for other health plans affecting school district, BOCES and, as may be appropriate, other public service and private sector employees in the geographic area(s) in which SWSCHP members are located.

5. The Executive Committee shall advise the Plan members and the Plan Administrator of any material change in the benefit structure.

ARTICLE VI: CUSTODY AND ADMINISTRATION OF FUNDS

1. The Chief Fiscal Officer shall at all times have custody of the Plan's funds. In the event that the Chief Fiscal Officer be unavailable or unable for any reason to function, then any member of the Executive Committee of the Board of Governors may exercise all of his or her functions and powers during the period of unavailability or inability to function.

2. The Chief Fiscal Officer shall have custody of all reports, statements and other documents of the Plan and shall maintain complete and accurate books of account for all funds in his or her custody in accordance with generally accepted accounting principles applicable to public bodies in general, and to school districts and BOCES in particular, and in accordance with such standards as may be prescribed by the Superintendent of Insurance.

3. The Chief Fiscal Officer shall make or cause to be made quarterly written reports to the Governors and Plan members with respect to the source and application of funds, and shall cause a certified financial statement to be prepared at the end of each fiscal year by an independent certified public accountant approved by the Board of Governors, which shall be furnished to all Plan members.

4. All payments made by the Chief Fiscal Officer shall be in accordance with procedures adopted by the Board of Governors and acceptable to the Superintendent of Insurance. The Chief Fiscal Officer shall be authorized to pay from Plan funds all direct expenses incurred in the custody and administration of Plan funds. Upon application to and approval by the Board of Governors, the Chief Fiscal Officer may reimburse the school district or BOCES by which he or she is employed for indirect expenses incurred in the custody and administration of Plan funds.

5. It is understood and agreed by each Plan member that the assessments received from each member will be co-mingled, and that funds received from one member may, in accordance with Plan criteria, be disbursed for the benefit of other members.

6. The Chief Fiscal Officer may invest any Plan funds not needed for current operating expenses. Investments shall be as expressly permitted by the Superintendent of Insurance, and as permitted by the laws of the State of New York, including:

   a. special time deposit accounts in, or certificates of deposit issued by, a bank or trust company located and authorized to do business in the State of New York that are secured by a pledge of:

      i. obligations of the United States,

      ii. any obligation fully guaranteed or insured as to interest and principal by the United States acting through an agency, subdivision, department or division thereof,

      iii. obligations of the State of New York, or

      iv. obligations of any municipality, school district or district corporation of the State of New York,

   b. obligations of the United States, and

   c. obligations of the State of New York.

7. The Plan's reserve funds shall be established and maintained in segregated account(s), separate and apart from all other funds of the Plan, in accordance with applicable statutory and regulatory requirements, and stop-loss coverage for the Plan shall be maintained to the extent required by the stop-loss requirements of Section 4707 of the Insurance Law.

8. The Chief Fiscal Officer shall cause to be prepared and furnished to the Board of Governors, to Plan members, to unions which are the exclusive bargaining representatives of employees covered by the Plan, and to the Superintendent of Insurance:

   a. An annual audit and opinions therein, by an independent certified public accountant, of the financial condition, accounting procedures and internal control systems of the Plan;

   b. An annual report and quarterly reports describing the Plan's current financial status; and

   c. An annual independent actuarial opinion on the financial soundness of contribution or premium equivalent rates and reserves, both as paid in the current year and projected for the next fiscal year.

ARTICLE VII: PLAN ADMINISTRATOR

1. The Board of Governors shall retain a Plan Administrator, which shall serve as attorney-in-fact for the Plan and which may be an enterprise operated for profit.

2. The Plan Administrator's services may include the following:
   a. Investigation, processing, and forwarding of claims for health coverage;
   b. Making recommendations for the payment or compromise of claims;
   c. Making recommendations for and procuring insurance to effectuate the purposes and preserve the financial stability of the Plan;
   d. Making recommendations with respect to the administrative and fiscal management of the Plan;
   e. Reviewing and making recommendations with respect to the funding of the Plan from year to year;
   f. Conducting surveys and studies with respect to individual members and otherwise;
   g. Making recommendations with respect to risk management and loss control programs;
   h. Evaluating new applicants for Plan membership and making recommendations with respect to such applications; and
   i. Performing such other functions as may properly be delegated to the Administrator by the Board of Governors.

3. The Board of Governors shall retain the Plan Administrator pursuant to a written contract which shall specify the services to be performed by the Administrator and shall set forth the basis on which the Administrator will be compensated for such services after having been rendered.

4. The Plan Administrator shall be designated to receive service of summons or other legal process on behalf of the Plan in any action, suit or proceeding arising out of any contract, agreement or transaction involving the Plan.

5. No member of the Board of Governors or of a Governor's immediate family shall be an owner, officer, partner or employee of any contract administrator retained by the Plan.

ARTICLE VIII: PLAN MEMBERSHIP AND OBLIGATIONS

1. Any school district or BOCES located in the State of New York is eligible for Plan membership, subject to the provisions of this Cooperation Agreement. The Board of Governors may make reasonable differentiations among school districts and Plan members based upon type and level of benefits, regional geographic location, and other relevant factors (except not age, sex, health status or occupation), upon approval by the Superintendent of Insurance. The school districts listed in Appendix A hereto shall be deemed to have qualified for Plan membership without the need for further investigation and approval.

2. School districts and BOCES which have not qualified for Plan membership may be permitted to join the Plan at such times and on such terms as may be approved by a majority vote of the Board of Governors; provided, however, that a school district applying for Plan membership provides proof of its financial responsibility satisfactory to the Board of Governors. The Board of Governors may require applicants for Plan membership to furnish fiscal, loss, and claim information, to submit to examinations of their records and operations, and to bear the reasonable expense of such examinations. In order to become a Plan member, the applicant shall have at least 50 covered employees in the Plan who shall represent no less than 80 percent of its total employees. In acting upon an application for Plan membership, the Board of Governors may consider relevant factors such as the availability and adequacy of health providers for the Plan to provide suitable services in the applicable region and the type and level of benefits under the Plan.

3. No school districts or BOCES, whether qualified or subsequently approved, shall be admitted to Plan membership until its governing body shall have duly passed such resolutions as the Board of Governors may require to assure compliance with Section 119-o of the General Municipal Law and other applicable statutes.

4. Once admitted to Plan membership, each member shall be obligated to cooperate in the administration of the Plan and to perform all requirements of continuing membership including, without limitation, the following:

   a. The prompt payment of all assessments;

   b. The maintenance of accurate books and records with respect to health coverage claims and obligations, and with respect to matters likely to give rise to such claims and obligations;

   c. The prompt furnishing of information regarding actual and anticipated claims for health coverage;

   d. Cooperation with and facilitation of all reasonable inquiries which may be made by the Board of Governors or the Plan Administrator with respect to specific claims and with respect to loss experience in general; and

e. Cooperation with all risk management, loss control and operational programs that may be instituted by the Board of Governors.

5. A decision by the Board of Governors to pay, compromise, or contest any claim shall be final and binding, subject to a fair and equitable process for claims review, dispute resolution and appeal procedures including arbitration of rejected claims, and procedures for handling claims for benefits in the event of Plan dissolution, adopted by the Board of Governors and satisfactory to the Superintendent of Insurance.

6. A member may withdraw from Plan membership upon ninety (90) days' written notice to the President, which notice shall be effective at the end of the fiscal year following expiration of the ninety (90) day period.

7. Any member which fails to pay a required assessment within thirty (30) days after the date on which such assessment was payable will be deemed to have given notice of withdrawal from the Plan effective at the end of the thirty (30) day period and the Plan shall have no further obligation to continue the processing and payment of claims for benefits submitted by employees and/or retirees of such member. No forbearance with respect to any member or any payment will be deemed to create a waiver with respect to subsequent defaults by the same or any other member.

8. The Board of Governors may terminate the membership of any Plan member, on not less than ninety (90) days' written notice, as follows:

   a. By two-thirds vote for persistent failure to comply with any of the provisions of sub-paragraphs 4.b through 4.e of this Article; or

   b. By two-thirds vote for bad faith actions of a Plan member that have a severe negative impact on the Plan.

9. A member that withdraws or is terminated from membership shall remain obligated to the Plan with respect to supplemental assessments and refunds, if any, computed in accordance with Article IX herein.

ARTICLE IX: ASSESSMENTS FOR HEALTH COVERAGE, FUND CARRYOVERS, REFUNDS

1. Each Plan member shall be assessed for health coverage according to a percentage derived by dividing the number of the individual member's employees to be covered by the Plan by the total number of employees to be covered by the Plan.

2. Initial assessments shall be set in such amounts as the Board of Governors determine to be reasonable and appropriate to fund insurance premiums, to meet anticipated administrative expenses, to fund all anticipated obligations for the payment of Plan benefits, and to provide for other expenses related to the Plan during the fiscal year. The amounts of total and individual assessments, together with remittance schedules required in connection therewith, shall be communicated to all Plan members as promptly as practicable. Anything in this paragraph to the contrary notwithstanding, no payment from funds held by the Chief Fiscal Officer shall be made except in accordance with Article VI. Anything in this Cooperation Agreement to the contrary notwithstanding, assessments shall not be permitted to establish a reserve fund in contravention of the General Municipal law. Between the Plan and any individual member, a determination by the Board of Governors that a particular assessment is attributable to actual claims incurred shall be conclusive.

3. Prior to the end of the Plan's first fiscal year, and prior to the end of each fiscal year thereafter, the Board of Governors shall set each member's initial assessment for the next succeeding fiscal year, which may be based upon factors including the cost of insurance premiums, numbers of employees, payrolls, loss experience, the amount of services rendered or to be rendered, benefits received or conferred or to be received or conferred, and other relevant factors applied on an equitable basis. The Executive Committee may, prior to the beginning of each fiscal year, establish an actual assessment for members which is lower than the initial assessment, provided that such actual assessment is, in the Committee's judgment, adequate to fund all anticipated plan obligations for such fiscal year.

4. The Board of Governors may require that Plan members make individual budget provisions in excess of the amounts of initial assessments in order to ensure that sufficient funds will be available to meet supplemental assessments.

5. In the event that during any fiscal year there be insufficient funds in the Plan to meet the Plan's reasonable anticipated needs for the remainder of such fiscal year, the Board of Governors may issue supplemental assessments to the members for the amount determined to be required; provided, however, that no supplemental assessment to a Plan member may bear a greater proportion of such member's initial assessment for the fiscal year bears to the total amount of initial assessments for the fiscal year. In no event, however, shall the Board of Governors be empowered to issue supplemental assessments in any amount greater than that needed to fund total current and anticipated Plan liabilities during such fiscal year that have been presented or are anticipated to be presented for payment in the future.

6. In the event that there be surplus funds in the Plan at the close of any fiscal year, the Board of Governors may do any or all of the following:

   a. Return part or all of the fund surplus to the Plan members in proportion to their assessments for the year then ending or on such other basis as may be equitable; or

   b. Apply part or all of the fund surplus as a credit against the Plan members' assessments for the next succeeding fiscal year in proportion to their assessments for the year then ending, or on such other basis as may be equitable; or

   c. Carry over such part of the fund surplus as is reasonably necessary to meet incurred or accrued claims anticipated to be payable subsequent to the year then ending.

7. Upon the effective date of the withdrawal or expulsion of any Plan member as provided herein, the Board of Governors may cancel and terminate the entitlement of such withdrawing or expelled Plan member to any further health coverage, subject to conversion privileges required by law. A withdrawing or expelled Plan member will remain obligated to the Plan for all assessments (or pro rata portions thereof) attributable to periods through the date of withdrawal or expulsion, but a withdrawing Plan member shall not be entitled to participate in the distribution of any fund surplus that may thereafter be available for distribution.

ARTICLE X: AMENDMENT AND TERMINATION OF THE PLAN

1. This Cooperation Agreement may be amended by approval of each Plan member by majority vote of each such member's governing body.

2. The Plan may be terminated by a majority vote of the Board of Governors, effective at the end of the then-current fiscal year; provided, however, that the Plan shall remain in existence for the winding up of its affairs as provided in this Article.

3. In the event that the Plan be terminated, then:

   a. The Chief Fiscal Officer shall, no later than the effective date of termination, prepare schedules of the Plan's assets and of the Plan's liquidated, contingent, and disputed liabilities; and

   b. The Plan shall pay its acknowledged liabilities and establish a reserve for the payment of contingent and disputed liabilities; and

   c. The Chief Fiscal Officer shall compute the total amount of assessments of whatever nature paid by then-current Plan members during the last three fiscal years of the Plan's existence, and the ratio which each then-current member's payments during the last three years of the Plan's existence bears to such total; and

   d. Upon the execution by each then-current Plan member of a release in suitable form relieving the Plan and each other then-current member from any liability by reason of the existence of the Plan, the Plan shall pay to such member that ratio of the Plan's surplus assets as equals the member's ratio as computed in accordance with the preceding sub-paragraph c; and

   e. To the extent that the reserve fund established pursuant to the preceding sub-paragraph b shall not have been expended within one year after the effective date of termination, then any fund balance therein shall be returned to the Plan members in accordance with the preceding sub-paragraph d.

ARTICLE XI: REFORMATION, SUPERVENING LAW

1. To the extent that any provision of the Plan be determined by a court of competent jurisdiction to be invalid in whole or in part under existing or hereafter-enacted law, the remaining provisions of this Cooperation Agreement shall remain in full force and effect, and any disputed provisions shall, to the extent possible, be interpreted in such manner as to conform to applicable legal requirements.

2. In the event that the Board of Governors determines that the complete or partial invalidity of any provision of this Cooperation Agreement would materially prevent or impede the accomplishment of the essential purposes of the Plan, then the Plan shall be terminated in accordance with Article X hereof.

ARTICLE XII: ENFORCEMENT

Nothing herein shall be construed to prevent the Board of Governors from commencing such actions or other proceedings in the name of the Plan as may be appropriate to effectuate the purposes of the Plan or to enforce the obligations of any Plan member.

ARTICLE XIII: EXECUTION

This Cooperation Agreement may be executed in separate counterparts, to become binding and enforceable as provided in Article II, Paragraph 1 above.

IN WITNESS WHEREOF, the undersigned has caused this document to be executed by its duly authorized officer and its seal affixed on the date and at the place below noted.

Dated: _____, New York
_____ ___, 2003

[Name of School District]

[Address]

By:

Title