



SPECIAL MEETING AGENDA
Monday, August 26, 2019 – 3:00 PM

CONSENT AGENDA: ALL ITEMS MARKED WITH A SINGLE ASTERICK (*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE GOVERNING BOARD. ANY BOARD MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

PROCEED TO BOTTOM OF THIS DOCUMENT FOR APPEARANCE & EXECUTIVE SESSION GUIDELINES

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation in order to participate in this proceeding should request necessary accommodations by contacting CHW's Executive Assistant at 409-949-3406, or via email at trollins@gchd.org.

ANY MEMBERS NEEDING TO BE REACHED DURING THE MEETING MAY BE CONTACTED AT 409-938-2288

MEETING CALLED TO ORDER

Item #1 ACTION.....Consider for Approval Contracting with Garfunkel Wild, PC to Provide Assistance with FTCA Program Requirements and Additional Documentation Requested for the CY 2020 Application

Item #2 ACTION.....Consider for Approval Enacting a Board procedure to conform with House Bill 2840

ADJOURNMENT

Next Regularly Scheduled Meeting: August 29, 2019

Appearances before Governing Board

A citizen desiring to make comment(s) to the Board, shall submit a written request to the Executive Director by noon on the Thursday preceding the Thursday Board meeting. The written request must include a brief statement identifying the specific topic and matter presented for consideration. The Executive Director shall include the requested appearance on the agenda, and the person shall be heard, so long as he or she appears at the Board Meeting

Executive Sessions

When listed, an Executive Session may be held by the Governing Board in accordance with the Texas Open Meetings Act. An Executive Session is authorized under the Open Meetings Act pursuant to one or more the following exceptions: Tex. Gov't Code §§ 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding a prospective gift or donation), 551.074 (personnel matters), 551.0745 (personnel matters affecting

Coastal Health & Wellness advisory body), 551.076 (deliberation regarding security devices or security audits), and/or 551.087 (deliberations regarding economic development negotiations). The Presiding Officer of the Governing Board shall announce the basis for the Executive Session prior to recessing into Executive Session. The Governing Board may only enter into Executive Session if such action is specifically noted on the posted agenda.



COASTAL HEALTH & WELLNESS

GOVERNING BOARD

9850-A.106 Boardroom Emmett F. Lowry Expressway, Texas City

Governing Board

Special Meeting

August 2019

Item #1

**Consider for Approval Contracting with Garfunkel Wild, PC to
Provide Assistance with FTCA Program Requirements and Additional
Documentation Requested for the CY 2020 Application**

FQHC-RELATED SERVICES PROVIDED BY GARFUNKEL WILD, P.C.

The following is a brief description of some of the broad categories of services that Garfunkel Wild, P.C. (“GW”) regularly provides to Federally Qualified Health Centers/Community Health Centers, Federally Qualified Health Center Look-Alikes and FQHC subgrantees (collectively, “FQHCs”). We can provide further details regarding these services upon request.

1. ESTABLISHMENT OF FQHC

- (a) Assisting organizations in establishing FQHCs.
- (b) Advising entities “spinning off” their clinic(s) to FQHCs and/or advising FQHC entity.
- (c) Assistance includes compliance with many items listed below including, assistance with governance and Board structure and compliance with the Health Resources and Services Administration’s (“HRSA”) Compliance Manual.
- (d) Advising FQHCs with respect to various state and Federal issues including formation, nonprofit status, licensure and related issues.
- (e) Preparing necessary legal documents relating to FQHC.
- (f) Providing assistance in review of FQHC application from legal and practical standpoint.
- (g) Advising on establishment of subgrantee relationships and negotiating subgrantee agreements.

2. GOVERNANCE

- (a) Reviewing and revising the FQHC’s bylaws to ensure compliance with FQHC-related requirements (*e.g.*, Board composition and Board responsibility requirements).
- (b) Reviewing and revising the organization’s conflict of interest policy to meet applicable FQHC requirements.
- (c) Advising FQHCs on actions that are required to be approved/taken by the Board annually or at other required times.
- (d) Preparing Board resolutions to document compliance with FQHC requirements.
- (e) Advising subgrantees on requirements relating to relationship with sponsoring FQHCs.
- (f) Attending Board meetings.
- (g) Participating in strategic planning sessions with executive staff and the Board.
- (h) Providing training and educational updates to Board members.

3. HRSA OPERATIONAL SITE VISITS

- (a) Conducting pre-HRSA operational site visit (“OSV”) on site surveys to help the FQHC determine whether it is in compliance with the HRSA Compliance Manual and to identify issues on which the FQHC should focus in preparation for the HRSA OSV.
- (b) Assisting the FQHC in preparing for the OSV and establishing compliance with all aspects of the HRSA Compliance Manual including:
 - (i) Reviewing and providing guidance regarding Forms 5A, 5B and 5C;
 - (ii) Providing agreements that comply with Form 5A Column II and Column III;

- (iii) Reviewing and revising all applicable policies and documents;
 - (iv) Providing template documents that satisfy the requirements of the HRSA Compliance Manual; and
 - (v) Providing practical advice to assist the FQHC with operationalizing its compliance with the HRSA Compliance Manual.
- (c) Performing Board training on the HRSA Compliance Manual and how the FQHC complies with each of the requirements.
 - (d) Conducting mock site visit interviews with FQHC leadership and staff.
 - (e) Assisting the FQHC in determining appropriate corrective actions and responding to HRSA and/or preparing objections to HRSA findings.

4. OPERATIONAL ASSISTANCE AND COMPLIANCE WITH HRSA REQUIREMENTS

- (a) Providing regular advice regarding actions needing to be taken to comply with the HRSA Compliance Manual.
- (b) Reviewing compliance with the HRSA Compliance Manual.
- (c) Advising FQHCs of opportunities for grants and/or other sources of revenue.
- (d) Assisting in communications with HRSA.
- (e) Assisting with grant requirement compliance.
- (f) Assisting with changes in scope.
- (g) Assisting with regard to various reimbursement issues relevant to the organization's FQHC status and its right to be paid appropriately for FQHC services.

5. RESPONDING TO NOTICE OF GRANT AWARD CONDITIONS

- (a) Preparing detailed submissions to the Bureau of Primary Health Care in response to Notice of Grant Award ("NGA") conditions.
- (b) Assisting in meeting those conditions.

6. QUALITY ASSURANCE/RISK MANAGEMENT/CREDENTIALING

- (a) Advising FQHCs with regard to credentialing, risk management and quality assurance requirements.
- (b) Reviewing and revising required risk management and quality assurance policies and procedures.
- (c) Providing practical advice and assisting FQHCs with identifying focus areas to satisfy risk management and quality assurance.
- (d) Providing training materials and education sessions for medical staff, general staff and Board.

7. FEDERAL TORT CLAIMS ACT ("FTCA") AND FTCA SITE VISITS

- (a) Assisting the FQHC in preparing its annual FTCA applications.
- (b) Assisting FQHCs in all aspects of preparing for FTCA site visits (similar to the preparation for OSVs discussed above).
- (c) Advising the FQHC on structuring arrangements to enable FTCA coverage for the FQHC and its clinicians.

- (d) Structuring cross-coverage and other on-call arrangements.
- (e) Preparing agreements to document relationships such that FTCA coverage would be afforded.
- (f) Assisting the FQHC in ensuring that malpractice claims receive coverage through the FTCA.
- (g) Responding to and educating plaintiffs' attorneys regarding FTCA requirements to avoid the FQHC or its clinicians having to remain a named party in a state action.
- (h) Responding to state claims made directly against FQHCs which should be handled through FTCA-specific procedures and assisting with dealing with HRSA on claims.

8. 340B PHARMACY PROGRAMS

- (a) Assisting FQHCs with regard to their 340B programs and related issues.
- (b) Reviewing and negotiating agreements with 340B administrators, vendors and pharmacies.
- (c) Reviewing and revising 340B policies.
- (d) Assisting with 340B audits and related processes.

9. AGREEMENTS

- (a) Structuring arrangements with health care providers, business associates and vendors.
- (b) Assisting in ensuring that FQHCs continue to comply with the extensive fraud and abuse and specific service requirements imposed by Federal laws and regulations.
- (c) Preparing and/or reviewing and negotiating various types of contracts and services agreements to document the foregoing, including, but not limited to:
 - (i) Employment agreements;
 - (ii) Professional services agreements, including coverage agreements;
 - (iii) Form 5A Column II and Column III agreements;
 - (iv) Administrative services agreements;
 - (v) Collaboration agreements;
 - (vi) Leases;
 - (vii) Business associate agreements;
 - (viii) License agreements;
 - (ix) Consulting agreements;
 - (x) Grant agreements; and
 - (xi) Loan agreements.

10. HEALTH INFORMATION TECHNOLOGY SERVICES

- (a) Consulting with regard to IT systems, as well as negotiation of agreements relating to IT systems, including:
 - (i) Hardware and software acquisition; and
 - (ii) Review of license, service, consulting, billing, and other agreements.

- (b) Other IT-related services that GW provides include the following:
 - (i) IT/Cyber Security concerns;
 - (ii) Policies for the use of HIT;
 - (iii) HIE and interoperability projects;
 - (iv) Licensor audits;
 - (v) Data breach mitigation; and
 - (vi) HIT dispute resolution and litigation.

11. MANAGED CARE SERVICES

- (a) Providing assistance with regard to contract negotiations which can also include strategic advice relating to managed care relationships.
- (b) Assisting with enforcement of third-party payor agreements.
- (c) Resolving issues with payors using longstanding contacts.
- (d) Providing arbitration and litigation services relating to managed care disputes.
- (e) Providing updates regarding developments in the managed care industry.

12. CORPORATE COMPLIANCE/AUDITS AND INVESTIGATIONS

- (a) Implementing compliance programs to comply with state laws.
- (b) Developing compliance work plans.
- (c) Performing internal audit reviews and investigations.
- (d) Assisting clients with regard to audits and investigations by regulators.
- (e) Providing assistance relating to voluntary disclosures and refunds to regulators.

13. HUMAN RESOURCES

- (a) Reviewing and revising employee manuals.
- (b) Providing guidance with respect to employee discipline issues.
- (c) Providing guidance with respect to hiring and firing issues.
- (d) Providing guidance with respect to employee complaints.
- (e) Assistance with Federal benefit-related issues.

14. FINANCE AND REAL ESTATE

- (a) Providing advice concerning financing and real estate matters, including the review and negotiation of:
- (b) Reviewing and negotiating various agreements including:
 - (i) Space leases;
 - (ii) Loan documents for third party financing;
 - (iii) Construction agreements; and
 - (iv) Equipment leases and software agreements.

15. LITIGATION AND ARBITRATION

- (a) Providing representation with respect to a wide range of disputes, including:
 - (i) Reimbursement disputes;
 - (ii) Employment/HR issues;
 - (iii) Governmental (OIG/DOH) investigations and payor audits; and
 - (iv) Disputes with vendors, service providers, landlord, etc.

16. HIPAA/HITECH COMPLIANCE

- (a) Providing updates on new rules and regulations.
- (b) Assisting the FQHC in ensuring compliance with applicable standards.
- (c) Assisting with breach notification requirements.
- (d) Responding to subpoenas and other legal process.

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

JEFFRY ADEST

Partner Director

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Direct Dial: (516) 393-2270

FILE NO.: 90183.1002

August 26, 2019

By E-Mail

Ms. Kathy Barroso
Executive Director
Coastal Health & Wellness
9850-A Emmett F. Lowry Expressway
Texas City, TX 77591

Re: Legal Engagement

Dear Ms. Barroso:

As a follow-up to our conversation, I am providing you with our standard retainer agreement. To foster a better understanding, this retainer agreement ("Agreement") describes the scope of the legal services to be provided by our law firm, explains how our law firm charges and bills its fees and expenses, and contains other information describing our attorney-client relationship and as required by law.

1. Scope of Legal Services; Identity of Client. We understand that Coastal Health & Wellness (the "Client" or "you") has agreed to retain Garfunkel Wild, P.C. ("Firm" or "we") to provide legal advice and related services in connection with general FTCA and FQHC matters (the "Matter"). The Matter may be expanded to include other services, as mutually agreed and memorialized in an amendment to this Agreement.

2. Responsible Attorneys. I will have overall responsibility for this representation. Other partners and attorneys have expertise in particular areas and may be asked, as appropriate, to work with me based upon the nature of the work and the experience and expertise required.

3. Fees. Generally, our fees are based on the time spent by attorneys and other staff who work on the Matter. Our hourly rates for attorneys are based on years of experience, specialization in training and practice, and level of professional attainment. These rates may be adjusted from time to time, generally on an annual basis. The Client will be responsible for paying our current rates. The hourly billing rates of partners currently range from \$350 to \$630. My hourly billing rate is presently \$575. The hourly billing rates of our senior attorneys,

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Ms. Kathy Barroso

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associates and paralegals currently range from approximately \$220 to \$425. As a courtesy, we are pleased to offer a 10% discount from our current billing rates on this Matter.

4. Retainer. You have agreed to provide us with an initial retainer of \$2,500.00, contemporaneous with the execution of this Agreement. During this engagement, we will apply one-half of the retainer against current fees and expenses. To the extent our fees and expenses exceed the retainer, you will be billed and you agree to pay promptly. The second half of the retainer will be held until the conclusion of the matter. Please note that this is not a "ceiling" or a "maximum" on our legal fees, but is merely intended to provide a reasonable estimate of legal fees. Our costs incurred are in addition to our legal fees. For your convenience, the retainer can be processed by credit card payment. A form is attached.

5. Disbursements and Other Charges. In performing services for you, we may incur expenses, such as travel, lodging, meals, long distance or conference telephone calls, search and other fees, and courier services. In addition, we may incur ancillary services such as filing fees, photocopying, document preparation and messenger services. These disbursements and other charges represent out-of-pocket expenses and, in some cases, the Firm's approximate cost and/or comparable market pricing (collectively, "Expenses"). Expenses, such as consultants, expert witnesses, arbitration fees and transcripts incurred on behalf of the Client are payable directly by the Client to the third party vendor. If direct billing is not practical, such Expenses will be passed through at our cost, but remain a liability of the Client to such vendor. If requested by the Client, we will furnish detailed billing information for such Expenses.

6. Billings. Fees and Expenses will generally be billed monthly, or more frequently as we deem appropriate, and are payable upon presentation. We reserve the right to postpone or defer providing additional services or to discontinue our representation of you if our bills are not paid promptly.

7. Conflict of Interest Waiver. The Firm represents many clients over a range of industries (in particular, the health care industry) and in a broad variety of matters. Our present or former clients may include debtors, creditors, or competitors of yours. A summary of our current practice areas and the industries in which we represent clients can be found on our website at www.garfunkelwild.com.

Conflicts of interest might arise that could deprive an existing or prospective client of the right to retain the Firm as its counsel. Consequently, as an integral part of this engagement, this Agreement confirms our mutual agreement that, during this engagement, the Firm may represent current or future clients, whether with respect to counseling, transactional matters, regulatory matters, litigation/adversarial proceedings, or other matters, whether or not on a basis adverse to the Client or any of the Client's affiliates, so long as those matters are not substantially related to our particular work for you. For these purposes, "Client's affiliates" includes affiliated parties and entities of the Client or who may become affiliated during our representation of you. We ask that you identify Client's affiliates by using the attachment at the end of this letter. Of course, during our engagement, we ask you to identify any additions or deletions to Client's affiliates.

GARFUNKEL WILD, P.C.

Such matters described above are collectively referred to as "Permitted Representations." The Client waives and consents to any current or potential conflicts of interest with respect to Permitted Representations. In furtherance of this waiver and consent, the Client agrees not to assert the Firm's representation of the Client, as a basis for disqualifying the Firm from representing a current or prospective client in any Permitted Representation, and the Client agrees that any Permitted Representation does not constitute a breach of our duty to the Client.

You and the Firm have reached the foregoing mutual agreement with knowledge that without your waiver and consent the Firm might be prohibited by applicable law and/or the Rules of Professional Conduct from representing other current or prospective clients in a Permitted Representation. Nevertheless, you expressly waive any claim of and consent to such conflict of interest on the part of the Firm arising from any such Permitted Representation.

Applicable law requires that any client consenting to a conflicts of interest waiver for Permitted Representations give informed consent. We wish to make sure that you have information adequate to make an informed decision and that we have sufficiently explained to you the material risks of the proposed course of conduct and reasonably available alternatives. By agreeing to the waiver, you agree that the Firm may represent other current and prospective clients that are or may be adverse to you and your financial interests.

Our representation of you is premised on our Firm's adherence to its professional obligation not to disclose any of your confidential information or to use your confidential information for someone else's benefit. When appropriate and at your request, the Firm will internally screen the lawyers and work product involved in the engagement referred to in this letter from the lawyers and work product involved in any Permitted Representation.

8. The Firm's Privilege Concerning Ethics Consultations. In the course of representing you, we may from time to time consult with lawyers or others within or outside the Firm regarding issues of professional responsibility and professional ethics that arise in connection with the Firm's representation of you. We believe that the ability to undertake such consultations with the expectation of confidentiality benefits our clients by fostering the Firm's ability to frankly and candidly discuss concerns which implicate your interests. You acknowledge and agree that these conversations shall be confidential communications between the Firm and its internal and external advisors as to which the Firm shall be entitled to an attorney-client privilege, notwithstanding the potential for a conflict between the interests of the Firm and your interests as a client of the Firm.

9. Use of Information Obtained in Other Representations. As you know, the Firm represents many clients in many diverse matters, and it is possible that, in connection with its representation of other clients, the Firm may have obtained or may obtain in the future information with respect to the Client which the Firm may be prohibited from disclosing to the Client or using in connection with our representation of the Client because of obligations to another client. The Client acknowledges and agrees that the Firm is not under an obligation to disclose such information to the Client or to use such information in connection with our representation of the Client, and the Client further agrees that it will not assert that the Firm has

GARFUNKEL WILD, P.C.

an actual or potential conflict or has breached any duty or obligation to the Client by virtue of the Firm's possession of such information, our not revealing such information to the Client, and/or our not using such information in connection with our representation of the Client.

10. Future Actions. You are engaging the Firm to provide legal services in connection with these Matters. After completion of these Matters, changes may occur in applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you actually engage us after the completion of the Matters to provide additional advice on issues arising from the Matters, the Firm has no continuing obligation to advise you with respect to future legal developments.

For example, in connection with our representation, the Firm may perfect security interests or other liens or perform other work on a client's behalf which may require future action to remain valid. Financing statements filed under the Uniform Commercial Code must be continued generally every five years and may require amendment under certain circumstances such as a change of name. Given the length of time which may elapse between the rendering of our services in connection with the closing of any transaction and such future actions, the responsibility to take such future actions will be the Client's, and our Firm is not undertaking to provide notice to you of any requirement to take any future actions such as the filing of any continuation statements, amendments or similar items.

11. Compliance with Audit Requests, Subpoenas, Legal Process and Other Requests or Demands for Information. From time to time we may be required to respond to requests for information, documents, or testimony about the Client or our substantive work on behalf of the Client. Such requests may come from you or your auditors. They may also come from third parties through a subpoena or other legal process to which we are required to respond. We will bill you for our time and Expenses incurred in responding to such requests or demands in connection with any matters we handle for you. In the event the Firm considers it necessary to engage counsel in connection with any such third party inquiries, those Expenses will be reimbursable under this Agreement. The Firm will consult with you before engaging other counsel.

12. Termination. The Client has the right to terminate our representation at any time upon written notice to the Firm. We have the same right on written notice to the Client, subject to applicable provisions of the Rules of Professional Conduct. One of the circumstances in which the Firm will terminate the representation is the Client's failure to timely pay our bills. If our representation of the Client is terminated, the Client agrees to take all steps necessary to free us of any obligation to perform further services, including the prompt execution of any documents necessary to withdraw from the representation. We will be entitled to be paid for our services rendered and disbursements paid or incurred on the Client's behalf to the date of termination, and, thereafter, to the extent required to permit the smooth transition of the Client's files. Unless previously terminated, the Firm's representation will terminate upon the sending of a final statement for services rendered in these Matters.

13. Records Relating to the Representation. At the conclusion of the Matters, we will return your papers to you upon request and receipt of payment for outstanding fees and Expenses. Files that are retained by the Firm will be retained in accordance with our records retention policy, usually for a maximum period of ten years. The Firm reserves the right to destroy or otherwise dispose of records that you have not timely requested, in accordance with this policy.

14. Survival of the Agreement. The provisions of this Agreement will continue in effect, as appropriate, even after the termination of our relationship. In addition, the provisions of this Agreement will apply to future engagements of the Firm by the Client, unless we mutually agree otherwise.

15. Advertising and Marketing. The Firm prepares advertising and marketing materials about itself for current and prospective clients. Solely upon receipt of your consent, which in no respect are you obligated to provide, we may identify you as a client and/or generally describe work we perform for you based on public information.

16. Use of Email. Garfunkel Wild, P.C. may communicate with you by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. You accept the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful malware).

17. Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to its conflicts of laws principles, concerning the Firm's professional responsibility and professional ethics and related issues that arise in connection with the Firm's representation of the Client.

18. Please contact me at 516-393-2270 if you have any questions. To the extent you have asked us to commence work on the Matter prior to your execution of this Agreement, subject to a conflicts review, we assume that you agree to its terms and conditions unless we promptly hear from you to the contrary.

Ms. Kathy Barroso
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If this Agreement is acceptable, please acknowledge your agreement by executing this letter and returning it to me in the enclosed envelope with the retainer. Please keep a copy for your files.

Sincerely,



Jeffrey Adest

Attachments

Accepted and Agreed to:

COASTAL HEALTH & WELLNESS

Kathy Barroso
Executive Director

GARFUNKEL WILD, P.C.

Client's Affiliates

Please identify Client's Affiliates of whom you wish to make us aware in connection with the Matter, including its officers, board members, and shareholders/members. If none is listed, we will assume there are none, but you may supplement the list at any time by providing us notice in writing or by email.

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

(516) 393-2200
FAX (516) 466-5964

**REMITTANCE/
CREDIT CARD AUTHORIZATION**

Method of payment:

- Check payable to *Garfunkel Wild, P.C.* enclosed.
 Payment authorization to use credit card.

Please accept this as my authorization to pay invoices relating to professional fees and/or disbursements using the following credit card(s) (*note: if paying by credit card you can fax the information for immediate processing (516) 393-7702 or email: bfontanetta@garfunkelwild.com to the attention of Brenda Fontanetta*):

Client Matter No: _____
Invoice No. (s) *: _____
Amount: _____
MasterCard/Visa No: _____
American Express No: _____
Exp. Date/Sec Code: _____ Sec. Code: _____
Signature: _____
Name Printed On Card: _____
Address On Card: _____

Zip Code: _____
Date: _____

**Oldest invoices are paid first, unless indicated otherwise.*

How would you like your receipt? Please check all that apply:

- Mailed: _____
(address, if different from above address)
 Email: _____
 SMS Text* #: (_____) _____
(*Message & data rates may apply)



COASTAL HEALTH & WELLNESS

GOVERNING BOARD

9850-A.106 Boardroom Emmett F. Lowry Expressway, Texas City

Governing Board

Special Meeting

August 2019

Item #2

**Consider for Approval Enacting a Board procedure to conform
with House Bill 2840**



1. What is H.B. 2840?

House Bill 2840 is effective September 1, 2019. The bill amends the Texas Open Meetings Act to provide that “a governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body’s consideration of the item.” Before the passage of the bill, the public had only the right to observe, rather than speak at, an open meeting of a governmental body.

2. What right does the public have to speak on a particular agenda item?

The public has the right to speak on each item on the agenda at an open meeting of all governmental bodies as defined by the Open Meetings Act, except for state agencies. Tex. Gov’t Code § 551.007(a).

3. When does the public have the right to speak on items on the agenda of an open meeting?

The Board must allow the public the right to speak on items on the agenda either at the beginning of the meeting or during the meeting when the agenda item is being considered by the Board. Id. § 551.007(b).

4. Is the Board allowed to adopt reasonable rules on the public’s right to speak?

Yes. The Board may adopt reasonable rules concerning the public’s right to speak at an open meeting. Id. § 551.007(c). The rules may include how long the person can address the Board on a given item. If the person addressing the Board needs a translator, the Board is required to allow at least twice the normal amount of time for the non-English speaker to address the body. Id. § 551.007(d).

5. May the Board still allow the public to ask questions about items not on the agenda?

The Board may decide to allow the public to ask questions about items not on the agenda. If the Board allows the public to ask questions about items not on the agenda, the Board can still apply reasonable rules regarding the number, frequency, and length of presentation, but it cannot discriminate against speakers. The Board will not be able to deliberate on any item that is not on the agenda. For such an item, the Board may either: (1) make a statement of fact regarding the item; (2) make a statement concerning the policy regarding the item; or (3) propose that the item be placed on a future agenda. Id. § 551.042.

6. May the Board prevent the public from criticizing the Board or actions of the Board?

A Board may not prohibit public criticism of the Board, including criticism of any act, omission, policy, procedure, program, or service. However, the bill “does not apply to public criticism that is otherwise prohibited by law.” Id. § 551.007(e). What public criticism is prohibited by law remains to be seen. Defamation would probably fall under that prohibition. In any case, the Board should be able to enforce a decorum policy for public speakers, so long as it doesn’t prohibit criticism.

Board Considerations:

1. Would the Board rather permit members of the public to speak on agenda items: i) prior to the start of the meeting; ii) when the item is initially presented for discussion; or iii) after the Board has deliberated upon the item but prior to Board members commencing motions on the item?
2. Would the Board like to set an allotted amount of time for individuals wishing to speak about an agenda (or non-agenda) item? In the past, the Board has generally (albeit informally) enforced a three-minute time limit.

For the sake of clarity and to illustrate conformance with H.B. 2840, the Board's instituted procedures regarding these matters will be denoted as a disclaimer at the bottom of all future agendas.

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