



# Suitable Representative - Rulemaking Workgroup

## MEETING NOTES

February 13, 2017

**Attendees:** Lorraine Lee, Ed Pesik, Johnette Sullivan, Jeff Manson, Barb Cleveland, Barbara Harris, Pete Wogsland, Laura Bradley, Maggie Leland, Dia Tornatore (for Evelyn Cantrell), Elizabeth Flavin, Lisa Brodoff

**Absent:** Sheri Sawyer, David Lord, Maggie Leland, Evelyn Cantrell, Neil Gorrell

### Welcome

Ed Pesik

Ed welcomed workgroup members to the meeting and explained that the purpose of the meeting was to review any feedback received on the proposed draft rule. He noted that we received comments from HCA (two sets), DSHS, and Northwest Justice Project.

### Review Feedback on Draft Rule Language

Ed Pesik

#### HCA

The workgroup reviewed the feedback and suggested revisions to the draft rule language received from Dia Tornatore on behalf of HCA.

#### **Page 1 (2)(b) and throughout document – addition of “unrepresented”**

Dia states the *Franco* case makes specific reference to unrepresented parties. The workgroup discussed this addition. There was concern that adding this wording may confuse the readers. If a party is already represented then the rule would not apply to them. Any party can also reject the accommodation. The consensus was to not include “unrepresented” but instead add “an otherwise represented party.”

#### **Page 1 (2)(b) and throughout document – addition of “suitable” before representative**

The workgroup agreed with this addition.

#### **Page 1 (2)(b) and throughout document – changing “access” to “participation”**

Barbara Harris expressed concern that the term meaningful access/participation is not defined. If access and participation mean the same thing in the rule it should state that. Jeff noted that a single term will be used in the draft rule. Several committee members expressed concern with defining meaningful participation. Elizabeth Flavin stated using the disability definition and factors is most effective. Several members agreed and Jeff noted that it is better to go with the factors than a specific definition; there will also be consistency with having the ADA coordinator make the determination.

#### **Page 1 (4)**

The 90 day timeframe is a concern. Jeff noted that deadlines could negatively impact the process. Johnette stated that deadlines are less of a concern if the request is made early on. She hoped that training will address the questions or issues surrounding timeframes by case type .

#### **Page 1 (5)**

A concern was expressed that the suitable representation records should be excluded from the appeal record. Jeff noted that the records should be sent to the ADA coordinator; Elizabeth stated we should get the parties permission before any records are shared.. Johnette stated the appointment records should be separate from the medical records. Johnette stated the need to determine what are the privacy rules for requests for accommodation and practical implementation in the hearing process. For example, to disclose the reasons a party with a disability requests a continuance? Laura noted this needs to be researched but it should not be included in the rule.

#### **Page 3 (11)(c)**

The conflict of interest language is broad for the eligibility to be appointed language. Elizabeth asked if OAH has an internal policy to follow if we are aware of a conflict of interest. Jeff noted that this language will be taken out of the rule and an internal policy on conflict of interest should be created.

#### **Page 5 (20)**

The next issue discussed involved training for family and friends. It was suggested the elimination of language in subsection (7) will take care of this issue. It was also suggested to remove the statement about consulting with other agencies or organizations. Ed noted that we will look for guidance from the subject matter experts.

#### DSHS

The Chief stated that she replied to DSHS' January 24, 2017, letter. She provided a copy of her response to the workgroup members. She stated that the rulemaking effort has been a very deliberative process. OAH met with the Governor's office after receiving the rule petition and had an intentional discussion about which key agencies needed to be included in this effort – DSHS, ESD, HCA, L&I.

Chief Lee expressed concern about the statement that there is no data to document the issue of suitable representation. She cited a 2004 memo from the DSHS Standing Committee and the *Bussing* case in 2009. She noted that Jane Habegger was the key staff person on the ADA issues until 2015, at which time Johnette Sullivan was designated the ADA Coordinator. She noted that we have done our best with our resources to accommodate parties. Our PRISM case management system records ADA data. There is a risk of unmet needs of parties who are significantly impaired due to disabilities. Chief Lee stated the rulemaking process is the right forum to address this issue.

#### Other comments

There were no comments received on the proposed rule from NJP, ATJ, Seattle University, ESD, or L&I. Pete sent an email verifying the comments that DSHS had provided.

**Next Steps and Adjournment:**

Ed stated he planned to finalize the draft based on comments received from today's meeting. He will send a final draft to the workgroup via email for review and comment. If based on the comments he thinks it is necessary he will schedule another phone conference.

The Chief mentioned she would like to have the CR-102 filed by March 1. Ed will review the rule filing schedule to determine the best date to file the CR-102. He will let the workgroup know before it is filed.

Johnette suggested that a report be prepared for the Chief on points where there is not significant agreement; Ed stated he will prepare a report that shows the majority agreement.

Ed closed the meeting with a plus/delta roundtable.