

Agenda Item 2 Attachment

LOW-INCOME POOL COUNCIL: COMPLIANCE WITH GOVERNMENT IN THE SUNSHINE LAW AND FLORIDA'S PUBLIC RECORDS

The Medicaid Low Income Pool (LIP) Council ("LIP Council") is subject to the Florida's public records and Sunshine Law. Any gathering (this includes email communication) of two or more members of the LIP Council to discuss some matter on which foreseeable action will be taken by the LIP Council is considered a meeting subject to Sunshine Law requirements. The following is a synopsis of Sunshine Law requirements.

The Sunshine Law

The Sunshine Law is established by Article I, Section 24 of the Florida State Constitution and Chapter 286, Florida Statutes. The Sunshine Law imposes three basic requirements: (1) meetings of the LIP Council must be open to the public; (2) the LIP Council must give "reasonable notice" of its meetings; and (3) the LIP Council must keep minutes of its meetings.

Meetings. A "meeting" of a body subject to the Sunshine Law is broadly defined to include any gathering—formal or informal—during which two or more members of the body discuss the official business of the body. Accordingly, business-related discussions between members of the LIP Council may only take place at open, properly-noticed meetings. Members may not discuss the business of the LIP Council with each other through private phone conversations or e-mail discussions. Members may distribute documents to each other, but they may not discuss or exchange comments on those documents outside of a public meeting. In addition, members may discuss business

with third parties (i.e., non-members of the council), provided the members do not use a third party as a liaison for business-related communication with other members.

Notice. Because the LIP Council is under the auspices of AHCA, Section 120.525, F.S. governs the requirements for notice of public meetings. These requirements are more specific than those of the Sunshine Law and dictate the following:

- Notice of public meetings, hearings, and workshops shall be by publication in the Florida Administrative Weekly not less than 7 days before the event. The notice shall include a statement of the general subject matter to be considered.
- An agenda shall be prepared in time to ensure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda shall contain the items to be considered in order of presentation. After the agenda has been made available, a change shall be made only for good cause, as determined by the person designated to preside, and stated in the record.

Notification of such change shall be at the earliest practicable time.

Minutes. Although the Sunshine Law requires the LIP Council to record minutes of its meetings, such minutes need not be verbatim transcripts of the proceedings. A summary or notes of the meeting is sufficient. It is within the LIP Council's discretion to determine who is responsible for creating the minutes of meetings.

The Public Records Law

As a general matter, any documents or other materials that are (1) created or received by LIP Council members and (2) related to the LIP Council's official business are "public records" which must be made available to the public for inspection and

copying. Specific examples of “public records” include LIP Council reports, circulated drafts of such reports, and any business-related correspondence (including e-mail) between LIP Council members, between LIP Council members and AHCA, or any member of the public. Even personal notes of LIP Council members are considered “public records” if they are used to “perpetuate, communicate, or formalize knowledge.”

It is possible that records created by the LIP Council will include information that is considered confidential and exempt from the Public Records Law. For example, some information which could conceivably come before the LIP Council, such as Medicaid recipient identifying information and medical records, is confidential and exempt. In the event that LIP Council documents were to include confidential information, the relevant portions of that document would have to be redacted before the document could be released to the public. LIP Council members should also take care during the public meetings not to discuss information derived from such confidential records.

Questions regarding public records and Sunshine Law requirements may be directed to:

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