

FILE NOTE

T. L. O. A.

September 20, 2007

File Note Memorandum

Item: Discussion of Consideration of the Restructuring of the ORS 190 Intergovernmental Entity Responsible for the Delivery of Human Services in Lane County and the Consolidation of Human Services Committees/Boards under this New Entity.

Presented by: Jennifer Inman, Sr. Management Analyst
Trina Laidlaw, County Counsel
Greta Utecht, Human Resources

This item asks the Board to give staff direction with regard to the possible restructuring of committees and creation of the Community Care Partners of Lane County intergovernmental entity described in the agenda memo and attachments. Would the Board of County Commissioners like to

1. Leave in place the current structure of the two committees and the Human Services Commission.
2. Combine the Community Action Advisory Committee and the Community Health Centers Advisory Council under the existing Human Services Commission, requiring an update of the existing ORS 190 intergovernmental agreement;
3. Create a new ORS 190 intergovernmental entity, changing the governance structure, and giving oversight and control to the board of the new entity, in order to gain flexibility, efficiency, and a greater ability to leverage resources;

We recognize and appreciate the innovative thinking and months of planning by all involved and share their commitment to strive to best meet the health and human service needs of our community. The intent of this file note is to highlight some of the management, legal, and personnel questions that need to be addressed in order create the Community Care Partners of Lane County (CCPLC) as recommended in the agenda memo. Should the Board elect to explore the creation of the CCPLC, County Counsel, County Admin, and Human Resources need more clarity and information to analyze the impact of the restructure on the Board and Lane County.

Management/Policy Questions

- How much authority would the Lane County Board of Commissioners retain or turn over to new governing board of the new entity?
- What are the requirements of the state and federal funding agencies regarding this type of change and how do they impact existing and future grants, and County finance, budget, personnel, and legal policies and procedures?
- Are there any current functions of the HSC division that would not become part of the new entity? What would be the relationship between the new entity and the Department of Health & Human Services? How will the administrative services currently provided by HHS Admin be covered by the new entity?
- What changes would be required in Lane Code, Lane Manual, and the APM as a result of this restructuring and are those changes acceptable to the Board and County Administrator?
- How would budget, finance, contracts, and granting be administered? Would these functions remain County responsibilities, become shared, or become the sole responsibility of the new entity? What does being a "co-applicant" mean?

Personnel Questions

- The IGA refers to the transfer of employees between public agencies (section 3.9), but it's unclear as to which entity the employees would work for and to whom they would report as the memo also states (p.5) that the BCC will retain authority over County ... personnel including the establishment of ... personnel policies and procedures."
- If the County does not have authority over the new entity's governing body and the employees report to the new governing body, how does the County ensure that its employees are managed appropriately?
- Would the administrative managers and executive director continue to report to the County or the new governing board even if the employees remain County employees?
- Currently, most of the employees are members of AFSCME 2831; would they remain members of that same bargaining unit? If so, hiring, promotion, and disciplinary procedures have to be adhered to as prescribed by the current contract.
- The memo suggests (p.3) that the new entity might employ its own personnel. This suggestion brings with it a host of potential equity issues and questions from recruitment to merit and fitness, to fair labor laws. Again, the central question remains, where does the authority, responsibility, and liability reside?

Legal Questions

The following section includes a list of some of the preliminary legal questions raised by this agenda item.

State and federal agencies are providing funds to Lane County as the sole "grant recipient" through current grants and approved program plans. This agenda item raises the possibility of creating a new intergovernmental entity ("ORS 190 entity"). Generally, under ORS Chapter 190, units of local government can create a new entity to perform functions a party to the agreement has authority to perform.

However, one key question is whether a function one party (Lane County) may be responsible for through existing grants can be shifted to an ORS 190 entity "midstream". A second question is whether the BCC is willing to assume the additional liability caused by the loss of ability to control/oversee compliance with grant requirements.

1. If an ORS 190 entity were created as proposed:

A. Could or would the state and federal funding agencies require Lane County as the "grant recipient" to be solely and fully liable for meeting the grant requirements, including liability for any actions of the separate ORS 190 entity?

B. Lane County would probably not have the right/ability to ultimately oversee the actions of a separate ORS 190 legal entity, where proposed policymaking and decision making for implementing the grants would occur. The proposal is that Lane County government would have only 2 out of 15 votes on the ORS 190 entity board. How would this change affect the funding sources' expectations about financial accountability under current grants?

C. One of the proposed purposes of the new ORS 190 entity is to contract for services for individuals and families. (See Draft IGA, Section 2, and 3.8). Is the proposal to transfer all current Lane County provider contracts to the new ORS 190 entity? If so, how would this change affect the funding sources' expectations about financial accountability under current grants?

D. Is it possible to amend grants to reflect the new ORS 190 entity as the "grant recipient"? If not, after current grants expire, is it possible for the ORS 190 entity to apply and be the "grant recipient" and, if so, how likely is it to continue to receive a comparable level of funding for human services in the Lane County community?

2. State and federal funding sources may currently provide funds to Lane County with an understanding that the current governance structure allows for Lane County, as the sole "grant recipient", to be ultimately responsible for compliance with grant requirements. There are federal requirements covering Lane County's use of grant funds, including that there be a "governing board". The agenda cover memo lists areas of "authority of the CCPB [or ORS 190 entity] established by statute." If this is intended to list "governing board" responsibilities, several of them are similar to "governing board" duties for a community health center pursuant to federal regulation, including: 1) adopting policies on scope and availability of services, location, hours of services; 2) development of a process for hearing and resolving patient grievances; 3) involvement in approval of hiring of the executive director. 42 CFR Section 51c.304. Because Lane County, is the "grant recipient" there are areas of authority which may be assigned differently, including some that may be performed through County government operations as opposed to the "governing board." Additional federal rules, guidelines, and advice should be researched.

A. The proposal includes that the new ORS 190 entity act as the governing body and direct policy "in areas not specifically reserved for the BCC or the city councils under federal statutes." (Agenda Cover Memo, bottom page 4).

i. What are the areas of governance specifically reserved for the BCC under state and federal law?

ii. How would the current roles of the BCC, Lane County, and city councils change under this proposal?

B. What are the legal parameters and funding source expectations concerning a division of governance between Lane County, as "grant recipient" and a separate ORS 190 entity?

C. Once these legal parameters are identified, what do they mean in terms of potential liability for Lane County under current grants?

D. If there were a division of governance, how would the County employees performing services for the ORS 190 entity be affected? (There are additional County personnel related questions addressed in the following section.)

3. The following is a list of certain Draft IGA contract issues which are unclear or not addressed, including liability relating to the Board Chair's authority to execute all grants, contracts, and other documents, the effect of withdrawal of a party, indemnification, applicability of the county's constitutional debt limit, insurance. There is a government ethics issue raised in prohibiting board members from participating in a decision in which they have a pecuniary interest when 51% of the board members may be required to use services covered by one or more grants, and issues with termination. Some of the issues not addressed include audits, public meeting and records requirements and HIPAA.

4. **Conclusion (legal):** When considering current grants, there appear to be certain inherent inconsistencies between the concepts of "grant recipient" control over grant compliance and the function of a separate ORS 190 entity. In addition, the actual proposal for governance as set forth in this agenda item appears to further diminish the ability of the "grant recipient" to affect decisions about how grant funds are spent. The risk to the County, as far as grant compliance, would be significantly less if the grants were instead in the name of a separate ORS 190 entity as "grant recipient". (There may be other personnel related concerns with this option). In addition, the alternative proposal to consolidate the two advisory committees into one 15-person Board while maintaining the rest of the current governance structure, would not raise significant legal concerns unless there were some federal requirement prohibiting this.