OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

October 20, 2026

Via U.S. Mail and Email

OPEH&W Health Plan Board of Review
3851C E Tuxedo Blvd.
Bartlesville, OK 74006

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Re: Compliance with Oklahoma's Open Meeting Act

OPEH&W Board of Review,

My office has received complaints about actions reportedly taken by the OPEH&W Board of Review ("Board") at its meetings on September 3rd, September 24th, and possibly on October 8th. Upon review of the meeting agendas and available minutes, this office has concluded that there were actions taken without having proper agenda items for those actions. Since assuming office on January 9, 2023, I have prioritized government transparency and accountability. Accordingly, I ask that the Board take any necessary actions to correct and resolve these complaints.

Potential violations of the Oklahoma's Open Meeting Act ("OMA")[1]

As you are aware, as a public trust health plan formed pursuant to the Interlocal Cooperation Act, OPEH&W is considered a "public body." As a public body, it is subject to and must comply with the OMA. 74 O.S. § 1000 *et seq.*, 25 O.S. § 304(1). To be in compliance with the OMA, agendas must be "worded in plain language, directly stating the purpose of the meeting," and the "language used must be simple, direct[,] and comprehensible to a person of ordinary education and intelligence." *Haworth Bd. of Ed. of Indep. Sch. Dist. No. I-6, McCurtain Cnty. v. Havens*, 1981 OK CIV APP 56 ¶ 9, 637 P.2d 902, 904. The Oklahoma Supreme Court has held that the Legislature clearly intended for the agenda to provide the public with sufficient notice of all subject matter of the business that public bodies would transact at a meeting. *Oklahoma Schs. Risk Mgmt. Tr. v. Lexington Sch. Dist.*, 2026 OK 38, 591 P.3d 690. The Oklahoma Supreme Court has also emphasized that the purpose of the OMA is defeated if the required notice is "deceptively worded or materially obscures" the stated purpose of the meeting. *Fraternal Ord. of Police, Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman*, 2021 OK 20, 489 P.3d 20.

Further, a public body may **not** vote on any matter not identified on the posted agenda, and a vote taken on an unnoticed item constitutes a willful violation of the OMA, rendering the action invalid. *Okmulgee Cnty. Rural Water Dist. No. 2 v. Beggs Pub. Works Auth.*, 2009 OK CIV APP 51, 211 P.3d 225; *Wilson v. City of Tecumseh*, 2008 OK CIV APP 84, 194 P.3d 140. This is an automatic consequence. The action is void, not merely voidable and you the Board must understand consequences of any willful violation.[2]

As an initial matter, regarding all OPEH&W agendas my office reviewed, each agenda includes the caption, "Report, discussion, consideration, amendment, and appropriate action, if any, on the following:" with an enumerated list of agenda items. This approach lacks sufficient detail required of an agenda. And, as it relates to the complaints my office received, "appropriate action" does not meet the OMA standard for informing members or the public that the Board may vote to approve or reject an item on the agenda. The Board must immediately focus on complying with the OMA, including ceasing use of this catch-all heading.

Turning to the OPEH&W's agendas and related actions taken by the Board at its September 3rd and 24th meetings were, at best, fundamentally different from or materially exceeded the scope of what was announced on the agendas. At worst, the agendas materially obscured the purpose of the meetings held. Specifically, the September 3rd meeting agenda (attached as Exhibit 1)[3]

[1] 25 O.S. §§ 301–314

[2] Willful violations of the OMA can lead to misdemeanor criminal charges punishable by a fine and/or imprisonment. Any person may also bring a civil action for declaratory and/or injunctive relief and, if successful, is entitled to attorney fees from the public body. 25 O.S. § 314.

[3] The September 3rd meeting is also labeled as an emergency board meeting when it does not meet the required standard. Emergency meetings are defined by statute as "a situation involving injury to persons or injury and damage to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure

contained only three (3) agenda items. Not one of the agenda items includes an action item to vote to approve or take any specific action. Even though item number "2. Remedies for Financial Position" was seemingly included to discuss possible solutions to OPEH&W's current financial problems, this agenda item does not sufficiently comply with the notice requirements of the OMA. It fails to notify the public, or OPEH&W's members, that the Board was considering or intending to vote on any specific financial remedy. Despite this glaring omission, my office's review of the minutes of the September 3rd special meeting shows that the Board took four (4) actions (9/3 Minutes attached as Exhibit 2) under that flawed agenda item. The Board voted to: 1) terminate Medefy mobile app service, 2) impose a 12.5% premium rate increase for its members retroactive to July 1, 2026, 3) adopt new Plan governance policies, and 4) create a Financial Remedies Working Group committee.

Similarly, the September 24, 2026, special meeting agenda (attached as Exhibit 3) again only contained an item titled, "8: Financial Remedies." No agenda item allowed any vote by the Board on any specific financial remedy. However, my office's review of that meeting's minutes shows that the Board voted under agenda item #8 to approve a $13 million special assessment on its members. (Minutes of 9/24 meeting attached as Exhibit 4). None of the OPEH&W's members would have been placed on any reasonable notice that the Board was considering such a remedy of the kind and amount approved.

Both the September 3rd and 24th agendas show that the Board materially exceeded its announced purpose and intention, especially related to the "Financial Remedies" agenda items. A public body may not vote on any matter not identified on the posted agenda, and a vote taken on an unnoticed item constitutes a willful violation of the Act, rendering the action invalid under the OMA. 25 O.S. § 313.

Revisions to the Interlocal Agreement

Finally, in undated correspondence sent to OPEH&W members from Tammy Malone (attached as Exhibit 5), Board Chair. Ms. Malone stated, "In conjunction with the rate increase, the need for an additional assessment has been determined, along with major changes to the Inter-Local Government Agreement . . ." This correspondence reads as if the changes may have already been proposed and/or voted on by the Board. A review of the previous meetings' agendas again shows that the Interlocal Agreement was on the September 24th agenda as item #6, "Plan Governance Policies & Inter-Local Agreement." Though a review of the minutes does not show that an unauthorized vote was taken on that issue at that meeting (*see* Exhibit 4). However, the October 8, 2026 agenda (attached as Exhibit 6) had an item that says, "Governance Changes Update," which seems could have included the interlocal cooperative agreement. If there was any action taken, it would constitute action on unnoticed items and a willful violation of the Act, making the action invalid.

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impractical and increase the likelihood of injury or damage or immediate financial loss." 25 O.S. § 304(5). This was a special meeting, and any other special meetings need to be appropriately labeled as such. Further, the Board's decision to wait until September 24—three weeks later—to consider and vote on a $13 million special assessment proves no emergency existed.

This office also reminds the Board that any interlocal cooperative agreement establishing or modifying a public trust must, as a condition precedent to taking effect, be submitted to the Attorney General for review to determine whether it is in proper form and compatible with Oklahoma law. 74 O.S. § 1004. This requirement applies to amendments to existing trust agreements as well as to original agreements. To date, this office has not received a revised Interlocal Agreement from OPEH&W for review.

Please contact Cheryl Dixon, Deputy General Counsel, at (572) 241-4645 or Cheryl.Dixon@oag.ok.gov, to discuss whether the Board intends to correct these actions in future meetings. Also, specifically as to the Interlocal Agreement, please let us know if and when a revised Agreement may be sent to our office.

Respectfully,



GENTNER DRUMMOND
Attorney General

cc: Ross Naylor, President, OPEH&W Health Plan
(R.naylor@opehw1.com or ross.naylor@opehw1.com)