

Approved February 20, 2013

**COLORADO BOARD OF HEALTH  
MEETING MINUTES  
January 16, 2013**

**NOTE:** These minutes are a summary of the proceedings and motions of the January 16, 2013 meeting of the Colorado Board of Health. The complete and accurate record is the audio recording of the meeting. Documents referenced in the minutes are available for public inspection at the Board of Health Office, Colorado Department of Public Health and Environment, Bldg. A, 5<sup>th</sup> Floor, 4300 Cherry Creek Drive South, Denver, CO., or call 303-692-3464 to request copies.

**Call to Order/Roll Call**

The January 16, 2013 Colorado Board of Health meeting was called to order at approximately 10:05 a.m. at the Colorado Department of Public Health and Environment, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, Colorado, by Laura Davis, president.

**Members Present**

Philip Mehler, M.D., District 1; Laura Davis, District 2; Kindra Mulch, District 4; Glenn Schlabs, District 5; Joan Sowinski, District 6; Christine Nevin-Woods, D.O., At-Large (arrived 10:15 a.m.); Christopher Stanley, M.D., District 7 (via phone) ; Christopher Urbina, M.D., MPH, Executive Director and Chief Medical Officer, (ex-officio).

**Members Absent:**

Sue Warren, At-Large

**Staff Present:**

Karen Osthus, Board Administrator; Jamie L. Thornton, Program Assistant; Jennifer L. Weaver, First Assistant Attorney General, legal counsel; and Joni Reynolds, Director, Health Programs.

**Approval of Minutes**

**BY UNANIMOUS CONSENT**, the Board approved the November 21, 2012 and the December 19, 2012 minutes as written.

**Public comments regarding matters not on the agenda**

None.

**Board comments regarding matters not on the agenda**

None.

**Informational Briefing: Aspen Valley Hospital Waiver Request for Building & Fire Safety Regulation – Update**

Rob Sontag, Program Manager, Life Safety Code, Health Facilities and Emergency Medical Services Division briefly discussed efforts made between the Department and Aspen Valley Hospital regarding the outstanding issues pertaining to the original waiver request discussed at the November 21, 2012 meeting. He remarked that at the December 19 meeting he provided the Board with a progress report and requested that the conditional approval of the waiver be extended for one more month. He stated that the Department met with the hospital's design team to review the construction and perform a walkthrough of the space on the second floor. He pointed out that some interior construction needs were identified

during the walkthrough and that Aspen Valley Hospital has provided a set of drawings that would resolve the outstanding issues. Mr. Sontag stated that the Department believes that with some construction the facility can pass an NFPA 101-A Fire Safety Evaluation system.

**MOVED** by Ms. Mulch, seconded by Ms. Sowinski, to affirm the conditional waiver request (granted on December 19, 2012) as provided in 6 CCR 1011-1, Ch. II, §4.1.06 for the Building and Fire Safety Regulations for Aspen Valley.

### **MOTION CARRIED UNANIMOUSLY**

#### **Informational Briefing: Evidence-Based Public Health**

Gabriel Kaplan, Health Policy, Planning and Analytics, Prevention Services Division, provided a PowerPoint presentation regarding Evidenced-Based Public Health (EBPH). He discussed: 1) the definition of EBPH; 2) the framework for EBPH; 3) the vision for implementing the EBPH framework in Colorado; and 4) the resources available for local health departments to implement EBPH.

Mr. Kaplan responded to various questions pertaining to statewide training and access to evidence based research.

#### **Request for Approval of Funding Recommendations: Tobacco Education, Prevention and Cessation Grant Program – Paid Media for Local Public Health Agencies**

Karen Wilson, M.D. Vice Chair, Tobacco Education, Prevention and Cessation Grant Program Review Committee, presented the funding recommendations as described, in detail, in the memorandum dated January 16, 2013.

Dr. Wilson stated that the proposed funding recommendations are for the current fiscal year (Fiscal Year 2012-2013) grant program for paid media to support local community efforts across the state. She remarked that the recommendations comply with the statutory requirements outlined in Colorado Revised Statute 25-3.5-801 et seq., and the grant application requirements specified in the rules adopted by the Colorado State Board of Health. She stated that the Review Committee recommends funding local public health agencies in major media markets for paid media to support local community tobacco control efforts. She pointed out that the project is intended to have statewide impact with paid media lasting into 2014.

Celeste Schoenthaler, Healthy Living Unit Manager, Tobacco Education, Prevention and Cessation Program, Prevention Services Division, mentioned that the Tobacco program will contract with Boulder County Public Health, Denver Health and Hospital Authority, El Paso County Health, Larimer County Public Health, Mesa County Public Health, Pueblo City-County Health Department and San Juan Basin Health Department for those entities to purchase paid media.

#### **Public Comment**

Judith Shlay, M.D. /M.S.P.H., Associate Director, Denver General, spoke in support of the proposed funding recommendations. She remarked that tobacco use is the single most preventable cause of death and disease in Colorado. She stated that the purpose of the comprehensive tobacco control program is to reduce disease, disability and death related to tobacco use. She mentioned that Denver Public Health is one of the recipients of these funds and has been asked to coordinate purchasing paid media for surrounding Metro counties. She remarked that the proposed funding recommendations would allow local

agencies to rebuild tobacco control education prevention and cessation efforts devastated by State budget cuts during the past three years.

Ms. Schoenthaler responded to Board questions regarding: a) fund distribution; b) program evaluation process; c) data management; and d) target audiences. Ms. Schoenthaler stated that the media purchases will focus on: 1) low socioeconomic adults; 2) young adults not attending college; and 3) youth-particularly at risk youth.

**MOVED** by Ms. Sowinski, seconded by Mr. Schlabs, to approve the funding recommendations from the Tobacco Education, Prevention and Cessation Grant Program Review Committee in the amount not to exceed \$6,000,000, specific to funding the statewide media purchase.

**MOTION CARRIED UNANIMOUSLY**

**(Dr. Nevin-Woods and Dr. Mehler recused)**

**Request for Approval of Funding Recommendations: Cancer, Cardiovascular Disease, and Pulmonary Disease Review Committee - FY 2012-2013 youth health survey**

Gabriel Kaplan, Health Policy, Planning and Analytics, Prevention Services Division, presented the funding recommendations from the Cancer, Cardiovascular Disease, and Pulmonary Disease Review Committee (the Committee) for the FY 2012-2013 to support a youth health survey.

Mr. Kaplan stated that in May 2012, the Board approved the funding recommendations brought forward from the Committee to allocate up to 10% of the Grant Program budget for surveillance and evaluation. He stated that in April 2012, the Committee approved funding for: evaluation of the technical assistance, evaluation of grantee projects, a telephone survey of Colorado adults, and a school-based youth survey. He remarked that the Board approved a contract for the University of Colorado Denver in the amount of \$895,000 to conduct surveillance and evaluation activities such as the the adult telephone survey. He pointed out that the contract with the University did not include the youth survey because the intention was to bid this work out separately as part of a cross-agency effort to revamp school surveys in Colorado.

Mr. Kaplan remarked that in 2012 the Colorado Department of Education, the Colorado Department of Human Services, and the Colorado Department of Public Health and Environment were asked to overhaul the youth survey efforts of these agencies in order to reduce duplication and create efficiencies. He pointed out that the agencies combined efforts and resources to issue a single Request for Proposal (RFP) for a survey vendor. He remarked that the RFP was issued in October 2012, and in late November the University of Colorado Denver was selected to perform the survey.

Mr. Kaplan asked the Board to approve the Committee's funding recommendations of \$50,000 to the University of Colorado Denver for the Unified Youth Health Survey project.

**MOVED** by Mr. Schlabs, seconded by Ms. Sowinski, to approve the funding recommendations from the Cancer, Cardiovascular Disease, and Pulmonary Disease Review Committee for FY 2012-2013 in the amount not to exceed \$50,000, specific to a youth health survey.

**MOTION CARRIED UNANIMOUSLY**

**EMERGENCY RULEMAKING: Proposed amendments to 6 CCR 1015-8, Rules for Service Grants For The Dental Assistance Program – Fee Schedule**

Katya Mauritson, DMD, MPH (c), Director, Oral Health Unit, Prevention Services Division, presented an overview of the proposed changes as described, in detail, in the memorandum dated January 16, 2013.

Dr. Mauritson remarked that immediate adoption of the proposed rules to the Service Grants for the Dental Assistance Program is imperatively necessary for the dental treatment of eligible low-income seniors and to prevent loss of funds during the current fiscal year's grant cycle, FY 2012-13. She stated that seniors in need of dental care will be unable to receive needed care, and funding for this program (\$ 3 million dollars) could be lost without the proposed emergency rule changes.

She commented that many dental providers are no longer willing to participate in the program due to the low reimbursement rates, and that those willing to participate are only willing to see a very limited number of eligible seniors. She remarked that since the program was inactive for two years, a large number of seniors in need of dental treatment combined with the low number of participating providers have resulted in accumulated wait lists and anticipated wait times of 180 days for treatment. She remarked that the low number of dental provider accepting the current reimbursement fees may lead to loss of program funding and to the dental needs of vulnerable seniors going unmet.

Dr. Mauritson remarked that since the Old Age Pension Dental Assistance Program was reactivated in September 2012, the Dental Advisory Committee (the Committee) has been re-established, a Request for Applicants (RFA) was issued, and all grant applications were reviewed. She stated that the Committee recommends funding nineteen applications for a total of \$ 3 million dollars.

Dr. Mauritson responded to Board questions regarding distributions of funds and provider participation.

**Public Comments**

None.

**MOVED** by Mr. Schlabs, seconded by Dr. Nevin-Woods to adopt the proposed emergency amendments to 6 CCR 1015-8, rules for Service Grants for the Dental Assistance Program, along with the statement of basis and purpose, emergency finding and justification, specific statutory authority, regulatory analysis, with the following amendment to Section 2.3, Table of Allowable Procedures and Fees Code 2951 maximum allowable fee \$50; program payment \$40; and maximum patient co-pay \$10.

The Board finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety or welfare, and compliance with the notice and public hearing provisions of section 24-4-103 of the state administrative procedure act would be contrary to the public interest.

**MOTION CARRIED UNANIMOUSLY**

**Discussion/Request for Rulemaking Hearing: Proposed amendments to 6 CCR 1015-8, Rules for Service Grants For The Dental Assistance Program – Fee Schedule**

Katya Mauritson, DMD, MPH (c), Director, Oral Health Unit, Prevention Services Division, asked the Board to schedule a public rulemaking hearing on March 20, 2013 to adopt the emergency rules as permanent rules.

**BY UNANIMOUS CONSENT**, the Board scheduled a public rulemaking hearing on March 20, 2013 to consider proposed amendments to 6 CCR 1015-8, Service Grants for The Dental Assistance Program.

**Executive Director and Chief Medical Officer Report – Chris Urbina, Executive Director/Chief Medical Officer**

Dr. Urbina discussed a variety of topics including: a) the legislative agenda, b) the impact of Amendment 64; c) the Department’s strategic map; d) the rise in pediatric deaths from influenza; and e) the decline in reports of Pertussis.

**Public Health Act Update – Kathleen Matthews, Director, Office of Planning and Partnerships, Community Relations**

Ms. Matthews discussed a variety of topics including: a) the 2009 Public Health Plan; b) the statewide assessment plan; c) the Public Health Improvement Steering Committee; d) the improved relationships between the Department and the local public health agencies; and e) the best use of resources and how to optimize shared services.

**Attorney General’s Report**

Jennifer Weaver, First Assistant Attorney General, stated that there is nothing to report on the litigation front.

**Legislative Report – Karin McGowan, Director, Community Relations**

Ms. McGowan updated the Board regarding the Department’s legislative initiatives and other bills of interest to the Department. She remarked that major topics of discussion for the General Assembly include: a) economic development; b) health care reform; c) renewable energy; d) civil unions; e) in state tuition for illegal immigrants; f) Amendment 64; and g) the budget surplus.

She discussed the Department’s legislative agenda which includes: a) oral health modernization; b) updates to the Office of Health Disparities statute; c) updates to the Office of Primary Care statute; d) funding assistance to address nutrients; e) updates to air pollution standards related to heavy duty diesel engines; f) waste tires; g) budget amendment to transfer money from the Oil and Gas Commission; and h) increased general funding for local public health funding formula.

**Administrative Business – Karen Osthus, Board Administrator**

Rio Chowdhury, Publications Specialist, Community Relations, provided a brief technology update regarding internet access.

Ms. Osthus discussed the possibility of acquiring iPads for Board members.

**Election of Officers**

The Board held its annual election of officers using secret nominating ballots and electing ballots. Laura Davis was re-elected as President of the Board. The Board will hold

elections for the Vice President at the February 20 meeting due to a tie.

**Note:** Dr. Mehler was not present for the remainder of the meeting and did not vote on the hearings outlined below.

**EMERGENCY RULEMAKING: Proposed amendments to 6 CCR 1009-2, Rules pertaining to the Infant Immunization Program, the Vaccines for Children Program, and the Immunization of Students Attending School – regarding Vaccine Administration Fees**

Rachel Herlihy, M.D., Immunization Section Chief, Disease Control and Environmental Epidemiology Division, provided a brief history of the Vaccines for Children Program (VFC) and requested the Board adopt the emergency rule related to the maximum allowable administration fees.

Dr. Herlihy stated that the emergency rules update the fees that Vaccines for Children enrolled providers may charge for administering vaccines to VFC eligible, non-Medicaid enrolled infants, children, or students. The proposed amendments also update the fees that public health agencies may charge for administering vaccines to non-Medicaid enrolled infants, children, or students. She remarked that the changes are being proposed to make Colorado's rules congruent with those established by the U.S. Secretary of Health and Human Services as the Regional Maximum Administration Fee for the VFC program. She commented that the proposed amendments remove the fee amount that a private practitioner or public health agency may charge the Medicaid program for administering immunizations to Medicaid enrolled infants, children or students and instead reference the amount set by the State Medicaid program.

Dr. Herlihy mentioned that each state is required to have a VFC program. She stated that while the provider cannot charge for the vaccine, he or she may impose a fee for administering the vaccine to a VFC eligible child. She pointed out that the administration fee is set by the Secretary of Health & Human Services based on actual regional costs of administration. She stated that effective January 1, 2013, the maximum administration fee for Colorado was increased from \$14.74 to \$21.68 per dose and that currently Colorado's administration fee is set at \$14.74 in 6 CCR 1009-2, Section XI. Dr. Herlihy noted that the rules require a physician to waive the administration fee if a parent is not able to pay the administration fee.

Dr. Herlihy remarked that it is imperatively necessary for the Colorado rule to be amended to preserve the public health, safety, or welfare and for the rule to be consistent with the new federal standard. She stated that failure to adopt a new emergency rule would result in Colorado's rule being inconsistent with the federal rule and could result in providers dropping out of the VFC program because it is not cost effective to participate in the program.

**Public Comments**

None.

**MOVED** by Mr. Schlabs, seconded by Dr. Nevin-Woods to adopt the proposed emergency amendments to 6 CCR 1009-2, rules for Infant Immunization Program, the Vaccines for Children Program, and the Immunizations of Students Attending School, regarding vaccine administration fees, along with the statement of basis and purpose, specific statutory authority, statement of emergency basis and justification, and regulatory analysis including the following

amendments:

Statement of Emergency Basis and Justification:

Line 9, strike "1928" and insert "1396s"

Line 12, strike "1928" and insert "1396s"

Statement of Basis and Purpose and Specific Statutory Authority:

Line 19, strike "1928" and insert "1396s"

The Board finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health safety or welfare, and compliance with the notice and public hearing provisions of section 24-4-103 of the state administrative procedure act would be contrary to the public interest.

#### **MOTION CARRIED UNANIMOUSLY**

#### **Discussion/Request for Rulemaking Hearing: Proposed amendments to 6 CCR 1009-2, Rules pertaining to the Infant Immunization Program, the Vaccines for Children Program, and the Immunization of Students Attending School – regarding Vaccine Administration Fees**

Rachel Herlihy, M.D., Immunization Section Chief, Disease Control and Environmental Epidemiology Division, asked the Board to schedule a public rulemaking hearing on February 20, 2013 to adopt the emergency rules as permanent rules. She pointed out that the proposed permanent rules include additional changes that would remove outdated references, maintain state established maximums and mirror the federal rate.

**BY UNANIMOUS CONSENT**, the Board scheduled a public rulemaking hearing on February 20, 2013 to consider proposed amendments to 6 CCR 1009-2 Infant Immunization Program, the Vaccines for Children Program, and the Immunization of Students Attending School.

#### **Public Rulemaking Hearing: Proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter XX, Ambulatory Surgical Centers**

Tom Hill, Regulatory Policy Director, Colorado Hospital Association, asked the Board to make permanent the emergency rule adopted on November 21, 2012.

Mr. Hill remarked that the purpose of requiring policies and procedures which provide for adequate care of Ambulatory Surgical Center (ASC) patients in the event of an emergency is to clearly establish the respective responsibilities of the ASC and receiving hospitals pertaining to the transfer of patient information; the provision of transportation, the sharing of services, equipment and personnel; the provision of care as it relates to facility capability; and the confidentiality of patient records. He briefly discussed the timeline of the various iterations of proposed language. He mentioned that recommendation B as outlined in a memo from Nancy McDonald, to the Board, dated January 3, 2013 was acceptable to the Colorado Hospital Association.

#### **Public Comments**

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, discussed the options as described, in detail, in the memorandum dated January 3, 2013. She stated that the Health Facilities and Emergency Medical Services Division respectfully propose that the Board consider modifying the language proposed by the Colorado Hospital Association by adopting Option A, which corresponds most closely with CMS guidance

regarding the intent of the federal regulation on this topic. She remarked that the Division is concerned that the public health will not be adequately protected by allowing ASCs to avoid having transfer agreements if its physicians have admitting privileges at merely "a hospital" which could be any hospital anywhere in the world. Since this language concerns emergency transfers, clearly the admitting privileges should be at a "local" hospital.

Mr. Chris Skagen, Assistant Executive Director, Colorado Ambulatory Surgery Center Association, testified in support of the proposed amendments presented by Mr. Hill.

Mr. Hill and Ms. Schoder responded to various Board questions pertaining to: a) the word "appropriate"; b) the definition of the word "local"; and c) the impact federal regulations have on the ASCs.

**Note:** Dr. Nevin-Woods was not present for this rulemaking hearing and did not vote.

**MOVED** by Ms. Mulch, seconded by Ms. Sowinski, to adopt the proposed amendments to 6 CCR 1011-1, Chapter XX, Ambulatory Surgical Centers, with the following amendment: line 12, insert "local" before "hospital" (Option B) along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

**MOTION CARRIED (4-1 Mr. Schlabs opposed)**

**Public Rulemaking Hearing: Proposed New Rules, 6 CCR 1014-9, Public Health Standards**

Bonnie Koehler, Deputy Director, Delta County Public Health, remarked that with the passage of the Public Health Act in 2008 the Board was crucial in developing a comprehensive public health system. She stated that the system recognizes that local public health agencies are essential providers of quality comprehensive health services in Colorado and critical partners with the Department to remain and maintain a strong public health system.

Kathleen Matthews, Director, Office of Planning and Partnerships, Community Relations, spoke briefly about the public health statute and pointed out that the proposed standards are just one component necessary to accomplish the goals outlined in the statute. She remarked that the goals of the proposed rule are: a) to stimulate continuous quality improvement; b) to align with nationally defined quality standards; and c) to promote partnerships between local and state public health agencies. She discussed a) the stakeholder process; b) the difference between the Core Services rule and the Public Health Standards rule; and c) the work of the Colorado Standards Workgroup. She stated that the rule has three sections which include: a) purpose and authority; b) the definitions; and c) the thirty-two minimum quality standards. She mentioned that the standards were based on decades of national work with a high level of representation from the local public health community. She said that there should be little fiscal impact on counties because the standards are designed as best practices which will allow agencies to customize and align their priorities and resources in order to meet the standards.

Mark Johnson, M.D., Director, Jefferson County Department of Public Health, stated that he supports the proposed rule.

Ms. Matthews responded to Board questions regarding the stakeholder process and the evaluation process. Ms. Matthews also thanked Mr. Schlabs for his interest and leadership in helping move the regulations implementing the Public Health Act forward

**Public Comments**

None.

Board members congratulated Ms. Matthews and her team on the hard work and dedication regarding the Public Health Act.

**MOVED** by Mr. Schlabs, seconded by Dr. Nevin-Woods, to adopt the proposed new rule, to 6 CCR 1014-9, Public Health Standards, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

**MOTION CARRIED UNANIMOUSLY**

**Public Rulemaking Hearing: Proposed amendments to 6 CCR 1015-3, Emergency Medical Services, Chapter One, Education and Certification**

Randy Kuykendall, Deputy Director, Health Facilities and Emergency Medical Services Division, provided a brief overview of the proposed amendments.

Mr. Kuykendall mentioned that the proposed rules are necessary to comply with House Bill 12-1059 in order to assist members of the armed forces in maintaining their Colorado Emergency Medical Service (EMS) provider certifications. He stated that the rules assist military personnel stationed in Colorado or their spouses with entering the workforce more quickly by allowing another state's certification or licensure to serve as a basis for Colorado EMS provider certification. He remarked that the proposed amendments include: a) offering reciprocity to out-of-state EMS providers; b) waiving certain renewal requirements; c) recognizing continuing education provided to members of the armed forces; and d) clarifying the good cause provision for disciplinary sanctions. He discussed the stakeholder process and he stated that the rule were reviewed and approved by State Emergency Medical and Trauma Services Advisory Council (SEMTAC).

**MOVED** by Dr. Nevin-Woods, seconded by Ms. Sowinski, to adopt the proposed amendments, to 6 CCR 1015-3, Chapter One – Education and Certification, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

**MOTION CARRIED UNANIMOUSLY (Ms. Mulch was absent for the vote)**

**Public Rulemaking Hearing: Proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter II, General Licensure Standards**

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, requested the Board adopt the proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter II, General Licensure Standards with some conforming amendments to Chapter VII, Assisted Living Facilities.

Ms. Schoder remarked that the proposed changes are necessary to comply with the statutory mandate imposed by House Bill 12-1294. She stated that numerous drafts of the proposed changes have been prepared, shared with stakeholders and modified to reflect stakeholder comments and suggestions.

She stated that the most recent changes involved postponing previously proposed language on performance incentives and reduced fees or credit for deemed facilities. She pointed out that recent stakeholder comments on these issues could not be adequately addressed and that the Division will request a future hearing once any changes to those components have been fully vetted by all stakeholders. She discussed the proposed amendments which

include: a) adding clarifying definitions; b) adding a new section pertaining to licensure surveys; c) clarifying the considerations for a change of ownership; d) adding language regarding the fitness review process; e) updating language pertaining to waivers; and f) removing language regarding the fee cap.

**Public Comment**

None.

**Note:** Ms. Mulch was absent from this rulemaking hearing and did not vote.

**MOVED** by Dr. Nevin-Woods, seconded by Mr. Schlabs, to adopt the proposed amendments, to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter II, General Licensure Standards with conforming amendments to Chapter VII, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

**MOTION CARRIED UNANIMOUSLY**

**This meeting was adjourned at approximately 2:11 p.m.**

You may obtain copies of the rulemaking documents, reports, briefings, and presentations by submitting a request to: [cdphe.bohrequests@state.co.us](mailto:cdphe.bohrequests@state.co.us)