

Approved January 16, 2013

**COLORADO BOARD OF HEALTH
MEETING SUMMARY**

November 21, 2012

NOTE: These minutes are a summary of the proceedings and motions of the November 21, 2012 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, 5th Floor, 4300 Cherry Creek Drive South, Denver, CO., or call 303-692-3464 to request copies.

Call to Order/Roll Call

The November 21, 2012 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; Crestina Martinez, District 3, County Commissioner (via phone); Kindra Mulch, District 4; Glenn Schlabs, District 5 (via phone); Joan Sowinski; Christopher Stanley, M.D., District 7; Sue Warren, At-Large; Christopher Urbina, M.D., MPH, Executive Director and Chief Medical Officer, (ex-officio).

Members Absent

District 6; Christine Nevin-Woods, D.O., At-Large.

Staff Present

Karen Osthus, Board Administrator; Jamie L. Thornton, Program Assistant; Jennifer L. Weaver, First Assistant Attorney General, legal counsel.

Approval of Minutes

BY UNANIMOUS CONSENT, the Board approved the September 19, 2012 minutes as written.

Public comments regarding matters not on the agenda

The following individuals voiced their concerns regarding 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter II, General Licensure, Part X – pertaining to the annual influenza immunization requirement: Nancy Markow, Andie Volin, Bonnie Guzman, Brenda Young, Duane Hayes, and France Ray Dice.

Individuals remarked that the recently adopted regulations: a) are not being consistently interpreted and implemented; b) take away the right to informed consent; c) are unconstitutional; d) require vaccines that are ineffective and unsafe; and e) should contain religious, personal and medical exemptions.

They discussed the pressure employers are applying to achieve the compliance goals outlined in the rule and provided personal experiences of individuals who have lost their jobs or have been forced to retire or resign due to refusing to get the influenza shot.

Approved January 16, 2013

The Board discussed the intent of the regulation, and the employer's right to implement policies they deem appropriate for their business. The Board emphasized that concerned citizens can follow the formal process of requesting a change in regulations and provided contact information.

Board comments regarding matters not on the agenda

None.

Informational Briefing: Colorado Heart Health Solutions Program

Mori Krantz, MD, FACC, Director, Cardiovascular Risk Reduction Program, Denver Health and Stephanie Coronel-Mockler, MPH, CHES, Associate Director, CPC Community Health, provided a PowerPoint presentation regarding the improvement of cardiovascular health of adults in Colorado communities.

The presentation included background information pertaining to Colorado Heart Health Solutions (CHHS), CHHS community health workers, CHHS logic model, CHHS sustainability strategies, and CHHS goals.

There were various questions and comments regarding the achievements of the program, the direction of the program, and how it could impact the future of health care.

Request for Waiver of Building and Fire Safety Regulations: Aspen Valley Hospital

Rob Sontag, Program Manager, Life Safety Code, Health Facilities and Emergency Medical Services Division, provided an overview of the waiver request as described, in detail, in the memorandum dated November 6, 2012. He reminded the Board that when reviewing a waiver request the program has an obligation to ensure that the building is safe and that a financial hardship is demonstrated if the waiver was not granted.

Mr. Sontag advised the Board that this particular waiver request is unlike previous requests because of the extensive multi-phase construction project currently underway at Aspen Valley Hospital and the waiver request is for a structure that has not been built. He stated that the facility was evaluated for compliance with the life safety code and that the project was initially submitted as one project. He remarked that through discussions with the facility and its design team it was decided the facility was better served by breaking the project into several different phases to allow occupancy of portions of the building as they were constructed. He pointed out that this waiver request applies to the second phase of the project.

Mr. Sontag noted that it is common to find missing elements of a plan review when dealing with a multi-phase project; however, in this instance, the new construction creates a deficiency which results in noncompliance to a currently compliant building. He provided detailed information pertaining to the specific issues and discussed efforts made by the Department and the facility to resolve the issues in order to bring the facility up to code.

Public comment

Dave Ressler, CEO, Aspen Valley Hospital, and Russ Sedmak, Director, Healthcare Design, testified in support of granting the waiver request. They discussed the challenges associated with the project, the considerations regarding patient safety, the potential cost increase to the facility if the waiver was not granted, and the efforts made on behalf of the Department. Discussion included the limited options for compliance with the code at this stage of construction, the potential for financial hardship, and the fact that the waiver application assures the safety of employees and clients.

Approved January 16, 2013

Board Question/Comments/Discussion

There were various questions and comments regarding the review process, the different standards pertaining to federal safety codes and local fire jurisdiction codes, the financial impact of denying the waiver or delaying action on the waiver request, and the cost to the facility to bring the building up to code.

After further consideration, Mr. Sontag proposed that the board grant the waiver contingent on the results of reviewing additional information provided by Aspen Valley Hospital.

MOVED by Dr. Stanley, seconded by Ms. Sowinski, to approve the request waiver contingent upon the evaluation of the SEF provided to Mr. Sontag today and that this matter be brought back to the Board in December for discussion on the resolution or further action.

MOTION CARRIED UNANIMOUSLY

Request for Approval of Funding Recommendations: Tobacco Education, Prevention and Cessation Grant Program: Health Communication for Media Templates and Health Communications for Cessation Web Hub

Jennifer Ludwig, Eagle County Public Health Director, and Chair, Tobacco Review Committee, and Celeste Schoenthaler, Healthy Living Unit Manager, Prevention Services Division, provided an overview of the waiver request as described, in detail, in the memorandum dated November 5, 2012. Ms. Schoenthaler discussed the Amendment 35 Tobacco Program 2012-2013 timeline provided to the Board at the meeting. She mentioned that she will be presenting a request for funding approval in December.

Ms. Ludwig respectfully requested the approval of \$403,014 to be awarded to SE2 (Health Communication vendor) to develop electronic document templates for print and web use across the state to support the tobacco education, prevention and cessation grant program. She stated that the contract period will be January 1, 2013 – June 30, 2013.

MOVED by Ms. Mulch, seconded by Ms. Sowinski, to approve the FY2012-13 funding recommendations for the Tobacco Education, Prevention and Cessation Grant Program, Health Communication vendor SE2m in the amount not to exceed \$403,014

MOTION CARRIED UNANIMOUSLY

Ms. Ludwig respectfully requested the approval of \$776,366 to be awarded to Webb PR (Health Communication vendor) to create a statewide resource hub. The hub will contain information for multiple audiences that increase website traffic and increase audience engagement through multiple social marketing engagement strategies. She stated that the contract period will be January 1, 2013 – June 30, 2013.

Ms. Ludwig and Ms. Schoenthaler responded to questions regarding the State hub as it compares to other communication hubs, and maintenance and support for the hub.

MOVED by Ms. Sowinski, seconded by Dr. Stanley, to approve the FY2012-13 funding recommendations for the Tobacco Education, Prevention and Cessation Grant Program, Health Communication vendor Webb PR in the amount not to exceed \$776,366

MOTION CARRIED UNANIMOUSLY

Approved January 16, 2013

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

Nancy McDonald, Director, Health Facilities and Emergency Medical Services Division, discussed the proposed amendments and asked the Board to schedule a public rulemaking hearing for January 16, 2013.

Ms. McDonald remarked that the proposed amendments to Chapter II include conforming amendments to Chapter VII, Assisted Living Facilities, Chapter XXI, Hospices and Chapter XXVI, Home Care Agencies.

She stated that the proposed changes are necessary to comply with the statutory mandates imposed by House Bill 12-1294 signed into law by the Governor in June 2012. She mentioned that several drafts of the proposed changes have been prepared, shared with stakeholders and modified to reflect stakeholder comments and suggestions. She noted that several stakeholder meetings have been held to discuss the proposed changes.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on January 16, 2013 to consider proposed amendments to 6CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter II, General Licensure Standards.

Discussion/Request for Rulemaking Hearing: Proposed amendments to 6 CCR 1014-9, Public Health Standards

Shannon Rossiter, JD, MPH, Public Health Planner, Office of Planning and Partnerships, discussed the proposed rule and asked the Board to schedule a public rulemaking hearing for January 16, 2013.

Ms. Rossiter remarked that the major considerations for the proposed rules are compliance with state law and respect for the spirit of the law that suggests that the public health services should be provided to all Colorado residents and visitors at a minimum standard regardless of where services are provided in the state. She mentioned that the Office of Planning and Partnerships collaborated with local and state public health leaders through the Public Health Improvement Steering Committee to develop the proposed standards. She stated that the proposed minimum quality standards would be the first time such standards have been proposed as a rule for consideration by the State Board of Health. She pointed out that the thirty-two proposed standards align with the national standards created by the Public Health Accreditation Board (PHAB). She mentioned that the standards have an inherent flexibility that will fit with the variety of agencies in Colorado, while representing the basics of what local public health agencies should be doing to ensure healthy communities.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on January 16, 2013 to consider proposed amendments to 6 CCR 1014-9, Public Health Standards.

Attorney General's Report – Updates on litigation involving the State Board of Health

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

Administrative Business, Karen Osthus, Board Administrator

Ms. Osthus discussed the December 19 meeting, the Department's Regulatory Agenda, and Executive Order 2.

Approved January 16, 2013

Public Health Act Update Kathleen Matthews, Director, Office of Planning and Partnerships

Ms. Matthews stated that she will bring updated information regarding the Office's projects to the Board next month.

Discussion/Request for Rulemaking Hearing: Proposed amendments to 6 CCR 1015-3, Rules pertaining to Emergency Medical Services, Chapter One, Education and Certification

Michelle Reese, Chief, Emergency Medical and Trauma Services Section, Health Facilities and Emergency Medical Services Division, discussed the proposed amendments and asked the Board to schedule a public rulemaking hearing for January 16, 2013.

Ms. Reese stated that the proposed amendments are necessary to comply with House Bill 12-1059 and will assist members of the armed forces in maintaining their Colorado Emergency Medical Services (EMS) provider certifications. She remarked that the proposed amendments include: a) granting reciprocity for members of the armed forces and their spouses residing in Colorado who hold a valid EMS provider license or certificate from another state or U.S. jurisdiction; b) waving certain renewal requirements (continued education, CPR and ACLS if applicable) for individuals called to federally-funded active duty for 120 days to serve in a war, emergency or contingency; c) recognizing continuing education provided to member of the armed forces for certification renewal purpose; and 4) clarifying the good cause provision for disciplinary sanctions.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on January 16, 2013 to consider proposed amendments to 6 CCR 1015-3, Rules pertaining to Emergency Medical Services, Chapter One – Education and Certification.

Executive Director and Chief Medical Officer, Chris Urbina, MD, MPH

Dr. Urbina discussed a variety of topics including: a) the upcoming legislative session, b) progress made by the Leadership team and department staff on projects furthering the Strategic Plan; c) the regulations concerning fracturing in the oil and gas industry; d) the possible impacts on the Department associated with legalizing marijuana; and e) his support of the recently passed influenza vaccinations for healthcare workers rules.

Work Session: Board of Health Procedures

Karen Osthus, Board Administrator discussed draft implementation guidance for the Board of Health Procedural rules. The draft guidance included information on: a) rulemaking procedures; b) managing deliberations; and c) handling amendments proposed during deliberations. There were Board member questions, comments and discussion regarding: a) reopening the public hearing period; b) the scope of notices; c) holding executive sessions; and c) limitations that may be imposed by the Hearing Chair .

Ms. Osthus suggested that the Board review the document and send any comments, concerns or questions to her. Ms. Davis recommended further discussion during the December teleconference.

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1007-1 Radiation Control Part 5

James Jarvis, M.S., Sr. Health Physicist, and Steve Tarlton, Program Manager, Radiation Program, Hazardous Materials and Waste Management Division, presented the proposed amendments.

Approved January 16, 2013

Mr. Jarvis stated that Part 5 only pertains to industrial radiographic operations which were last revised in 2009. He pointed out that background information was provided in the memo dated November 2, 2012. He discussed the stakeholder process and remarked that no comments were received. He stated that the proposed changes include: a) updating definitions; b) revising references; c) incorporating language to be consistent with 10 CFR Part 34; d) adding additional clarifying language pertaining to radiation exposure devices; f) adding clarifying language pertaining to qualified radiographer requirements ; and g) correcting typographical errors.

Public Comment

None.

MOVED by Ms. Sowinski, seconded by Ms. Mulch, to adopt the proposed amendments to 6 CCR 1007-1, Part 5, along with the statement of basis and purpose, specific statutory authority and regulatory analysis

**MOTION CARRIED UNANIMOUSLY
(Dr. Mehler and Ms. Martinez absent)**

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1010-2 Retail Food Establishments

Patricia Klocker, Assistant Director, Environmental Health and Sustainability Division, requested that the Board adopt the proposed amendments to the Retail Food Establishments regulations as presented in the memo dated November 7, 2012. Ms. Klocker noted that the last comprehensive review of the regulations occurred in 2004. She stated that the Division, in collaboration with a stakeholder group that included representatives from the local public health agencies, other divisions within the Department, industry, and the Colorado Restaurant Association, conducted a thorough and lengthy review process that began in 2008. She commented that the entire regulation was revised in order to provide clarity and more closely align with federal standards. She noted that language was updated to reflect new legal definitions from the American Disabilities Act (ADA) and to better align the requirements with water quality, disease control and epidemiology standards in the state. She discussed the timing of the notice, stakeholder meetings, various comments received from stakeholder participants, and letters of support received by the Division.

Ms. Klocker remarked that the regulations have been revised to ensure science-based food safety principles are enforced in Colorado. She said that the adoption of the U.S. FDA Food Code is not mandated; however, it is strongly favored by industry, particularly by national chain restaurants and grocery stores and will allow Colorado to meet the Voluntary National Retail Food Regulatory Program Standards. She discussed minor errors found in the proposed rules and outlined in the revised memo dated November 19, 2012.

Ms. Klocker requested that the proposed rules become effective on March 1, 2013, excluding Chapter 3 section 8 (Consumer Advisories), to allow the Division to draft guidance documents and provide training and to allow industry adequate time to conform with the new regulations. Ms. Klocker noted that the consumer advisory portion of the rules would be effective beginning July 1, 2013 to allow restaurants to make the necessary changes to menus and other documents.

Ms. Klocker responded to various questions and comments from the Board which included hand washing requirements, inspection forms, violations and guidance documents.

Public Comment

Peter M. Meersman, President and CEO, Colorado Restaurant Association, testified in general support of the proposed rules. He mentioned that he worked with the Division for the past two months regarding concerns he outlined in a letter to the Division. He stated that he appreciated the hard work and effort of the Division staff to resolve the majority of the Association's concerns; however, there are still a number of issues that remain unresolved. He reviewed the comments he submitted to the Board on November 20. He stated that he supports the mission of the food inspection program and appreciates the working relationship he has with the Department.

Tom Butts, Tri-County Environmental Health Director, representing the Colorado Directors of Environmental Health (CDEH), testified in support of the proposed regulations. He commented that local health agencies are responsible for conducting the majority of the inspections in the state. Mr. Butts mentioned the letter of support he provided to the program and remarked that the Division's stakeholder process was a good process and it allowed for a collaborative environment. He testified that the proposed amendments provide a good balance between uniformity, good science and food safety protection.

Dale Yamnik, Yum! Brands, Inc., testified in support of the proposed regulations. He stated that the proposed amendments bring Colorado closer to the FDA Food Code.

The Board asked questions regarding; a) the consumer advisory; b) the importance of standardization; c) the availability of staff to train industry; d) the steps to access medical information as they pertain to employees in the food industry; and e) other concerns raised during the public comment period.

MOVED by Ms. Mulch, seconded by Dr. Stanley, to adopt the proposed amendments to 6 CCR 1010-2, Retail Food Establishments, with the following amendments to the proposed rules¹:

1. Page 1, line 6, strike "safe, unadulterated, and honestly presented." and insert "safe and unadulterated.";
2. Section 1-201: Page 7, line 2, strike "working";
3. Page 7, line 4 strike "hostesses and/or" and insert "hostesses, servers and/or"
4. Section 2-103K: Page 23, line 43, strike "ARE" and insert "and";
5. Section 2-201A: Page 24, line 31, strike "TRANSMISSION, ," and insert "transmission,";
6. Section 2-201D: Page 25, line 35, strike "(F)(1)" and insert "(F)";
7. Page 25, line 36, strike "(H)(1)";
8. Page 25, line 37, strike "(G)" and insert "(F)";
9. Page 25, line 39, strike "(F)(2)" and insert "(F)" and strike "(H2), (I)";
10. Page 25, line 40, strike "(G)" and insert "(F)";
11. Section 2-201F: Page 26, line 3, strike "(F)(1), (G)(1), (H)(1)" and insert "(F),

¹ Several amendments were made as presented in a memo dated November 19, 2013, corrections to that document, and corrections to a document "Summary of Changes since 9-19-12 Request for Rulemaking". The amendments described here are limited to those needed to correct the proposed rules presented at the November 21, 2012 rulemaking hearing.

- (G)(1)";
12. Page 26, line 5, strike“(F)(2), (G)(2), (H)(2), (I)” and insert “(F), (G)(2), (H)”;
 13. Page 26, line 6, strike “(G)” and insert “(F)”;
 14. Section 2-203D: Page 28, line 9, strike “2-202(D)” and insert “2-202(H)”;
 15. Section 3-101: Page 32, line 5, “safe, unadulterated, and honestly presented.” and insert “safe and unadulterated.”;
 16. Section 3-302: Page 35, line 31, strike “CAN” and insert “shall”;
 17. Section 4-404 H: Page 80, line 36, strike “H.” and insert “*H.”;
 18. Page 80, line 38, strike “that” and insert “than”;
 19. Section 4-407D: Page 83, line 24, strike “*D.” and insert “D.”;
 20. Section 10-104: Page 115, line 42, strike “A.” and insert “*A.”;
 21. Page 116, line 1, strike “B.” and insert “*B.”;
 22. Page 116, line 3, strike “C.” and insert “*C.”,

with an effective date of July 1, 2013 for Section 3-8 Consumer Advisory and an effective date of March 1, 2013 for the remainder of the regulation, along with the statement of basis and purpose, specific statutory authority and regulatory analysis

**MOTION CARRIED UNANIMOUSLY
(Dr. Mehler and Ms. Martinez absent)**

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1011-1 Standards for Hospitals and Health Facilities, Chapter IX, Community Clinics and Community Clinics and Emergency Centers

Lorraine Dixon-Jones, Policy Analyst, Health Facilities and Emergency Medical Services Division presented the proposed amendments.

Ms. Dixon-Jones provided a brief background on the proposed regulations, discussed the stakeholder process and talked about the proposed revisions. She remarked that the proposed amendments make comprehensive revisions to regulations that are over 30 years old and align the regulations with House Bill 12-1294. The rules apply to facilities that operate inpatient beds, clinics that provide emergency services, and clinics that provide primary care services that opt to obtain licensure. She discussed the errata sheet presented to the Board at the start of the meeting and included; a) the organization of the proposed language; b) the definition of community clinics; c) the definition of community emergency centers; and d) the definition of emergency services.

Public Comments

Gail Finley, Colorado Hospital Association; Donald Lefkowitz, MD, Executive Director, Rose Medical Center; Toby Hamilton, MD, Exempla; Christopher Ott, MD, FACEP, representing Centura/ACEP, presented testimony in general support of the proposed amendments and discussed minor concerns.

In general, testimony focused on areas of concern including; a) admitting privileges requirements; b) EMTLA implications; c) emergency transportation requirements; c) impact on communities providing emergency centers; d) financial arrangements and how it relates to patients in an emergency setting.

The Board discussed the definition of a free standing emergency room and several other

Approved January 16, 2013

factors pertaining to the proposed amendments.

MOVED by Dr. Stanley, seconded by Ms. Warren, to adopt the proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter IX, Community Clinics and Community Clinics and Emergency Centers, as amended on the errata sheet, along with the statement of basis and purpose, specific statutory authority and regulatory analysis

MOTION CARRIED UNANIMOUSLY
(Dr. Mehler and Ms. Martinez absent)

EMERGENCY PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter XX, Ambulatory Surgical Centers, Section 11, Emergency Services

Tom Hill, Regulatory Policy Director, Colorado Hospital Association, requested that the Board adopt emergency rules regarding the emergency services section of the ambulatory surgical centers (ASC) regulations. He remarked that the emergency rule-making hearing is necessary because language adopted by the Board on October 17, 2012 resulted in two major unintended consequences – loss of access to services for the public and financial hardship on individuals who are transferred to a facility that is not covered by his or her insurance.

Mr. Hill asked the Board to adopt the following language:

“in the event emergency services are necessary, the ASC shall have a written transfer agreement with a local hospital or ensure that every physician performing surgery at the ASC has admitting privileges at a hospital.”

He stated that this language is closer to what was originally proposed by the Division for the October rulemaking and that CHA had supported. Mr. Hill responded to several Board questions regarding admitting privileges, transfer agreements and the original language proposed by the Division.

Public Comments

The following persons presented testimony in general support of the proposed amendments and discussed minor concerns: Rob Schwartz, Executive Director, Colorado Ambulatory Surgery Center Association (CASCA); Lisa Austin, Vice President of Operations, Pinnacle III; Elizabeth Reimann, Kaiser Permanente; and Ellen Stewart, Pain Centers of America.

In general the persons testifying supported the position of the Colorado Hospital Association and agreed that the rules adopted in October created unintended consequences. Remarks focused on the importance of more closely aligning Colorado licensing requirements with the Centers for Medicare & Medicaid Services (CMS) requirements. They also mentioned the negative impact the rules adopted in October may have on physicians that perform procedures that do not generally require hospitalization (i.e. ophthalmologists) because those providers may not have admitting privileges at a hospital. Additional remarks focused on standard policies provided by CASCA and the use of the 911 system, the negative consequences of keeping the “and” in the regulations, and the importance of following national standards.

MOVED by Ms. Mulch, seconded by Dr. Stanley, to adopt the proposed emergency amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter XX, Ambulatory Surgical Centers, along with

Approved January 16, 2013

the emergency justification that immediate adoption of the rule is imperatively necessary for the preservation of public health, safety and welfare and the compliance with the notice provisions of Section 24-4-103, C.R.S. would be contrary to the public interest, the statement of basis and purpose, specific statutory authority and regulatory analysis

**MOTION CARRIED UNANIMOUSLY
(Dr. Mehler and Ms. Martinez absent)**

4:45 Adjournment