

Approved December 19, 2012

**COLORADO BOARD OF HEALTH
October 17, 2012
Meeting Summary**

NOTE: These minutes are a summary of the proceedings and motions of the October 17, 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 October 17, 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 (by telephone); Kindra Mulch, District 4; Glenn Schlabs, District 5; Joan Sowinski, District 6; Christine Nevin-Woods, D.O., At-Large; 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:

None.

Staff Present:

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

Public comments regarding matters not on the agenda

None.

Board comments regarding matters not on the agenda

Ms. Sowinski requested that the Board be provided with a fact sheet pertaining to the flu vaccinations in order to respond to questions from individuals impacted by these regulations.

Ms. Osthus reminded the Board that the joint meeting with the Air Quality Control Commission and the Board of Health will be held in the Sabin-Cleere room on October 18th at 11:30 and she encouraged members to attend.

Ms. Davis thanked Dr. Urbina for his participation and support of the event recognizing companies that participate in the Environmental Leadership Program. She stated that the event highlighted the efforts of member companies that are going beyond compliance and that impressive strides are being made on limiting Colorado's environmental footprint.

Request for Waiver of Building and Fire Safety Regulations: Centennial Medical Plaza

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/packet dated August 30, 2012.

Mr. Sontag commented that Centennial Medical Plaza is currently licensed under three separate licenses. He stated that the outpatient surgical services department operates under the license of the Medical Center of Aurora as an "off campus location". He remarked that under the current regulations the outpatient surgical services department cannot be licensed as part of an off campus location and should be licensed as an ambulatory surgical center ("ASC"). He pointed out that as an alternative to applying for a new ASC license and holding four licenses in one building, Health One elected to consolidate the facility

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under a single hospital license. He remarked that the facility has been evaluated for Life Safety Code compliance under the 2000 edition of the Life Safety Code, Chapter 18 as a New Health Care Occupancy. He stated that the review identified three items which do not meet the requirements of Chapter 18 but do comply with the Life Safety Code, Chapter 19 Existing Health Care Occupancies. He remarked that the facility requested waivers for items which meet the requirements for an existing facility but do not meet the requirements for a new facility and present a hardship to correct. He pointed out that items identified during the review which do not meet new or existing health care chapters have been or are being corrected to comply with the requirements.

Mr. Sontag remarked that Division staff recommends approval of the waivers based on the determination that rigid application of the regulations would result in demonstrated financial hardship to the facility and granting the waiver request would not adversely affect the health and safety of the facility's patients and staff. Mr. Sontag responded to several Board questions.

MOVED by Glenn Schlabs, seconded by Sue Warren, to approve Centennial Medical Plaza's waiver request of Building and Fire Safety Regulations.

MOTION CARRIED UNANIMOUSLY

Administrative Business, Karen Osthus, Board Administrator

Ms. Osthus mentioned that the November agenda could require an all day meeting and asked Board members to plan accordingly. She reminded the Board that the December 19th meeting will be held via teleconference. She thanked Dr. Nevin-Woods and her staff for the use of the facility and the support her staff provided throughout the meeting.

Attorney General's Report - status update on litigation involving the State Board of Health

Jennifer Weaver, First Assistant Attorney General, reported that there were no changes to report on existing litigation.

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Ch. X, Rehabilitation Centers

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, stated that the proposed amendment changes the name of the facility type from rehabilitation "center" to rehabilitation "hospital" in conformance with House Bill 12-1294. She remarked that additional changes included correcting minor grammatical errors and formatting issues, and she discussed the two types of federal certifications associated with rehabilitative services. Ms. Schoder pointed out that there were no opposition from stakeholders. She asked the Board to approve the proposed changes.

Public Comment

None.

MOVED by Ms. Sowinski, seconded by Dr. Nevin-Woods, to adopt the proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter X, Rehabilitation Centers, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

MOTION CARRIED UNANIMOUSLY

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

Dr. Urbina discussed: a) the upcoming legislative session; b) the internal review of the Department's strategic map; c) the development of the new leadership program; d) the progress made pertaining to the winnable battles; e) the increase in Whooping cough cases in Colorado and the declaration of an epidemic by Washington state and Colorado; and f) Colorado is number one in breastfeeding. Dr. Urbina reported that there has also been an increase in West Nile cases in Colorado. Dr. Urbina noted that Colorado has not had any meningitis cases involving the adulterated pharmaceuticals produced by an out of state compounding pharmacy. Dr. Urbina reported that with respect to the Department's strategic plan, the process of aligning employee work plans with the strategic map is complete and new areas of focus are being considered. Those areas include customer service and

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succession planning. Dr. Nevin-Woods reported that there has been a significant decrease in teen pregnancy in Pueblo from 84 per thousand to 41.6 per thousand.

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1014-8, Procedural Rules for State Board of Health

Karen Osthus, Administrator, State Board of Health, remarked that the Board has always conducted its rulemaking hearings in accordance with the Colorado Administrative Procedures Act (APA) (C.R.S. §24-4-103) but has not had any additional procedural rules that further affect the rulemaking process. She stated that since 2010 the Board has had numerous discussions and work sessions concerning the procedures it uses for rulemaking hearings and how the process could be improved for all participants.

Ms. Osthus discussed the elements of the proposal that included: a) clarifying definitions; b) outlining the selection of the hearing chair; and c) establishing meeting protocols. She mentioned that one set of comments was received from the Colorado Hospital Association which resulted in incorporating the requested change to the definitions of "interested person" and "proponent" to include organizations, associations and governmental agencies. She discussed the Board's concerns to include any limitations it intends to impose in the notice of proposed rulemaking.

Ms. Osthus responded to board questions regarding; a) the selection of the hearing chair; b) the incorporation of the procedural rules in to the notice; and c) the importance of not expanding the APA.

Public Comments

Tom Hill, Regulatory Policy Director, Colorado Hospital Association, testified in support of the proposed rules. He discussed his participation in the stakeholder process and his concerns with the Board's decision not to make it mandatory to express any limitations imposed on written and oral testimony in the notices provided prior to the meetings.

Board Discussion

The Board asked several questions regarding the APA, the definitions of "interested person" and "proponent", and how to measure the effectiveness of implementing procedural rules.

MOVED by Mr. Schlabs, seconded by Dr. Stanley, to adopt the proposed Procedural Rules for the State Board of Health, 6 CCR 1014-8, along with the statement of basis and purpose, specific statutory authority and regulatory analysis with the following change: Line 17, strike "agency" and insert "entity".

MOTION CARRIED UNANIMOUSLY

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1011-1, Chapter XX, Ambulatory Surgical Centers

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the Board with the proposed changes to the Ambulatory Surgical Centers (ASC) regulations which included an errata sheet that outlined the most recent changes to part 10 lines 11 - 13.

Ms. Schoder provided a brief background on the definition of ambulatory surgical centers and the requirements to operate an ambulatory surgical center. She mentioned that there are currently ninety licensed ASC in Colorado and that 95% of those facilities are also certified by the Centers for Medicare and Medicaid (CMS).

Ms. Schoder remarked that the Division has worked extensively with stakeholders since the beginning of 2012 on small changes to this regulation. She pointed out that the proposed changes are the first time in ten years that the regulations have been thoroughly reviewed and updated. She commented that the amendments being proposed align the Division's regulations with federal changes, make numerous typographical and grammatical corrections, and update references and current standards of practice.

She discussed the Division's response to concerns outlined in a letter from Kaiser Permanente, received after Board packets were distributed, pertaining to the language regarding patient education and written transfer agreements. She pointed out that the errata sheet presented today was a direct result of the letter from Kaiser. She remarked that the proposed language pertaining to the written transfer agreements incorporated language directly from CMS. Ms. Schoder noted that the change identified in

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the errata sheet was discussed with the Colorado Hospital Association representative Tom Hill and the Colorado Ambulatory Surgery Center Association representative Chris Skagen and that they did not present any objection with the change.

Ms. Schoder responded to Board questions regarding physician admitting privileges and transfer agreements.

Public Comments

Chris Skagen, Associate Executive Director, Colorado Ambulatory Surgery Center Association, testified in support of the proposed changes. He stated that Tom Hill, Colorado Hospital Association, had informally stated that it was in support of the proposed amendments. He acknowledged and thanked the Division for its excellent work on conducting a well-organized stakeholder process.

Jacob Wager, Government Relations Specialist, Kaiser Permanente, testified in support of the proposed changes. He discussed the administrative burden that ASC would experience if the change noted in the errata sheet was not adopted and he responded to various Board questions regarding physician admitting privileges and nurse training requirements.

Board Discussion

There were various questions and comments regarding the transfer agreement, rule review to ensure rules remain relevant, and the rapid changes to the industry. Further discussion ensued regarding the change made in the errata sheet pertaining to the use of the words “and” vs. “or” as it relates to transfer agreements. There was also additional discussion regarding the training requirements for nurses.

MOVED by Dr. Stanley, seconded by Dr. Nevin-Woods, to adopt the proposed amendments to 6 CCR 1011-1, Chapter XX, Ambulatory Surgical Centers, with the following amendments:

1. Page 10 line 12 after the words “agreement with” insert “the nearest and most appropriate local hospital.”
2. Page 11, line 11 strike the word “be offered” and replace it with “shall”

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 1009-1, Epidemic and Communicable Disease Control, Regulations 1 and 3

Wendy Bamberg, M.D., Medical Epidemiologist for Healthcare-Associated Infections, Communicable Disease Epidemiology Program, Disease Control and Environmental Epidemiology Division, presented the proposed amendments to Epidemic and Communicable Disease Control regulations.

Dr. Bamberg remarked that the proposed changes include the expansion of the new provider reportable condition from the Denver metropolitan area to the entire state in Regulation 1 and the addition of the two new laboratory reportable conditions to Regulation 3. She pointed out that the proposed modifications support one of the Department’s ten winnable battles, Preventing Infections.

Dr. Bamberg provided a brief background on Healthcare-Associated Infections (HAIs), and she discussed the rationale for the expansion in Regulation 1. She emphasized that the reporting would remain voluntary.

She talked about the two new laboratory reportable conditions (selected carbapenem-non-susceptible *Enterobacteriaceae* and carbapenem-non-susceptible *Acinetobacter*) and the required reporting timeframes associated with these conditions.

Dr. Bamberg responded to questions regarding the proposed amendments.

Public Comments

None.

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MOVED by Ms. Mulch, seconded by Dr. Mehler, to adopt the proposed amendments to 6 CCR 1009-1, along with the statement of basis and purpose, specific statutory authority and regulatory analysis

MOTION CARRIED UNANIMOUSLY

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

Ms. Matthews did not have any updates to share at this time.

Request for Approval of Funding Recommendations: Maternal, Infant and Early Childhood Home Visiting Program

Mary Martin, MSW, LCSW, Director, Home Visitation Programs, Prevention Services Division, presented the FY 2012/2013 funding recommendations for existing Nurse Home Visitor Programs (NHVP): Denver Health and Hospital Authority, Mesa County Nurse Family Partnership, St. Anthony Health Foundation and Tri-County Health Department, for a total of \$1,593,605. She reviewed the content of the materials provided to the Board that included; 1) background information of the program; 2) information on the award selection process; and 3) a spreadsheet with funding recommendation amounts.

Ms. Martin and Lisa Merlino, Executive Director, Invest in Kids responded to questions and comments pertaining to program costs, funding streams, data management, and the application process.

MOVED by Ms. Mulch, seconded by Mr. Schlabs, to approve the funding recommendations for the Nurse Home Visitor Programs for Denver Health and Hospital Authority, Mesa County Nurse Family Partnership, St. Anthony Health Foundation and Tri-County Health Department in the amount not to exceed \$1,593,605 as presented.

MOTION CARRIED UNANIMOUSLY (Dr. Mehler absent)

Additional Public Comment

Tom Hill, Colorado Hospital Association expressed his concerns about how the Board adopted amendments to the proposed Ambulatory Surgical Center (ASC) rules. Specifically, Mr. Hill stated he believed the Board should have provided the public with an opportunity to comment on the amendments that were proposed by Board and that were not originally included in the proposal. He testified that the Board violated protocols, legislative and others, by not voting on each amendment separately and then voting on the amended "package". He stated CHA had been supportive of the proposal, with the errata sheet, that was presented by the Division. However, the amendments adopted by the Board materially changed the rules and impacts members of his association.

Several Board members disagreed with Mr. Hill's assessment of the appropriateness of the Board's process in amending regulations and thanked him for his comments.

This meeting was adjourned at approximately 1:15 p.m.

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