

Approved November 21

**COLORADO BOARD OF HEALTH
MEETING MINUTES
September 19, 2012**

NOTE: These minutes are a summary of the proceedings and motions of the September 19, 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 September 19, 2012 Colorado Board of Health meeting was called to order at approximately 10:05 a.m. at the Pueblo City-County Health Department, 3rd Floor Conference Room, 101 West 9th St., Pueblo, Colorado, by Laura Davis, president.

Members Present

Philip Mehler, M.D., District 1; Laura Davis, District 2; Crestina Martinez, District 3, County Commissioner; 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.

Approval of Minutes

BY UNANIMOUS CONSENT, the Board approved the August 15 minutes as written.

Public comments regarding matters not on the agenda

None.

Board comments regarding matters not on the agenda

Dr. Nevin-Woods welcomed the Board to the Pueblo City-County Health Department, introduced several key department staff, provided logistical information concerning the building and discussed the history of the Board of Health. Dr. Nevin-Woods also introduced Sylvia Proud and Pueblo County Commissioner John B. Cordova, Sr.

Joni Reynolds, Public Health Programs Director, provided the Board with a flyer titled "Legalizing Marijuana Is Wrong For Colorado". Ms. Davis recognized Dr. Steve Lowenstein, the department's first Chief Medical Officer, and thanked him for his service.

Informational Briefing: Injury Prevention

Lindsey Myers, Injury and Violence Prevention Unit Manager, Prevention Services Division, provided a PowerPoint presentation on injury prevention. Ms. Myers' comments focused on the leading causes of death for people ages 4 to 34 in Colorado, the implementation of the STEADI (Stopping Elderly Accidents, Deaths and Injuries) pilot program in Adams and Arapahoe counties, injury prevention winnable battle goals, and the grant obtained by the division to build a fall prevention infrastructure. Ms. Myers also presented information concerning motor vehicle safety initiatives directed at teen drivers.

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Elaine Sabyan, R.N., J.D., Compliance Investigator, Health Facilities & Emergency Medical Services Division provided a PowerPoint presentation on preventing falls in Colorado long-term care facilities. Ms. Sabyan's presentation included a discussion on program responsibilities, the contributing factors to falls in long-term care facilities, and fall prevention strategies. Ms. Sabyan's comments focused on the widespread use of position change alarms for residents in long-term care facilities and the harmful health outcomes associated with the increased use of an alarm. She stated that the alarms were designed for short-term use to evaluate fall patterns and not necessarily for how the alarms are currently being used. Ms. Sabyan

Informational Briefing: Procedural Rules for State Board of Health

Karen Osthus, Board Administrator, provided an overview of the draft Procedural Rules for the Board of Health. She discussed the elements of the proposal, the rule development process, the reason for the rules, and the rule-making hearing process. She pointed out that the public rule-making hearing is scheduled for October 17, 2012 at the Colorado Department of Public Health and Environment.

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) in Tri-County Health Department, Pueblo Community Health Center, and Prowers County Public Health, for a total of \$322,864. She reviewed the content of the materials provided to the Board that included; 1) a cover letter summarizing the application process; 2) application review summaries for each of the program grantees; and 3) a spreadsheet with funding recommendation amounts.

Ms. Martin responded to questions and comments pertaining to program expansion, program costs, and the impact on other similar programs outside of the three targeted communities. The Board determined that Dr. Nevin-Woods did not have a conflict of interest because the Pueblo Community Health Center is separate from the Pueblo City- County Health Department.

MOVED by Mr. Schlabs, seconded by Dr. Nevin-Woods, to approve the funding recommendations for the Nurse Home Visitor Programs for Tri-County Health Department, Pueblo Community Health Center and Prowers County Public Health as presented.

MOTION CARRIED UNANIMOUSLY

Discussion/Request for Rulemaking Hearing: Proposed amendments to 6 CCR 1010-2 Retail Food Establishments

Patricia Klocker, Assistant Division Director, Division of Environmental Health and Sustainability Division, discussed the proposed amendments and asked the Board to schedule a public rulemaking hearing for November 21, 2012.

Ms. Klocker remarked that the proposed rule changes are in response to changes in the U.S. Food and Drug Administration's model Food Code (Food Code). She stated that the Food Code is updated every two years; however, Colorado's regulations have not been comprehensively revised since 2004. She commented that the proposed revisions will ensure that Colorado's regulations are uniform with the rest of the country and will allow Colorado to keep pace with national science-based recommendations.

Ms. Klocker stated that the Division conducted a lengthy review process 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. She noted that the proposed revisions are more closely aligned with federal standards, include language that reflects new legal definitions from the American Disabilities Act (ADA), and provide clarity to users as to what is required for compliance.

Ms. Klocker responded to numerous Board questions and comments regarding the proposed amendments.

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BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on November 21, 2012 to consider proposed amendments to 6 CCR 1010-2, Retail Food Establishments.

Discussion/Request for Rulemaking Hearing: Proposed amendments to 6 CCR 1007-1 Radiation Control, Part 5

James Jarvis, M.S., Sr. Health Physicist, Radiation Program, Hazardous Materials and Waste Management Division, presented the proposed amendments and asked the Board to schedule a public rulemaking hearing on November 21, 2012. Mr. Jarvis remarked that the proposed changes incorporate consistent with 10 CFR Part 34 that were not incorporated into prior amendments to Part 5. He stated that the proposed changes limit modifications to certain radiography equipment by licensees and registrants related to the security of radiography devices in storage. He commented that the proposed amendments are necessary to maintain compatibility with federal requirements and maintain Colorado's status as an Agreement State. He pointed out that additional changes make improvements, corrections, and clarifications to the regulations.

Mr. Jarvis responded to numerous Board questions and comments regarding the proposed amendments.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on November 21, 2012 to consider proposed amendments to 6 CCR 1007-1, Radiation Control Part 5, Safety Requirements for Industrial Radiographic Operations.

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

Dr. Urbina discussed his local public health department site visits, the progress on the Winnable Battles, and the progress the department has made on numerous LEAN projects. He also mentioned that the department is already preparing for the upcoming legislative session. Dr. Urbina responded to Board questions regarding the increase of substance abuse of prescription drugs for pregnant women and the increase in Pertussis cases in Colorado.

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

None.

Attorney General's Report

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 advised the Board that the State is transitioning to the Google platform for email starting October 8. She encouraged them to check their spam folder if they do not receive any emails from the department during the initial transition. She reminded members that the Air Quality Control Commission and the Board of Health will hold a joint meeting on October 18, 2012 and encouraged members to attend.

Discussion/Request for 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 and asked the Board to schedule a public rulemaking hearing on November 21, 2012.

Ms. Dixon-Jones remarked that the proposed amendments to Chapter IX make comprehensive revisions to regulations that are over 30 years old. She stated that the amendments align the regulations with House Bill 12-1294 that specifies which type of clinic is subject to licensure. Those clinics include, clinics operated by prisons, clinics that operate inpatient beds, clinics that provide emergency services and clinics that provide primary care that opt to obtain licensure. She mentioned that the standards for clinics subject to licensure have been updated regarding: governing body; medical director; emergency evacuation/management plan; plan review; policies and procedures;

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infection control; emergency care services; service interruptions and seasonal closures of community emergency centers; and services provided through inpatient beds.

BY UNANIMOUS CONSENT, the Board scheduled a public rulemaking hearing on November 21, 2012 to consider proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter IX, Community Clinics and Community Clinics and Emergency Centers.

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter XIV, Maternity Hospitals

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the Board with the proposed changes to Standards for Hospitals and Health Facilities pertaining to Maternity Hospitals.

Ms. Schoder remarked that House Bill 1294 (HB 1294) removed the department's authority to license and set standards for maternity hospitals. She mentioned that the department has not received an application or issued a license for a maternity hospital in many years and that the proposed repeal is not controversial. She pointed out that there are still licensing categories and regulations concerning birth centers and general hospitals. She stated that as a result of HB 1294, the department is proposing to repeal 6 CCR 1011-1, Chapter XIV.

MOVED by Ms. Warren, seconded by Mr. Schlabs, to adopt the proposed amendments to 6 CCR 1011-1, Chapter XIV, Maternity Hospitals (repeal), 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 1011-1, Standards for Hospitals and Health Facilities, Chapter XII, Chiropractic Centers

Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the Board with the proposed changes to Standards for Hospitals and Health Facilities pertaining to chiropractic centers. Ms. Schoder remarked that House Bill 1294 (HB 1294) removed the department's authority to license and set standards for chiropractic centers and hospitals. As a result, the Department is proposing to repeal 6 CCR 1011-1, Chapter XII.

Ms. Schoder commented that she is unaware of the department ever having received an application or issued a license for a Chiropractic Center and Hospital and that the proposed repeal is not controversial. She pointed out that the practice of chiropractic is currently regulated by the Board of Chiropractic Examiners in the Department of Regulatory Agencies (DORA) and DORA will continue to have regulatory authority over individual chiropractors.

MOVED by Mr. Schlabs, seconded by Dr. Nevin-Woods, to adopt the proposed amendments to 6 CCR 1011-1, Chapter XXI, Chiropractic Centers, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1015-8, Rules for Service Grants for the Dental Assistance Program

Katya Mauritson DMD, MPH (c), Director, Oral Health Unit, Prevention Services Division, presented the proposed changes to Rules for Service Grants for the Dental Assistance Program. Ms. Mauritson remarked that in May 2012, House Bill 12-1326 passed, providing \$3 million in funding to the Old Age Pension Dental Program. She stated that the department recommends the 2008-2009 allowable dental procedures and provider reimbursement fees (aka fee schedule) for this program be reinstated for the period beginning October 30, 2012. She asked that the fee schedule remain effective until new recommendations are made by the Dental Advisory Committee and approved by the Board of Health.

Ms. Mauritson stated that the proposed changes in section 1.2-1(B), application requirements, are recommended to increase the possible grantee pool. She said that existing rules require certain

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documentation from applicants to establish a relationship with Area Agencies on Aging (AAA) and that the proposed changes will remove this requirement in order to avoid excluding qualified grant applicants. She also discussed the stakeholder process and future funding amounts.

Ms. Mauritson responded to Board questions and comments regarding grantee wait lists, eligibility determination, and outreach opportunities.

Public Comments:

Eileen Doherty, Director, Colorado Gerontological Society, Michael Espinosa, Program Administrator, Pueblo Area Agency on Aging, and Karen Miller, D, testified in support of the proposed amendments.

MOVED by Dr. Stanley, seconded by Ms. Warren, to adopt the proposed amendments to 6 CCR 1015-8, Rules for Service Grants for the Dental Assistance Program, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

MOTION CARRIED UNANIMOUSLY

Board Discussion: Cancer, Cardiovascular and Chronic Pulmonary Disease and Tobacco Review Committee Recommendations Process and Board Approvals

Karen Osthus, Board Administrator stated that this discussion is in follow-up to questions, comments, and concerns that were raised during the requests for approval of funding recommendations portion of the August 15 meeting.

Board members discussed the Board's role as it relates to funding recommendations, the responsibility placed on them to approve or disapprove substantial amounts of money, the importance of evaluating the effectiveness of the programs, the opportunity for community involvement, and committee processes pertaining to electing committee members and providing funding recommendations.

After lengthy discussion the Board provided Ms. Osthus with the following suggestions to pass along to the programs: 1) provide the Board with a timeline well in advance, 2) provide a funding "map" so that members can easily see where the funds are allocated, 3) determine the disparities between programs in urban and rural areas and investigate ways to ensure everyone has an equal opportunity for funding, and 4) provide a concise recommendation that includes the rationale for the decisions.

PUBLIC RULEMAKING HEARING: Proposed amendments to 5 CCR 1005-2, Testing for Alcohol and other Drugs

David Butcher, Director, Laboratory Services Division, requested the adoption of the proposed amendments to 5 CCR 1005-2, Testing for Alcohol and other Drugs. He stated that the revisions are necessary due to implementation of the new equipment (Intoxilyzer 9000) and to allow Forensic Toxicology laboratory requirements to reflect industry quality standards and best practices. The current 5000 EN has been in use since 1998. Mr. Butcher mentioned that the revisions were developed by staff and incorporated changes suggested by stakeholders including defense attorneys, forensic toxicology laboratory directors, law enforcement, Colorado DA Council, Department of Revenue, Department of Transportation, the Attorney General's Office, and counties and municipalities. He stated that all stakeholder feedback was critically reviewed and in most cases incorporated into the proposed language to address concerns of the group.

Jeffrey Groff, Evidential Breath Alcohol Testing (EBAT) Program Manager, Laboratory Services Division, remarked that the intent of the proposed amendments is to address three objectives: 1) establish language relevant to the statewide certification, collection, and testing of evidential breath alcohol samples from individuals suspected of DUI/DWAI using new EBAT instrumentation; 2) update existing requirements with currently recognized and accepted industry best practices for forensic toxicology laboratories certified by the rule to perform testing for DUI/DUID purposes; and 3) remove outdated, non-applicable requirements and to clarify existing language found in the rule wherever possible. He provided a summary of the stakeholder process, the efficiencies created by the proposed amendments, and the implementation of the new equipment. Mr. Groff also submitted an errata sheet with a list of minor amendments to the proposal.

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Mr. Groff responded to Board questions and comments regarding safeguards for the new equipment, use of outdated technology, costs associated with the new equipment, and impact on rural communities.

Public Comment

Support Department's Proposal:

David Hall, Colorado State Patrol and Mathew Wenig, Denver District Attorney testified in support of the proposed amendments.

Oppose Department Proposal:

Lloyd Boyer, Attorney; Patricia Sulik, Rocky Mount Fort Collins; Robert C. Bux, M.D., Coroner, El Paso County Coroner's Office; Vincent Todd, Attorney, testified in opposition to the proposed amendments. Comments opposing the amendments included:

- Proposed rules prohibit an individual citizen from becoming a certified EBAT operator;
- Proposed rules combine all types of entities under one set of regulations-lack differentiation based on purpose of testing;
- Proposed rules lack definition and are unclear

Following the public comment period Board members posed additional questions regarding blood test tubes and instructions, laboratory certifications, unintended consequences of the proposed amendments, quality assurance, testing validity, and evaluation methods, to Mr. Groff.

MOVED by Ms. Mulch, seconded by Ms. Martinez, to continue the rulemaking hearing to October 17, 2012.

MOTION FAILED (6 – 2)

MOVED by Dr. Stanley, seconded by Ms. Sowinski, to adopt the proposed amendments to 5 CCR 1005-2, Testing for Alcohol and Other Drugs, with the following amendments:

1. Line 270, Strike "Biannually" and insert "Biennially";
2. Strike lines 823 and 824 and insert "rule. A laboratory meeting the certification requirements of these regulations will be issued a certificate. Recertification shall be required annually and will";
3. Line 886, Insert after "Subject testing" "in the affected method";
4. Line 998, Insert after "Identification and "when applicable";
5. Line 998, Strike the "-" in front of the 80%";
6. Line 1827, Strike "to include the limit of quantitation (LOQ)";
7. Strike lines 1841 through 1845;
8. Line 1884, Insert "," after "type(s)";
9. Line 1884, Insert a space after "identification";and
10. Line 2049, after "INSTRUCTIONS" insert ", if they exist".

, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

MOTION CARRIED (6 – 2)

Note: Dr. Mehler was not present for this rulemaking hearing and did not vote on this agenda item.

This meeting was adjourned at 4:04 p.m.

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