



COLORADO

Board of Health

Department of Public Health & Environment

Meeting Minutes

Tuesday, September 16, 2014

Approved October 15, 2014

Call to Order

The Colorado Board of Health held a public meeting on Tuesday, September 16, 2014 at the Old Supreme Court Chambers, State Capitol Building, Room 220, 200 E. Colfax Ave., Denver, CO 80203. The meeting was called to order at 8:30 a.m.

Members Present

Christopher Stanley, M.D., District 1; Laura Davis, District 2, Board President; Jill Hunsaker-Ryan, County Commissioner, District 3; Betty McLain, District 5; Rick Brown, District 7; Christine Nevin-Woods, D.O., At-Large, Vice President; Sue Warren, At-Large and Larry Wolk, M.D., Executive Director.

Members Absent

Tony Cappello, PhD, District 4 and Joan Sowinski, District 6.

Staff Present

Deborah Nelson, Board Administrator; Jennifer L. Weaver, First Assistant Attorney General, and; Jamie L. Thornton, Program Assistant.

Public Rule-making Hearing

Medical Use of Marijuana

The board convened a hearing in order to receive public testimony and consider revisions to 5 CCR 1006-2, Medical Use of Marijuana. Dana Erpelding, Center for Health and Environmental Data, presented the proposed amendments which are needed to implement Senate Bill 14-155, address findings from the Office of the State Auditor, align department activities with the Department of Revenue and clarify Medical Marijuana Registry processes. The proposed changes effect: Regulation 2, Application for a Registry Identification Card; Regulation 6, Debilitating Medical Conditions and the Process for Adding New Debilitating Medical Conditions; Regulation 10, Waiver for Primary Caregivers to Serve More Than Five Patients; Regulation 12, Patient Responsibilities and Regulation 14, Colorado Medical Marijuana Research Grant Program.

Ms. Erpelding discussed the stakeholder process and mentioned that a majority of stakeholder comments focused on the proposed changes to Regulation 10, Waiver for Primary Caregivers to Serve More Than Five Patients. She stated that the proposed changes to Regulation 10 only impact four primary caregivers, and that the department has issued 20 waivers to date. She spoke about the law requiring parents of minor patients to be the child's primary caregiver and that the rulemaking does not affect minor children. Ms. Erpelding responded to board questions regarding parents serving as primary caregivers, confidentiality of the registry, and the legal implications of multiple primary caregivers providing services to a patient.

Oral Testimony

The following persons testified in opposition to the department's proposal: Wendy Turner, Matthew Dible, Kirk Anderson, Tom Turner, Sarah Rowland, Cristine Steed, Terry Himes, Michael Green, Carlos Montoya, Kaiya Logne, Jason Crawford, Janea Cox, Mark Pedersen, Regina Nelson, Tonya Risnes, Pamela Montoya, James Clark, Genny Jessee, Peter Birkeland, Kathleen Chippi, Thomas Stock, Teri Robnett, Jason Warf, Robert Chase, Greg Durnn, Laura Altobell, Phillip Barton, Jessica LeRoux, Benita Nelson, Mark Anserhdeer and Holly Conrad. Below is a summary of the oral testimony:

- That the department does not have the authority to limit the number of patients seen by primary caregivers.
- Limited availability of medicine (low THC, high CBD) for children with debilitating medical conditions.
- No proof of widespread harm caused by primary caregivers.
- Medicine with low THC and high CBD would be cost prohibitive in dispensaries.

- Centers are not interested in low THC high CBD medicine because it would not generate money.
- Unreasonable expectation for parents to grow the medicine because they are busy taking care of their children and they do not have the resources.
- Centers are not knowledgeable about medical conditions or dosage practices.
- Limiting the number of patients a caregiver can see will force patients to purchase medicine illegally.

The vast majority of comments concerned the proposed caregiver standard; however, there was some oral testimony opposing the medical marijuana grants program and use of patient fees for this purpose.

Department response to Oral Testimony

Ms. Erpelding provided a brief review of the drivers for the proposed rule, including the audit findings and the legislation enabling the medical marijuana grant program. Ms. Erpelding reviewed the requirements that are delineated in statute, existing Board of Health rules, and the rationale for the proposed changes.

Board Comments and Questions during Oral Testimony

There were questions and comments regarding the proposed amendments throughout the public testimony period which included; the availability of low THC high CBD medication in centers, the types of services associated with activities of daily living, the ability for parents to grow and make medicine, the definitions of centers and caregivers, the ability to have medical marijuana tested by Colorado laboratories, the cost of medical marijuana versus recreational marijuana and definition of significant responsibility and well being as it is outlined in the department's rules.

After all who sought to provide oral testimony did so; this portion of the rulemaking hearing was closed.

Call for Motion to Convene in Executive Session

Moved by Mr. Brown, seconded by Dr. Nevin-Woods, to convene in executive session to receive legal advice on specific legal questions pursuant to §24-6-402(3)(a)(II), C.R.S, specifically to receive advice from counsel with regard to legal issues pertinent to this rulemaking. Motion carried unanimously. The board convened in executive session at the Department of Personal and Administration, 1525 Sherman St., Rom 513 at approximately 11:30 p.m. - 12:30 p.m. Following the executive session, the board reconvened at the Old Supreme Court Chambers, State Capitol Building, Room 220, 200 E. Colfax Ave., Denver, CO 80203.

Ms. Davis stated that the board convened in executive session at approximately 11:35 p.m. - 12:30 p.m. during that time counsel to the board and board members engaged in communication seeking legal advice on specific legal questions pertaining to 5 CCR 1006-2, Medical Use of Marijuana. The communications consisted of discussions that are protected by the attorney-client privilege under §§13-90-107(1)(b) and 24-6-402(3)(a)(II), C.R.S., and are therefore, exempt from the Open Meetings Act pursuant to §24-6-402(3)(a)(II), C.R.S. During the executive session the board did not adopt any proposed policy, position, resolution, rule, regulation or formal action in accordance with §24-6-402(3)(a)(II), C.R.S. Ms. Weaver stated that during the executive session an electronic recording was kept of the discussion; however, based on my opinion, the discussion constituted a privileged attorney client communication and that the recording will not be released to the public.

Additional Questions to Staff

The board re-opened the oral testimony to ask additional questions of the department staff regarding: a) the total number of waiver requests and approvals; b) the time period requests were received; c) the rationale for restricting the number of patients; d) the ability for a minor child to have a primary caregiver other than their parent; and e) the criteria for a waiver. The department responded that 100% of waiver requests have been approved and that based upon the audit finding the department has developed enhanced waiver criteria. The proposed rule delineates factors that the department can consider when reviewing a request for a waiver to exceed the patient count of five. The department testified that the data used is recent as patients apply to the registry annually. The department testified that the rationale for the waiver was based upon multiple factors: the department sought to distinguish primary caregivers from medical marijuana centers to provide clarity across the medical marijuana community and the state agencies involved. The audit findings recommended that the department strengthen its oversight and the recommendation from the department sought to provide clarity that aligned with the vast majority of stakeholder process, the statutory requirement that a caregiver have a significant responsibility for managing the well-being of a patient with a debilitating condition, which is defined in rules promulgated by the Board of Health, as well as an interpretation of the rule that regularly assisting with daily living activities would require a caregiver to devote one hour per day to the patient's care. Ms. Erpelding also reviewed her previous testimony regarding the criteria the department will use when a caregiver seeks to

demonstrate exceptional circumstances that merit a waiver of the five-patient limit. At the conclusion of Ms. Erpelding's response, the testimony portion of the rulemaking was again closed.

Deliberations

Board members each made a statement about Regulation 10, Waiver for Primary Caregivers to Serve More Than Five Patients. Ms. Warren remarked that she was comfortable with the current waiver process and stated that she did not see a compelling case to limit the number of patients caregivers can take care of. Dr. Stanley stated that he is concerned with the high approval rate as it could imply that the waiver criteria are not clear. Ms. Davis remarked that it may be premature to amend this part of the rule. Commissioner Hunsaker-Ryan stated that individuals may or may not require an entire hour of care and that care could be provided in a non-traditional way. She also mentioned that the testimony reflected that patients feel that the level of care is higher in a caregiver setting versus a center. Mr. Brown stated that he would like to see the patient and caregiver relationship defined better and that patients should receive the highest level of care possible. He went on to say that more scientific data regarding medical marijuana is necessary. Mr. Brown also spoke to the stakeholders indicating that the testimony raised an issue that lives in statute and the board is unable to address the requirement that a parent be the primary caregiver. Ms. McLain remarked that she is unsure if 10 patients per caregiver is the correct ratio. She stated that she would like to see the waiver process tightened and more clearly defined. She encouraged caregivers to create an alliance and work with legislators.

Vote

The board then agreed to vote on the amendments with two motions; one excluding Regulation 10, Waiver for Primary Caregivers to Serve More Than Five Patients and one solely for Regulation 10, Waiver for Primary Caregivers to Serve More Than Five Patients.

Motion 1: Moved by Ms. Warren, seconded by Dr. Stanley to approve the proposed amendments to 5 CCR 1006-2, Medical Use of Marijuana with the exception of the revisions proposed in Regulation 10. Motion carried unanimously.

Motion 2: Moved by Ms. Warren, seconded by Dr. Nevin-Woods to approve the proposed amendments to Regulation 10, Waiver for Primary Caregivers to Serve More Than Five Patients, with the amendment to delete the new language proposed at lines 346 and 347. Motion carried 6 -1.

This meeting was adjourned at approximately 1:32.