

**COLORADO BOARD OF HEALTH  
MEETING MINUTES  
August 17, 2011**

**NOTE:** These minutes are a summary of the proceedings and motions of the August 17, 2011 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 August 17, 2011 Colorado Board of Health meeting was called to order at approximately 10:15 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**

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:**

Philip Mehler, M.D., District 1

**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 June minutes with minor corrections and the July minutes as written.

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

Jeff Parsons, representing Western Mining Action Project (WMAP) and Sharyn Cunningham, Director, Colorado Citizens Against Toxic Waste (CCAT), remarked that there are significant issues with the regulations governing uranium mining facilities and how the department's administration of the Radiation Control Program. Mr. Parsons and Ms. Cunningham specifically mentioned; a) that regulations providing adjudicatory hearings are not being followed; b) that public comments are not being allowed; and c) that there are serious problems with the bond amount and the calculations used to determine the bond amount for such facilities. Mr. Parsons asked the Board to establish an advisory committee to provide guidance to WMAP and CCAT.

The Board responded to several questions and encouraged Mr. Parsons and Ms. Cunningham to submit a formal request to convene an advisory committee.

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

Dr. Nevin-Woods commented that on a recent trip to England she was struck by the differences between children in the U.S. and England. She mentioned that more children played outside compared to their counterparts in the U.S. and that they were

not overly concerned with having the most stylish clothing. She added that children in England did not seem to have the childhood obesity issues that American children have.

**PUBLIC RULEMAKING HEARING: Proposed amendments to 6 CCR 1011-1, Chapter VII, Assisted Living Residences, pertaining to reduction of renewal licensure fee**

**Staff Comments:** Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, presented the Board with the proposed changes to the Assisted Living Residences (ALRs) regulations.

Ms. Schoder remarked that in November 2008, the Board raised license fees for ALRs in order to establish a fee schedule sufficient to meet the direct and indirect costs of administration and enforcement of the ALR licensing statute. She added that the fees were determined based on the department's standard expense projections and included annual cost of living increase for department personnel. She added that the increased license renewal fees were phased in over two years.

Ms. Schoder commented that ALR revenue has exceeded the department's spending authority due to: a) unexpected increase in the number of new ALRs; b) programmatic changes that have increased efficiencies; and c) mandated furloughs and reduced salary costs.

She pointed out that the stakeholders supported the proposed rules and she added that the effective date would coincide with ALR licenses renewed on or after January 1, 2012.

**Public Comments:**

None.

**Board Comments:**

Ms. Schoder responded to questions pertaining to the statute and the correlation between the numbers of beds a facility has and the fees associated with licensure.

**MOVED** by Ms. Sowinski, seconded by Dr. Nevin-Woods, to adopt the proposed amendments to 6 CCR 1011-1 Ch. VII, Assisted Living Residences, 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, Chapters II, General Licensure, VII Assisted Living Residences and XXVI Home Care Agencies-pertaining to health facility naming and change fee reduction**

**Staff Comments:** Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division, provided a brief overview of the proposed changes.

Ms. Schoder remarked that proposed changes reflect the changing face of health care and the anticipated expansion of health care delivery systems under the Affordable Care Act. She pointed out that by eliminating the requirement for an entity's name to identify services for which it is licensed, it will help remove any public stigma associated with visiting certain types of facilities. She commented that the proposed language pertaining to the reduction of licensure fees for processing a request to change its name or address is due to a reduction in the administrative burden for processing such requests.

**Public Comments:**

None.

### **Board Comments:**

Ms. Schoder responded to Board questions regarding the potential for facilities to misrepresent services they provide; as well as, any possible consequences of an inappropriate name.

**MOVED** by Ms. Mulch, seconded by Ms. Sowinski, to adopt the proposed amendments to 6 CCR 1011-1 Chapter II, General Licensure, Chapter VII, Assisted Living Residences, and Chapter XXVI Home Care Agencies, along with the statement of basis and purpose, specific statutory authority and regulatory analysis.

### **MOTION CARRIED UNANIMOUSLY**

### **Reports of the Executive Director and Chief Medical Officer, Chris Urbina, M.D., M.P.H.**

Dr. Urbina remarked that the department is preparing for the 2012 legislative session. He anticipates the department will be impacted by the lean budget Colorado faces, as well as, possible cuts at the federal level.

He commented that the department is currently reviewing the strategic planning process, evaluating winnable battles, and focusing on priorities. He added that the department is working closely with local public health departments and statewide stakeholders to ensure advancements are being made to create one public health system for the state.

Dr. Urbina responded to questions regarding recent milestones achieved by the department as they pertain to the reorganization efforts. Additionally, he received and discussed suggestions related to customer service.

### **Attorney General's Report-Updates on litigation involving the State Board of Health**

Jennifer Weaver, First Assistant Attorney General, updated the Board on the status of the following cases:

- CCHI v. BOH – pending in District Court
- LaGoy v. CDPHE – Court of Appeals vacated oral arguments and a decision is forthcoming.

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

The Board discussed plans for their October 18 retreat scheduled to be held in Burlington, Colorado. Ms. Osthus mentioned that Ms. Davis, Ms. Sowinski, Ms. Warren and Commissioner Martinez would be attending the joint meeting between the Board and the Air Quality Control Commission on October 20, 2011.

### **Public Health Act Update, Kathleen Matthews, Director, Office of Planning and Partnerships (OPP)**

Ms. Matthews discussed the stakeholder process pertaining to the Public Health Core Services rulemaking, the focus of the steering committee's upcoming meeting, and OPP's role in obtaining information related to the department's strategic plan.

She responded to Board questions pertaining to the involvement of elected officials and the ability for local public health departments to fund the services outlined in the Core Public Health Services proposed regulations.

### **Request for Approval of Funding Recommendations: Nurse Home Visitor Program, Tri-County Health Department and Pueblo Community Health Center**

Dr. Nevin-Woods recused herself from the hearing and the vote on this issue.

**Staff Comments:** Mary Martin, MSW, LCSW, Director, Home Visitation Programs, Prevention Services Division, asked the Board to approve the recommendation to fund Tri-County Health Department and Pueblo Community Health Center to expand their Nurse Home Visitor Program (NHVP), specifically for the Maternal, Infant and Early Childhood Home Visiting Program (MIECHV), in the amount of \$290,250.

Ms. Martin remarked that funding support for the Nurse-Family Partnership (NPF) model in Colorado is through the Master Tobacco Settlement Agreement fund and is administered under the Nurse Home Visitor Act, and noted that she typically comes to the Board for approval of recommendations under that program. She added that this request is for approval to direct federal funds from the Affordable Care Act – Maternal Infant and Early Childhood Home Visiting Program to support the expansion of existing Nurse Home Visitor Programs. Ms. Martin stated that Board approval is necessary because C.R.S. §25-31-104 requires that NHVP services, whether funded through private, state or federal dollars, must follow the fiscal and administrative rules of the Nurse Home Visitor Act.

She remarked that the purpose of the MIECHV funding is to support evidence-based home visiting programs in Colorado for 1 year. She added that \$225,250 is recommended for Tri-County Health Department to serve 50 families, and \$65,000 is recommended for Pueblo Community Health Center to serve 13 families for the funding period of October 1, 2011 through September 30, 2012.

Ms. Martin commented that the application process consisted of a statewide needs assessment to identify counties/communities at high risk for poor maternal and child health outcomes. She pointed out that Adams and Pueblo counties ranked first and second respectively. She added that NHVP staff reviewed the applications for completeness and forwarded them to the Nurse-Home Family Partnership National Service Office (NFPNSO) for programmatic review. Ms. Martin stated that NFPNSO supports the recommendations.

There were various questions and comments regarding eligibility requirements, recipient goals, program outcomes, and costs associated with administering the program.

**MOVED** by Ms. Mulch, seconded by Mr. Schlabs, to approve the funding recommendation as presented.

**MOTION CARRIED UNANIMOUSLY** (Dr. Nevin-Woods recused)

#### **Public Hearing: Dissolvable Tobacco Products**

Ms. Davis addressed opening remarks to the public prior to the informational hearing on dissolvable tobacco products. She reminded everyone that this public hearing is not a regulatory hearing and that there is no action before the Board to consider. Ms. Davis pointed out that this hearing allows the Board to be informed about dissolvable tobacco products and is strictly an informational hearing.

**Staff Comments:** Stephanie Walton, Healthy Living Branch Unit, Youth Tobacco Specialist, Youth Health & Tobacco, Prevention Services Division, presented a PowerPoint overview, which highlighted: a) Colorado Youth tobacco data; b) status of federal and state oversight and regulations; and c) possible impact of dissolvable tobacco products on youth tobacco use.

Ms. Walton remarked that traditional products include cigarettes, cigars, and chewing tobacco; additionally, she stated that these products are regulated by the U.S. Food and Drug Administration (FDA). She commented that the dissolvable tobacco products being test-marketed in Colorado represent the newest line of tobacco products marketed by the tobacco industry. She stated that the primary concern for the department is the potential impact on youth due to the packaging, flavoring and pricing which are more likely to attract younger customers. She pointed out that the dissolvable tobacco products are relatively

easy for youth to access because they are not regulated by the FDA thereby allowing retailers the freedom of product placement.

Ms. Walton pointed out that tobacco is still the leading cause of preventable death in the United States and added that Colorado has made enormous progress in terms of decreasing tobacco use. She pointed out that Colorado statutes have updated the definition of tobacco to include dissolvable products and she pointed out that limited research has been conducted on these products. She added that the FDA is expected to issue a report concerning dissolvable tobacco products in March 2012.

The Board asked various questions and provided numerous comments regarding: a) the composition of the products; b) the accessibility of the products; c) the addictive nature of tobacco; d) the statistics associated with Colorado youth; and e) the reason why the products are not taxed.

### **PUBLIC COMMENT:**

The following persons commented in opposition to Colorado being a test-market for dissolvable tobacco products: Mary Hilko, Rocky Mtn. Poison Center; John McCracken, citizen; Wendy Wiedenbeck, citizen; Shawn Cochran, pediatric resident; Cindy Liverance, American Lung Association; Shylo Dennison, Program Director, Pueblo Tobacco Education and Prevention Partnership (PTEPP); Walter "Snip" Young, citizen; Bob Hagedorn, former Colorado legislator; Mark Johnson, M.D., Jefferson County Public Health Executive Director; Bob Doyle, Executive Director, Colorado Tobacco Education and Prevention Alliance; Jodi Radke, Rocky Mountain Regional Director, Campaign for Tobacco Free Kids; Bill Godshall, Executive Director, Smokefree Pennsylvania; and Gregory Connolly, Consumer Advocates For Smoke-Free Alternative Association.

The majority of the persons who provided comments encouraged the Board to adopt a resolution requesting that Colorado be removed from the test-market. Additionally, the Board heard comments pertaining to concerns related to general tobacco use. The following is a summary of their comments:

- Concerned with the toxic and addictive nature of nicotine;
- Concerned that youth are being targeted;
- Want the FDA to regulate all tobacco products;
- Want legislative action requiring dissolvable tobacco products be taxed in the same manner as other tobacco products;
- Concerned about the increase of smokeless tobacco use in Colorado;
- Increased tobacco use (15%) among boys since 2007;
- Encouraged the State to address the loop hole in excise tax;
- Concerned about dual use;
- Concerned about the ingestion potential for small children; and
- Encouraged the Board to draft a resolution requesting R.J. Reynolds to remove Colorado from the test-market.

The following persons commented in support of dissolvable tobacco products and Colorado being a test-market for the products: Geoffrey M. Curtin, Ph.D., Principal Scientist, Director, Regulatory Science Development and Engagement Regulatory Oversight, R.J. Reynolds Tobacco; Scott A. Meiklejohn, attorney representing R.J. Reynolds; Brad Rodu, DDS, Professor, Department of Medicine, Endowed Chair, Tobacco Harm Reduction Research, School of Medicine, University of Louisville; Mary Szarmach, Vice President, Smoker Friendly. The following is a summary of their comments:

- Over forty peer reviews indicate that the risks associated with the use of smokeless tobacco are significantly less than those associated with cigarette smoking;
- Extensive testing shows smokeless products are equivalent to cigarettes;
- Dissolvable products may lead to reductions in cigarette smoking among current smokers;
- Dissolvable tobacco products can be used as a good substitute for other tobacco products;
- Products reduce the harms associated with tobacco use;
- Packaging for the products are child-resistant;
- Marketing of dissolvable tobacco is in accordance with state and federal law, as well as the Master Settlement Agreement;
- Composition, packaging and flavoring of products are the results of surveys completed by current adult smokers not to entice children; and
- Packages are clearly labeled with warnings and are stocked like other tobacco products.

### **Board Discussion**

The Board proceeded with deliberations regarding public testimony. Discussion focused on the lack of safety information on the products, the evidence suggesting that marketing efforts are directed toward children, and the conflicting information provided by dueling experts.

There was also some discussion pertaining to R.J. Reynolds's claim that these products may serve as a mechanism to reduce smoking prevalence. Some Board members commented that the products are being sold legally and that the Board is limited in any action they may take. The Board stated that the topic warranted further discussion and agreed to draft a resolution which may include education, legislation and marketing components.

Several Board members commented on the urgency for the Board to take immediate action to support the progress made in reducing tobacco use in Colorado. One member remarked that there was not time to wait for the FDA's reports due in late 2012.

Dr. Urbina stated that he believes that the marketing efforts are clearly aimed at youth. He pointed out that there is no safe level of tobacco consumption, and he added that he is very concerned that these products may impede the progress Colorado has made in smoking reduction efforts. Dr. Urbina remarked that he supported the Board drafting a resolution encouraging the removal of these products from Colorado.

2:30 p.m.     **Adjournment**